11–25–96
Vol. 61 No. 228
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Federal Register

Monday
November 25, 1996

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Presidential Documents

Title 3—

The President

Proclamation 6957 of November 21, 1996

National Great American Smokeout Day, 1996

By the President of the United States of America

A Proclamation

Every day, nearly 3,000 young Americans become regular smokers, falling victim to negative influences and provocative advertisements and putting themselves at risk of diseases caused by nicotine addiction. Nearly 1,000 of these children will die prematurely and be among the more than 400,000 Americans who lose their lives to tobacco-related illnesses each year. Smoking is the single greatest cause of preventable illness and premature death in our society. The use of tobacco is responsible for nearly one in five deaths in the United States, and we anticipate that, unless smoking rates decline immediately, more than 5 million people under the age of 18 today will die from a smoking-related disease. For a country so deeply devoted to the protection of our children, such numbers are a national tragedy.

Recognizing the urgent need to reverse these devastating statistics, my Administration has announced tough, unprecedented measures to limit children's access to tobacco products and to reduce tobacco's appeal to children. In support of these efforts, I am pleased to join the millions of caring citizens who are observing the ''Great American Smokeout,'' an annual, nationwide effort to help millions of Americans give up tobacco and to raise awareness of nicotine addiction and the deadly risks associated with tobacco use.

Twenty years ago the American Cancer Society organized the first nationwide Great American Smokeout. Through the Society's leadership, the event has helped millions of Americans to stop smoking by proving to them that, if they can quit for a day, they can quit for a lifetime. In recent years the focus of the Great American Smokeout has broadened to include efforts to help our young people understand that they should never start smoking in the first place.

Since the inception of the Great American Smokeout, the smoking rate of American adults has dropped from 36 percent to 25 percent. Nonetheless, tobacco use continues to take an unacceptable toll. This year, 177,000 new cases of lung cancer will be diagnosed. Moreover, even as the number of adult smokers has declined, the use of tobacco among children is rising.

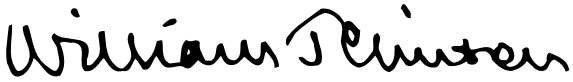
On this 20th anniversary of the Smokeout, local offices of the American Cancer Society are hosting a variety of events, including the Great American SmokeScream for middle school students, the Great American Smokeout Pledge for high school students, and the launching of an exciting and interactive Internet web page for teenagers.

The Great American Smokeout is an opportunity for all Americans to renew their commitment to a smoke-free environment for themselves and particularly for their children. Working together on this day and every day throughout the year, we can create a brighter, healthier future for all Americans—young and old.

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 November 21, 1996, as National Great American Smokeout Day. I call upon all Americans to

join together in an effort to educate our children about the dangers of tobacco use, and I urge smokers and nonsmokers alike to take this opportunity to begin healthier lifestyles that set a positive example for young people.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of November, 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.



[FR Doc. 96–30201
Filed 11–22–96; 8:45 am]
Billing code 3195–01–P

Presidential Documents

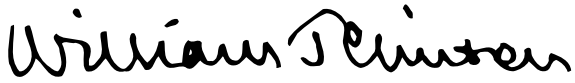
Presidential Determination No. 97–2 of November 11, 1996

Determination Under Section 2(b)(2)(D) of the Export-Import Bank Act of 1945, as Amended: People's Republic of China

Memorandum for the Secretary of State

Pursuant to section 2(b)(2)(D) of the Export-Import Bank Act of 1945, as amended, I determine that it is in the national interest for the Export-Import Bank of the United States to extend a loan in the amount of approximately $383 million in connection with the purchase of the nonnuclear balance of plant equipment and services for the Qinshan III nuclear power plant in Zhejiang Province, the People's Republic of China.

You are authorized and directed to report this determination to the Congress and publish it in the Federal Register.



THE WHITE HOUSE,
Washington, November 11, 1996.

[FR Doc. 96–30220
Filed 11–22–96; 8:45 am]
Billing code 4710–10–M

Presidential Documents

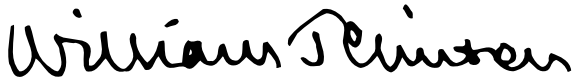
Presidential Determination No. 97–3 of November 11, 1996

Determination Under Section 2(b)(2)(D) of the Export-Import Bank Act of 1945, as Amended: People's Republic of China

Memorandum for the Secretary of State

Pursuant to section 2(b)(2)(D) of the Export-Import Bank Act of 1945, as amended, I determine that it is in the national interest for the Export-Import Bank of the United States to extend a loan in the amount of approximately $409 million in connection with the purchase of U.S. equipment and services for the Yangcheng coal-fired power plant in Shanxi Province, the People's Republic of China.

You are authorized and directed to report this determination to the Congress and publish it in the Federal Register.



THE WHITE HOUSE,
Washington, November 11, 1996.

[FR Doc. 96–30221
Filed 11–22–96; 8:45 am]
Billing code 4710–10–M

Presidential Documents

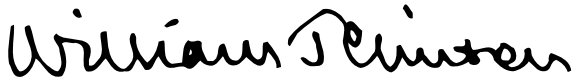
Presidential Determination No. 97–4 of November 12, 1996

Designation of Jordan as a Major Non-NATO Ally

Memorandum for the Secretary of State

I hereby designate the Hashemite Kingdom of Jordan a major non-NATO ally of the United States pursuant to section 517 of the Foreign Assistance Act of 1961, as amended, for the purposes of the Foreign Assistance Act of 1961, as amended, and the Arms Export Control Act.

You are authorized and directed to publish this determination in the Federal Register.



THE WHITE HOUSE,
Washington, November 12, 1996.

[FR Doc. 96–30222
Filed 11–22–96; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 61, No. 228
Monday, November 25, 1996

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.

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DEPARTMENT OF JUSTICE

5 CFR Ch. XXVIII

28 CFR Part 45

RIN 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of Justice

AGENCY: Department of Justice (Department).

ACTION: Interim rule, with request for comments.

SUMMARY: The Department of Justice, with the concurrence of the Office of Government Ethics (OGE), is issuing an interim rule for Department employees as a supplement to the uniform standards of ethical conduct for employees of the executive branch (Uniform Standards) issued by OGE. The regulations established by the interim rule are a necessary supplement to the Uniform Standards because they address statutory requirements and issues that are unique to the Department.

DATES: Interim rule effective November 25, 1996. Comments are invited and must be received on or before January 9, 1997.

ADDRESSES: Send comments to the U.S. Department of Justice, Justice Management Division, Departmental Ethics Office, Main Justice Building, Room 6316, 950 Pennsylvania Avenue, NW, Washington, DC 20530, Attention: Mary Braden.

FOR FURTHER INFORMATION CONTACT:

Mary Braden, U.S. Department of Justice, Justice Management Division, Departmental Ethics Office, (202) 514–8196.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published the Standards of Ethical Conduct for Employees of the Executive Branch (Uniform Standards). See 57 FR 35006–35067, as corrected at 57 FR 48557, 57 FR 52583, and 60 FR 51667, and amended at 61 FR 42965–42970 (as corrected at 61 FR 48733) and 61 FR 50689–50691, with additional grace period extensions at 59 FR 4779–4780, 60 FR 6390–6391, 60 FR 66857–66858, and 61 FR 40950–40952. The Uniform Standards, codified at 5 CFR part 2635 and effective February 3, 1993, established uniform standards of ethical conduct for executive branch personnel. Pursuant to E.O. 12674 (54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306) and 5 CFR 2635.105, executive branch agencies may issue agency-specific regulations, with the concurrence of OGE, that supplement the Uniform Standards. After considering its unique operations, the Department, with the concurrence of OGE, has determined that the regulations established by the interim rule are necessary to implement the Department's ethics program successfully.

II. Analysis of the Regulations

The interim rule establishes the following regulations in new 5 CFR XXVIII:

Section 3801.101 General

Section 3801.101 of the interim rule explains that the regulations established by the interim rule apply to all Departmental Employees and are supplemental to the Uniform Standards, and that all employees must comply with the regulations established by the interim rule as well as the Uniform Standards. In addition employees are subject to the regulations regarding conduct in part 735 of the title and part 45 of chapter I of 28 CFR as revised in this document.

Section 3801.102 Detailed or Assigned Special Agents of Certain Departmental Components

Section 2635.104 of the Uniform Standards sets forth certain circumstances under which an employee detailed or assigned to another entity may be subject to the conduct regulations of that entity rather than those of his employing agency. However, special agents of the Federal Bureau of Investigation (FBI) and the Drug Enforcement Administration (DEA), even if on detail or special assignment usually retain their special law enforcement powers, are generally subject to recall to their department components at all times, and are sometimes required to provide services on an occasional or overtime basis to those components. See, e.g., 5 U.S.C. 5545(c); 5 CFR 550.151–550.164; and DOJ Order No. 1551.4A (available from the agency designee which, for purposes of this rule, shall be the Deputy Designated Agency Ethics Official for the component). Where a detail or assignment of these special agents does not explicitly sever the obligations of service to their Department components, § 3801.102 of the interim rule makes clear that these special agents who become subject to the conduct regulations of another entity pursuant to § 2635.104 (a) or (b) of this title shall also remain subject to the supplemental regulations established by the interim rule. In particular, the standards governing outside employment and activities of these special agents must conform to the same standards that are required of other agents of their employing components with whom they may continue to work side-by-side on an occasional or overtime basis. To do otherwise would undermine the efficiency of the service and would create unnecessary internal discipline and administrative efficiency problems.

Section 3801.103 Designation of Separate Departmental Components

Pursuant to § 2635.203(a) of the Uniform Standards, an executive department, with the concurrence of OGE, may designate any component that exercises distinct and separate functions as a separate agency for the purpose of applying the rules governing the solicitation or acceptance of gifts from prohibited sources or given because of official position. See 5 CFR 2635.201–2635.205. Pursuant to § 2635.807(a)(2)(ii) of the Uniform Standards, any component so designated is also considered a separate agency for the purpose of applying the rules governing the receipt of compensation by an employee for

teaching, speaking, and writing. The Department has determined that the divisions and offices (''components'') set forth in section 3801.103 of the interim rule exercise distinct and separate functions for purposes of applying §§ 2635.201–2635.205 and § 2635.807(a)(2)(ii).

Employees serving in positions within the Department but outside of the components designated by this section serve in positions or offices with cross-component duties and responsibilities. This section of the interim rule makes clear that those employees must continue to treat the entire department as their employing agency for purposes of applying the gifts and the teaching, speaking and writing provisions of the Uniform Standards.

Section 3801.104 Purchase or Use of Certain Forfeited and Other Property

Section 3801.104(a) of the interim rule is a slight revision of the prohibition contained in the Department's former conduct regulations at 28 CFR 45.735–18. The chief principle served by that prohibition—that performance of official duties and the use of nonpublic information should not further an employee's private interests—is also found in two related provisions of the Uniform Standards. See 5 CFR 2635.702 and 2635.703. The Department's unique role in asset forfeiture and the public sale of forfeited property has led it to determine, on the basis of significant concerns about internal discipline, the possible appearance of misuse of nonpublic information and official position, administrative efficiency, and the enforcement of the Departmental conduct regulations, that any Departmental employee seeking to buy forfeited property from the Department or its agents (or to use such property if it was purchased from the Department or its agents by his spouse or dependent) should first obtain written approval from his agency designee. Consequently, § 3801.104(a) bars any employee who does not have such prior written approval from purchasing forfeited property from the Department or its agents, and from using any such property if it was purchased from the Department or its agents by his spouse or minor child. Additionally, § 3801.104(a) sets forth the criteria to be applied in determining whether or not to approve a request to purchase or use such property.

Section 3801.104(b) of the interim rule is an extension of the principle that performance of official duties and the use of nonpublic information should not further an employee's private interests. The Department has determined that the employees of the United States Marshals Service (USMS), FBI, and DEA typically have a high degree of control over valuable property used by their components. To address significant Departmental concerns about the actual or apparent use of nonpublic information regarding the condition of the property at the time of sale and the use of position in that property's maintenance in anticipation of its sale, § 3801.105(b) prohibits any USMS, FBI or DEA employee from purchasing from his component, the General Services Administration (GSA), or the agents of either of them, any property formerly used by his component, and from using any such property if it was purchased from his component, GSA, or the agents of either of them, by his spouse or minor child.

Section 3801.105 Personal Use of Government Property

Section 3801.105 references Department of Justice internal policy issued by the Designated Agency Ethics Official on April 21, 1995, which authorized limited personal use of Department of Justice office and library equipment and facilities by its employees. Employees with questions concerning this policy may seek advice and obtain a copy of the policy from their agency designee, who for this purpose, shall be the Deputy Designated Agency Ethics Official for the employee's component. This section is included strictly for ease of reference. The Department does not require OGE's concurrence when exercising its authority under 5 U.S.C. 301 to prescribe regulations for the use of Department property.

Section 3801.106 Outside Employment

The Uniform Standards, at 5 CFR 2635.802, provide that an employee shall not engage in outside employment if it is prohibited by agency supplemental regulation. To much the same effect, 5 CFR 2635.403 permits an agency, by supplemental regulation, to prohibit compensated outside employment on the same basis that it may prohibit employees from holding other financial interests. Under the Department's previous standards of conduct regulations at 28 CFR part 45, a Department employee has been prohibited from engaging in ''the private practice of his profession, including the practice of law * * *.'' Despite this prohibition those regulations also stated that ''employees are encouraged to provide public interest professional services so long as such services do not interfere with their official responsibilities.'' Also, such services were required to be uncompensated. Pursuant to § 45.735–9 of those regulations, Justice Department employees were also prohibited from engaging ''in any professional practice or any other outside employment if [t]he activity involves any criminal matter or proceeding whether Federal, State or local * * *.''

Section 3801.106(b)(1) has the effect of continuing substantially similar prohibitions, based on the Department's determination that it is necessary to ensure public confidence in the impartiality and objectivity with which the Department carries out its mission, and to avoid any appearance of misuse of position. In addition to continuing the tradition of generally prohibiting outside employment that involves the practice of law, and prohibiting participation in criminal or habeas corpus matters, whether Federal, State or local, paragraph (b)(1) further prohibits Department employees from participating, even behind the scenes, in a matter in which the Department is, or represents, a party.

While the provisions in § 3801.106(b)(1) prohibiting the practice of law by Departmental attorneys is based generally upon the public perception that the Department is the Federal Government's ''law firm,'' and the primary loyalty of Department attorneys should lie only with the Government as client, the section also recognizes the professional obligations of attorneys to the community. Since 1980, each Department of Justice Appropriations Act has contained a provision which states, ''None of the sums authorized to be appropriated by this Act may be used to pay the compensation of any person employed after the date of the enactment of this Act as an attorney (except foreign counsel employed in special cases) unless such person shall be duly licensed and authorized to practice as an attorney under the laws of a State, territory or the District of Columbia.'' The State bars of thirty-four States have a goal or official statement urging members to devote time to the provision of pro bono legal services, some stipulating 50 hours a year of such service in accord with the American Bar Association's Model Rule 6.1. On March 6, 1996, the Attorney General issued a policy statement on pro bono legal and volunteer services in order to encourage Department attorneys to meet the goals of the bar in which they are licensed. That policy also responds to Executive Order 12988 of February 5, 1996, in which the President required all Federal agencies to develop appropriate

programs to encourage and facilitate pro bono legal and other volunteer services by Government employees. Consequently, § 3801.106(b) of the interim rule contains an exception for the uncompensated practice of law in the nature of community service as well as continuing an exception for practicing law on behalf of certain family members. In order that such practice not otherwise violate any statute or Federal regulation, § 3801.106(c) requires that prior approval must be obtained for all practice of law under this exception.

Where the restrictions of § 3801.106(b)(1) would cause undue personal or family hardship, unduly prohibit an employee from completing a professional obligation entered into prior to government service, or unduly restrict the Department from securing necessary and uniquely specialized services, particularly from a special Government employee, the restrictions may be waived in writing if it is determined that the activities covered by the waiver are not expected to involve conduct prohibited by statute or Federal regulation. While the waiver standard of such a restriction normally would only require a finding that the activity would not otherwise be expected to violate the interim rule, part 2635 or a statute, waivers under section 3801.106(b)(2) will also suffice as prior approval under paragraph (c) of § 3801.106 and therefore must meet the standard of that paragraph which requires consideration of any Federal regulation.

In order to further ensure against the kinds of conflicts addressed by the prohibition of paragraph (b), paragraph (c) requires a Justice Department employee to obtain written approval before engaging in outside employment not otherwise prohibited that involves: (1) The practice of law; or (2) a subject matter, policy, or program that is in his component's area of responsibility. The approval requirement will supplement the prohibitions in paragraph (b)(1) by allowing managers and ethics officials an additional check to ensure that employees do not engage in outside employment related to the Department's mission that would violate applicable laws and regulations.

28 CFR Part 45

By a separate instrument in this rulemaking document, the Department is repealing those of its agency conduct regulations, currently found at 28 CFR part 45, which are superseded by the Uniform Standards, the regulations established by the interim rule, DOJ Order 1735.1 on procedures for complying with ethics requirements, and the uniform, executive branch financial disclosure regulations (Uniform Financial Disclosure Regulations) at 5 CFR part 2634. Sections 45.735–4,[1] 45.735–5(b), and 45.735–7a of 28 CFR of the Department's old conduct standards are being preserved and redesignated and a new cross-reference section to the current ethics provisions is being added.

III. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b), as Assistant Attorney General for Administration of the Department of Justice, I have found good cause for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the thirty-day delay in entry into effect of the interim rule and repeal. This determination is based on the fact that: (1) The rulemaking is related to the internal organization, procedure, and practice of the Department of Justice; (2) the rulemaking pertains to agency management and personnel; and (3) there is a need for a smooth and speedy transition to the Uniform Standards from the prior Departmental conduct regulations, which were essentially superseded on Februry 3, 1993, when the Uniform Standards entered into effect. As a result of this supersession and the recent expiration of the extended grace period for certain regulatory prohibited financial interest and prior approval for outside employment/activities provisions, the Department currently has no agency-specific standards of conduct in place that address statutory requirements and issues unique to the Department. Given the special nature of the Department's functions, it is imperative that the Department issue supplemental conduct regulations to fill this void as soon as possible. Because this is an interim rulemaking, with provision for a forty-five day public comment period, the Department of Justice will review all comments received during the comment period and, with the concurrence of the Office of Government Ethics, will consider any modifications that may appear to be appropriate in adopting the rule as final.

Executive Order 12866

In promulgating this interim regulation, the Department of Justice has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This regulation has not been reviewed by the Office of Management and Budget under the Executive order, it deals with agency organizational, management, and personnel matters and is not in any event, deemed ''significant'' thereunder.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. chapter 6, as Assistant Attorney General for Administration of the Department of Justice, I have determined that this regulation will not have a significant economic impact on a substantial number of small entities, because it affects only Department of Justice employees.

Paperwork Reduction Act

As Assistant Attorney General for Administration of the Department of Justice, I have determined that the Paperwork Reduction Act, 44 U.S.C. chapter 35, does not apply to the regulation established by the interim rule, because the regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 3801 and 28 CFR Part 45

Conflict of interests, Executive branch standards of conduct, Government employees.

Dated: November 12, 1996.

Stephen R. Colgate,

Assistant Attorney General for Administration, Department of Justice.

Approved: November 15, 1996.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Department of Justice, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations and is also amending title 28 of the Code of Federal Regulations as follows:

TITLE 5—[AMENDED]

1. A new chapter XXVIII, consisting of part 3801, is added to 5 CFR to read as follows:

[1] Pursuant to 28 U.S.C. 528, the Department is obligated to issue regulations that require an employee to disqualify himself from participation in certain investigations or prosecutions if such participation may result in a financial, political, or personal conflict of interest. Section 45.735–4 of title 28 CFR satisfies the requirements of 28 U.S.C. 528 relating to political or personal conflicts and is being retained. However, in the Department's view, subparts D and F of 5 CFR part 2635 satisfy the requirements of the statute relating to financial conflicts of interest. Therefore, the Department is repealing § 45.735–5(a) of title 28 of the CFR.

CHAPTER XXVIII—DEPARTMENT OF JUSTICE

PART 3801—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF JUSTICE

Sec.

3801.101 General.
3801.102 Detailed or assigned special agents of certain Departmental components.
3801.103 Designation of separate Departmental components.
3801.104 Purchase or use of certain forfeited and other property.
3801.105 Personal use of Government property.
3801.106 Outside employment.

Authority: 5 U.S.C. 301, 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; E.O. 12988, 61 FR 4729; 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.701–2635.705, 2635.803, 2635.807(a)(2)(ii); and DOJ Order 1735.1.

§ 3801.101 General.

In accordance with § 2635.105 of this title, the regulations in this part apply to employees of the Department of Justice and supplement the Standards of Ethical Conduct for Employees of the Executive Branch in part 2635 of this title. In addition to the regulations contained in part 2635 of this title and in this part, employees are subject to the conduct regulations contained in part 735 of this title and 28 CFR part 45.

§ 3801.102 Detailed or assigned special agents of certain Departmental components.

Notwithstanding a detail or assignment to another entity, any special agent of the Federal Bureau of Investigation or Drug Enforcement Administration who is subject to the regulations or standards of ethical conduct of that entity pursuant to § 2635.104 of this title shall also remain subject to the regulations in this part.

§ 3801.103 Designation of separate Departmental components.

(a) Pursuant to § 2635.203(a) of this title, each of the following components is designated as a separate agency for purposes of the regulations contained in subpart B of part 2635 of this title governing gifts from outside sources, and, accordingly, § 2635.807 of this title governing teaching, speaking, and writing:

Antitrust Division
Bureau of Prisons (including Federal Prison Industries, Inc.)
Civil Division
Civil Rights Division
Community Relations Service
Criminal Division
Drug Enforcement Administration
Environment and Natural Resources Division
Executive Office for Immigration Review
Executive Office for United States Attorneys (The Executive Office for United States Attorneys shall not be considered separate from any Office of the United States Attorney for a judicial district, but only from other designated components of the Department of Justice.)
Executive Office for United States Trustees (The Executive Office for United States Trustees shall not be considered separate from any Office of the United States Trustee for a region, but only from other designated components of the Department of Justice.)
Federal Bureau of Investigation
Foreign Claims Settlement Commission
Immigration and Naturalization Service
Independent Counsel appointed by the Attorney General
INTERPOL
National Drug Intelligence Center
Justice Management Division
Office of Information and Privacy
Office of Intelligence Policy and Review
Office of Community Oriented Policing Services
Office of Justice Programs
Office of the Pardon Attorney
Office of Policy Development
Offices of the United States Attorney (94) (Each Office of the United States Attorney for a judicial district shall be considered a separate component from each other such office.)
Offices of the United States Trustee (21) (Each Office of the United States Trustee for a region shall be considered a separate component from each other such office.)
Tax Division
United States Marshals Service
United States Parole Commission

(b) Employees serving in positions within the Department but outside of the components designated in paragraph (a) of this section must continue to treat the entire Department of Justice as their employing agency for purposes of the gift rules of subpart B of part 2635 of this title and the application of the teaching, speaking and writing provisions found in § 2635.807 of this title.

§ 3801.104 Purchase or use of certain forfeited and other property.

(a) In the absence of prior approval by the agency designee, no employee shall purchase, directly or indirectly, from the Department of Justice or its agents property forfeited to the United States and no employee shall use property forfeited to the United States which has been purchased, directly or indirectly, from the Department of Justice or its agents by his spouse or minor child. Approval may be granted only on the basis of a written determination by the agency designee that in the mind of a reasonable person with knowledge of the circumstances, purchase or use by the employee of the asset will not raise a question as to whether the employee has used his official position or nonpublic information to obtain or assist in an advantageous purchase or create an appearance of loss of impartiality in the performance of the employee's duties. A copy of the written determination shall be filed with the Deputy Attorney General.

(b) No employee of the United States Marshals Service, Federal Bureau of Investigation, or Drug Enforcement Administration shall purchase, directly or indirectly, from his component, the General Services Administration, or the agent of either, property formerly used by that component and no such employee shall use property formerly used by his component which has been purchased, directly or indirectly, by his spouse or minor child from his component, the General Services Administration, or the agent of either.

§ 3801.105 Personal use of Government property.

Employees are prohibited by part 2635 of this title from using Government property for other than authorized purposes. On April 21, 1995, the Department issued an internal policy authorizing limited personal use of Department of Justice office and library equipment and facilities by its employees. Employees with questions concerning this policy may seek advice and obtain a copy of the policy from their agency designee, who for this purpose shall be the Deputy Designated Agency Ethics Official for the employee's component.

§ 3801.106 Outside employment.

(a) *Definition.* For purposes of this section, outside employment means any form of employment, business relationship or activity, involving the provision of personal services whether or not for compensation, other than in the discharge of official duties. It includes, but is not limited to, services as a lawyer, officer, director, trustee, employee, agent, consultant, contractor, or general partner. Speaking, writing and serving as a fact witness are excluded from this definition, so long as they are not combined with the provision of other services that do fall within this definition, such as the practice of law. Employees who wish to engage in compensated speaking and writing should review § 2635.807 of this title.

(b) *Prohibited outside employment.* (1) No employee may engage in outside employment that involves:

(i) The practice of law, unless it is uncompensated and in the nature of community service, or unless it is on behalf of himself, his parents, spouse, or minor children;

(ii) Any criminal or habeas corpus matter, be it Federal, State, or local; or

(iii) Litigation, investigations, grants or other matters in which the Department of Justice is or represents a party, witness, litigant, investigator or grant-maker.

(2) Where application of the restrictions of paragraph (b)(1) of this section will cause undue personal or family hardship; unduly prohibit an employee from completing a professional obligation entered into prior to Government service; or unduly restrict the Department from securing necessary and uniquely specialized services, the restrictions may be waived in writing based upon a determination that the activities covered by the waiver are not expected to involve conduct prohibited by statute or Federal regulation. Employees should refer to DOJ Order 1735.1 on obtaining waivers. The Order is available from the agency designee which, for purposes of this rule, shall be the Deputy Designated Agency Ethics Official for the component.

(c) *Prior approval for outside employment.* (1) An employee must obtain written approval before engaging in outside employment, not otherwise prohibited by paragraph (b) of this section that involves:

(i) The practice of law; or

(ii) A subject matter, policy, or program that is in his component's area of responsibility.

(2) Employees should refer to DOJ Order 1735.1 for procedures on obtaining prior approval. A waiver granted pursuant to paragraph (b)(2) of this section will be sufficient to satisfy this prior approval requirement.

(3) Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct that is prohibited by statute or Federal regulation.

TITLE 28—[AMENDED]

CHAPTER I—DEPARTMENT OF JUSTICE

PART 45—[AMENDED]

2. The authority citation for part 45 is revised to read as follows:

Authority: 5 U.S.C. 301, 901, 7301; 18 U.S.C. 207, 208; 28 U.S.C. 503, 528; DOJ Order 1735.1.

§§ 45.735–1—45.735–3, 45.735–6—45.735–45 and the Appendix [Removed]; § 45.735–5 [Amended]

3. Part 45 is amended by revising the part heading to read ''Employee Responsibilities'' and removing the following sections:

§§ 45.735–1 through 45.735–3
§ 45.735–5(a)
§§ 45.735–6 through 45.735–7
§§ 45.735–8 through 45.735–27
Appendix

§ 45.735–4 [Redesignated as § 45.2 and amended]

4. Section 45.735–4 is redesignated as § 45.2

§ 45.735–5(b) [Redesignated as § 45.3 and amended]

5. Section 45.735–5(b) is redesignated as § 45.3 and the section heading is revised to read ''Financial interest exemptions.''

§ 45.735–7a [Redesignated as § 45.4]

6. Section 45.735–7a is redesignated as § 45.4.

7. A new § 45.1 is added to read as follows:

§ 45.1 Cross-reference to ethical standards and financial disclosure regulations.

Employees of the Department of Justice are subject to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635, the Department of Justice regulations at 5 CFR part 3801 which supplement the executive branch-wide standards, the executive branch-wide financial disclosure regulations at 5 CFR part 2634 and the executive branch-wide employee responsibilities and conduct regulations at 5 CFR part 735.

[FR Doc. 96–29932 Filed 11–22–96; 8:45 am]

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NATIONAL SCIENCE FOUNDATION

5 CFR Ch. XLIII

RINs 3209–AA15, 3145–AA20

Supplemental Standards of Ethical Conduct for Employees of the National Science Foundation

AGENCY: National Science Foundation (NSF or Foundation).

ACTION: Interim rule, with request for comments.

SUMMARY: The National Science Foundation, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for officers and employees of the NSF that supplement the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) issued by OGE. The rule is a necessary supplement to the Standards, and addresses ethical issues unique to NSF. It restricts employee participation in certain proposals and awards; provides for clearance for participation in NSF-supported conferences and in certain other outside activities, and prescribes certain ethics restriction on Members of the National Science Board.

DATES: Interim rule effective November 25, 1996. Comments are invited and must be received on or before January 24, 1997. Comments will then be evaluated in order to determine what changes, if any, may be needed.

ADDRESSES: Send comments to the Office of the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Charles S. Brown, Designated Agency Ethics Official, Office of the General Counsel, National Science Foundation, telephone 703–306–1060, FAX 703–306–0149.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published Standards of Ethical Conduct for Employees of the Executive Branch (Standards) that are now codified at 5 CFR part 2635. See 57 FR 35006–35067, as corrected at 57 48557, 57 FR 52583, and 60 FR 51667, and amended at 61 FR 42965–42970 (as corrected at 61 FR 48733) and 61 FR 50689–50691, with additional grade period extensions at 59 FR 4779–4780, 60 FR 6390–6391, 60 FR 66857–66858, and 61 FR 40950–40952. The Standards took effect on February 3, 1993, and set uniform standards of ethical conduct for all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations that are necessary to properly implement agency ethics programs. The Foundation, with OGE's concurrence, has determined that the following supplemental rule, being codified in new chapter XLIII of 5 CFR, consisting of part 5301, is necessary to successfully implement NSF's ethics program in light of NSF's unique programs, structure, and operations. Today NSF also published in the Federal Register regulations that repeal portions of its conflict of interest and standards of conduct regulations that are superseded by 5 CFR part 2635 and by these supplemental regulations.

II. Analysis of the Regulations

Section 5301.101 General

Section 5301.101(a) explains that the regulations contained in the interim rule apply to all NSF employees, including members of the National Science Board (NSB), and that they supplement the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635.

Section 5301.101(b) sets forth definitions that apply to the interim rule. While the rule contains provisions applicable to special Government employees, including Members of the NSB, particular substantive provisions apply to special Government employees and NSB Members only when the substantive language specifically makes that provision applicable. Thus, for purposes of the NSF supplemental regulations only, the definitional language in paragraph (b)(2) defines the term ''employee'' to exclude special Government employees, including Members of the NSB. Exclusion of NSB Members from this definitional language facilitates the adoption of slightly different supplemental standards for NSB Members than those applicable to other NSF employees. The definition at § 5301.101(b)(2) has no effect on the manner in which 5 CFR part 2635 applies to NSB Members or other special Government employees. They continue to be covered by the definition of an employee at 5 CFR 2635.102(h) and to be subject to the standards in part 2635 applicable to all employees of the executive branch, including special Government employees.

The definition of ''award'' in paragraph (b)(1) is intended to make it clear that, for purposes of interpreting the standards set forth in §§ 5301.102 through 5301.105 of this interim rule, the term is to be broadly construed to cover financial arrangements made by the Government including, but not limited to, those that are in the nature of a grant, contract, cooperative agreement, or loan. The definition of a ''proposal'' in paragraph (b)(4) is included to make it clear that, for similar purposes, the term covers any application for such a financial arrangement, even though it is not technically denominated a ''bid'' or ''proposal.''

A definition of ''institution'' is provided in paragraph (b)(3). Since NSF awards are ordinarily made to ''institutions,'' paragraph (b)(3) makes it clear that this term is to be interpreted broadly. In accordance with OGE formal advisory opinion 82 OGE 1, regarding the breadth of the term ''organization,'' as used in 18 U.S.C. 208 and applied to State colleges, universities, and higher education systems, the definition applies to all parts of multi-institution State or city university systems. (See pp. 851–857 of the bound volume available from the Government Printing Office entitled *The Informal Advisory Letters and Memoranda and Formal Opinions of the United States Office of Government Ethics (1979–1988).*) However, the definition treats consortia as separate ''institutions'' from the colleges and universities that belong to them.

Section 5301.102 Participation in Proposals and Awards

Section 5301.102(a) supplements subpart E (Impartiality in Performing Official Duties) of 5 CFR part 2635 with additional standards to be used in determining whether NSF employees should or should not participate as part of their official duties in proposals and awards. Where disqualification is not mandated by 18 U.S.C. 208, subpart E creates a mechanism for determining whether employees should be disqualified on grounds of lack of impartiality from participation in proposals, awards, and other particular matters involving specific parties. With the exception of party matters that affect the financial interests of a member of the employee's household, the mechanism in subpart E is specifically triggered only when a person with whom the employee has a covered relationship is a party or represents a party to the matter. The definition of a ''covered relationship'' in 5 CFR 2635.502(b)(1), however, does not cover all the affiliations and relationships that NSF believes should be considered in determining whether an NSF employee's participation in a proposal or award is appropriate.

Paragraph (a)(3) of § 5301.102 lists the additional relationships that are likely to raise questions about an NSF employee's ability to participate with complete impartiality in proposals and awards involving the persons with whom the employee has the affiliation or relationship. As provided in paragraph (a)(1) of § 5301.102, one effect of paragraph (a)(3) is to create additional categories of covered relationships for NSF employees that are to be addressed under all or part of the mechanism set forth in subpart E. For certain relationships, paragraph (a)(2) eliminates the discretion an employee is otherwise given by 5 CFR 2635.502(a) to make the initial judgment call as to whether his or her participation would cause a reasonable person to question the employee's impartiality in the matter. Paragraph (a)(2) provides that where an affiliation listed in paragraph (a)(3) is denoted as ''automatically disqualifying,'' the employee is disqualified from participating in a proposal or award to which the institution or person is a party unless the employee's participation is authorized by the agency designee with the concurrence of the Office of the General Counsel.

The Foundation has long recognized that prospective, current, and recent NSF employees are likely to be perceived as having an unfair advantage in obtaining NSF awards. Section 5301.102(b) continues NSF's current practice of making sure that employees disclose the involvement or likely involvement of prospective, current, or recent NSF employees in a proposal or award to an appropriate official who, in turn, will ensure that the proposal is fairly evaluated or the award is fairly administered.

Section 5301.102(b) also requires employees to disclose the involvement or likely involvement of current Members of the NSB. These Members are special Government employees, but because they constitute NSF's governing body, they too may be perceived as benefiting from an unfair advantage in obtaining NSF awards. Nonetheless, Members of the NSB are appointed by the President and are not ''recruited'' by NSF in the same manner as are prospective NSF employees. For this reason, NSF has decided not to require the reporting of the involvement or likely involvement of ''prospective'' NSB Members. Section 5301.102(b) also does not impose a reporting requirement with respect to ''recent'' NSB Members. Members work at NSF for so few days a year that recent NSB Members are unlikely to have developed close ties with NSF employees who might handle a proposal or award to which the recent NSB Member is a party.

Section 5301.103 Outside Employment and Activities

Pursuant to 5 CFR 2635.802(a), § 5301.103(a) of this interim rule imposes restrictions on NSF employees engaging in certain outside employment and activities. It prohibits them from receiving any form of compensation or reimbursement from an NSF award, serving as principal investigator or project director under an NSF award, and receiving compensation or expenses for participating in conferences and other events supported by NSF funds. The prohibitions are imposed on the basis of NSF's determination that employees' participation in such activities would be likely to raise questions as to whether they were

improperly using their official positions for private gain.

Under 5 CFR 2635.803, an agency may, by supplemental regulation, require employees to obtain prior approval before engaging in outside employment or activities where it determines that such a requirement is necessary or desirable for the purpose of administering its ethics program. The Foundation has made that determination with respect to the requirements for prior approval of outside employment and activities set forth in § 5301.103(b).

Section 5301.103(b)(1) requires NSF employees to obtain prior approval from an agency designee to engage in compensated outside employment with any institution or person doing or expected to do business with NSF, or to serve, with or without compensation, on such an institution's visiting committee. This is a new requirement intended to help protect employees from inadvertent violation of substantive ethics laws and regulations.

Section 5301.103(b)(2)(i) is similar to a previous NSF rule requiring permission from an ethics counselor in the Office of the General Counsel to hold a policymaking office in a research institution, scientific society, or professional association. It is intended to ensure that NSF employees wishing to hold such positions receive appropriate assistance from an ethics official in dealing with the complex issues that arise from affiliations of this character.

Section 5301.103(b)(2)(ii) imposes an approval requirement for NSF employees who wish to participate, in their personal capacities, in NSF-funded events where the participation takes the form of presenting a paper, or serving as organizer, director, proceedings editor, or session chairperson. The Foundation is concerned that some may perceive NSF employees to be in a better position than others to enhance their personal professional credentials by such participation in NSF-supported events. This approval requirement is therefore intended to ensure that employees actually do not misuse their official positions in participating in NSF-supported events in their personal capacities.

Section 5301.103(b)(3) sets forth the standard to be used by officials who review and approve requests to engage in the outside activities specified in paragraph (b). This standard is intended to ensure that these determinations are not made arbitrarily, but on the basis of applicable statutes part 2635, and this supplemental regulation.

Section 5301.104 Participation in NSF-Supported Conferences

For employees who wish to participate in their personal capacities in NSF-supported events, § 5301.104(a) provides cross-references to the relevant prohibitions and approval requirements contained in § 5301.103.

Section 5301.104(b) addresses the concern that some may perceive NSF employees to be in a better position than others to enhance their professional standing by participating in NSF-sponsored events. Very often, those presenting papers, chairing sessions, editing proceedings, or serving as directors or organizers at conferences or other scientific events will take credit for that participation on their resumes with the expectation that they will be accorded some recognition for these professional activities. The fact that the employee's participation takes place in an official rather than a personal capacity is unlikely to have a bearing on the degree to which that participation enhances his or her credentials and professional standing.

Paragraph (b)(1) thus serves as a corollary to the prohibitions and prior approval requirements in § 5301.103 (a)(3) and (b)(2)(iii) that apply to personal participation in NSF-supported events. With an exception for events that primarily serve NSF purposes, it requires prior approval for certain forms of participation in NSF-funded events when undertaken by NSF employees as part of their official duties. The approval standard set forth in § 5301.104(b)(2) requires a balancing of the importance of the employee's official participation against the likelihood that his or her participation may be viewed as use of official position to enhance the employee's professional credentials.

Section 5301.105 Restrictions Applicable to Members of the National Science Board

Much like § 5301.102(a), § 5301.105(a) supplements subpart E of 5 CFR part 2635 with additional standards to be used in determining whether National Science Board (NSF) Members should or should not participate as part of their official duties in proposals and awards. As with § 5301.102(a), the definition of a ''covered relationship'' in 5 CFR 2635.502(b)(1) does not cover all the affiliations and relationships that NSF has determined need to be considered in deciding whether an NSF Member's participation in a proposal or award is appropriate.

Paragraph (a)(3) lists the additional relationships that are likely to raise questions about the Member's ability to participate with complete impartiality in proposals and awards involving the persons with whom the Member has the affiliation or relationship. Paragraphs (a)(3)(i)(A) and (a)(3)(ii) denote relationships as ''automatically disqualifying.'' Here the Member is disqualified from participating unless the NSB Chairman or the Designated Agency Ethics Official authorizes the Member to participate in accordance with paragraph (a)(2). Affiliations not identified as ''automatically disqualifying'' in paragraph (a)(3)(i) will be addressed in the same manner as covered relationships described in subpart E of 5 CFR part 2635.

Section 5301.105(b)(1) maintains the NSF's previous rule barring Members from representing themselves or others in dealings with NSF staff. National Science Board Members are special Government employees who ordinarily work at NSF for so few days per year that they are not covered by the sixty-one-day threshold on the agency-wide representation restriction contained in 18 U.S.C. 205. Yet unlike most special Government employees, NSB Members have significant decisionmaking responsibility for management of the agency. The Foundation has found that a prohibition on NSB Members negotiating with NSF staff prevents even the appearance that they are in a position to misuse their official positions to improperly influence normal decisionmaking processes.

Section 5301.105(b)(2) maintains the NSF's previous restrictions on Members' receipt of compensation from NSF awards made during their terms of service and, in so doing, strikes a balance between their role as NSB Members and their continuing outside careers in science, engineering, and education.

III. Matters of Regulatory Procedure

Administrative Procedure Act

The National Science Foundation has found that good cause exists under 5 U.S.C. 553 (b) and (d) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to this final rule. Similar regulations have been applicable to NSF employees under the now suspended NSF regulations contained in 45 CFR parts 680, 681, 682, 683, and 684. An immediate effective date is necessary to effect a smooth regulatory transition and minimize any lapse in applicable procedural and substantive rules relating to prior approval of outside activities due to the

expiration of ''grandfathering'' provisions contained in the OGE Standards.

Moreover, the rulemaking requirements of the Administrative Procedure Act are not applicable to this final rule because it deals with agency organization, procedure, or practice, 5 U.S.C. 553(b), and relates to matters of agency management and personnel, 5 U.S.C. 553(a)(2). The final rule also contains substantive provisions that grant or recognize an exemption or relieve a restriction such that an immediate effective date is permitted under 5 U.S.C. 553(d)(1).

Executive Order 12866

In promulgating this interim rule, the National Science Foundation has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This regulation has not been reviewed by the Office of Management and Budget under that Executive order, as it deals with agency organization, management, and personnel matters and is not, in any event, deemed a significant rule thereunder.

Regulatory Flexibility Act

The National Science Foundation has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have significant economic impact on a substantial number of small entities, because it primarily affects NSF employees, as well as prospective and former NSF employees.

Paperwork Reduction Act

The National Science Foundation has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply, because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 5301

Conduct standards, Conflict of interests, Ethical standards, Executive Branch Standards of Conduct, Government employees, National Science Foundation.

Dated: November 14, 1996.

Lawrence Rudolph,

General Counsel, National Science Foundation.

Approved: November 18, 1996.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the National Science Foundation, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations by adding a new chapter XLIII, consisting of part 5301, to read as follows:

CHAPTER XLIII—NATIONAL SCIENCE FOUNDATION

PART 5301—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE NATIONAL SCIENCE FOUNDATION

Sec.

5301.101 General.
5301.102 Participation in proposals and awards.
5301.103 Outside employment and activities.
5301.104 Participation in NSF-supported conferences.
5301.105 Restrictions applicable to Members of the National Science Board.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 42 U.S.C. 1870(a); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR 1990 Comp., p. 306; 5 CFR 2635.105, 2635.502, 2635.802(a), 2635.803.

§ 5301.101 General.

(a) *Purpose.* In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the National Science Foundation (NSF), including Members of the National Science Board. They supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635.

(b) *Definitions.* For purposes of this part, unless a provision plainly indicates otherwise:

(1) *Award* means any grant, contract, cooperative agreement, loan, or other arrangement made by the Government.

(2) *Employee* has the meaning set forth in 5 CFR 2635.102(h), except that, for purposes of this part, it shall not include a special Government employee.

(3) *Institution* means any university, college, business firm, research institute, professional society, or other organization. It includes all parts of a university or college, including all institutions in a multi-institution State or city system. It includes any university consortium or joint corporation, but not the individual universities that belong to such a consortium. Those universities shall be considered separate institutions for purposes of this part.

(4) *Proposal* means an application for an award and includes a bid.

§ 5301.102 Participation in proposals and awards.

(a) *Participation in proposals and awards.* (1) For the purpose of determining whether an employee or a special Government employee, other than a Member of the National Science Board, should participate as part of his official duties in a proposal or award, the affiliations and relationships listed in paragraph (a)(3) of this section shall be considered additional ''covered relationships'' for purposes of applying 5 CFR 2635.502. Except as provided in paragraph (a)(2) of this section, they shall be treated as disqualifying to the same extent as the covered relationships listed in 5 CFR 2635.502(b)(1).

(2) Where an affiliation or relationship is listed in paragraph (a)(3) of this section as ''automatically disqualifying,'' an employee shall not participate in a proposal or award in which the institution or other person with whom the employee has a covered relationship is or represents a party unless participation is authorized in accordance with 5 CFR 2635.502(d) by the agency designee, with the concurrence of an ethics counselor in the Office of the General Counsel.

(3) An employee has a covered relationship, within the meaning of 5 CFR 2635.502(b)(1), with:

(i) An institution with which the employee is affiliated through:

(A) Membership on a visiting committee or similar body at the institution. The relationship is automatically disqualifying where the particular department, school, or faculty that the visiting committee or similar body advises originated the proposal or where a proposal from the department, school, or faculty formed the basis for the award;

(B) Current enrollment of the employee or a member of the employee's household as a student;

(C) Receipt and retention of an honorarium or other form of compensation, award, or off-duty travel payment from the institution within the last twelve months. The relationship is automatically disqualifying, unless the payment or award was received before beginning Government service; and

(ii) A person who is an investigator or project director on or who otherwise is identified in a proposal as a party to the

proposal or award and with whom the employee has:

(A) A family relationship as sibling, parent, spouse, or child. Any such relationship is automatically disqualifying;

(B) Associated, in the past or currently, as thesis advisor or thesis student;

(C) Collaborated on a project, book, article, report, or paper within the last 48 months; or

(D) Co-edited a journal, compendium, or conference proceedings within the last 24 months.

(b) *Reporting involvement of prospective, current, or recent employees.* (1) When an employee who is participating in a proposal or award becomes aware that a prospective, current, or recent NSF employee or current National Science Board member is or is likely to become a member of the research group or project staff under that proposal or award, the employee shall bring that circumstance to the attention of an agency designee. For purposes of this paragraph:

(i) A ''recent NSF employee'' is any former NSF employee who left the NSF within the year before submission of the proposal at issue or on which the award was based.

(ii) A ''prospective NSF employee'' is any person being recruited by an NSF official for a specific opening and from whom the official has received an indication of mutual interest. Such a person is a ''prospective NSF employee'' even though those recruiting have not extended an offer and even though the person might not accept an offer if it were extended.

(2) The agency designee shall review the circumstances to determine what action, if any, should be taken to assure that the proposal or award is administered impartially and otherwise in compliance with applicable laws and regulations, including this part, 5 CFR part 2635, 18 U.S.C. 207 and 208, and 45 CFR part 680.

§ 5301.103 Outside employment and activities.

(a) *Prohibited outside employment and activities.* (1) An NSF employee may not receive, directly or indirectly, any salary, consulting fee, honorarium, or other form of compensation for services, or reimbursement of expenses, from an NSF award.

(2) An NSF employee may not serve as principal investigator or project director under an NSF award.

(3) An NSF employee may not receive, directly or indirectly, any honorarium or any other form of compensation, or reimbursement of expenses from anyone, other than the United States, for participating in an event supported by NSF funds.

(b) *Prior approval of outside employment and activities.* (1) An employee shall obtain written approval from an agency designee before:

(i) Engaging in compensated outside employment with any person or institution (including any for-profit, non-profit, or governmental organization) which does business or may reasonably be expected to do business with the NSF. For these purposes, ''employment'' means any form of non-Federal employment or business relationship involving the provision of personal services by the employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing when done under an arrangement for publication of the written product; or

(ii) Serving, with or without compensation, on a visiting committee with any institution that does business or may reasonably be expected to do business with NSF.

(2) In addition to any prior approval required in paragraph (b)(1) of this section, an employee shall obtain prior written approval:

(i) From an ethics counselor in the Office of the General Counsel before participating, with or without compensation, as a policymaking officer of any research or educational institution or any scientific society or professional association; and

(ii) From his Assistant Director or Office head before serving in a personal capacity as an organizer, director, proceedings editor, or session chairperson for a conference, workshop, or similar event supported by NSF funds, or before presenting a paper at such an event.

(3) The approvals required by paragraphs (b)(1) and (b)(2) of this section shall be granted only upon a determination by the appropriate NSF official that the outside employment or activity is not expected to involve conduct prohibited by statute or Federal regulations, including 5 CFR part 2635 and this part.

§ 5301.104 Participation in NSF-supported conferences.

An NSF employee may participate in conferences, workshops, and similar events supported by NSF funds provided that:

(a) Where the employee's participation is undertaken in a personal capacity, his participation does not violate the restrictions on outside employment and activities of § 5301.103(a), and the approval requirements of § 5301.103(b) have been met.

(b) Where the employee's participation is undertaken as part of his official duties as an NSF employee:

(1) The employee shall obtain prior written approval from his Assistant Director or Office head before serving as an organizer, director, proceedings editor, or session chairperson for a conference, workshop, or similar event sponsored by NSF funds, or before presenting a paper at such an event. However, prior approval is not required where the primary purpose of the event is to plan, assess, or publicize NSF programs or needs, or where the subject of the paper or session to be presented focuses on NSF programs or needs.

(2) The approval required by paragraph (b)(1) of this section shall be granted only upon a determination that the importance of the employee's participation outweighs any appearance of use of official position to enhance his personal credentials.

§ 5301.105 Restrictions applicable to Members of the National Science Board.

(a) *Participation in proposals and awards.* (1) For the purpose of determining whether a Member of the National Science Board (Board) should participate as part of his official duties in a proposal or award coming before the Board or any of its committees, the affiliations and relationships listed in paragraph (a)(3) of this section shall be considered ''covered relationships'' for purposes of applying 5 CFR 2635.502. Except as provided in paragraph (a)(2) of this section, they shall be treated as disqualifying to the same extent as the covered relationships listed in 5 CFR 2635.502(b)(1).

(2) Where an affiliation or relationship is listed in paragraph (a)(3) of this section as ''automatically disqualifying,'' a Member of the National Science Board shall not participate in a proposal or award in which the institution or other person with whom the Member has a covered relationship is or represents a party, unless participation is authorized in accordance with 5 CFR 2635.502(d) by the Chairman of the National Science Board or by the Designated Agency Ethics Official.

(3) A Member of the National Science Board has a covered relationship, within the meaning of 5 CFR 2635.502(b)(1), with:

(i) An institution or other person with which the Member is affiliated through:

(A) Membership on a visiting committee or similar body at the institution. The relationship is automatically disqualifying where the particular department, school, or faculty that the visiting committee or similar body advises originated the proposal or where a proposal from the department, school, or faculty formed the basis for the award; or

(B) Current enrollment of the Member or a member of his household as a student; and

(ii) A person who is an investigator or project director or who is otherwise identified in a proposal as a party to the proposal or award and with whom the Member has a family relationship as sibling, parent, spouse, or child. Any such relationship is automatically disqualifying.

(b) *Outside employment and activities.* (1) A Member of the National Science Board shall not represent himself, herself, or any other person in negotiations or other dealings with an NSF official on any proposal, award, or other particular matter, as defined in 5 CFR 2635.402(b)(3).

(2) A Member of the National Science Board may not receive compensation from any award made while serving on the Board. However, unless prohibited by law, an award may be charged, and a Member may be reimbursed, for actual expenses incurred by the Member in doing work supported by the award. If a Member was an investigator or consultant under an award before appointment to the Board, the award may be charged and the Member may continue to receive compensation to the extent established before the Member's nomination.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV96–906–3 FIR]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Revision of Pack and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, with minor modification, the provisions of an interim final rule revising pack requirements for grapefruit and certain types of oranges under the marketing order covering oranges and grapefruit grown in the Lower Rio Grande Valley in Texas to allow larger sizes of fruit to be marketed in fresh channels. This rule also reduces current minimum size requirements for Texas grapefruit. These actions were recommended by the Texas Valley Citrus Committee (TVCC), the agency responsible for local administration of the marketing order. These changes will enable the industry to market a wider range of sizes of citrus fruit in fresh market channels, thereby meeting consumer demand, increasing sales, and improving returns to growers.

EFFECTIVE DATE: December 26, 1996.

FOR FURTHER INFORMATION CONTACT: Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2522–S, Washington, DC 20090–6456, telephone (202) 690–3670, Fax #(202) 720–5698; or Belinda G. Garza, McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone (210) 682–2833, Fax # (210) 682–5942. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 906 (7 CFR part 906), as amended, regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

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

There are approximately 20 handlers of oranges and grapefruit subject to regulation under the order and approximately 2,000 orange and grapefruit producers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. The majority of Texas orange and grapefruit handlers and producers may be classified as small entities.

This final rule revises pack requirements for grapefruit and certain varieties of oranges to allow larger sizes to be marketed in fresh channels. Pack requirements are stated in terms of certain size designations. Size designations are defined in terms of minimum and maximum diameter. Improved irrigation methods, technological advances, and improved cultural practices have resulted in the Texas citrus industry growing larger, good quality fruit. Pack regulations preclude this fruit from being marketed in fresh market channels (with the exception of small amounts allowed to exceed the maximum specific diameters), and it is generally directed to the processing market. The

processing market is currently in an oversupply situation and yields low returns to growers. Providing for additional supplies (an additional 5 to 10 percent) to be marketed fresh should enhance grower returns.

This final rule also reduces the minimum size requirements for grapefruit by allowing a broader range of sizes of grapefruit to be marketed. This final rule provides that pack size 112 grapefruit (if it grades at least U.S. No. 1) may be shipped throughout the entire season. This has been done in recent seasons. There is a market for this smaller grapefruit particularly in juice bars, health food stores, and other types of outlets that use smaller fruit for juicing. Some markets, such as Canada, prefer smaller fruit. Also, current drought conditions can lead to an abundance of smaller sizes. This rule enables handlers to market a broader range of sizes of citrus fruit in fresh market outlets, thereby meeting consumer demand, increasing fresh fruit sales, and enhancing returns to handlers and producers.

Therefore, the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

An interim final rule was issued on August 16, 1996, and published in the Federal Register (61 FR 43139, August 21, 1996), with an effective date of August 22, 1996. That rule amended § 906.340 of the rules and regulations in effect under the order. That rule provided a 30-day comment period which ended September 20, 1996. No comments were received.

This action is in accordance with § 906.40(a) of the order. This section authorizes the Secretary to limit the handling of particular grades, sizes, qualities, maturities, or packs of any or all varieties of fruit during a specified period or periods. Currently, minimum grade and size requirements, as well as pack and container requirements, are in effect for both grapefruit and oranges throughout the season. Shipments for certain purposes, including processing, are exempt from these requirements.

The TVCC met on May 29, 1996, and unanimously recommended changes in pack and minimum size requirements. The TVCC meets prior to and during each season to review the handling regulations effective on a continuous basis for each citrus fruit regulated under the order. TVCC meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews TVCC recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the handling regulations would tend to effectuate the declared policy of the Act.

Revision of Pack Requirements

Pack requirements for oranges and grapefruit are in effect under § 906.340 of the order's rules and regulations. These requirements provide, among other things, that oranges and grapefruit be packed in accordance with certain size designations. These size designations are defined in terms of minimum and maximum diameters.

Oranges are divided into two categories for the purpose of pack regulations: (1) Navel, Valencia and similar late-type oranges, and (2) all other oranges. Navel, Valencia and similar late-type oranges must be packed in accordance with 13 size designations. The smallest of these is Size 324, which ranges from 2 3/16 to 2 8/16 inches in diameter. The largest size defined is Size 46, which ranges from 4 3/16 to 5 inches in diameter. Prior to issuance of the interim final rule, oranges other than navel, Valencia and similar late-type oranges were required to be packed in accordance with the various pack sizes in § 51.691(c) of the United States Standards for Grades of Oranges (Texas and States other than Florida, California, and Arizona), hereinafter referred to as the ''orange standards.''

The orange standards define seven pack sizes, from Size 324 (2 3/16 to 2 8/16 inches in diameter) to Size 100 (3 7/16 to 3 13/16 inches in diameter). To allow for variations incident to proper packing, a tolerance for undersized and oversized fruit is provided. The tolerance is in terms of the number of fruit in a sample that may be off-size—with the actual number increasing as the sample size increases. Otherwise oversized oranges other than navel, Valencia and similar late-type oranges would be diverted to exempt outlets, such as processing.

The TVCC recommended revising the orange pack regulations to allow all types of oranges to be packed in the full range of sizes—from Size 324 to Size 46. Thus, this rule finalizes a revision of § 906.340(a)(2)(i)(a), which specified pack requirements for oranges other than navel, Valencia and similar late-type oranges, to define the 13 size designations authorized for such oranges. The 7 smallest sizes are defined in the same way they are in the orange standards. (The minimum diameters are 2/16 inch larger than those specified for navels, Valencias and similar late-type oranges, while the maximum diameters are the same). The 6 sizes added for these oranges are defined similarly (that is, the minimum diameters differ, but the maximum diameters are the same). The differences in the minimum diameters take into account varietal differences between these two categories of oranges and current industry practice.

Grapefruit are required to be packed within the diameter limits specified for the various pack sizes defined in § 51.630(c) of the United States Standards for Grades of Grapefruit (Texas and States other than Florida, California, and Arizona), hereinafter referred to as the grapefruit standards. Exceptions are that the minimum diameter for pack size 96 grapefruit is 3 9/16 inches, and for pack size 112 grapefruit, the minimum diameter is 3 5/16 inches.

The grapefruit standards define 8 pack sizes. The smallest is Size 125/126, which ranges from a minimum of 3 inches to a maximum of 3 8/16 inches in diameter. The largest is Size 46 which ranges from 4 5/16 to 5 inches in diameter. This rule adds a new, larger Size 36 grapefruit, which ranges in size from 4 15/16 to 5 9/16 inches in diameter.

Improved irrigation methods, technological advances, and improved cultural practices have resulted in the Texas citrus industry growing larger, good quality fruit. Pack regulations preclude this fruit from being marketed in fresh channels (with the exception of small amounts allowed to exceed the maximum specified diameters), and it is generally diverted to the processing market. The processing market is currently in an oversupply situation and yields low returns to growers. Providing for additional supplies (an estimated 5 to 10 percent) to be marketed fresh should, therefore, enhance grower returns.

Additionally, the TVCC indicated that there has been increased demand from consumers in recent years for a broader range of sizes of oranges and grapefruit. Providing that these larger sizes may be shipped will provide greater supplies and more choices to consumers. It should also make the Texas citrus industry more competitive with other citrus-growing areas, which have adapted their marketing efforts to meet consumer demands.

Finally, varying growing conditions in Texas result in diverse size distributions of oranges and grapefruit from season to season. Severe drought conditions may cause a season's crop to be 5 to 10 percent small sizes. Conversely, a rainy season may result in 5 to 10 percent large sizes. These changes in pack requirements to approve the shipment of all commercial sizes of oranges and grapefruit will provide handlers with the flexibility to market available

supplies in light of existing market conditions.

Revision of Minimum Size Requirements for Grapefruit

Minimum size requirements for grapefruit are in effect under § 906.365 of the order's rules and regulations. During the period November 16 through January 31 each season, grapefruit must be at least pack size 96, with a minimum diameter of 3$^{9}/_{16}$ inches. At other times, grapefruit that is pack size 112 (with a minimum diameter of 3$^{5}/_{16}$ inches), may be shipped if it grades at least U.S. No. 1. Otherwise, the minimum grade requirement for grapefruit is Texas Choice. The smaller fruit is subject to a higher grade requirement because experience indicates that a market exists for this smaller fruit only if it meets a higher quality standard.

This final rule provides that pack size 112 grapefruit (if it grades at least U.S. No. 1) may be shipped throughout the entire season. This has been done in recent seasons. The Texas citrus industry has found that there is a market for this smaller grapefruit, particularly in juice bars, health food stores, and other types of retail outlets that use smaller fruit for juicing. In addition, some markets, such as Canada, prefer smaller fruit.

Also, as previously indicated, drought conditions can lead to an abundance of smaller sizes. Such conditions currently exist in the Lower Rio Grande Valley in Texas. The expected small sized grapefruit, which cannot be marketed profitably in processing outlets, will be made available to meet fresh market needs through this rule. This action is expected to result in improved grower returns.

Permitting shipments of pack size 112 grapefruit grading at least U.S. No. 1 will enable Texas grapefruit handlers to meet market needs and compete with similar size grapefruit expected to be shipped from Florida.

These changes in pack and size requirements for Texas oranges and grapefruit are intended to broaden the range of sizes and increase the amount of fruit available to consumers and increase grower returns. An alternative to this rule is to leave the current regulations in place. However, that would result in more of the larger oranges and grapefruit and the smaller grapefruit going to processors, and less fruit going to the more lucrative fresh market, which yields higher returns to growers.

In the interim final rule, a conforming change to all references to ''Table I'' of paragraph (a)(2)(i)(c) of § 906.340 was inadvertently omitted. The interim final rule did not specifically request that all references to ''Table I'' be revised to read ''Table II.'' The final rule will be modified by revising the phrase ''Table I'' each time it appears to read ''Table II.''

After consideration of all relevant material presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule, with modification, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 7 CFR part 906 which was published at 61 FR 43139 on August 21, 1996, is adopted as a final rule with the following change:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 906.340 [Amended]

2. In § 906.340, paragraph (a)(2)(i)(c), the phrase ''Table I'' is revised to read ''Table II'' each time it appears.

Dated: November 15, 1996.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 96–30033 Filed 11–22–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Parts 997 and 998

[Docket No. FV96–998–2 FIR]

Assessment Rate for Domestically Produced Peanuts Handled by Persons Not Subject to Peanut Marketing Agreement No. 146 and for Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that established an assessment rate for the Peanut Administrative Committee (Committee) under Marketing Agreement No. 146 (agreement) for the 1996–97 and subsequent crop years. The Committee is responsible for local administration of the marketing agreement which regulates the handling of peanuts grown in 16 States. Authorization to assess peanut handlers who have signed the agreement enables the Committee to incur expenses that are reasonable and necessary to administer the program. Public Law 103–66 requires the Department to impose an administrative assessment on farmers' stock peanuts received or acquired by handlers who are not signatory (non-signatory handlers) to the agreement. Therefore, this same assessment rate established under the agreement also must be applied to all non-signatory handlers.

EFFECTIVE DATE: Effective on July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–720–9918, FAX 202–720–5698, or William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone 941–299–4770, FAX 941–299–5169. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–720–2491, FAX 202–720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued pursuant to the requirements of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and as further amended December 12, 1989, hereinafter referred to as the ''Act''; Public Law 101–220, section 4(1),(2), 103 Stat. 1878, December 12, 1989; Public Law 103–66, section 8b(b)(1), 107 Stat. 312, August 10, 1993; and under Marketing Agreement 146 (7 CFR part 998) regulating the quality of domestically produced peanuts.

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Farmers' stock peanuts received or acquired by non-signatory handlers and farmers' stock peanuts received or acquired by handlers signatory to the agreement, other than from those described in §§ 998.31(c) and (d), are subject to assessments. It is intended that the assessment rates issued herein

will be applicable to all assessable peanuts beginning July 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 45 handlers of peanuts who have not signed the agreement and, thus, will be subject to the regulations specified herein. Also, there are approximately 47,000 producers of peanuts in the 16 States covered under the agreement and approximately 32 handlers subject to regulation under the agreement. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. A majority of the producers and the non-signatory handlers may be classified as small entities, and some of the handlers covered under the agreement are small entities.

The peanut marketing agreement provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. Funds to administer the peanut agreement program are derived from signatory handler assessments. The members of the Committee are handlers and producers of peanuts. They are familiar with the Committee's needs and with the costs of goods and services in their local area and, thus, are in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input. The handlers of peanuts who are directly affected have signed the marketing agreement authorizing the expenses that may be incurred and the imposition of assessments.

The Committee met on March 19, 1996, and unanimously recommended 1996–97 administrative expenditures of $1,025,500 and an administrative assessment rate of $0.70 per net ton of assessable farmers' stock peanuts received or acquired by handlers. The Committee met again on May 23, 1996, and with 17 favorable votes and one abstention voted not to recommend an assessment rate for indemnification for handler losses due to aflatoxin contamination. Adequate funds are included in the Committee's indemnification reserve for such expenses during the 1996–97 crop year. In comparison, last year's budgeted administrative expenditures were $1,067,500. The assessment rate of $0.70 is the same as last year's initially established rate. An interim final rule was published on June 13, 1996 (61 FR 29926) increasing last year's administrative assessment rate to $0.83 per ton.

The finalization of that rule was published on August 20, 1996 (61 FR 42993).

Major expenditures recommended by the Committee for the 1996–97 year include $112,450 for executive salaries, $131,500 for clerical salaries, $296,700 for field representatives salaries, $42,000 for payroll taxes, $148,000 for employee benefits, $40,000 for Committee members travel, $5,000 for staff travel, $110,000 for field representatives travel, $9,800 for insurance and bonds, $46,200 for office rent and parking, $14,000 for office supplies and stationery, $13,200 for postage and mailing, $15,000 for telephone and telegraph, $6,000 for repairs and maintenance agreements, $10,400 for the audit fee, and $10,250 for the contingency reserve. Budgeted expenses for these items in 1995–96 were $145,051, $138,856, $304,344, $44,000, $148,000, $40,000, $5,000, $110,000, $9,500, $44,360, $14,000, $13,200, $15,000, $6,000, $10,400, and $4,789, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected receipts and acquisitions of farmers' stock peanuts. Farmers' stock peanuts received or acquired by non-signatory handlers and farmers' stock peanuts received or acquired by handlers signatory to the agreement, other than from those described in §§ 998.31 (c) and (d), are subject to the assessments. Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired. Peanut shipments for the year under the agreement are estimated at 1,465,000 tons, which should provide $1,025,500 in assessment income. Approximately 95 percent of the domestically produced peanut crop is marketed by handlers who are signatory to the agreement.

Public Law 101–220 amended section 608b of the Act to require that all peanuts handled by persons who have not entered into the agreement (non-signers) be subject to quality and inspection requirements to the same extent and manner as are required under the agreement. Approximately 5 percent of the U.S. peanut crop is marketed by non-signer handlers.

Public Law 103–66 (107 Stat. 312) provides for mandatory assessment of farmers' stock peanuts acquired by non-signatory peanut handlers. Under this law, paragraph (b) of section 1001, of the Agricultural Reconciliation Act of 1993, specifies that: (1) Any assessment (except indemnification assessments) imposed under the agreement on signatory handlers also shall apply to non-signatory handlers, and (2) such assessment shall be paid to the Secretary.

An interim final rule regarding this action was published in the July 8, 1996, issue of the Federal Register (61 FR 35594). That interim final rule added §§ 997.101 and 998.409 to establish assessment rates for the Committee and non-signatory handlers. That rule provided that interested persons could file comments through August 7, 1996. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers signatory to the agreement. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing agreement. This administrative assessment is required by law to be applied uniformly to all non-signatory handlers and should be of benefit to all. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

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

Although these assessment rates are effective for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings

are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1996–97 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by the Department.

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

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) Pub. L. 103–66 requires the Department to impose an administrative assessment on peanuts received or acquired for the account of non-signatory handlers; (3) the 1996–97 crop year began on July 1, 1996, and the marketing agreement and Pub. L. 103–66 require that the rate of assessment for the crop year apply to all peanuts handled during the crop year; (4) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and (5) an interim final rule was published on this action which provided a 30-day comment period, and no comments were received.

List of Subjects

7 CFR Part 997

Food grades and standards, Peanuts, Reporting and recordkeeping requirements.

7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

Note: These sections will appear in the Code of Federal Regulations.

Accordingly, the interim final rule amending 7 CFR parts 997 and 998 which was published at 61 FR 35594 on July 8, 1996, is adopted as a final rule without change.

Dated: November 19, 1996.

Sharon Bomer Lauritsen,

Acting Director Fruit and Vegetable Division.

[FR Doc. 96–30035 Filed 11–22–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS No. 1748–96; AG Order No. 2063–96]

RIN 1115–AE27

Periods of Lawful Temporary Resident Status and Lawful Permanent Resident Status To Establish Seven Years of Lawful Domicile

AGENCY: Immigration and Naturalization Service (INS), Executive Office for Immigration Review (EOIR), Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends Department of Justice regulations that limit discretion to grant an application for relief under section 212(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(c), by expanding the class of aliens eligible for section 212(c) relief. This interim rule allows an alien who has adjusted to lawful permanent resident status pursuant to section 245A, 8 U.S.C. 1255a, or section 210, 8 U.S.C. 1160, of the Act to use the combined period of his or her status as a lawful temporary resident and lawful permanent resident to establish seven (7) years of lawful domicile in the United States for purposes of eligibility for section 212(c) relief. This interim rule will provide uniformity between the regulation and case law.

DATES: This interim rule is effective November 25, 1996. Written comments must be submitted on or before December 26, 1996.

ADDRESSES: Please submit written comments, in triplicate, to the Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536, Attention: Public Comment Clerk. To ensure proper handling, please reference INS number 1748–96 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 305–0470; David M. Dixon, Chief Appellate Counsel, Immigration and Naturalization Service, Suite 309, 5113 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 756–6257.

SUPPLEMENTARY INFORMATION: Under recent case law, an alien who has acquired lawful permanent resident status under section 245A of the Act may accrue the seven (7) years of lawful domicile required for purposes of section 212(c) relief from the date of his or her application for temporary resident status. *See Robles* v. *INS,* 58 F.3d 1355 (9th Cir. 1995); *Avelar-Cruz* v. *INS,* 58 F.3d 338 (7th Cir. 1995); *Castellon-Contreras* v. *INS,* 45 F.3d 149 (7th Cir. 1995). The current regulation allows an alien to apply for section 212(c) relief only if he or she has established at least seven consecutive years of lawful permanent resident status immediately prior to filing the application *See* 8 CFR 212.3(f)(2). The Board of Immigration Appeals (BIA) has determined that, in cases arising in the Ninth Circuit, an alien may use the period of temporary resident status to establish the requisite seven years. *See In re Carlos Cazares-Alvarez,* Interim Decision 3262 (BIA 1996). However, in cases arising in circuits without such a temporary resident status rule, the BIA has determined that the current regulation requires seven years of lawful permanent resident status. *See In re Hector Ponce de Leon-Ruiz,* Interim Decision 3261 (BIA 1996). The BIA has referred these cases to the Attorney General pursuant to 8 CFR 3.1(h)(1)(ii) to resolve the issue. The issue raised in *White* v. *INS,* 75 F.3d 213 (5th Cir. 1996) (whether 8 CFR 212.3(f)(2) is consistent with 8 U.S.C. 1182(c) and therefore is entitled to deference), has been addressed and rendered moot by section 304 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104–208, 110 Stat. 3009 (September 30, 1996) (repealing section 212(c) and substituting other relief), effective April 1, 1997, codified at section 240A of the Immigration and Nationality Act as amended. The *White* court computed the years of lawful unrelinquished domicile (including the years of lawful temporary resident status) rather than lawful permanent residence in determining eligibility for relief.

This interim rule will permit an alien to demonstrate lawful domicile for section 212(c) relief purposes by combining his or her status as a lawful temporary resident and as a lawful permanent resident under section 245A or section 210 of the Act. This rule,

which is necessary for consistency between the regulation and case law, will become effective immediately.

The Department's implementation of this rule as a interim rule, with provision for post-promulgation public comment, is based upon the ''good cause'' exception found at 5 U.S.C. 553(d)(3). The reasons and necessity for immediate implementation of this interim rule are as follows: (1) To resolve the conflict among the circuits regarding this issue; (2) to respond to the controversy raised by the BIA decisions; (3) to render moot the decisions referred to the Attorney General by the BIA; and (4) to provide a benefit to those aliens who meet its criteria. An abbreviated comment period of 30 days is necessary because of the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, supra, which repeals the provision for section 212(c) relief and substitutes other relief, effective April 1, 1997. This regulation thus will be applicable only in the case of aliens in proceedings and who have filed an application for section 212(c) relief as of the effective date. Nothing in this regulation is intended to affect, nor will it affect, the operation of the Illegal Immigration Reform and Immigrant Responsibility Act, *supra*, to applications for relief pending on the general effective date of that act.

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. It will affect certain individual aliens, not small entities. This rule does not constitute significant regulatory action within the meaning of section 3(f) of Executive Order 12866, nor does it have federalism implications warranting the preparation of a Federalism Assessment in accordance with section 6(b) of Executive Order 12612.

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

Accordingly, part 212 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

2. In § 212.3 paragraph (f)(2) is revised to read as follows:

§ 212.3 Application for the exercise of discretion under section 212(c).

* * * * *

(f) * * *

(2) The alien has not maintained lawful domicile in the United States, as either a lawful permanent resident or a lawful temporary resident pursuant to section 245A or section 210 of the Act, for at least seven consecutive years immediately preceding the filing of the application;

* * * * *

Dated: November 19, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–29996 Filed 11–22–96; 8:45 am]

BILLING CODE 4410–10–M

8 CFR Part 245

[INS No. 1373–95]

RIN 1115–AD12

Adjustment of Status to That of Person Admitted for Permanent Residence: Interview

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule adopts without change an interim rule published in the Federal Register by the Immigration and Naturalization Service (the Service) on November 2, 1992, which allows the Service to determine when interviews are needed to adjudicate applications for adjustment of status to that of a lawful permanent resident alien. This action is considered necessary to promote more efficient adjudications and convenience to the public.

EFFECTIVE DATE: December 26, 1996.

FOR FURTHER INFORMATION CONTACT: Gerard Casale, Senior Adjudications Officer, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Background

Section 245 of the Immigration and Nationality Act (the Act) provides that the status of certain aliens in the United States may be adjusted to that of lawful permanent residents at the discretion of the Attorney General under such regulations as she may prescribe. This process, known as adjustment of status, is governed by section 245 of the Act and 8 CFR part 245. Pursuant to 8 CFR 245.6, an applicant over the age of 14 is generally required to be interviewed by an officer of the Service.

On November 2, 1992, the Service published an interim rule with request for public comments in the Federal Register, at 57 FR 49374–49375. The rule revised 8 CFR 245.6 to allow the Service to conduct interviews only in cases where it determines that an interview is necessary. The rule also eliminated a provision allowing interviews to be waived for persons who had applied before November 20, 1990, for adjustment of status under the Cuban Adjustment Act of November 2, 1996, since that specific provision was no longer needed.

The interim rule became effective on November 2, 1992. Interested persons were invited to submit written comments regarding the interim rule on or before December 2, 1992. The Service received five written comments regarding the rule. Since the closing of the period for public comment, no new factors have affected the stated basis for the interim rule. Meanwhile, significant increases in total application receipts have underscored the need for promoting efficient use of adjudications resources. The following discussion summarizes the issues involved in the interview determination rule, including those raised by the commenters, and the conclusions reached by the Service.

Fraud

Traditionally, the interview of applicants for adjustment of status has been seen as an important element in the Service's ability to detect and deter fraud. On that account, one commenter opposed the change to selective interviewing. Citing reports indicating a significant number of fraudulent marriages connected with petitions for immigration benefits, he concluded that the prospect of an interview deters additional persons from fraudulently claiming eligibility for lawful permanent resident status. The Service shares this interest in avoiding the creation of opportunities for fraud. However, the conversion to select interviewing does not assure any particular applicants that they will not be interviewed and does not limit the Service's ability to interview a particular applicant for permanent resident status. Interviews of a significant number of applicants, particularly those claiming eligibility based on a recent marriage, will continue. In fact, the Service intends to conduct interviews in all cases in which

it is likely that the interview would disclose a basis for ineligibility.

The possibility that fraudulent claims would be increased by the combination of selective interviewing and the direct mailing of adjustment applications to the four service centers was another consideration. A commenter suggested that service center adjudicators, who do not conduct interviews, lack the experience of working on suspect cases and the knowledge of fraud patterns prevalent in particular localities, and therefore would be unable to identify those applications for which an interview is needed. The Service's view is that adjudicators at the service centers have sufficient experience and training in the detection of fraudulent claims to eligibility for immigration benefits and that they will continue to apply this knowledge in determining when interviews are not necessary. For example, when processing petitions to remove the conditions imposed on persons who obtained permanent residency based on a recent marriage during the past several years, the responsibility for assessing the risk of fraud has been assigned to service center adjudicators, who refer suspect cases to local offices for interview. Service center adjudicators also recently handled a large number of applications for adjustment of status under the Chinese Student Protection Act of 1992 in a similar manner.

Impact of the Interview Determination Program on the Adjustment Application Filing Fee

Another issue raised by the interview determination program is whether its efficiencies should result in a reduction in the current fee for adjustment of status applications. One commenter reasoned that a decrease in the number of interviews would result in the Service spending less to process applications for adjustment of status, yielding savings that should be passed to the public in the form of a lower filing fee. However, the Service does not intend that the elimination of some interviews will lessen the total resources devoted to adjudication of applications for adjustment of status; rather, the change will shift some workloads and costs from the district offices to the service centers. Officer time and other resources formerly devoted to interviewing clearly eligible applicants will be dedicated to uncovering fraud in high-risk adjustment of status cases. Also, a previously discussed, a significant number of applicants will continue to be interviewed. Therefore, while the decrease in the percentage of cases interviewed will benefit many applicants, the Service does not expect it to change significantly the overall cost of adjudicating adjustment applications.

Processing Time

As far as maintenance of adjudications standards allows, the Service has an abiding interest in minimizing the time required to complete action on adjustment of status applications. One commenter saw the interim rule as an example of Service efforts to alleviate adjudications backlogs and make the most of existing resources, while another recommended that the Service issue a decision within 90 days of receipt of the application.

Timely adjudication of requests for benefits is a Service goal, and selective waiving of interviews will allow decisions to be issued more quickly in routine and non-suspect adjustment of status cases. The Service has recently introduced Customer Service Standards which aim at completing action on adjustment applications within a shorter time. However, since some Service offices currently have heavier caseloads in relation to available personnel, they may incur backlogs longer than those of other offices. Caseloads are also subject to unanticipated surges in the number or type of applications received. Final processing may be delayed in individual cases for other reasons outside the adjudicator's control, as when additional time is required to await an immigrant visa priority date, the receipt of supplementary information from the applicant, or the completion of an investigation regarding a questionable claim.

Applicant Request for Waiver of Interview

A question whether there would be a procedure allowing an applicant to request a waiver of the interview has been considered. The determination whether an interview is necessary involves evaluation of all relevant factors concerning the application, including any special circumstances. However, the decision will be made on the basis of the evidence of eligibility and not an applicant's desire to avoid an interview. The Service cannot assure an applicant in advance that no interview will be required, since information may be received which discloses the need for interview of an application who initially did not appear to require it. Consequently, the INS will not adopt a procedure to entertain advance requests to waive the interview.

The Selection of Cases

Each adjustment of status application will be reviewed on a case-by-case basis to determine whether an interview is needed. The Service will monitor fraud trends and the use of the interview determination provision to provide guidelines for adjudicators.

Concern was expressed as to how the interview determination decision would be reached, particularly if it would result in interviews being called merely to address minor documentary deficiencies. A minor deficiency is not, in itself, an indicator of fraud. The Service does not plan to interview an applicant solely because he or she neglected to submit a document which can be more easily requested and submitted by mail.

A commenter suggested that the Service adopt a nationwide list of specified adjustment application categories which, in her opinion, presented a low risk of fraud and yet were consuming nearly half of the staff time devoted to adjustment interviews in a large district office; the time freed by waiving interviews of such cases could then be re-directed to fraud deterrence and reduction of the waiting time for processing applications. The Service recognizes that at any point in time there are categories of applications which pose a generally lower risk of fraud than others. However, it does not follow that the rule must be altered on that account. A regulation prescribing fixed categories of applications for which interviews must be waived would hamper the Service's flexibility in adjusting to changes in fraud profiles and caseloads. The existing rule, which neither specifies nor limits the types of adjustment cases on which the interview determination may be made, affords the Service and its adjudicating offices the widest freedom of action to balance local needs and priorities.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities because of the following factors: This rule merely adopts as final an interim rule which has been in effect since November 2, 1992. By removing the interview requirement, the rule has eliminated an inconvenience to a number of individual applicants for adjustment of status who otherwise would have been required to appear in

person at a Service office to be interviewed by an immigration examiner. This rule does not have impact on small entities.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

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 rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 8 CFR part 245 which was published at 57 FR 49374–49375 on November 2, 1992, is adopted as a final rule without change.

Dated: October 28, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96–29971 Filed 11–22–96; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

12 CFR Part 1806

RIN 1505–AA71

Bank Enterprise Award Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Amendments to interim rule.

SUMMARY: The Department of the Treasury is issuing revisions to the interim regulations for the Bank Enterprise Award (BEA) Program published in the Federal Register on October 19, 1995 and subsequently amended on January 23, 1996 and February 29, 1996. The BEA Program was authorized by the Community Development Banking and Financial Institutions Act of 1994. The program is designed to encourage insured depository institutions to make equity investments in or otherwise support Community Development Financial Institutions and/or increase lending and other services provided within distressed communities.

DATES: This interim rule is effective November 25, 1996. Comments must be received on or before December 26, 1996.

ADDRESSES: All questions or comments concerning this interim rule should be addressed to the Director, Community Development Financial Institutions Fund, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Kirsten S. Moy, Director, Community Development Financial Institutions Fund at (202) 622–8662. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

I. General

Executive Order (E.O.) 12866

It has been determined that this regulation is not a significant regulatory action as defined in E.O. 12866.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this interim rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Moreover, the Department of the Treasury finds that any economic or other consequences of this interim rule are a direct result of the implementation of statutory provisions.

Administrative Procedures Act

Pursuant to 5 U.S.C. 553(a)(2), these amendments are not subject to the provisions in 5 U.S.C. 553(b) concerning notice and public comment or the delayed effective date provisions of 5 U.S.C. 553(d). Furthermore, the Department for good cause finds that notice and public comment prior to effect are impracticable and contrary to the public interest. These revisions are intended to amend the interim regulations for the BEA Program that were published in the Federal Register on October 19, 1995 and subsequently amended on January 23, 1996 and February 29, 1996. The purpose of the revisions is to give applicants greater flexibility as to the type of instruments that will be considered Equity Investments, reduce the burden associated with reporting certain Eligible Development Activities, and permit applicants that achieved less than 90 percent, as opposed to less than 90 percent but at least 75 percent, of their projected activities to receive a partial, pro-rated award.

Catalog of Federal Financial Assistance Number Bank Enterprise Award Program—21.021.

II. Background

On October 19, 1995, the Department published interim regulations in the Federal Register for the Bank Enterprise Award Program (12 CFR part 1806). These interim regulations were amended pursuant to revisions published in the Federal Register on January 23, 1996 and corrections to these revisions published in the Federal Register on February 29, 1996. Subsequent to the publication of such interim regulations, as amended, the Department has developed policies designed to clarify several existing provisions in the interim regulations. The purpose of these amendments is to give applicants greater flexibility as to the type of instruments that will be considered Equity Investments, reduce the burden associated with reporting certain Eligible Development Activities, and permit applicants that achieved less than 90 percent, as opposed to less than 90 percent but at least 75 percent, of their projected activities to receive a partial, pro-rated award.

III. Bank Enterprise Award Program

Under the Bank Enterprise Award Program (12 CFR Part 1806), the Department will provide awards to selected Applicants that successfully carry out certain community development activities. The following summarizes the amendments to the interim regulations.

Definitions

The term ''Equity Investment'' is amended in Section 1806.103(q) to give Applicants greater flexibility as to the type of instruments that will be considered Equity Investments. An Equity Investment shall be considered new financial assistance provided by an Applicant or its Subsidiary to a CDFI in the form of a stock purchase, a grant (excluding grants used to support operating costs), a purchase of any type of partnership interest, a loan made on such terms that it has characteristics of equity (and is considered as such by the Fund and is consistent with requirements of the Applicant's Appropriate Federal Banking Agency), or any other investment deemed to be an equity investment by the Fund.

Measuring Activities

Section 1806.202(a) is revised to give an Applicant the option of reporting their activities in all categories of Qualified Activities or providing an explanation satisfactory to the Fund for not reporting in all categories and providing any certifications reasonably deemed necessary by the Fund, including, without limitation, a certification that during the Assessment Period the Applicant did not reduce its total activity in any unreported categories. The form and content of any certification shall be determined by the Fund.

Actual Award Amounts

Section 1806.205 is revised to permit any Applicant that achieves less than 90 percent, as opposed to less than 90 percent but at least 75 percent, of its projected Qualified Activities to receive a partial award based upon (among other things) the Applicant's satisfactory explanation for its failure to substantially achieve the activities projected in its application. Any estimated award amount will be adjusted on a pro-rata basis to reflect the activities actually performed.

List of Subjects in 12 CFR Part 1806

Banks, banking, Community development, Economic development, Grant programs—community development, Housing, Savings associations, Small businesses.

For the reasons set forth in the preamble, Part 1806 of Chapter XVIII of Title 12 of the Code of Federal Regulations is amended as follows:

PART 1806—BANK ENTERPRISE AWARD PROGRAM

1. The authority citation for Part 1806 continues to read as follows:

Authority: 12 U.S.C. 4703, 4717; chapter X, Pub. L. 104–19, 109 Stat. 237 (12 U.S.C. 4703 note).

2. Section 1806.103 (q) is revised to read as follows:

§ 1806.103 Definitions.

* * * * *

(q) *Equity Investment* means new financial assistance provided by an Applicant or its Subsidiary to a CDFI in the form of a stock purchase, a grant (excluding grants used to support operating costs), a purchase of any type of partnership interest, a loan made on such terms that it has characteristics of equity (and is considered as such by the Fund and is consistent with requirements of the Applicant's Appropriate Federal Banking Agency), or any other investment deemed to be an equity investment by the Fund.

* * * * *

3. Section 1806.202(a) is revised to read as follows:

§ 1806.202. Measuring activities.

(a) *General.* Qualified Activities shall be measured by comparing the Qualified Activities carried out during the Baseline Period with the Qualified Activities projected to be carried out during the Assessment Period. Increases in the values of Qualified Activities between the Baseline Period and Assessment Period will be used in determining award amounts. Applicants shall report their activities in all categories of Qualified Activities in which they engage for the Baseline Period and Assessment Period or provide an explanation satisfactory to the Fund for not reporting in all categories and provide any certification reasonably deemed necessary by the Fund, including, without limitation, a certification that during the Assessment Period the Applicant did not reduce its total activity in any unreported categories. The form and content of any certification shall be determined by the Fund. The dates of the Baseline Period and Assessment Period will be published in the NOFA for each funding round.

* * * * *

4. Section 1806.205(c)(1) is revised to read as follows:

§ 1806.205 Actual award amounts.

* * * * *

(c) *Partial achievement*—(1) *General.* If an Awardee carries out less than 90 percent of its projected Qualified Activities, it may be deemed to have partially achieved those activities. In such cases, the Fund may, in its sole discretion, provide a partial award based upon (among other things) the Awardee's satisfactory explanation for its failure to substantially achieve the activities projected in its application. Any estimated award amount will be adjusted on a pro-rata basis to reflect the activities actually performed.

* * * * *

Dated: November 18, 1996.

Kirsten S. Moy,

Director, Community Development Financial Institutions Fund.

[FR Doc. 96–29993 Filed 11–22–96; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–ANE–41; Amendment 39–9834, AD 96–24–09]

RIN 2120–AA64

Airworthiness Directives; Allison Engine Company Model 250–C47B Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; Request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Allison Engine Company Model 250–C47B turboshaft engines. This action supersedes priority letter AD 96–21–12, applicable to Bell Helicopter Textron, A Division of Textron Canada Ltd. (BHTC) Model 407 helicopters, that currently prohibits further flight, due to uncommanded inflight engine shutdowns. This action requires replacing the engine main electrical harness assembly with an improved assembly, disabling the overspeed solenoid, inspecting the engine control unit (ECU) internal PW10 voltage to determine electrical noise characteristics, and replacing units not considered serviceable. In addition, this AD requires adding a placard to the helicopter instrument panel notifying the pilot that the overspeed protection system is disabled and removes a placard which was required by priority letter AD 96–21–12; revises the BHTC Model 407 Rotorcraft Flight Manual (RFM); and requires maintenance actions to clear the engine electronic control unit (ECU) of faults prior to each flight. Accomplishment of these actions will enable operators to resume flight operations. This amendment is prompted by investigation into the causes of the inflight engine shutdowns. The actions specified by this AD are intended to prevent uncommanded inflight engine shutdowns, which can result in autorotation, forced landing, and possible loss of the helicopter.

DATES: Effective November 25, 1996, except effective upon receipt to all persons receiving a copy of this AD directly from the FAA.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 25, 1996.

Comments for inclusion in the Rules Docket must be received on or before January 24, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–ANE–41, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Allison Engine Company, P.O. Box 420, Speed Code P–40A, Indianapolis, IN 46206–0420; telephone (317) 230–2720, fax (317) 230–3381. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patricia Bonnen, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Ave., Des Plaines, IL 60018; telephone (847) 294–7134, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: On October 11, 1996, the Federal Aviation Administration (FAA) issued priority letter airworthiness directive (AD) 96–21–12, applicable to Bell Helicopter Textron, a Division of Textron Canada Ltd. (BHTC) Model 407 helicopters, which prohibits further flight. That action was prompted by reports of uncommanded inflight engine shutdowns on Allison Engine Company Model 250–C47B turboshaft engines installed in those helicopters. In each case, the harness failed and caused the electronic control unit (ECU) to go into a fail fixed fuel flow condition. Subsequent pilot action (reduction in collective), caused the engine to reach the overspeed trip point, with resultant default to zero fuel flow and engine shutdown. That condition, if not corrected, could result in uncommanded inflight engine shutdowns, which can result in autorotation, forced landing, and possible loss of the helicopter.

Since the issuance of that priority letter AD, the investigation revealed that the cause of the uncommanded inflight engine shutdowns was an ECU hard fault to a fail fixed fuel flow condition, and subsequent main rotor and power turbine overspeed limit exceedances coincident with pilot collective input. These overspeed conditions activated the analog overspeed trip, which results in default to a zero fuel flow condition. The ECU fault resulted from a manufacturing defect in the engine main electrical harness assembly.

Additionally, in a related incident involving a not yet certificated Allison Engine Company engine, an ECU hard fault to fail fixed fuel flow was attributed to the electrical noise characteristics of the ECU internal PW10 voltage, as affected by certain ECU power modulator subcomponents. This same power modulator Part Number (P/N) is currently in use on the Allison Engine Company Model 250–C47B engine application. The noted ECU power modulator problem can also lead to the overspeed condition and uncommanded engine shutdown described above, and is therefore addressed in this AD action.

The FAA has reviewed and approved the technical contents of Allison Engine Company Alert Commercial Engine Bulletin (CEB) No. CEB–A–73–6010, dated October 15, 1996, that describes procedures for replacing the engine main electrical harness assembly with an improved assembly; CEB–A–73–6011, dated October 31, 1996, that describes procedures for disabling the overspeed solenoid (thereby deactivating the engine overspeed protection system); and CEB–A–73–6012, dated October 31, 1996, that describes procedures for inspecting the ECU internal PW10 voltage to determine electrical noise characteristics.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD supersedes priority letter AD 96–21–12, applicable to BHTC Model 407 helicopters, to require the following actions: replacing the engine main electrical harness assembly with an improved assembly, disabling the overspeed solenoid (thereby deactivating the engine overspeed protection system), inspecting the ECU internal PW10 voltage to determine electrical noise characteristics, and replacing units not considered serviceable due to excessive electrical noise. In addition, this AD requires adding a helicopter instrument panel placard notifying the pilot that the overspeed protection system is disabled; removes the placard required by AD 96–21–12 which prohibited further flight; and revises the BHTC Model 407 Rotorcraft Flight Manual (RFM) to clarify emergency flight procedures and to require maintenance actions to clear Full Authority Digital Engine Control (FADEC) fault annunciations prior to each flight. Accomplishment of these actions will enable operators to resume flight operations on an interim basis. Additional rulemaking may reactivate the engine overspeed protection system in conjunction with raising the overspeed trip speed, and require additional control system modification of going to minimum fuel flow as a terminating action. The actions are required to be accomplished in accordance with the CEBs described previously.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. 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 notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96-ANE–41.'' The postcard will be date stamped and returned to the commenter.

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

implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 adding the following new airworthiness directive:

96–24–09 Allison Engine Company: Amendment 39–9834. Docket No. 96–ANE–41. Supersedes AD 96–21–12, applicable to Bell Helicopter Textron, A Division of Textron Canada Ltd. (BHTC) Model 407 helicopters.

Applicability: Allison Engine Company Model 250–C47B turboshaft engines, installed on but not limited to BHTC Model 407 helicopters.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) 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 prior to further flight, unless accomplished previously.

To prevent uncommanded inflight engine shutdowns, which can result in autorotation, forced landing, and possible loss of the helicopter, accomplish the following:

(a) Replace the engine main electrical harness assembly, Part Number (P/N) 23062796, with an improved assembly, P/N 23065805, in accordance with Allison Engine Company Alert Commercial Engine Bulletin (CEB) CEB–A–73–6010, dated October 15, 1996.

(b) Disable the overspeed solenoid in accordance with Allison Engine Company CEB–A–73–6011, dated October 31, 1996.

(c) Inspect the electronic control unit (ECU) internal PW10 voltage to determine electrical noise characteristics, and replace ECUs not considered serviceable, in accordance with Allison Engine Company CEB–A–73–6012, dated October 31, 1996.

(d) Install the following placard on the instrument panel near the overspeed test switch, notifying the pilot that the engine overspeed protection system is disabled, ''OVSPD SYSTEM INOP''. The placard shall be manufactured of a material that cannot be easily defaced or erased, and the lettering shall be block-style and at least 2 inches in height, but not greater than 6 inches in height. Additionally, the color of lettering must contrast with the background (color of placard material) such that it is legible.

(e) Remove the placard required by AD 96–21–12, which states, ''Flight Of This Helicopter Is Prohibited''.

(f) Revise the FAA-approved Rotorcraft Flight Manual (RFM) by incorporating Appendix 1 of this AD in the Normal Procedures. This may be accomplished by inserting a copy of Appendix 1 of this AD in the RFM:

Appendix 1

Note: Operators must initiate action to notify and ensure that flight crewmembers are appraised of this change.

(1) Revise the FAA approved Rotorcraft Flight Manual (RFM) by incorporating the following Limitation placard to page 1–14A/14B.

OVSPD
SYSTEM
INOP

Location: Instrument panel near overspeed test switch

(2) Revise the FAA-approved RFM by incorporating the following to the Normal Procedures.

Section 2–4. INTERIOR AND PRESTART CHECK

* * * * *

18. Caution lights—ENG OUT, XMSN OIL PRESS, RPM, HYDRAULIC SYSTEM, GEN FAIL, FADEC DEGRADED, FADEC FAULT, L/FUEL BOOST, R/FUEL BOOST, L/FUEL XFR, and R/FUEL XFR will be illuminated.

NOTE

L/FUEL XFR and R/FUEL XFR will not be illuminated when forward fuel tank is empty.

18a. Throttle—Idle position.

NOTE

GPU or battery cart power, if being used, must be cycled when the BATT switch is OFF.

18b. BATT switch—Cycle OFF, ON.

NOTE

Observations of Step 16 will be repeated. FADEC DEGRADED and FADEC FAULT lights, that are due to the overspeed system being inoperative, will be extinguished.

18c. Throttle—Closed position.

18d. Horn Mute button—Press to mute.

* * * * *

Section 2–11. ENGINE SHUTDOWN

* * * * *

14. Delete

* * * * *

23. BATT switch—OFF.

CAUTION

Applicable maintenance action must be performed prior to further flight if a FADEC light has illuminated during the flight or on engine shutdown.

(3) Revise the FAA approved RFM by incorporating the following to the Emergency/Malfunction Procedures.

Section 3–3–J. DRIVE SHAFT FAILURE

* * * * *

7. Delete

PROCEDURE:

1. Maintain heading and attitude control.

1a. Throttle—idle

* * * * *

3–3–K. FADEC FAILURE

NOTE

Takeoff power may not be available in the MANUAL mode.

Maximum continuous power will be available for all ambient conditions.

INDICATIONS:

1. FADEC fail audio activated.

2. FADEC FAIL warning light illuminated.

PROCEDURE:

WARNING

Raising or lowering of the collective during a FADEC fail condition will result in rotor droop or engine overspeed, respectively.

If *increasing* the collective when the failure occurs, smoothly lower collective to eliminate the NR/NP droop while simultaneously retarding the throttle to the 90% bezel position.

If *reducing* the collective when the failure occurs, smoothly increase the collective to correct the overspeed while simultaneously retarding the throttle to the 90% bezel position.

1. Collective—Maintain position. (if steady state flight condition)

WARNING

Within 2 to 7 seconds after the FADEC FAIL warning, NR/NP *may* increase very rapidly, requiring positive movements of collective to control NR/NP.

2. Throttle—Immediately retard to approximately 90% bezel position. (if not previously accomplished)

3. FADEC MODE switch—Depress one time.

NOTE

Initial engine response to manual control of fuel flow with throttle may take up to 7 seconds.

4. NR/NP—Maintain 95 to 100% with the throttle and collective.

5. Land as soon as practical.

NOTE

It may be necessary to use FUEL VALVE switch to shutdown engine after landing.

6. Normal shutdown if possible.

NOTE

When throttle is repositioned to the idle stop (during engine shutdown) the PMA will go off-line and engine may flameout.

(g) After accomplishing all the actions of this AD, operators may resume flight operations of the BHTC Model 407 helicopter.

(h) An alternative method of compliance that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

(i) The actions required by this AD shall be accomplished in accordance with the following Allison Engine Company Alert CEBs:

Document No.	Page	Revision	Date
CEB–A–73–6010 ...	1–7	Original	Oct. 15, 1996.
Total pages: 7.			
CEB–A–73–6011 ...	1–12	Original	Oct. 31, 1996.
Total pages: 12.			
CEB–A–73–6012 ...	1–11	Original	Oct. 31, 1996.
Total pages: 11.			

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 Allison Engine Company, P.O. Box 420, Speed Code P–40A, Indianapolis, IN 46206–0420; telephone (317) 230–2720, fax (317) 230–3381. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment supersedes priority letter AD 96–21- 12, issued October 11, 1996.

(k) This amendment becomes effective November 25, 1996, except effective upon receipt to all persons receiving a copy of this AD directly from the FAA.

Issued in Burlington, Massachusetts, on November 15, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–29861 Filed 11–21–96; 12:14 pm]

BILLING CODE 4910–13–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–205]

RIN 1218–AA40

Safety Standards for Scaffolds Used in the Construction Industry

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final rule; Corrections, Partial stay.

SUMMARY: This document makes corrections to the final rule on Safety Standards for Scaffolds Used in the Construction Industry, which was published in the Federal Register on August 30, 1996 at 61 FR 46026. The Agency is also issuing an administrative stay of the implementation of final rule § 1926.451(b)(2)(i) as it relates to roof bracket scaffolds.

EFFECTIVE DATE: The corrections take effect November 25, 1996. The administrative stay of § 1926.451(b)(2)(i) is effective November 29, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Bonnie Friedman, Occupational Safety and Health Administration, Office of Information, Division of Consumer Affairs, Room N–3647, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC. 20210; Telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION: This document contains miscellaneous minor corrections to the final rule for Safety Standards for Scaffolds Used in the Construction Industry, which was published on August 30, 1996 (61 FR 46026).

This document also stays the implementation of the requirement in final rule § 1926.451(b)(2)(i) that roof bracket scaffolds be at least 12 inches wide. The Murray-Black Co., a manufacturer of roof bracket scaffolds, has filed a petition for review of final subpart L in the United States Court of Appeals for the Sixth Circuit with respect to the roof bracket width requirement. The Agency has received information from Murray-Black and other manufacturers of roof bracket scaffolds which indicates that most roof bracket scaffolds currently in use are either 8 or 10 inches wide and that those roof brackets function adequately. The original requirements of subpart L do not set a minimum width for such scaffolds.

OSHA has concluded that the submissions by Murray-Black and other scaffold manufacturers raise reasonable concerns regarding the minimum width requirements for roof bracket scaffolds in final rule § 1926.451(b)(2)(i). The Agency believes that further rulemaking is needed to determine what minimum width would be appropriate for roof bracket scaffolds. Accordingly, OSHA is staying § 1926.451(b)(2)(i), as regards roof bracket scaffolds, and will act expeditiously to initiate notice and comment rulemaking that addresses the minimum width of roof bracket scaffolds.

Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 20th day of November 1996.

Joseph A. Dear,

Assistant Secretary of Labor.

Accordingly, the publication of August 30, 1996 of Safety Standards for Scaffolds Used in the Construction Industry (61 FR 46026) is hereby corrected as set forth below.

Summary and Explanation—[Corrected]

1. On page 46085, the reference to 1926.451(e)(1) in the first full paragraph in the middle column is corrected to read 1926.451(g)(1).

§ 1926.451 [Corrected]

2. On page 46107, in the first column, § 1926.451(a)(2) is corrected by removing the word ''either'' in the sixth line of the paragraph.

3. On page 46108, in the first column, § 1926.451(c)(2) is corrected to read:

* * * * *

(c) * * *

(2) Supported scaffold poles, legs, posts, frames, and uprights shall bear on base plates and mud sills or other adequate firm foundation.

* * * * *

4. On page 46109, in the first column, § 1926.451(d)(13) is corrected to read:

* * * * *

(d) * * *

(13) Suspension scaffold power-operated hoists and manual hoists shall be tested by a qualified testing laboratory.

* * * * *

5. On page 46110, the chart in § 1926.451(f)(6) is corrected to read:

INSULATED LINES

Voltage	Minimum distance	Alternatives
Less than 300 volts.	3 feet (0.9 m)	
300 volts to 50 kv.	10 feet (3.1 m)	
More than 50 kv.	10 feet (3.1 m) plus 0.4 inches (1.0 cm) for each 1 kv over 50 kv.	2 times the length of the line insulator, but never less than 10 feet (3.1 m).

UNINSULATED LINES

Voltage	Minimum distance	Alternatives
Less than 50 kv.	10 feet (3.1 m)	
More than 50 kv.	10 feet (3.1 m) plus 0.4 inches (1.0 cm) for each 1 kv over 50 kv.	2 times the length of the line insulator, but never less than 10 feet (3.1 m).

6. On page 46110, in the first column, the introductory language of the Exception is corrected to read:

Exception to Paragraph (f)(6):

* * * * *

§ 1926.453 [Corrected]

7. On page 46117, in the first column, at the end of paragraph (b)(2)(v) the following note is added:

Note to paragraph (b)(2)(v): As of January 1, 1998, subpart M of this part (§ 1926.502(d)) provides that body belts are not acceptable as part of a personal fall arrest system. The use of a body belt in a tethering system or in a restraint system is acceptable and is regulated under § 1926.502(e).

* * * * *

Non-mandatory Appendix E—[Corrected]

8. On page 46124, a caption is added below the drawing to read:

HOISTS MUST BE ELECTRONICALLY ISOLATED FROM SCAFFOLD

* * * * *

PART 1926—[AMENDED]

9. The authority citation for subpart L of part 1926 continues to read as follows:

Authority: Section 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order 1–90 (55 FR 9033); and 29 CFR Part 1911.

10. Section 1926.451(b)(2)(i) is amended by adding a note at the end of the paragraph to read as follows:

§ 1926.451 General Requirements.

* * * * *

(b) * * *

(2) * * *

(i) * * *

Note to paragraph (b)(2)(i): pursuant to an administrative stay effective November 29, 1996 and published in the Federal Register on November 25, 1996, the requirement in paragraph (b)(2)(i) that roof bracket scaffolds be at least 12 inches wide is stayed until November 25, 1997 or until rulemaking regarding the minimum width of roof bracket scaffolds has been completed, whichever is later.

* * * * *

[FR Doc. 96–30018 Filed 11–22–96; 8:45 am]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL–5655–2]

Standards of Performance for New Stationary Sources; Supplemental Delegation of Authority to the State of Georgia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: On June 17, 1996, the Georgia Department of Natural Resources, Environmental Protection Division (GA EPD) requested that EPA delegate authority for implementation and enforcement of additional categories of the New Source Performance Standards (NSPS). Since EPA's review of the State of Georgia's pertinent laws, rules, and regulations showed them to be adequate and effective procedures for the implementation and enforcement of these Federal standards, EPA has made the delegation as requested.

EFFECTIVE DATE: The effective date of the delegation of authority is September 30, 1996.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection during normal business hours at the following locations.

Environmental Protection Agency, Region 4, Air Planning Branch, 100 Alabama Street NE., Atlanta, GA 30303

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, suite 120, Atlanta, Georgia 30354.

Effective immediately, all requests, applications, reports and other correspondence required pursuant to the newly delegated standards should not be submitted to the Region 4 office, but should instead be submitted to the following address: Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, suite 120, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin, Regulatory Planning Section, Air Planning Branch, United States Environmental Protection Agency, Region 4, 100 Alabama Street NE, Atlanta, Georgia 30303, (404) 562–9036.

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with sections 110 and 111(c)(1) of the Clean Air Act as amended November 15, 1990, authorizes EPA to delegate authority to implement and enforce the standards set out in 40 CFR part 60, New Source Performance Standards (NSPS).

On May 3, 1976, EPA initially delegated the authority for implementation and enforcement of the NSPS programs to the State of Georgia. On June 17, 1996, the State of Georgia, through GA EPD, requested a delegation of authority for implementation and enforcement of the following NSPS categories found in 40 CFR part 60.

The following *40 CFR Part 60* categories are newly delegated:

Subpart Dc—Small Industrial-Commercial-Institutional Steam Generating Units, as amended, except § 60.48c(a)(4).

Subpart Ea—Municipal Waste Combustors, as amended.

Subpart RRR—Volatile Organic Compound (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Process, as amended, except § 60.703(e).

Subpart UUU—Calciners and Dryers in Mineral Industries, as amended.

The following *40 CFR Part 60* categories have been previously delegated, but resubmitted to incorporate any revisions:

Subpart D—Fossil-fuel Fired Steam Generators, as amended.

Subpart Da—Electric Utility Steam Generating Units, as amended, except § 60.45a.
Subpart Db—Industrial-Commercial-Institutional Steam Generating Units, as amended, except § 60.44b(f), § 60.44b(g), and § 60.49b(a)(4).
Subpart E—Incinerators, as amended.
Subpart F—Portland Cement Plants, as amended.
Subpart G—Nitric Acid Plants, as amended.
Subpart H—Sulfuric Acid Plants, as amended.
Subpart I—Asphalt Concrete Plants, as amended.
Subpart J—Petroleum Refineries, as amended, except § 60.105(a)(13)(iii) and § 60.106(i)(12) (revised in 10/2/90 FR, was § 60.106(g)(12))
Subpart K—Storage Vessels for Petroleum Liquids, as amended.
Subpart Ka—Storage Vessels for Petroleum Liquids, as amended, except § 60.114a.
Subpart Kb—Volatile Organic Liquid Storage Vessels, as amended, except § 60.111b(f)(4), § 60.114b, § 60.116b(e)(3) (iii) and (iv), and § 60.116b(f)(2)(iii).
Subpart L—Secondary Lead Smelters, as amended.
Subpart M—Secondary Brass and Bronze Ingot Production Plants, as amended.
Subpart N—Iron and Steel Plants, as amended.
Subpart Na—Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983, as amended.
Subpart O—Sewage Treatment Plants, as amended, except § 60.153(e).
Subpart P—Primary Copper Smelters, as amended.
Subpart Q—Primary Zinc Smelters, as amended.
Subpart R—Primary Lead Smelters, as amended.
Subpart S—Primary Aluminum Reduction Plants, as amended.
Subpart T—Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants, as amended.
Subpart U—Phosphate Fertilizer Industry: Superphosphoric Acid Plants, as amended.
Subpart V—Phosphate Fertilizer Industry: Diammonium Phosphate Plants, as amended.
Subpart W—Phosphate Fertilizer Industry: Triple Superphosphate Plants, as amended.
Subpart X—Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities, as amended.
Subpart Y—Coal Preparation Plants, as amended.
Subpart Z—Ferroalloy Production Facilities, as amended.
Subpart AA—Steel Plants: Electric Arc Furnaces, as amended.
Subpart AAa—Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983, as amended.
Subpart BB—Kraft Pulp Mills, as amended.
Subpart CC—Glass Manufacturing Plants, as amended.
Subpart DD—Grain Elevators, as amended.
Subpart EE—Surface Coating of Metal Furniture, as amended, except § 60.316(d).
Subpart GG—Stationary Gas Turbines, as amended, except § 60.334(b)(2) and § 60.335(f)(1).
Subpart HH—Lime Manufacturing Plants, as amended.
Subpart KK—Lead-Acid Battery Manufacturing Plants, as amended.
Subpart LL—Metallic Mineral Processing Plants, as amended.
Subpart MM—Automobile and Light-Duty Truck Coating Operations, as amended.
Subpart NN—Phosphate Rock Plants, as amended.
Subpart PP—Ammonium Sulfate Manufacture, as amended.
Subpart QQ—Performance for Graphic Arts Industry: Publication Rotogravure Printing, as amended.
Subpart RR—Pressure Sensitive Tape and Label Surface Coating Operations, as amended, except § 60.446(c).
Subpart SS—Industrial Surface Coating: Large Appliances, as amended, except § 60.456(d).
Subpart TT—Metal Coil Surface Coating, as amended, except § 60.466(d).
Subpart UU—Asphalt Processing and Asphalt Roofing Manufacture, as amended, except § 60.474(g).
Subpart VV—Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry, as amended, except § 60.482–1(c)(2) and § 60.484.
Subpart WW—Beverage Can Surface Coating Industry, as amended, except § 60.496(c).
Subpart XX—Bulk Gasoline Terminals, as amended, except § 60.502(e)(6).
Subpart BBB—Rubber Tire Manufacturing Industry, as amended, except § 60.543(c)(2)(ii)(B).
Subpart DDD—VOC Emissions from the Polymer Manufacturing Industry, as amended, except § 60.562–2(c).
Subpart FFF—Flexible Vinyl and Urethane Printing and Coating, as amended.
Subpart GGG—Equipment Leaks of VOC in Petroleum Refineries, as amended.
Subpart HHH—Synthetic Fiber Production Facilities, as amended.
Subpart III—Volatile Organic Compounds (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes, as amended, except § 60.613(e).
Subpart JJJ—Petroleum Dry Cleaners, as amended.
Subpart KKK—Equipment Leaks of VOC from Onshore Natural Gas Processing Plants, as amended.
Subpart LLL—Onshore Natural Gas Processing, as amended.
Subpart NNN—Volatile Organic Compounds (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operation, as amended, except § 60.663(e).
Subpart OOO—Nonmetallic Mineral Processing Plants, as amended.
Subpart PPP—Wool Fiberglass Insulation Manufacturing Plants, as amended.
Subpart QQQ—VOC Emissions from Petroleum Refinery Wastewater Systems, as amended.
Subpart SSS—Magnetic Tape Coating, as amended, except § 60.711(a)(16), § 60.713(b)(1)(i), § 60.713(b)(1)(ii), § 60.713(b)(5)(i), § 60.713(d), § 60.715(a), and § 60.716.
Subpart TTT—Plastic Parts for Business Machine Coatings, as amended, except § 60.723(b)(1), § 60.723(b)(2)(i)(C), § 60.723(b)(2)(iv), § 60.724(e), and § 60.725(b).
Subpart VVV—Polymeric Coating of Supporting Substrates Facilities, as amended, except § 60.743(a)(3)(v) (A) and (B), § 60.743(e), § 60.745(a), and § 60.746.

After a thorough review of the request, the Regional Administrator determined that such a delegation was appropriate for this source category with the conditions set forth in the original delegation letter of May 3, 1976. The State of Georgia sources subject to the requirements of these subparts will now be under the jurisdiction of the State of Georgia.

Since review of the pertinent Georgia laws, rules, and regulations showed them to be adequate for the implementation and enforcement of the aforementioned categories of NSPS, the EPA hereby notifies the public that it has delegated the authority for the source categories listed above on September 30, 1996. The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Authority: This notice is issued under the authority of sections 101, 110, 111, 112, and 301 of the Clean Air Act, as Amended (42 U.S.C. 7401, 7410, 7411, 7412, and 7601).

Dated: November 7, 1996.
A. Stanley Meiburg,
Acting Regional Administrator.
[FR Doc. 96–30040 Filed 11–22–96; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

[WO–330–1020–00–24 1A]

RIN 1004–AB89

Grazing Administration, Exclusive of Alaska; Development and Completion of Standards and Guidelines; Implementation of Fallback Standards and Guidelines

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior (Department) is adopting amendments to the livestock grazing, regulations of the Bureau of Land Management (BLM) to allow the Secretary of the Interior (Secretary) discretion to postpone implementation of the fallback standards and guidelines beyond February 12, 1997, but not to exceed the 6-month period ending August 12, 1997. The final rule will allow the Secretary to provide additional time for BLM to collaborate with resource advisory, councils (RACs) and the public to develop State or regional standards and guidelines. Without this change to the regulations, fallback standards and guidelines would go into effect on February 12, 1997, despite the fact that work on State or regional standards and guidelines might be nearly complete.

EFFECTIVE DATE: This rule will take effect December 26, 1996.

FOR FURTHER INFORMATION CONTACT: Tim Salt, (202) 208–4896.

SUPPLEMENTARY INFORMATION:

I. Background

The current regulations at 43 CFR § 4180.2 require the BLM State Director to develop State or regional standards and guidelines. These standards and guidelines are being developed at the State or regional level, in consultation with affected RACs to reflect local resource conditions and management practices. The standards and guidelines will reflect properly functioning conditions, or those conditions which must be met to ensure sustainability and healthy productive ecosystems and outline best management practices to achieve standards. They will provide the basis for evaluation of rangeland health and subsequent corrective actions. The regulations further provide that in the event State or regional standards and guidelines are not completed and in effect by February 12, 1997, fallback standards and guidelines described in the regulations will go into effect.

This revision of 43 CFR § 4180.2(f) gives the Secretary discretion to postpone the implementation of the fallback standards and guidelines for up to 6 months. The Department is making this change because it has become apparent that development of State or regional standards and guidelines might, in some instances, require longer than the 18-month period provided in the regulation.

The discretion to grant up to a 6 month extension will ensure that BLM State Directors, working with RACs and the public, will have adequate time to develop appropriate State or regional standards and guidelines. In adopting, this final rule, the Department considered the benefits of efficient rangeland administration, effective public participation, and possible impacts resulting from a minor delay. The Department has concluded that 6 months is an appropriate maximum period of extension. Postponing implementation of the fallback standards and guidelines will enhance the efficient administration and promote the long-term health of public rangelands for two primary reasons. First, where locally developed standards and guidelines are nearly complete, implementation of the more general fallback standards and guidelines on a short-term interim basis would be likely to create confusion and increased administrative costs. Second, postponing implementation of the fallback measures will allow the Department to achieve its commitment to improving public land management through a collaborative process that utilizes RAC recommendations, local public input, and consideration of State or regional public rangelands issues. The Department has concluded that the final rule will not have a significant impact on the environment since postponement of the fallback standards and guidelines would be for a limited period of no more than 6 months. Furthermore, the Department does not anticipate that every BLM State Director would need a postponement.

In determining whether to grant a postponement, the Secretary will evaluate whether the requested postponement will promote administrative efficiencies and long-term rangeland health. Factors relevant to this evaluation will include, among others, when the State or regional standards and guidelines are scheduled for completion and whether the delay would promote the efficient administration, use, and protection of the public rangelands.

The final rule will permit the Secretary the flexibility to postpone implementation of the fallback standards and guidelines when the State or regional standards and guidelines are nearly complete. Implementing different sets of standards and guidelines in rapid succession will produce confusion, uncertainty, and increased administrative costs. Furthermore, the Secretary will retain discretion to deny a postponement and implement the fallback standards and guidelines when the State or regional standards and guidelines are far from completion or when a postponement would not promote long-term rangeland health.

II. Response to Comments

The Department received five letters in response to the proposed rule which was published in the Federal Register on August 29, 1996 (61 FR 45385). All five letters supported the proposal to provide the Secretary discretion to postpone implementation of fallback standards and guidelines for up to 6 months. One commentor also suggested that if RACs needed additional time after the Secretary granted a postponement of 6 months, another postponement should be granted. The final rule allows the Secretary discretion to postpone implementation of the fallback standards and guidelines beyond February 12, 1997, but not to exceed the 6-month period ending August 12, 1997. The Department believes that 6 months is an appropriate maximum period of extension. The standards and guidelines are key elements of the new grazing, regulations. Postponing implementation of fallback standards and guidelines until August 12, 1996, provides nearly 2 years since the final rule was published to develop standards and guidelines. To further delay implementing standards and guidelines and realize the anticipated improvement in rangeland health would be inconsistent with the intent of the original regulations.

III. Procedural Matters

National Environmental Policy Act

BLM analyzed the impacts of this final rule in accordance with section 102(2)(C) of the National Environmental

Policy Act of 1969 [42 U.S.C. 4332(C)]. BLM has concluded that the final rule will not have a significant impact on the quality of the human environment, and therefore, preparation of an Environmental Impact Statement is not necessary. The characteristics and magnitude of predicted impacts of the amended regulations are unchanged from those identified in the Final Rangeland Reform '94 EIS, except that attaining some management objectives could be delayed slightly in the long term because of the postponement provided by the final rule. Resources would continue to be managed under current practices during that period, including the requirements of 43 CFR 4180.1, Fundamentals of Rangeland Health. This section requires the BLM to take appropriate action upon determining that existing grazing management needs to be modified to ensure conformance with the fundamentals. While the fundamentals are more general than either the fallback or State and regional standards and guidelines, they do require management action and will afford some measure of resource protection and result in improvement in rangeland conditions.

At the same time, implementing the final rule would provide for more public involvement in developing State or regional standards and guidelines. Additionally, where locally developed standards and guidelines are nearly complete, implementation of the more general fallback standards and guidelines on a short term interim basis would be likely to create confusion and increased administrative costs.

Unfunded Mandates Reform Act

Amendment of 43 CFR part 4180.2(f) will not result in any unfunded mandate to State, local, or tribal governments in the aggregate, or to private sector, of $100 million or more in any one year.

Executive Order 12630

BLM has analyzed the takings implications and concluded that this final rule does not present a risk of a taking of constitutionally protected private property rights.

Executive Order 12866

BLM has determined that this final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order.

Regulatory Flexibility Analysis

The final 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.].

Paperwork Reduction Act

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

Executive Order 12988

The Department has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Author

The principal author of this final rule is Tim Salt, Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240.

List of Subjects for 43 CFR Part 4100

Administrative practice and procedure, Grazing lands, Livestock, Penalties, Range management, Reporting and recordkeeping requirements.

For the reasons stated in the preamble and under the authority of 43 U.S.C. 1740, subpart 4180, part 4100, Group 4100, Subchapter D, of subtitle B of Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

Dated: November 18, 1996.

Sylvia V. Baca,

Acting Assistant Secretary of the Interior.

PART 4100—GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA

1. The authority citation for part 4100 continues to read as follows:

Authority: 43 U.S.C. 315, 315a–315r, 1181d, 1740.

Subpart 4180—Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

2. Section 4180.2(f) introductory text is revised to read as follows:

* * * * *

(f) In the event that State or regional standards and guidelines are not completed and in effect by February 12, 1997, and until such time as State or regional standards and guidelines are developed and in effect, the following standards provided in paragraph (f)(1) of this section and guidelines provided in (f)(2) of this section shall apply and will be implemented in accordance with paragraph (c) of this section. However, the Secretary may grant, upon referral by the BLM of a formal recommendation by a resource advisory council, a postponement of the February 12, 1997, fallback standards and guidelines implementation date, not to exceed the 6-month period ending August 12, 1997. In determining whether to grant a postponement, the Secretary will consider, among other factors, long-term rangeland health and administrative efficiencies.

* * * * *

[FR Doc. 96–30036 Filed 11–22–96; 8:45 am]

BILLING CODE 4310–84–P

NATIONAL SCIENCE FOUNDATION

45 CFR Parts 680, 681, 682, 683 and 684

RIN 3145–AA29

Repeal of Standards of Ethical Conduct for Employees of the National Science Foundation and Rules of Practice for the Foundation

AGENCY: National Science Foundation.

ACTION: Interim rule, with request for comments.

SUMMARY: The National Science Foundation is repealing most of its conflict-of-interest rules and standards of conduct regulations. This action is necessary, because they were largely superseded by the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) issued by the Office of Government Ethics (OGE) and by the NSF's Supplemental Standards of Ethical Conduct for Employees of the National Science Foundation (Supplemental Standards), issued by NSF, with OGE's concurrence. The NSF is also promulgating rules of practice, under authority independent of 5 CFR part 2635, which generally maintain and, in some instances, replace current NSF practices. In addition the NSF is temporarily retaining its regulatory waivers issued under 18 U.S.C. 208(b)(2).

DATES: Interim rule effective November 25, 1996. Comments are invited and must be received on or before January 24, 1997. Comments will then be evaluated to determine what changes, if any, are needed.

ADDRESSES: Send comments to the Office of the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Charles S. Brown, Designated Agency Ethics Official, Office of the General

Counsel, National Science Foundation, telephone (703) 306–1060, FAX (703) 306–0149.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published Standards of Ethical Conduct for Employees of the Executive Branch that are now codified at 5 CFR part 2635. Today, with OGE's concurrence, the NSF has published in the Federal Register Supplemental Standards of Ethical Conduct for Employees of the National Science Foundation. These Supplemental Standards are being codified in new chapter XLIII of 5 CFR, consisting of part 5301.

The Government-wide Standards and NSF's Supplemental Standards are intended to replace most of the NSF's conflict-of-interest rules and standards of conduct. Therefore, this interim rule repeals most of NSF's previous conflict-of-interest and standards of conduct regulations. This interim rule also prescribes additional rules of practice necessary to maintain public confidence in the integrity of NSF's procedures, as permitted in 5 CFR 2635.105(c)(93). The rules of practice are based on authority independent of 5 CFR part 2635.

Finally, as permitted in 5 CFR 2635.402(d)(1), this interim rule retains NSF's regulatory waivers issued under old 18 U.S.C. 208(b)(2) (1988 edition).

II. Analysis of the Regulations

The National Science Foundation is repealing the old subpart A of 45 CFR part 680, superseded by the Standards and Supplemental Standards, and replacing it with rules of agency practice for NSF (new 45 CFR 680.10–680.13, as discussed below).

45 CFR 680.10 Definitions; Cross-References to Employee Ethical Conduct Standards and Financial Disclosure Regulations

Section (a) sets forth definitions that apply to the interim rule. For purposes of this final rule, paragraph (a)(2) defines ''employee'' to include anyone working at NSF under the Intergovernmental Personnel Act. But the definition excludes special Government employees, recognizing that § 680.11 of the final rule does not apply to special Government employees (as that term is defined in 18 U.S.C. 202(a)), and that § 680.12 applies differently to former special Government employees who worked for NSF on no more than sixty days in the previous year.

The definition of ''award'' in paragraph (a)(1) of § 680.10 is intended to make it clear that, for purposes of interpreting the restrictions contained in §§ 680.11 and 680.12 of the interim rule, the term is to be broadly construed to cover financial arrangements made by the Government including, but not limited to, those that are in the nature of a grant, contract, cooperative agreement, or loan. The definition of ''proposal'' in paragraph (a)(4) of § 680.10 is include to make it clear that, for similar purposes, the term covers any application for such a financial arrangement, even though it is not technically denominated a ''bid'' or ''proposal.''

A definition of ''institution'' is provided in § 680.10(a)(3), since NSF awards are ordinarily made to ''institutions.'' Paragraph (a)(3) makes it clear that the term is to be interpreted broadly, but the definition treats consortia as separate ''institutions'' from the individual universities that belong to them.

Paragraph (b) of § 608.10 is a cross referencing provision. It reminds employees of the need to refer to the OGE Standards (5 CFR part 2635), NSF's supplemental Standards (5 CFR part 5301), and the OGE financial disclosure regulations (5 CFR part 2634).

45 CFR 680.11 Staff Involvement With NSF Proposals and Awards

Section 680.11(a)(1) recognizes that many scientists, engineers, and educators interrupt active research and teaching careers to spend a year or two at NSF. They then return to research and teaching, usually at the same institution from which they came. Many of them, and a few NSF permanent employees, retain some interest or association with the NSF-supported work—for example, an employee may continue supervising the work of a graduate student who is completing a thesis or may retain intellectual connection with a laboratory or project to which he or she will be returning. Section 680.11 codifies current NSF rules of practice designed to prevent conflicts of interest in such situations. Section 680.11(a)(2) requires that a ''substitute principal investigator'' be appointed to take responsibility for the work and equipment and for representing the institution in dealings with NSF. Section 680.11(a)(3) provides that a substitute principal investigator need not be appointed when work on an award is to be suspended while an individual is employed at NSF.

Section 680.11(b) also codifies current restrictions on employee involvement in certain NSF proposals. It avoids asking active investigators to sacrifice established support for their work in research or education as a price of public service. However, it also avoids any actuality or appearance that such service is undertaken in the expectation that it will result in new or increased support or favored treatment from NSF. Section 680.11(b)(1) requires that NSF not entertain any proposal in which a current NSF employee would be a senior investigator or the like, unless the proposal is for continuation or extension of work on which the employee was involved before coming to NSF. Section 681(b)(2) requires that any such proposal for continuation or extension of previous work be submitted by someone other than an NSF employee.

Sections 680.11(a) and (b) are published as part of 45 CFR part 680 rather than as part of the NSF's supplemental agency regulations at 5 CFR part 5301 because the limitations and obligations imposed apply mainly to grantees. They complement restrictions on employee conduct imposed by 5 CFR part 5301. Section 680.11(c) cross-references a provision in 5 CFR part 5301 barring employee receipt of compensation or reimbursements from NSF awards. The cross-referenced provision is contained in NSF's Supplemental Standards.

45 CFR 680.12 One-Year NSF Post-Employment Restrictions

Section 680.12(a) reaffirms NSF's longstanding one-year post-employment restriction on dealings with NSF officials on proposals, projects, and other particular matters. This prohibition also applies to former special Government employees who worked for NSF on more than 60 days in the previous twelve months.

Section 680.12(b) makes it clear that NSF's post-employment restriction is in addition to any statutory post-employment restrictions. This restriction is imposed on the basis of NSF's authority to regulate practice before it with respect to grants and other matter. This section permits the NSF General Counsel to grant limited exceptions to the rule, when such post-employment representation would not be barred by statute.

Section 680.12(c) makes it clear that the NSF post-employment restriction applies to all ''particular matters,'' not just to those involving specific parties.

Section 680.12(d) explains that certain types of contacts by former NSF employees do not violate NSF's post-employment restriction—expression of personal views on policy issues, communications of a personal nature, litigation appearances on the former employee's own behalf, and

presentations of scientific or technical information.

Section 680.12(e) provides for appointment of a substitute negotiator to perform representational functions when a former employee is disqualified from doing so.

45 CFR 680.13 Purposes for ''Substitute'' Requirements

Section 680.13 explains the purposes underlying the requirements for appointment of substitute principal investigators and substitute negotiators. The requirements flag the proposals or awards affected by the applicable restrictions, and identify individuals with whom the NSF staff can appropriately deal. Designation of a substitute principal investigator to replace a current NSF employee also identifies an individual responsible for the work and equipment, and reminds all concerned that the NSF employee so replaced will be devoting his or her primary energy to the performance of his or her NSF duties.

Other Regulatory Actions

The National Science Foundation is also repealing one interpretive section in Subpart B of 45 CFR (old § 680.20), but leaving in effect, as newly redesignated § 680.20, NSF's current regulatory waivers issued under 18 U.S.C. 208(b)(2), as permitted in 5 CFR 2635.402(d)(1).

The National Science Foundation is also repealing the remaining former NSF conflict-of-interests rules and standards of conduct in parts 681, 682, 683, and 684. The Foundation expects to revise procedural and interpretive provisions and incorporate them as appropriate into internal NSF explanatory issuances as permitted in 5 CFR 2635.105(c).

III. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to section 553 (b) and (d) of title 5 of the United States Code, the National Science Foundation has found that good cause exists for waiving the general requirements of notice of proposed rulemaking and delayed effective date. These requirements are being waived because the interim regulations are rules of agency organization, procedure, and practice and because it is in the public interest that these new rules, which continue existing NSF restrictions and practices in many respects, become effective as soon as possible.

Executive Order 12866

In promulgating this interim rule, the National Science Foundation has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive order 12866, Regulatory Planning and Review. This regulation has not been reviewed by the Office of Management and Budget under that Executive Order, as it deals with agency organization, management, and personnel matters and is not, in any event, deemed a significant rule thereunder.

Regulatory Flexibility Act

The National Science Foundation has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have significant economic impact on a substantial number of small entities because it primarily affects NSF employees, as well as prospective and former NSF employees.

Paperwork Reduction Act

The National Science Foundation has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply, because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 45 CFR Parts 680, 681, 682, 683, and 684

Conduct standards, Conflict of interests, Ethical standards, Executive Branch Standards of Conduct, Government employees, National Science Foundation, Rules of practice.

Dated: November 14, 1996.

Lawrence Rudolph,

General Counsel, National Science Foundation.

For the reasons set forth in the preamble, the National Science Foundation is amending chapter VI of title 45 of the Code of Federal Regulations as follows:

1. The authority citation for part 680 is revised to read as follows:

Authority: 5 U.S.C. 7301; 18 U.S.C. 208 (1988); 42 U.S.C. 1870(a); 5 CFR 2635.105(c)(3), 2635.402(d)(1).

2. The heading of part 680 is revised to read as follows:

PART 680—NATIONAL SCIENCE FOUNDATION RULES OF PRACTICE AND STATUTORY CONFLICT-OF-INTEREST EXEMPTIONS

3. Subpart A of part 680 is revised to read as follows:

Subpart A—Rules of Practice for the National Science Foundation

Sec.

680.10 Definitions; cross-references to employee ethical conduct standards and financial disclosure regulations.
680.11 Staff involvement with NSF proposals and awards.
680.12 One-year NSF post-employment restrictions.
680.13 Purposes for ''substitute'' requirements.

§ 680.10 Definitions; Cross-references to employee ethical conduct standards and financial disclosure regulations.

(a) *Definitions.* Under this subpart, unless a provision plainly indicates otherwise:

(1) *Award* means any grant, contract, cooperative agreement, loan, or other arrangement made by the Government.

(2) *Employee* includes, in addition to any individual defined in 5 CFR 2635.102(h), any individual working at NSF under the Intergovernmental Personnel Act. It includes any part-time or intermittent employee, temporary consultant; but not a special Government employee, as defined in 18 U.S.C. 202(a).

(3) *Institution* means any university, college, business firm, research institute, professional society, or other organization. It includes all parts of a university or college, including all institutions in a multi-institution State or city system. It includes any university consortium or joint corporation; but not the universities that belong to such a consortium. Those universities shall be considered separate institutions for purposes of this part.

(4) *Proposal* means an application for an award and includes a bid.

(b) *Cross-references to employee ethical conduct standards and financial disclosure regulations.* Members of the National Science Board and other employees of the National Science Foundation (NSF), including special Government employees, should refer to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, the National Science Foundation's regulations at 5 CFR part 5301 which supplement the executive branch Standards, and the executive branch financial disclosure regulations at 5 CFR part 2634.

§ 680.11 Staff involvement with NSF proposals and awards.

(a)(1) Many scientists, engineers, and educators interrupt active research and teaching careers to spend a year or two at NSF and then return to research and teaching, usually at the same institution from which they came. Many such visiting scientists, engineers, and

educators (and a few permanent employees) who have been principal investigators under NSF awards before coming to NSF, retain some interest or association with the work. If an individual is a principal investigator under an NSF award, the individual is not precluded from retaining ties to the work after becoming an NSF employee. The employee may stay in contact with those who are continuing the work in the employee's laboratory or on his or her project. The employee may continue to supervise graduate students. And the employee may visit and work in the laboratory on his or her own time for these and related purposes.

(2) Before a prospective employee comes to NSF, the prospective employee and the grantee institution must designate, subject to NSF approval, a ''substitute principal investigator''—i.e., another scientist who will be responsible for the work and equipment and will represent the institution in any dealings with NSF officials while the prospective employee is at NSF.

(3) Appointment of a substitute principal investigator is unnecessary if all work under an award is to be completely suspended while the employee is at NSF. If the work is to be suspended, the employee and the grantee institution must inform the NSF in writing before the employee's employment begins. Work under the award may be resumed when the employee completes his or her NSF employment, and its term may be extended to account for the time lost during the employee's NSF employment.

(b)(1) NSF will entertain no proposal on which a current NSF employee would be a senior investigator or equivalent, unless it is a proposal for continuation or extension of support for work on which the employee served in that capacity before coming to NSF. Any proposal for continuation of NSF support at essentially the same level (with reasonable allowance for inflation) will normally be considered a proposal for continuation or extension if it would support the work of the same investigator and his or her laboratory or group (if any) in the same general field of science, engineering, or education, notwithstanding that the focus of the work may change in response to research opportunities or educational needs.

(2) Someone other than the current NSF employee must submit any such proposal for continuation or extension of work NSF previously supported and handle all negotiations with NSF, but the capacity in which the current NSF employee will serve should be clearly spelled out in the proposal.

(c) In accordance with 5 CFR 5301.103(a)(1), an NSF employee may not receive, directly or indirectly, any salary, consulting fee, honorarium, or other form of compensation for services, or reimbursement of expenses, from an NSF award.

§ 680.12 One-year NSF post-employment restrictions.

(a) For one year after leaving NSF employment, a former NSF employee, including a special Government employee who has performed work for NSF on more than 60 days in the previous twelve months, shall not represent himself, herself, or any other person in dealings with any NSF official on any proposal, project, or other particular matter.

(b) The one-year restriction contained in paragraph (a) of this section is in addition to any post-employment restriction imposed by statute, including 18 U.S.C. 207 and 41 U.S.C. 423. To the extent that any disqualification required by paragraph (a) of this section is not also required by statute, written exceptions may be granted by the NSF's General Counsel, whose decisions shall be final. Exceptions will be rare and will be granted only where strict application of the rules would result in undue hardship for former short-term employees or for other former employees, and when granting an exception would not result in an unfair advantage to the former employee.

(c)(1) Paragraph (a) of this section applies to particular matters involving specific parties, such as grants, contracts, or other agreements; applications for permits, licenses, or the like; requests for rulings or similar official determinations; claims; investigations or audits; charges or accusations against individuals or firms; adjudicatory hearings; and court cases.

(2) For former employees, other than special Government employees, paragraph (a) of this section also applies to particular matters that do not involve specific parties, such as:

(i) Determinations to establish or disestablish a particular program or set its budget level for a particular fiscal year;

(ii) Decisions to undertake or terminate a particular project;

(iii) Decisions to open or not open a contract to competitive bidding;

(iv) General policy or rulemaking—including, for example, decisions on particular NSF rules or formal policy, such as adoption or amendment of a resolution by the National Science Board, promulgation or amendment of an NSF regulation or circular, amendment of standard grant or contract terms, or changes to NSF manuals or policy documents; and

(v) Agency positions on particular legislative or regulatory proposals.

(d) Paragraph (a) of this section does not apply to:

(1) Any expression of a former employee's views on policy issues where the circumstances make it obvious that the former employee is only speaking as an informed and interested citizen, not representing any financial or other interests of his or her own or of any other person or institution with which he or she is associated;

(2) Any appearance or communication concerning matters of a personal or individual nature, such as the former employee's taxes, salary, benefits, possible Federal employment, rights as a former employee, or the application of conflict-of-interest rules to something the former employee proposes to do;

(3) Any appearance on the former employee's own behalf in any litigation or administrative proceeding; or

(4) Any presentation of scientific or technical information (at a site visit, for example) or any other communication of scientific or technical information on work being proposed or conducted.

(e) As soon as his or her NSF employment ceases, a former NSF employee (including any former special Government employee described in paragraph (a) of this section) may again be listed as principal investigator on an NSF award, may be listed as principal investigator in any proposal or award, and may sign a proposal as principal investigator. However, the former employee and the grantee institution shall formally designate, subject to NSF approval, a ''substitute negotiator'' who, though not principally responsible for the work, will represent the former employee and the institution in dealings with NSF officials on any proposal or project for as long as the former employee would be barred from representational contacts with NSF by paragraph (a) of this section or by statute.

§ 680.13 Purposes for ''substitute'' requirements.

Appointment of a ''substitute principal investigator'' or ''substitute negotiator'' ensures against unthinking violation of the restrictions on dealings with NSF officials. It serves this purpose by flagging proposals or awards affected by the restrictions and by identifying someone else with whom NSF officials can properly discuss them or negotiate over them. Designation of a substitute principal investigator while an

employee is at NSF has two additional functions: it identifies another person to be responsible for the work and equipment, and it reminds all concerned that during an employee's NSF service his or her attentions should focus on NSF duties.

4. Subpart B of part 680 is amended by removing § 680.20 and redesignating § 680.21 as § 680.20.

5. Under the authority of 42 U.S.C. 1870(a), parts 681, 682, 683, and 684 are removed.

[FR Doc. 96–29990 Filed 11–22–96; 8:45 am]

BILLING CODE 7555–01–M

Proposed Rules

Federal Register
Vol. 61, No. 228
Monday, November 25, 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

Farm Service Agency

7 CFR Part 729

Commodity Credit Corporation

7 CFR Part 1446

RIN 0560–AF01, AE43

1997–Crop Peanut National Poundage Quota, 1996 and 1997–Crop Additional Peanuts National Average Support Level and Minimum Commodity Credit Corporation (CCC) Export Edible Sales Price for the 1996 and 1997 Crops of Additional Peanuts

AGENCY: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Adjustment Act of 1938, (the Act) as amended, requires that the national peanut poundage quota for the 1997 crop be announced by December 15, 1996. The Agricultural Act of 1949, (the 1949 Act), as amended, requires that the additional support levels be announced not later than February 15, 1997. The minimum CCC export edible sales price for additional peanuts is usually announced at the same time as the price support levels. This proposed rule would set a national poundage quota figure in the range between 1,111,000 short tons (st) and 1,155,000 st, proposes that the national average additional price support level for the 1997 crop peanuts be set between $125 per st and $140 per st, and that the minimum CCC sales price for 1997 and subsequent crops of additional peanuts for export edible use be set between $375 to $425 per st. Also, the rule would recodify certain determinations made for peanuts for the 1996 marketing year.

DATES: Comments must be received by December 3, 1996, in order to be assured of consideration.

ADDRESSES: Comments must be submitted to the Director, Tobacco and Peanuts Division, Farm Service Agency (FSA), United States Department of Agriculture, STOP 0514, Room 5750 South Building, P.O. Box 2415, Washington, DC 20013–2415. All written submissions will be made available for public inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, in Room 5750 South Building, 1400 Independence Avenue, SW, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Robison, Tobacco and Peanuts Division, USDA, STOP 0514, Room 5750 South Building, P.O. Box 2415, Washington, DC 20013–2415, telephone 202–720–9255. Copies of the cost-benefit assessment prepared for the rule can be obtained from Mr. Robison.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by OMB under Executive Order 12866.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Executive Order 12778

This rule has been reviewed in accordance with Executive Order 12778, Civil Justice Reform. The provisions of this proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since neither FSA nor CCC is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of these determinations.

Paperwork Reduction Act

These proposed amendments do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Discussion

This proposed rule would amend 7 CFR part 729 to set forth the 1997-crop peanut national poundage quota, and 7 CFR part 1446 to set forth the 1996 and 1997-crop national average support level for additional peanuts and the minimum CCC sales price for 1996 and 1997 crop additional peanuts sold for export edible use.

A. National Poundage Quota

Section 358–1(a)(1) of the Act, as amended in 1996, requires that the Secretary set a basic national quota for peanuts for each of the 1996 through 2002 marketing years (MY) at a level that is equal to the quantity of peanuts (in tons) that the Secretary estimates will be devoted in each MY to domestic edible use (excluding seed) and related uses. As to seed, section 358–1(b)(2)(B) of the Act provides that a temporary allocation of quota pounds for the MY only in which the crop is planted shall be made to producers for each of the 1996 through 2002 MYs and that the temporary seed quota allocation shall be equal to the pounds of seed peanuts planted on the farm as may be adjusted and determined under regulations prescribed by the Secretary. Regulations implementing the 1996 amendments to the peanut quota provisions of the Act were published in the Federal Register on July 16, 1996 (61 FR 36997). The MY for 1997-crop peanuts will be from August 1, 1997 through July 31, 1998.

The national poundage quota for MY 1996 was 1,100,000 st. This rule proposes that the national poundage quota for MY 1997 be set between 1,111,000 st and 1,155,000 st based on the following data:

ESTIMATED DOMESTIC EDIBLE, EXCLUDING SEED, AND RELATED USES FOR 1997–CROP PEANUTS

	Short Tons	
Domestic Edible Use:		
Domestic food	913,000	913,000

ESTIMATED DOMESTIC EDIBLE, EXCLUDING SEED, AND RELATED USES FOR 1997–CROP PEANUTS—Continued

On farm and local sales	8,500	8,500
Related Uses:		
Crushing residual	120,500	120,500
Shrinkage and other losses	36,500	36,500
Transfer to quota	5,000	5,000
Subtotal	1,083,500	1,083,500
Allowance for underproduction	27,500	71,500
Totals	1,111,000	1,155,000

The estimate of 1997 domestic food use was developed in two steps. First, total domestic edible utilization of 1,062,500 st was estimated by the USDA Interagency Commodity Estimates Committee (ICEC). Second, this estimate was reduced by 149,500 st to exclude peanut imports, peanut butter imports, and peanut butter exports. Although estimates of domestic edible utilization typically include product exports, peanut butter exports are generally either made from, or may otherwise be credited under section 358(e)(1) of the Act as being made from additional peanuts. MY 1997 farm use and local sales were estimated at 1 percent of ICEC's MY 1997 production estimate. This percentage reflects the average difference between USDA production data and Federal-State Inspection Service inspections data. About one-half of farm use and local sales is allocated to food use and the remainder to seed, which is excluded from quota determinations under amendments to the Act made by the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act).

The crushing residual represents the farmer stock equivalent weight of crushing grade kernels shelled from quota peanuts. In any given load of farmer stock peanuts, a portion of such peanuts is only suitable for the crushing market. The quota must be sufficient to provide for the shelling of both edible and crushing grades. The crushing residual identified above reflects the assumption that crushing grade peanuts will be about 12 percent, on a farmer stock basis, of the total of MY 1997 domestic edible use production.

The allowance for shrinkage and other losses is an estimate of reduced kernel weight available for milling as well as for kernel losses due to damage, fire, and spillage. These losses were estimated by multiplying a factor of 0.04 times domestic edible use. This factor is the minimum shrinkage generally allowed for calculating obligations of handlers under section 359a(d)(2)(B)(iv) of the Act and is believed to be a fair estimate of such shrinkage for purposes of this determination, taking into account all factors.

Segregation 2 and 3 loan transfers to quota loan represent transfers of Segregation 2 and 3 peanuts from additional price support loan pools to quota loan pools. Such transfers occur when quota peanut producers have insufficient Segregation 1 peanuts to fill their quotas, yet have Segregation 2 and 3 peanuts in additional loan pools which would have been eligible to be pledged as collateral for price support loans at a discounted quota loan rate.

In addition, an allowance has been made for underproduction. Historically, only 92 percent of the quota has been marketed. Since any quota pounds not marketed will be a loss of potential income for producers, it is expected that somewhat more than 92 percent of the quota will be marketed.

The lowest proposed 1997 quota level, as set forth above, reflects expected growth in domestic consumption of peanut products through new uses and a small increase in demand resulting from lower peanut support prices. This level essentially reflects the 1996 quota assumption that 97.5 percent of the quota will be produced and adds increased demand for edible peanuts. The higher range proposal takes into account the possibility that production of quota could fall below the 97.5 percent level.

A significantly larger quota option than those presented would lower the price received by first buyers and could reduce costs to consumers for peanut products slightly. However, it is assumed that a substantial increase in quota would be needed to lower the average grower price to a level near the average national support price. A quota in the neighborhood of 1,500,000 tons would likely result in sufficient qualities and quantities of peanuts delivered at the right time and place such that the average price would be only slightly higher than $610 per ton.

This option only becomes viable if one assumes greater responsiveness in demand to additional supplies. One must assume a significant growth in demand because of a lower price to justify this option.

The cost of overestimating demand would be high. Assuming the demand for greater supplies of peanuts is slight, this level of quota could result in a surplus and a loss on loan placements for more than 300,000 tons of peanuts. These peanut losses would be around $400 a ton. Losses of up to $120 million would occur and result in producer assessments of over $100 per ton the following year. This level of assessment would lower the effective price received by producers for quota peanuts in MY 1998 to near $500 per ton or less.

USDA will attempt to increase the accuracy and quantity of price data (quota and additional) over the next years to enhance analytical capacity and reduce the uncertainty associated with different options.

Buybacks have worked well in MY 1996. Buyback is a term used to describe a marketing transaction in which a producer places additional peanuts under loan at the additional loan rate and a handler simultaneously purchases such peanuts from the marketing associations for domestic edible use. To bolster stocks in MY 1996, the peanut industry has bought back over 100,000 tons of additional peanuts.

B. Additional Peanut Support Level

Section 155(b)(2) of the 1996 Act provides that price support shall be made available for additional peanuts at such level as the Secretary determines will ensure no losses to CCC from the sale or disposal of such peanuts, taking into consideration the demand for peanut oil and peanut meal, expected prices of other vegetable oils and protein meals, and the demand for peanuts in foreign markets.

The MY 1996 price support level for additional peanuts was announced at $132 per st on February 15, 1996. The national average price support rate for

quota peanuts, for each of the 1996 through 2002 crops, was set at $610 per st by the 1996 Act and is codified at 7 CFR § 1446.103.

The regulation pertaining to price support loan levels for additional peanuts is being moved in 7 CFR from part 1421 to part 1446.

The range for the MY 1997 price support level for additional peanuts is recommended to be between $125 per st and $140 per st to ensure no losses to CCC from the sale or disposal of additional peanuts. Peanuts are pledged as collateral for price support loans. The peanuts are then sold out of inventory in order to recoup the loan principal, interest and related costs. The statutory factors have been analyzed as set out below. Based on those factors, it is anticipated that while the current oil market is strong, there is enough uncertainty in the market to suggest caution.

In making this determination, the following market information will be considered:

1. The domestic use of peanut oil during MY 1997 is forecast to be 92,500 st, unchanged from MY 1996 projected domestic use. MY 1997 peanut oil beginning stocks are expected to be 18,500 st, down 44 percent from MY 1996. The MY 1997 average peanut oil price is expected to be $0.380 per pound, down $0.015 per pound from MY 1996.

2. The domestic use of peanut meal during MY 1997 is forecast to be 140,000 st, up 5,000 st from MY 1996 projected domestic use. MY 1997 peanut meal beginning stocks are expected to be 4,000 st, unchanged from MY 1996. The MY 1997 average peanut meal price is expected to be $227.50 per st, down $2.50 per st from MY 1996.

3. The domestic disappearance of soybean oil during MY 1997 is forecast to be 6,850,000 st, up 1.1 percent from projected MY 1996 domestic disappearance. MY 1997 soybean oil beginning stocks are expected to be 1,117,500 st, up 11.2 percent from MY 1996. The MY 1997 average soybean oil price is expected to be $0.230 per pound, down $0.005 per pound from MY 1996.

4. The domestic disappearance of cottonseed oil during MY 1997 is forecast to be 517,500 st, up 2 percent from projected MY 1996 domestic disappearance. MY 1997 cottonseed oil beginning stocks are expected to be 55,000 st, up 10 percent from MY 1996. The MY 1997 average cottonseed oil price is expected to be $0.260 per pound, down $0.0025 per pound from MY 1996.

5. The domestic disappearance of soybean meal during MY 1997 is forecast to be 27,000,000 st, up 0.9 percent from projected MY 1996 domestic disappearance. MY 1997 soybean meal beginning stocks are expected to be 225,000 st, up 12.5 percent from MY 1996. The MY 1997 average soybean meal price is expected to be $227.50 per st, down $7.50 per st from MY 1996.

6. The domestic disappearance of cottonseed meal during MY 1997 is forecast to be 1,690,000 st, up 0.9 percent from projected MY 1996 domestic disappearance. MY 1997 cottonseed meal beginning stocks are expected to be 40,000 st, unchanged from MY 1996. The MY 1997 average cottonseed meal price is expected to be $182.50 per st, down $7.50 per st from MY 1996.

7. The world use of peanuts for MY 1996 is expected to be 26.36 million metric tons, up slightly from MY 1995. World peanut production for MY 1996 is forecast to be 26.36 million metric tons, up 1.7 percent from MY 1995. Ending stocks for MY 1996 are forecast at 0.46 million metric tons, unchanged from 1995.

C. Minimum CCC Sales Price for Additional Peanuts Sold for Export Edible Use

A minimum price at which 1997 crop additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets is a discretionary action that, by practice, is expected to be announced on or before February 15, 1997, the same time that the quota and additional peanut support levels for the 1997 crop are announced. The announcement of that price provides producers and handlers with information to facilitate the negotiation of private contracts for the sale of additional peanuts for export.

An overly high price may create an unrealistic expectation of high pool dividends and discourage private sales. If too low, the minimum price could have an unnecessary, adverse effect on prices paid to producers for additional peanuts.

It is proposed that the minimum price at which 1997 crop additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets be established within the range of $375 to $425 per st. This range should encourage exports while providing price stability for additional peanuts sold under contract. It will also help assure handlers that CCC will not undercut their export contracting efforts with offerings of additional peanuts for export edible sale below the minimum sales price.

D. Technical Amendments

Due to recent amendments to 7 CFR parts 729 and 1421, it has become necessary to recodify the 1996 quota determination and the 1996 additional peanut support determination. The latter has been moved to part 1446.

Accordingly, comments are requested with respect to the foregoing issues.

List of Subjects

7 CFR Part 729

Peanuts, Penalties, Poundage quotas, Reporting and recordkeeping requirements.

7 CFR Part 1446

Loan programs—Agriculture, Peanuts, Price support programs, Reporting and recordkeeping requirements, Warehouses.

Accordingly, it is proposed that 7 CFR parts 729 and 1446 be amended as follows:

PART 729—PEANUTS

1. The authority citation for 7 CFR part 729 shall continue to read as follows:

Authority: 7 U.S.C. 1301, 1357 et seq., 1372, 1373, 1375, and 7271.

2. Section 729.216 is amended by adding new paragraphs (c) and (d) to read as follows:

§ 729.216 National poundage quota.

* * * * *

(c) The national poundage quota for quota peanuts for marketing year 1996 is 1,100,000 short tons.

(d) The national poundage quota for quota peanuts for marketing year 1997 will be set between 1,111,000 and 1,155,000 short tons.

PART 1446—PEANUTS

3. The authority citation for 7 CFR part 1446 shall continue to read as follows:

Authority: 7 U.S.C. 7271, 15 U.S.C. 714b and 714c.

§ 1446.103 [Amended]

4. Section 1446.103 is amended in paragraph (1) of the definition of ''Support rate'' by adding the words ''as set out in section 1446.310'' after ''announced by the Secretary''.

5. Two new §§ 1446.310 and 1446.311 are added to subpart C to read as follows:

§ 1446.310 Additional peanut support levels.

(a) The national support rate for additional peanuts for the 1996 crop is $132 per short ton.

(b) The national support rate for additional peanuts for the 1997 crop will be between $125 per short ton and $140 per short ton.

§ 1446.311 Minimum CCC sales price for certain peanuts.

(a) The minimum CCC sales price for additional peanuts to be sold from the price support loan inventory for export edible use from the 1996 crop is $400 per short ton.

(b) The minimum CCC sales price for additional peanuts to be sold from the price support loan inventory for export edible use from the 1997 and subsequent crops will be between $375 and $425 per short ton.

Signed at Washington, DC, on November 20, 1996.

Grant Buntrock,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 96–30086 Filed 11–20–96; 4:47 pm]

BILLING CODE 3410–05–P

Agricultural Marketing Service

7 CFR Parts 1005, 1007, 1011 and 1046

[Docket No. AO–388–A9, et al.; DA–96–08]

Milk in the Carolina and Certain Other Marketing Areas; Notice To Reopen Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR part	Marketing area	AO Nos.
1005	Carolina	AO–388–A9
1007	Southeast	AO–366–A38
1011	Tennessee Valley	AO–251–A40
1046	Louisville-Lexington-Evansville.	AO–123–A67

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice to reopen public hearing on proposed rulemaking.

SUMMARY: This notice announces a reopening of the hearing initially held on May 15–16, 1996, in Charlotte, North Carolina, to consider supplemental testimony and record evidence regarding the proposal to incorporate transportation credits for bulk milk that is imported for fluid use into 4 Southeastern milk orders. The reopened hearing, to be held on December 17, 1996, in Atlanta, Georgia, will receive supplementary data, testimony, and arguments concerning the operation and impact of the interim amendments since their inception on August 10, 1996, in the 4 orders.

The Department has received many comments from dairy farmers who have expressed concerns about the impact of the currently implemented transportation credits. Any changes to the interim amendments resulting from the impact of the credits must be based upon evidence placed in the record of the hearing. Accordingly, the Department has decided to reopen the hearing to receive such evidence.

Testimony on a related proposal submitted by Carolina-Virginia Milk Producers' Association (CVMPA) and Mid-America Dairymen, Inc., to incorporate a ''dairy farmer for other markets'' provision to help ensure an adequate milk supply for the seasonally-deficit markets of the southeastern United States will also be heard.

DATES: The hearing will convene at 9:00 a.m. on December 17, 1996.

ADDRESSES: The hearing will be held at the Hilton Airport Hotel, 1031 Virginia Avenue, Atlanta, Georgia 30354, telephone (404) 767–9000.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Division, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a reopened public hearing to be held at the Hilton Airport Hotel, 1031 Virginia Avenue, Atlanta, Georgia, beginning at 9:00 a.m. on December 17, 1996, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Carolina, Southeast, Tennessee Valley, and Louisville-Lexington-Evansville marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the reopened hearing is to receive supplemental testimony and evidence with respect to the economic and marketing conditions which relate to the interim amendments, one new proposed amendment, hereinafter set forth, and any appropriate modifications of these amendments to the tentative marketing agreements and to the orders.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

A public hearing was held to consider proposed amendments to the marketing agreements and the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice (7

CFR Part 900), in Charlotte, North Carolina, on May 15–16, 1996. Notice of such hearing was issued on May 1, 1996, and published May 3, 1996 (61 FR 19861).

Interested parties were given until May 28, 1996, to file post-hearing briefs on the proposals as published in the Federal Register and as modified at the hearing. Information also was requested on whether the proposals should be considered on an emergency basis.

Based upon the record of this hearing, an emergency tentative decision was issued on July 12, 1996, proposing amendments to the 4 orders. The amendments provided transportation credits for handlers to offset costs in importing supplemental milk for fluid use to these seasonally deficit markets. Having been approved by more than two-thirds of the producers in each of the respective marketing areas, the amendments became effective on an interim basis on August 10, 1996. The initial comment period for filing exceptions to the tentative decision was extended twice, based upon industry requests, and is now set to expire on November 30, 1996.

The Department has decided to reopen the hearing in this matter on December 17, 1996. Based upon the comments that it has already received, the Department is reasonably certain that it will be asked to modify the interim amendments based upon experience with these provisions during the past 3 months. Any modifications to the interim amendments may be based only on factual information that is in the hearing record of this proceeding. In view of these considerations, the Department sees no point in waiting until the expiration of the current comment period to call for a reopened hearing.

Interested parties who are planning to make an appearance at the reopened hearing need not send in written comments by November 30, 1996, as requested in the Department's tentative decision and the two subsequent extensions of time, but instead should enter their statements into the record of the hearing. Although written comments may still be submitted concerning this matter, interested parties should understand that the Department cannot make any changes to the interim amendments based upon events that have occurred while the interim amendments were in effect unless the events are documented in the hearing record.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with four copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

The May 15–16 hearing also considered a second proposal which concerned costs which are the responsibility of the plant operator. That proposal, and any modifications thereof, is being considered on a non-emergency basis and there is no indication that further evidence needs to be received on that issue. Hence, that issue will be outside the scope of the reopened hearing.

Prior Documents in This Proceeding

Notice of Hearing: Issued May 1, 1996; published May 3, 1996 (61 FR 19861).

Tentative Decision: Issued July 12, 1996; published July 18. 1996 (61 FR 37628).

Interim Amendment of Rules: Issued August 2, 1996; published August 9, 1996 (61 FR 41488).

Notice of Extension of Time for Filing Comments to Tentative Partial Decision: Issued August 16, 1996; published August 23, 1996 (61 FR 43474).

Notice of Extension of Time for Filing Comments to Tentative Partial Decision: Issued October 18, 1996; published October 25, 1996 (61 FR 55229).

List of Subjects in 7 CFR Parts 1005, 1007, 1011 and 1046

Milk marketing orders.

The authority citation for 7 CFR Parts 1005, 1007, 1011, and 1046 continues to read as follows:

Authority: 7 U.S.C. 601–674.

In addition to receiving testimony concerning the interim amendments, the Department will hear the following related proposal submitted by Carolina-Virginia Milk Producers' Association. This proposal, as set forth below, has not received the approval of the Secretary of Agriculture.

Proposed by Carolina-Virginia Milk Producers' Association and Mid-America Dairymen, Inc.: Proposal #4

Add a new subparagraph to paragraph 100X.12(b) of each of the four orders to read as follows:

100X.12 Producer

* * * * *

(b) Producer shall not include:

* * * * *

( ) Any person with respect to milk produced by him during the months of February through May that is caused to be delivered to a pool plant by a cooperative association or a pool plant operator if during the immediately preceding months of July through November more than 40 percent of the milk from the same farm was caused by such cooperative association or pool plant operator to be delivered to plants as other than producer milk (except milk that is not producer milk as a result of a temporary loss of grade A approval or the application of Section 100X.13), unless such pool plant was a nonpool plant during any of such immediately preceding months. *Provided however,* that for the purpose of determining the percentage of a person's milk that was pooled during the previous months of August through November, deliveries of the person's milk to plants as producer milk under Federal orders 100X, 100X or 100X shall be considered as deliveries of producer milk under this order.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of each of the aforesaid marketing areas, or from the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisionmaking process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture

Office of the Administrator, Agricultural Marketing Service

Office of the General Counsel

Dairy Division, Agricultural Marketing Service (Washington office) and the Offices of all Market Administrators.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: November 19, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–30034 Filed 11–22–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 564

[Docket No. 95N–0313]

Standards for Animal Food and Food Additives in Standardized Animal Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to remove its animal food standards regulations. This action is in response to the administration's ''Reinventing Government'' initiative, which seeks to streamline government to ease the burden on regulated industry and consumers, and it is intended to remove an unnecessary regulation.

DATES: Comments by February 24, 1997. The agency is proposing that any final rule that may be issued based upon this proposal become effective 30 days after date of publication of the final rule.

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: George Graber, Center for Veterinary Medicine (HFV–220), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1724.

SUPPLEMENTARY INFORMATION:

I. Background

On March 4, 1995, President Clinton announced plans for the reform of the Federal regulatory system as part of the administration's ''Reinventing Government'' initiative. As part of this initiative, the President ordered all Federal agencies to conduct a page-by-page review of all of their regulations and to ''eliminate or revise those that are outdated or otherwise in need of reform.'' The first results of FDA's efforts in implementing the President's plan were published in the Federal Register of October 13, 1995 (60 FR 53480).

In this document, FDA is proposing to remove the regulations in part 564 (21 CFR part 564) Definitions and Standards for Animal Food, of subchapter E, Animal Drugs, Feeds, and Related Products. Part 564 contains procedural regulations for establishing standards for animal food in subpart A, and regulations applicable to food additives in standardized animal food in subpart B. Because the procedures set out in part 564 have never been used and because the agency does not believe that there is any interest in developing a regulatory standard, part 564 is unnecessary. If in the future there were ever to be a request from the industry or elsewhere to develop an animal food standard regulation, the agency could determine whether procedural regulations are necessary and issue such procedures through the notice and comment rulemaking process as the standard was being developed.

II. Analysis of Impacts

FDA has examined the impact of this proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this proposed rule would remove a regulation that is not being applied, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Request for Comments

Interested persons may, on or before February 24, 1997, submit to the 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.

List of Subjects in 21 CFR Part 564

Animal foods, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Title 21 chapter I be amended as follows:

PART 564—DEFINITIONS AND STANDARDS FOR ANIMAL FOOD

Part 564 [Removed]

Part 564 is removed.

Dated: October 23, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–30052 Filed 11–22–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2510

Clarification of Application of ERISA to Insurance Company General Accounts

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Request for information.

SUMMARY: This document requests information from the public concerning issues which the Department has under consideration in developing regulations to clarify the application of the Employee Retirement Income Security Act of 1974 as amended (ERISA), to insurance company general accounts. Pursuant to section 1460 of the Small Business Job Protection Act of 1996 (Pub. L. 104–188), section 401 of ERISA has been amended. Section 401 now provides that no later than June 30, 1997, the Department must issue proposed regulations to: Provide guidance for the purpose of determining, where an insurer issues one or more policies to or for the benefit of an employee benefit plan (and such policies are supported by assets of the insurer's general account), which assets held by the insurer (other than plan assets held in its separate accounts) constitute assets of the plan for purposes of part 4 of Title I of ERISA and section 4975 of the Internal Revenue Code of 1986; and provide

guidance with respect to the application of Title I to the general account assets of insurers. The information provided to the Department in response to this document will assist the Department in developing the proposed regulations.

DATES: Comments must be received on or before January 24, 1997.

ADDRESSES: Comments (preferably, at least three copies) should be addressed to: Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, 200 Constitution Ave., N.W., Washington, D.C. 20210. Attention: ''General Account Contracts''.

FOR FURTHER INFORMATION CONTACT: Lyssa E. Hall, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202) 219–8971 (not a toll-free number) or Timothy Hauser, Plan Benefits Security Division, Office of the Solicitor, (202) 219–8637 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

A. Background

Life insurance companies issue a variety of group contracts for use in connection with employee pension benefit plans, some of which provide benefits the amount of which is guaranteed, some of which provide benefits that may fluctuate with the investment performance of the insurance company, and some of which offer elements of both. Under section 401(b)(2) of ERISA, if an insurance company issues a ''guaranteed benefit policy'' to a plan, the assets of the plan are deemed to include the policy, but do not solely by reason of the issuance of the policy, include any of the assets of the insurance company. Section 401(b)(2)(B) defines the term ''guaranteed benefit policy'' to mean an insurance policy or contract to the extent that such policy or contract provides for benefits the amount of which is guaranteed by the insurer. In addition, in paragraph (b) of ERISA Interpretive Bulletin 75–2, 29 CFR 2509.75–2 (1975), the Department stated that if an insurance company issues a contract or policy of insurance to a plan and places the consideration for such contract or policy in its general asset account, the assets in such account shall not be considered to be plan assets.[1]

On December 13, 1993, the Supreme Court rendered its decision in *John Hancock Mutual Life Insurance Co.* v. *Harris Trust & Savings Bank*, 114 S. Ct. 517 (1993) (Harris Trust) which interpreted the meaning of ''guaranteed benefit policy''. In its decision, the Court held that a contract qualifies as a guaranteed benefit policy only to the extent it allocates investment risk to the insurer:

> [w]e hold that to determine whether a contract qualifies as a guaranteed benefit policy, each component of the contract bears examination. A component fits within the guaranteed benefit policy exclusion only if it allocates investment risk to the insurer. Such an allocation is present when the insurer provides a genuine guarantee of an aggregate amount of benefits payable to retirement plan participants and their beneficiaries.

Accordingly, under the Supreme Court's decision, an insurer's general account includes plan assets to the extent it contains funds which are attributable to any nonguaranteed components of contracts with employee benefit plans. Because John Hancock's contract provided for a return that varied with the insurer's investment performance, the Court concluded that John Hancock held plan assets, and was, therefore, a fiduciary with respect to the management and disposition of those assets. Under the reasoning of the Court's decision, a broad range of activities involving insurance company general accounts are subject to ERISA's fiduciary standards.

Because of the retroactive effect of the Supreme Court decision, numerous transaction engaged in by insurance company general accounts may have violated ERISA's prohibited transaction and general fiduciary responsibility provisions. The insurance industry believed that, absent legislative or administrative action, it would be subject to significant additional litigation and potential liability with respect to the operation of its general accounts.

If the underlying assets of a general account include plan assets, persons who have engaged in transactions with such general account may be viewed as parties in interest under section 3(14) of ERISA and disqualified persons under section 4975 of the Code, including fiduciaries with respect to plans which have interests as contractholders in the general account. For example, insurance companies are a source of loans for smaller and mid-sized companies. Many of these companies have party in interest relationships with plans that have purchased general account contracts. Application of the prohibited transaction rules to the general account of an insurance company as a result of the *Harris Trust* decision could call such loans into question under ERISA. Lastly, the underlying assets of an entity in which a general account acquired an equity interest may include plan assets as a result of the *Harris Trust* decision.

On March 25, 1994, the American Council of Life Insurance (ACLI) submitted an application for a class exemption from certain of the restrictions of sections 406 and 407 of ERISA and from certain excise taxes imposed by section 4975 (a) and (b) of the Code. The ACLI requested broad exemptive relief for transactions which included the following: all internal operations of general accounts, all investment transactions involving general account assets, including transactions with parties in interest with respect to plans that have purchased general account contracts, and the purchase by the general account of securities issued by, and real property leased to, employers of employees covered by plans that have purchased general account contracts.

On August 22, 1994, the Department published a notice of proposed Class Exemption for Certain Transactions Involving Insurance Company General Accounts. (59 FR 43134). Although the ACLI requested exemptive relief for activities in connection with the internal operation of general accounts, the Department determined that it did not have sufficient information regarding the operation of such accounts to make the findings required by section 408(a) of ERISA. Accordingly, the proposed class exemption did not provide relief for transactions involving the internal operation of an insurance company general account. The final exemption (Prohibited Transaction Exemption [PTE] 95–60, 60 FR 35925) was published in the Federal Register on July 12, 1995.

B. Public Law 104–188

In response to the Supreme Court decision in *Harris Trust*, Congress amended section 401 of ERISA by adding a new subsection 401(c) which clarifies the application of ERISA to insurance company general accounts. Pub. L. 104–188, § 1460. This statutory provision requires that the Department, not later than June 30, 1997, issue proposed regulations providing guidance for the purpose of determining, in cases where an insurer issues one or more policies (supported by the assets of the insurer's general account) to or for the benefit of an employee benefit plan, which assets held by the insurer (other than plan assets held in its separate accounts) constitute plan assets for purposes of part 4 of Title I and section 4975 of the

[1] Paragraph (b) of 29 CFR 2509.75–2 was removed effective July 1, 1996. 61 FR 33847, 33849 (July 1, 1996).

Code and to provide guidance with respect to the application of Title I to an insurer's general account assets. The proposed regulations must be subject to public notice and comment until September 30, 1997, and final regulations shall be issued not later than December 31, 1997.

The regulations will only apply to those general account policies which are issued by an insurer on or before December 31, 1998. In the case of such policies, the regulations will take effect at the end of the 18 month period following the date the regulations become final. Pub. L. 104–188, however, authorizes the Secretary to issue additional regulations designed to prevent avoidance of the regulations described above. These additional regulations, if issued, may have an earlier effective date.

The Department must ensure that the regulations issued under Pub. L. 104–188 are administratively feasible, and protect the interests and rights of the plan and of its participants and beneficiaries. In addition, the regulations must require, in connection with any policy (other than a guaranteed benefit policy) issued by an insurer to or for the benefit of an employee benefit plan, that: (1) an independent plan fiduciary authorize the purchase of the policy (unless the purchase is exempt under ERISA section 408(b)(5)); (2) the insurer provide information on an annual basis to policyholders (as prescribed in such regulations) disclosing the methods by which any income and expenses of the insurer's general account are allocated to be policy and the actual return to the plan under the policy and such other financial information as the Department determines is appropriate; (3) the insurer disclose to the plan fiduciary the extent to which alternative arrangements supported by the assets of the insurer's separate accounts are available, whether there is a right under the policy to transfer funds to a separate account and the terms governing any such right, and the extent to which support by assets of the insurer's general account and support by assets of the insurer's separate accounts might pose differing risks to the plan; and (4) the insurer must manage general account assets prudently, taking into account all obligations supported by such general account.

Compliance with the regulations issued by the Department will be deemed compliance by such insurer with sections 404, 406 and 407 of ERISA. In addition, under this statutory provision, no person will be liable under part 4 of Title I or Code section 4975 for conduct which occurred before the date which is 18 months following the issuance of the final regulation on the basis of a claim that the assets of an insurer (other than plan assets held in a separate account) constitute plan assets. The limitation on liability is subject to three exceptions: (1) the Department may circumscribe this limitation on liability in regulations intended to prevent avoidance of the regulations which it is required to issue under the statutory amendment; (2) the Department may bring actions pursuant to paragraph (2) or (5) of section 502(a) for breaches of fiduciary responsibilities which also constitute violations of Federal or State criminal law; and (3) civil actions commenced before November 7, 1995 are exempt from the amendment's coverage.

Issues Under Consideration

The Department is publishing this notice to provide interested persons with an opportunity to submit information and comments which will be considered by the Department in developing the regulations mandated by Pub. L. 104–188.[2]

In order to assist interested parties in responding, this notice contains a list of specific questions designed to elicit information that the Department believes would be especially helpful in developing a notice of proposed rulemaking. The questions developed by the Department may not address all issues relevant to the development of the regulation. Therefore, the Department further invites interested parties to submit comments on other matters that they believe are pertinent to the Department's consideration of the regulation.

Annual Disclosures

(1) What information relating to the financial soundness of an insurer do plan fiduciaries currently rely upon in selecting an insurer?

(2) Should additional information be required to be disclosed to plan fiduciaries prior to selecting an insurer? What would be the cost of supplying this information? To what extent would these costs be passed on to the contractholders?

(3) What annual information would plan fiduciaries find helpful in evaluating the appropriateness of an existing general account contract?

(4) Is there any information which should be disclosed more frequently than annually? Should this information be provided or available upon request?

(5) Do insurers currently disclose to potential contractholders the availability of alternative insurance arrangements supported by separate accounts, the right to transfer funds under a general account contract to a separate account, and the terms governing any such right?

(6) In general, what are the comparative risks and benefits of general account contracts vis-a-vis separate account contracts?

(7) To what extent, and in what format, should insurers be required to disclose information concerning the following:

(a) The expenses allocated to the contract and the basis for the allocation;

(b) The investment income allocated to the contract and the basis for the allocation;

(c) The mortality or morbidity experience attributed to the contract and the basis for the attribution;

(d) The allocation of any other aspect of the insurance company's financial performance which has an impact on the contract's return, and the basis for the allocation;

(e) The timing of the allocation of expenses, investment income, mortality or morbidity experience, and of any other factors affecting the contract's return;

(f) Any charges or provisions attributable to the contract for risks or profits, and the basis for the charges or provisions;

(g) Comparative data concerning the return, expenses, investment income, profit and risk charges attributable to other contracts, and an explanation of any disparities;

(h) The particular investment income allocation methodology or methodologies employed by the insurer, and any departures from the general methodologies in the actual allocation of investment income to the contract;

(i) Financial or familial relationships or transactions between (1) the insurer, its officers, or directors, and (2) the plan, the plan sponsor, or plan fiduciaries;

(j) Financial transactions between the insurer and any person or entity in which the insurer, its officers, or directors have a financial interest or familial relationship.

Do different formats have different cost implications? Which items are costly to produce, or involve confidential or proprietary information? What professional skills are required to prepare the required information?

[2] Section 1460 of Pub. L. 104–188 does not distinguish between welfare plans and pension plans that purchase general account contracts from insurers. Accordingly, the Department urges interested persons to submit information and comments which are relevant to welfare plans that have purchased general account contracts.

(8) Should the insurer be required to retain documentation supporting the required disclosures, and to make the supporting documentation available to the Secretary of Labor, plan sponsors, plan fiduciaries, or plan participants and beneficiaries? To what extent are these documents retained as part of current business practice? What are the estimated costs of retaining and producing these documents to the appropriate parties?

(9) How should the insurer calculate the actual return to the plan for purposes of any disclosure requirement? In particular,

(a) Should the insurer be required to take into account any market value adjustments, termination expense adjustments, withdrawal charges, or surrender charges in stating the contract's return?

(b) Should the regulations permit different approaches for calculating the rate of return for contracts requiring the issuance of annuities as opposed to those in which benefit payments are made without the issuance of an annuity?

(c) Should the regulations require that dividends that are anticipated or declared buy not yet paid, be included in determining the contract's return?

(d) To what extent should the regulations permit the return to be reported on a gross basis (i.e., before expenses or charges)?

(10) Under what circumstances would regulations requiring disclosure of the contractholder's return apply to general account contracts before the end of the 18 month period following the issuance of the final regulations?

Market Value Adjustments Upon Termination of General Account Contracts

(1) In what ways is discretion exercised by insurers under general account contracts in imposing market value adjustments or in determining the amount of such adjustments?

(2) What standards should the Department adopt to assure that market value adjustments reflect market conditions at the time of contract termination?

(3) Should the Department require general account contracts to set forth in ''plain English'' the method for calculating market value adjustments that can be objectively verified by the contractholder pursuant to standards set forth in the contract? In this regard, should the Department require that the method used for calculating market value adjustments only use parameters that can be independently verified by the contractholder?

(4) Should the Department limit or forbid the imposition of termination expense adjustments, withdrawal charges, or surrender charges pursuant to general account contracts?

(5) Under what circumstances should regulations regarding market value adjustments and other termination charges be applicable to general account contracts prior to the end of the 18 month period following the issuance of the final regulations?

State Regulatory Requirements

(1) To what extent do State regulatory requirements parallel or conflict with some or all of the requirements imposed by section 1460 of Pub. L. 104–188?

(2) Should the Department of Labor regulation take into account any State regulatory requirements that serve as a protection to contractholders? If so, please describe the nature of such requirements and the state's enforcement mechanism to assure compliance with such requirements.

Impact on Small Entities

(1) In responding to the questions above, please address the anticipated annual impact of any regulatory proposals on small insurers, (insurers with annual receipts of less than $5 million, see Small Business Administration Size Standards, 61 FR 3280, Jan. 31, 1996) and small plans, (plans with fewer than 100 participants).

(2) Statistically, what are the sizes of the plans using insurance company general accounts? What is the volume of assets held in these accounts, and what percent is held by small plans? Is there an estimate of how many small plans may be affected by the regulations?

(3) How many small insurance companies offer products that may be subject to the regulations? Is there an anticipated effect on those small companies' competitiveness due to such a regulation?

(4) What would be the most economical and efficient method of compliance with the requirements imposed by the amendment for small insurance companies?

(5) In responding to the questions above, please state whether the insurance companies' costs of complying with any regulatory proposals are likely to be passed on to the contractholders. If so, what are the projected costs? Are large insurance companies more likely to absorb the costs, leaving their contractholders in better positions? If costs are passed on, will small plans be able to absorb the increase?

(6) How can the disclosed materials be provided in formats useful to small plans? How can these materials be structured in ''plain English,'' or must they require the assistance of professional service providers to be valuable?

Miscellaneous

(1) The regulations will apply only to ''policies which are issued by an insurer on or before December 31, 1998.'' To what extent should the regulations treat pre-existing policies which are amended after December 31, 1998 as policies issued on or before December 31, 1998?

(2) To what extent should the Department regulate transactions between the insurer and its subsidiaries; between the insurer and entities in which the insurer's officers or directors have a financial interest?

(3) To what extent can insurers exercise discretion to the detriment of plan contractholders in the allocation of income, expenses, dividends, and other financial costs and benefits? How should a limitation on that discretion be formulated? For example, should the Department require that income, expenses and surplus be allocated in a manner directly proportionate to the plan's actual contribution to each of these categories?

(4) What constraints, if any, should be placed on insurers' ability to unilaterally amend contract terms which affect the value of the plan's policy (e.g., terms concerning minimum interest rate guarantees, expense charges, and annuity purchase rates)?

(5) Do insurance companies and persons engaging in transactions with such companies believe that guidance is necessary regarding which general account contracts constitute ''guaranteed benefit policies'' within the meaning of section 401(b)(2) of ERISA in light of the *Harris Trust* decision? In this regard, what types of policies raise significant issues post *Harris*?

All submitted responses and comments will be made a part of the record of the proceeding referred to herein and will be available for public inspection.

Signed at Washington, DC this 20th day of November, 1996.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 96–30030 Filed 11–22–96; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202 and 206

RIN 1010–AB57

Amendments to Gas Valuation Regulations for Indian Leases

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule; notice of extension of public comment period.

SUMMARY: MMS hereby gives notice that it is extending the public comment period on a Notice of proposed rule, which was published in the Federal Register on September 23, 1996 (61 FR 49894). The proposed rule would amend the regulations governing the valuation for royalty purposes of natural gas produced from Indian leases. In response to requests for additional time, MMS will extend the comment period from November 22, 1996, to December 3, 1996.

DATES: Comments must be submitted on or before December 3, 1996.

ADDRESSES: Written comments, suggestions, or objections regarding this proposed amendment should be sent to the following addresses.

For comments sent via the U.S. Postal Service use: Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, P.O. Box 25165, MS 3101, Denver, Colorado 80225–0165.

For comments via courier or overnight delivery service use: Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, MS 3101, Building 85, Denver Federal Center, Room A–212, Denver, Colorado 80225–0165.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, phone (303) 231–3432, FAX (303) 231–3194, e-Mail David__Guzy@smtp.mms.gov.

Dated: November 20, 1996.

James W. Shaw

Associate Director, for Royalty Management.

[FR Doc. 96–30121 Filed 11–21–96; 12:47 pm]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5653–4]

RIN 2060–AD–56
RIN 2060–AE–37

National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins and Group IV Polymers and Resins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: The EPA intends to propose changes to the recently promulgated subpart U—National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins; and subpart JJJ—National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins. The proposed changes to subparts U and JJJ will parallel proposed changes to the National Emission Standards for Hazardous Air Pollutant Emissions for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks (commonly known as the Hazardous Organics NESHAP or HON).

Since HON regulations are directly referenced in subparts U and JJJ, the proposed changes to HON subparts F, G, and H will also apply to Group I and Group IV Polymers and Resins sources subject to subparts U and JJJ. In addition to direct cross-references, there are additional changes that the EPA plans to propose to subparts U and JJJ to provide consistency with the HON. The EPA also intends to extend the compliance date for heat exchange systems to September 5, 1999.

DATES: *Comments.* Comments on this ANPR must be received by the EPA on or before December 26, 1996.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–92–44 (for Polymers and Resins I) and/or A–92–45 (for Polymers and Resins IV), U. S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The dockets are located at the above address in room M–1500, Waterside Mall (ground floor), and may be inspected from 8 a.m. to 4 p.m., Monday through Friday; telephone number (202) 260–7548. A reasonable fee may be charged for copying docket materials.

The EPA requests that a separate copy of the comments also be sent to the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section below. Comments on this ANPR may also be submitted electronically by sending electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: For information concerning this ANPR, contact Mr. Robert Rosensteel at (919) 541–5608, Organic Chemicals Group, Emission Standards Division (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Regulated entities. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Producers of butyl rubber, halobutyl rubber, epichlorohydrin elastomers, ethylene propylene rubber, Hypalon™, neoprene, nitrile butadiene rubber, nitrile butadiene latex, polysulfide rubber, polybutadiene rubber/styrene butadiene rubber by solution, styrene butadiene latex, and styrene butadiene rubber by emulsion.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by regulation discussed in this ANPR. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Electronic Submission of Comments. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments will also be accepted on diskette in WordPerfect 5.1 or ASCII file format. All comments in electronic form must be identified by the docket number A–92–44 or A–92–45. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

I. Background

The HON was promulgated on April 22, 1994 (59 FR 19402) as subparts F, G, H, and I of 40 CFR part 63. The HON regulates emissions of certain organic hazardous air pollutants (HAP) from synthetic organic chemical manufacturing industry (SOCMI) production processes. Due to the

similarities in HAP emissions and emission controls at SOCMI facilities and at elastomer and thermoplastic production facilities, the HON provisions were used in the development of regulations for elastomer and thermoplastic production facilities (40 CFR part 63, subparts U and JJJ).

On March 29, 1995 (60 FR 16090), the EPA proposed standards for seven source categories collectively referred to as Group IV polymers and resins source categories. These source categories, which produce products generally called ''thermoplastics,'' are (1) Acrylonitrile Butadiene Styrene Resin, (2) Styrene Acrylonitrile Resin, (3) Methyl Methacrylate Acrylonitrile Butadiene Styrene Resin, (4) Methyl Methacrylate Butadiene Styrene Terpolymers, (5) Polystyrene Resin, (6) Polyol (Ethylene Terephthalate) Resin, and (7) Nitrile Resin. These standards, which are contained in subpart JJJ of 40 CFR part 63, were promulgated on September 12, 1996 (61 FR 48207).

On June 12, 1995 (60 FR 30801), the EPA proposed standards for nine source categories collectively referred to as Group I polymers and resins source categories. These source categories, which produce products generally called ''elastomers,'' are (1) Butyl Rubber Production, (2) Epichlorohydrin Elastomers Production, (3) Ethylene-Propylene Rubber Production, (4) Hypalon™ Production, (5) Neoprene Production, (6) Nitrile Butadiene Rubber Production, (7) Polybutadiene Rubber Production, (8) Polysulfide Rubber Production, and (9) Styrene-Butadiene Rubber and Latex Production. These standards, which are contained in subpart U of 40 CFR part 63, were promulgated on September 5, 1996 (61 FR 46905).

On August 26, 1996 (61 FR 43698), in conformance with a settlement agreement reached with the Chemical Manufacturers Association (CMA) and the Dow Chemical Company, the EPA proposed revisions to the HON rule. Some of these proposed amendments are in sections which are referenced in subparts U and JJJ. Therefore, these proposed changes would also affect subparts U and JJJ, as discussed in the following sections of this ANPR. In addition, some of the HON proposal would add language to the rule, such as new definitions, and the EPA intends to propose the same changes to subparts U and JJJ where relevant.

II. Relationship of Subparts U and JJJ to the HON

Subparts U and JJJ each regulate seven HAP emission sources types. For five emission source types (storage vessels, continuous process vents, equipment leaks, heat exchange systems, and wastewater), both subpart U and subpart JJJ directly reference the HON rule. In addition, several HON definitions are referenced, as are the storage vessel and wastewater emission estimation equations used for emissions averaging.

Table 1 shows the specific sections of subparts F, G, and H referenced in subparts U and JJJ. Since subparts U and JJJ directly reference the HON provisions in these instances, any changes to the referenced HON sections will also affect subparts U and JJJ.

In addition to the direct reference to HON sections, some portions of subparts U and JJJ are modeled after the HON requirements. Specifically, the applicability and emissions averaging provisions, and the testing, monitoring, reporting, and recordkeeping requirements in subparts U and JJJ are based on the analogous HON provisions. Some changes were made to these provisions after proposal to make them unique to subparts U and JJJ; however, they continue to follow the HON approach. In these instances, the proposed changes to subparts F, G, and H will not directly impact subparts U and JJJ.

TABLE 1.—SECTIONS OF SUBPARTS F, G, AND H DIRECTLY REFERENCED IN SUBPARTS U AND JJJ

HON section referenced in subparts U and JJJ	Description of referenced provisions	Comment
Subpart F:		
63.101	Definitions	Several definitions from 63.101 are incorporated by reference into subparts U and JJJ.
63.104	Heat exchange system requirements	Directly referenced in subpart U in §63.502. Directly referenced in subpart JJJ with minor deviations noted in §63.1328.
Subpart G:		
63.111	Definitions	Several definitions from 63.111 are incorporated by reference into subparts U and JJJ.
63.113–63.118	Continuous process vent provisions	Minor deviations from the subpart G language are noted in subparts U and JJJ.
63.119–63.123	Storage vessel provisions	Minor deviations from the subpart G language are noted in subparts U and JJJ.
63.131–63.147	Wastewater provisions	Minor deviations from the subpart G language are noted in subparts U and JJJ.
63.148	Leak inspection provisions	Minor deviations from the subpart G language are noted in subparts U and JJJ.
63.150(g)(3)	Procedures for determining emission debits from storage vessels.	
63.150(g)(5)	Procedures for determining emission debits from wastewater.	
63.150(h)(3)	Procedures for determining emissions credits from storage vessels.	
63.150(h)(5)	Procedures for determining emissions credits from wastewater.	
Subpart H		
63.160–63.193	Equipment leak provisions	Subparts U and JJJ affected sources must comply with all requirements of subpart H.

However, the EPA intends to propose changes to many of these provisions, following a similar rationale to that used in developing the proposed HON changes.

III. Summary of Proposed Changes to Subparts F, G, and H

The proposed revisions to the HON consisted of amendments to subparts F, G, H, and I of 40 CFR part 63. The proposed revisions to the HON are intended to remove any ambiguity, to clearly convey the EPA's intent, to make the rule easier to read and implement, and to increase flexibility.

The wastewater sections of the rule were redrafted to improve organizational structure and clarity. The revised definition of ''wastewater'' incorporates the concept that only water that is discarded from a process is subject to the HON wastewater provisions. Additional changes were also proposed to the HON wastewater provisions to (1) ensure that streams traveling from one piece of process equipment to another would be handled appropriately to avoid emissions to the environment, and (2) ensure that the changes in the wastewater definitions would not permit sources to dilute their waste streams prior to the point at which the streams are determined to be wastewater (thus avoiding control requirements). The proposed revisions also include provisions that would allow the owner or operator of a HON affected source who wished to ship waste off-site for treatment to ship to a facility that has certified that it will treat the waste to the standard required by the HON.

In the proposed amendments to the HON, the EPA proposed new requirements for monitoring heat exchange systems for leaks of process fluids into cooling water. These revisions were proposed in order to address issues related to the availability of monitoring methods with sufficient analytical sensitivity, lack of flexibility in some of the requirements, and the burden associated with the monitoring requirements.

In contrast to the significant redrafting of the requirements for wastewater and heat exchange systems, minor changes were also proposed for other sections of the HON. In addition to removing ambiguity and increasing flexibility (e.g., through more flexible monitoring method requirements and sampling location requirements), some revisions would reduce the reporting and recordkeeping burden for sources. The reporting and recordkeeping revisions would include changes which reduce the number of copies of reports that must be submitted to the EPA and the States; provide for alternative, less frequent recordkeeping of monitoring data where sources show no violations for prolonged stretches of time; and remove the requirement for most sources to file an Implementation Plan. The preamble to the proposed HON changes (61 FR 43698) provides a more in-depth explanation of the rationale behind these changes.

IV. Summary of Planned EPA Action

The proposed changes to the continuous process vent, storage vessel, wastewater, heat exchange system, and equipment leak requirements in the HON apply to subpart U and JJJ sources, due to the fact that subparts U and JJJ directly reference these requirements. The EPA intends to propose minor editorial and cross-referencing changes to these sections in subparts U and JJJ in order to parallel the revisions to the HON sections, and to seek public comment on such changes. In addition, the EPA plans to revise the compliance date in subpart U for heat exchange systems to be September 5, 1999 (three years after initial promulgation of subpart U).

The EPA is also planning to incorporate many of the continuous process vent revisions from the HON proposal into the batch process vent provisions in subparts U and JJJ, in order to take advantage of the increased clarity and flexibility that are represented in the proposed HON changes. Finally, the EPA is planning to incorporate the changes to the HON applicability, testing, reporting, and recordkeeping sections, which also provide increased clarity and flexibility, into the comparable sections in subparts U and JJJ.

V. Request for Comments

In this ANPR, the EPA is requesting comments on the proposed revisions to subparts F, G, and H, as they pertain to subparts U and JJJ. Specifically, the EPA is interested in receiving comments on whether the proposed changes to the HON are appropriate for the polymer and resin production facilities subject to subparts U and JJJ and, if these changes are not appropriate for these rules, recommendations for alternative approaches.

As mentioned earlier, some provisions in subparts U and JJJ were based on the HON provisions, even though the final rules do not directly reference these particular provisions in the HON. One example of this occurs in the testing, monitoring, recordkeeping, and reporting requirements for batch process vents. These provisions were modeled after the HON provisions for continuous process vents, but these sections of the rules do not reference any section of the HON. The EPA requests comment on whether any of the changes made to the HON process vent testing, monitoring, reporting, and recordkeeping provisions are appropriate for the subpart U and JJJ batch process vent provisions. If commenters believe that some proposed changes made to the HON are needed for subparts U and JJJ, the EPA requests that the commenters identify the HON change, explain the reasons the same (or a similar) change is needed in subpart U and/or JJJ, and explain the section of subpart U or JJJ where they believe the change is necessary.

VI. Administrative Requirements

A. Docket

The dockets for the Polymers and Resins I and Polymers and Resins IV rules are A–92–44 and A–92–45, respectively. The dockets for the HON are A–90–19 through A–90–23. These dockets are complete, organized files of all the information submitted to, or otherwise considered by, the Agency in the development of these rules. These dockets are available for public inspection at the EPA's Air and Radiation Docket and Information Center, which is listed in the **ADDRESSES** section of this notice.

B. Regulatory Requirements

This notice is not a rule, but an Advanced Notice of the Agency's preliminary intentions as it begins to work on revisions to subparts U and JJJ. The notice imposes no regulatory requirements or costs. Therefore, the EPA has not prepared an assessment of the potential costs and benefits pursuant to Executive Order 12866, an economic impact analysis pursuant to Section 317, a regulatory flexibility analysis pursuant to the Regulatory Flexibility Act (Pub. L. 96–354, September 19, 1980), or a budgetary impact statement pursuant to the Unfunded Mandates Act of 1995. Also, this notice does not contain any information collection requirements and, therefore, is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances.

Dated: November 8, 1996.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 96–29659 Filed 11–22–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 89–552; FCC 96–448]

220 MHz Radio Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission seeks comment on its tentative conclusion that the ''40-mile rule'' should be repealed, as recommended by the SMR Advisory Group L.C. This action is needed to establish a comprehensive record on which to base a final decision.

DATES: Comments are due December 10, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Marty Liebman, Wireless Telecommunications Bureau, (202) 418–1310.

SUPPLEMENTARY INFORMATION:

Commission Seeks Supplemental Comment on Request To Eliminate 40-Mile Rule for 220 MHz Radio Service

Released: November 19, 1996.

1. Section 90.739 of the Commission's Rules stipulates that a licensee in the 220 MHz radio service may not hold more than one license within a 40-mile area, unless the licensee can justify the need for an additional license based on communications requirements.

2. On April 5, 1996, the SMR Advisory Group, L.C. (SMR Group) filed *ex parte* comments in the above-captioned proceeding, urging the Commission to eliminate Section 90.739 (the ''40-mile rule''). In its comments, SMR Group suggests that elimination of the rule would enhance the competitive potential of the 220 MHz service, and would be consistent with Commission findings of regulatory parity between the 220 MHz service and other commercial mobile radio services. SMR Group also contends that the original purpose for the rule—*i.e.*, to prevent spectrum warehousing—is no longer relevant in the context of today's mobile communications marketplace. Subsequently, the American Mobile Telecommunications Association, Securicor Radiocoms, Ltd., and SEA, Inc., also filed *ex parte* comments asking that the Commission eliminate this rule. Based on these filings, the Commission tentatively concludes that the rule should be repealed.

3. Pursuant to Section 1.415(d) of the Commission's Rules, 47 CFR § 1.415(d), the Commission seeks comment on this tentative conclusion. In particular, interested parties are invited to address any legal, factual, or policy considerations that may be associated with this issue. Comments must be filed no later than December 10, 1996. No reply comments will be accepted.

4. All comments should be filed with the Office of the Secretary, Federal Communications Commission, 1919 M Street NW, Room 222, Washington, DC 20554, referencing PR Docket No. 89–552. The full text of the comments is available for inspection and duplication during regular business hours in the FCC Reference Center, Federal Communications Commission, 1919 M Street NW, Room 239, Washington, DC 20554. Copies may also be obtained from the International Transcription Service, Inc. (ITS), 2100 M Street NW, Suite 140, Washington, DC 20037, (202) 857–3800.

Initial Regulatory Flexibility Analysis

5. For purposes of this Public Notice, the Initial Regulatory Flexibility Analysis adopted in the Third Notice of Proposed Rulemaking in PR Docket No. 89–552 (60 FR 46564, September 7, 1995) applies.

List of Subjects in 47 CFR Part 90

Radio.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 96–30002 Filed 11–22–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 961108316–6316–01; I.D. 101796C]

RIN 0648–AI47

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 14

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 14 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). This proposed rule would prohibit the use or possession of fish traps in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) beginning February 8, 2007; prohibit the use or possession of fish traps west of 85°30′ W. long.; modify the procedure for retrieval of fish traps when a breakdown prevents a vessel with a trap endorsement from retrieving its traps; modify the restrictions on transfer of fish trap endorsements and reef fish permits; prohibit the harvest or possession of Nassau grouper in or from the EEZ of the Gulf; and clarify the authority of the Regional Administrator, Southeast Region, NMFS (RA), to reopen a prematurely closed fishery. In addition, NMFS proposes to extend the current prohibition on the possession of dynamite on board a permitted vessel to those vessels permitted in the South Atlantic golden crab fishery. The intended effects of this rule are to conserve and manage the reef fish resources of the Gulf and enhance enforceability of the regulations.

DATES: Written comments must be received on or before January 9, 1997.

ADDRESSES: Comments on the proposed rule or on the initial regulatory flexibility analysis (IRFA) must be sent to Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Comments regarding the collection-of-information requirement contained in this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory

Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Requests for copies of Amendment 14, which includes an environmental assessment, a regulatory impact review (RIR), and an IRFA, should be sent to the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL, 33609, PHONE: 813–228–2815; FAX: 813–225–7015.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 813–570–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act).

Background and Rationale

The Council developed Amendment 14 to address various problems in the reef fish fishery. Most of the problems are associated with the fish trap fishery and the February 7, 1997, expiration of the existing moratorium on the issuance of additional fish trap endorsements.

Phaseout of the Use of Fish Traps in the Gulf

The Council established a moratorium on additional fish trap endorsements under Amendment 5 that will extend through February 7, 1997 (final rule implementing Amendment 5 was effective February 7, 1994; 59 FR 966). This moratorium was implemented to stabilize the number of participants in the fish trap fishery until the Council could obtain better information on the trap fishery's ecological impacts. This information was recently provided through completion of a NMFS observer study on the biological effects of the fish trap fishery. The study indicated, that for the particular area where most of the study data were collected, fish traps can target the higher-value species (grouper and snapper) without major bycatch of non-targeted species. Because the study's duration and geographical extent were limited, the Council determined that the study data and conclusions may not be representative of the Gulf reef fish trap fishery as a whole.

Many of the Council members were concerned over the apparent lack of compliance with fish trap rules and believed that enforcement would never be adequate to assure compliance. The Council members were concerned over the impacts of incidental catch of non-targeted species, increased unreported fishing effort, and long-term ghost fishing from abandoned or lost traps with non-functioning escape panels. Because fish traps are completely submerged and can be fished without fishermen being present, they are difficult for enforcement officers to locate and, if being fished illegally without surface buoys, are difficult to identify. Regulations pertaining to trap construction specifications, including escape panels, prohibited areas, and tag requirements can only be enforced if the fisherman is intercepted during the relatively short periods of deployment or retrieval. The Council's Law Enforcement and Reef Fish Advisory Panels both recommended that the use of fish traps be banned in the Gulf EEZ.

After extensive deliberations and consideration of public comments, the Council proposed a 10-year phaseout of the fish trap fishery. Compared to an immediate prohibition, the 10-year phaseout period would spread the economic impact on the existing participants over a relatively long time. This phaseout period would allow fishermen to make a gradual transition to other fisheries without the disruption associated with an immediate termination of the fishery. The majority of fishermen in the fish trap fishery are only partially dependent on the fishery and can switch to other fisheries or fishing methods in which they are already participating.

Prohibition on the Use or Possession of Fish Traps West of Cape San Blas, FL

The Council proposes to prohibit the use of fish traps west of 85°30′ W. long., the longitude of Cape San Blas, FL, consistent with the Council's intent to limit, reduce, and ultimately eliminate the use of fish traps. This measure would prevent an expansion of the fishery beyond its current geographical range and was supported by most persons who testified on this measure at the Council's public hearings. The measure would also limit potential enforceability problems by restricting the area where traps may be used. The immediate effects on fishermen would be limited since only one person who owns a vessel with a fish trap endorsement resides west of Cape San Blas, FL.

Modification of the Procedure for Retrieval of Fish Traps

In the event of a breakdown of a vessel with a fish trap endorsement, current regulations allow another vessel to retrieve its fish traps, if written authorization from the owner or operator of the vessel with the endorsement is on board. Those authorizations do not have to be obtained from or registered with NMFS. This provision is being used in a manner not intended by the Council. Some owners of vessels with fish trap endorsements are providing such authorizations to the operators of other vessels without regard to vessel breakdowns. In this manner, vessels that do not have fish trap endorsements are being used to tend traps.

To provide greater accountability for retrieval of traps when vessel breakdown prevents retrieval by the vessel with the fish trap endorsement, the proposed measure would require that authorization to retrieve a disabled vessel's traps be obtained from NMFS' Office of Enforcement. Such authorizations would be specific as to vessel, individual(s), point of landing, and time period, and be issued only at the time that a disabling incident occurs. This measure would allow enforcement personnel, including U.S. Coast Guard and state enforcement officers, to check with NMFS' Office of Enforcement to verify the terms of authorization. The Office of Enforcement will accept phone calls around the clock; messages at certain times of the day will require a return call by office personnel.

Modification of the Restrictions on Transfer of Fish Trap Endorsements

During the first 2 years of the phaseout period, fish trap endorsements would be transferable among vessels with reef fish permits. This initial transfer period is intended to give fish trap fishermen an opportunity to exit the fishery and receive economic compensation by selling their endorsements. The Council limited the period for unrestricted transfers to 2 years to encourage a continued reduction in the number of fish trap endorsements for the remainder of the phaseout.

During the third through the tenth year of the phaseout period, fish trap endorsements would be transferable only to an immediate family member, another person upon death or disability of the endorsement holder, another vessel owned by the same entity, or any of the 56 individuals who were fishing traps after November 19, 1992, and were excluded by the current moratorium. The limitation on transfer of endorsements under these conditions would be expected to result in additional attrition during the last 8 years of the phaseout. Endorsements that expire and are not renewed would not be reissued.

Modification of the Restrictions on Transfer of Reef Fish Permits

The current regulations allow transfer of a permit between persons only when the owner of the vessel whose permit is being transferred has met the income qualification for the permit. This prevents a vessel operator, whose earned income qualified a vessel for a permit, from acquiring the permit by transfer from the owner when buying the vessel from the owner. The Council proposed an exception to the general rule that only an owner-qualified permit may be transferred to another person by allowing the transfer when the recipient is the income-qualifying operator.

The Council also proposed to allow a non-income-qualifying owner who loses his income-qualifying operator to continue in the reef fish fishery for a limited time (grace period) in order to meet the income qualification for the vessel permit. Currently, upon transfer of a reef fish permit, an owner who does not meet the earned income requirement and who receives a trap permit by transfer may continue to operate the vessel in the fishery for one full calendar year in order to meet that requirement. An additional 3½ months (beyond the one full calendar year period) is provided for the new owner to document his/her earned income for the calendar year and apply for renewal of the permit and for NMFS to process the application and issue a renewed permit. However, an owner who loses his/her earned-income qualifying operator does not have the same grace period. The Council's proposal would grant the same grace period for meeting the earned income requirement to such owner.

Prohibition on the Harvest or Possession of Nassau Grouper

Nassau grouper is on the candidate list of threatened or endangered species under the Endangered Species Act. The species is classified by NMFS as over-utilized, with a current potential yield of zero. Harvest and possession of Nassau grouper is prohibited in Florida's waters, the South Atlantic EEZ, and the Caribbean EEZ, but not in the Gulf EEZ. A closure of the Gulf EEZ would provide consistent regulations for Nassau grouper in the U.S. EEZ. Economic impacts are expected to be limited, because Nassau grouper have comprised 0.5 percent of shallow-water grouper harvest in recent years.

Reopening of a Commercial or Recreational Fishery

The Council proposes to authorize the RA to reopen a commercial or recreational fishery for a Gulf reef fish species or species group when needed to ensure that a commercial quota or recreational allocation may be reached. Such authorization would constitute a modification to the framework procedure of the FMP for making changes to management measures. As the closure provisions currently apply only to Gulf reef fish species or species groups that have commercial quotas, the proposed change would not be immediately applicable to the recreational fisheries for Gulf reef fish.

Availability of Amendment 14

Additional background and rationale for the measures discussed above are contained in Amendment 14, the availability of which was announced in the Federal Register (61 FR 55128, October 24, 1996).

Changes Proposed by NMFS

Current regulations prohibit the possession on board a permitted vessel of dynamite or similar explosive substance. To apply this prohibition to permitted vessels in the South Atlantic golden crab fishery, NMFS proposes to add, at § 622.31(a), a reference to § 622.17, which is the section that requires permits in the golden crab fishery.

Generally, a vessel permit or endorsement is not transferable. To correctly reflect the current exceptions to that general rule, NMFS proposes to add, at § 622.4(g), a reference to § 622.4(p) regarding transfers of red snapper endorsements.

NMFS proposes other minor language changes for consistency and clarity.

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 the amendment and regulations. At this time, NMFS has not determined that the provisions of Amendment 14 are 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.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

As part of the RIR, the Council prepared an IRFA, summarized as follows. Since all participants in the fishery, including those in the fish trap sector, are small business entities, disproportionate effects on capital costs of compliance would not occur. A substantial number of the 92 small business entities that use fish traps in the reef fish fishery would be affected by the proposed rule. These entities would not be able to use fish traps beginning February 8, 2007, and would incur a substantial reduction in income. The regulations are likely to result in a change in gross revenues of more than 5 percent. Performance standards are not practicable because the trap gear cannot be adequately monitored and enforced. Approximately 87 percent of these entities (80 in number) would be able to switch to other fisheries, but would incur substantial increases in costs to acquire and operate the alternative gear. Since the fish traps and related gear would not be marketable, all investments in the traps and gear would be lost. Approximately 13 percent of these entities (12 in number) would be unable to switch to other fisheries and would be forced to cease business operations. No duplicative, overlapping, or conflicting Federal rules have been identified regarding this action. Significant alternatives to the proposed action to eliminate the use of fish trap gear in ten years were considered including: Several related alternatives that would create a permanent fish trap license limitation system but differed in the number of allowed participants; an alternative that would extend the current permit moratorium until the year 2000; an alternative delaying any decisions for two years; and a status-quo alternative. The Council chose its preferred alternative (ten-year phase out of the trap fishery) based on a determination that this action would address its concerns about the adverse biological impacts of fish traps and the serious enforcement difficulties with this fishery, while providing affected trap fishermen sufficient time to plan for the termination of the fishery. The IRFA discusses the costs and benefits of all the alternatives considered by the Council for this action. The IRFA also identifies and assesses the alternatives for the other proposed measures of Amendment 14. A copy of the IRFA is available (see **ADDRESSES**).

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 (PRA) unless that collection of information displays a currently valid OMB Control Number.

This rule contains a new collection-of-information requirement subject to the PRA—namely, the requirement that, when a vessel with a fish trap

endorsement has a breakdown that prevents the vessel from retrieving its traps, the owner or operator must notify the nearest NMFS Office of Enforcement and obtain authorization for another vessel to retrieve the traps. This requirement has been submitted to OMB for approval. The public reporting burden for this collection of information is estimated at 3 minutes 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 reporting burden estimate, or any other aspect of the collection of information, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: November 13, 1996.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.4, in paragraph (a)(2)(i), in the second sentence, the words ''moratorium on'' are removed; in paragraph (a)(2)(v), the last sentence is revised; in paragraph (g), the first sentence is revised; paragraphs (m) and (n) are revised; and in paragraph (p)(3)(i) the last, parenthetical sentence is revised to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(v) * * * See paragraph (m) of this section regarding a moratorium on commercial vessel permits for Gulf reef fish and paragraphs (m)(3) and (m)(5) of this section for limited exceptions to the earned income requirement for a permit.

* * * * *

(g) * * * A vessel permit or endorsement or dealer permit issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, as provided in paragraph (n) of this section for a fish trap endorsement, or as provided in paragraph (p) of this section for a red snapper endorsement. * * *

* * * * *

(m) *Moratorium on commercial vessel permits for Gulf reef fish.* This paragraph (m) is effective through December 31, 2000.

(1) No applications for additional commercial vessel permits for Gulf reef fish will be accepted. Existing vessel permits may be renewed, are subject to the restrictions on transfer or change in paragraphs (m)(2) through (m)(5) of this section, and are subject to the requirement for timely renewal in paragraph (m)(6) of this section.

(2) An owner of a permitted vessel may transfer the commercial vessel permit for Gulf reef fish to another vessel owned by the same entity.

(3) An owner whose earned income qualified for the commercial vessel permit for Gulf reef fish may transfer the permit to the owner of another vessel, or to the new owner when he or she transfers ownership of the permitted vessel. Such owner of another vessel, or new owner, may receive a commercial vessel permit for Gulf reef fish for his or her vessel, and renew it through April 15 following the first full calendar year after obtaining it, without meeting the earned income requirement of paragraph (a)(2)(v) of this section. However, to further renew the commercial vessel permit, the owner of the other vessel, or new owner, must meet the earned income requirement not later than the first full calendar year after the permit transfer takes place.

(4) An owner of a permitted vessel, the permit for which is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, may transfer the permit to the income qualifying operator when such operator becomes an owner of a vessel.

(5) An owner of a permitted vessel, the permit for which is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, may have the operator qualification on the permit removed, and renew it without such qualification through April 15 following the first full calendar year after removing it, without meeting the earned income requirement of paragraph (a)(2)(v) of this section. However, to further renew the commercial vessel permit, the owner must meet the earned income requirement not later than the first full calendar year after the operator qualification is removed. To have an operator qualification removed from a permit, the owner must return the original permit to the RD with an application for the changed permit.

(6) A commercial vessel permit for Gulf reef fish that is not renewed or that is revoked will not be reissued. A permit is considered to be not renewed when an application for renewal is not received by the RD within 1 year of the expiration date of the permit.

(n) *Endorsements for fish traps in the Gulf.* The provisions of this paragraph (n) are effective through February 7, 2007.

(1) Only those fish trap endorsements that are valid on February 7, 1997, may be renewed. Such endorsements are subject to the restrictions on transfer in paragraphs (n)(2) and (3) of this section and are subject to the requirement for timely renewal in paragraph (n)(5) of this section. Effective February 8, 2007, no fish trap endorsements are valid.

(2) Through February 7, 1999, a fish trap endorsement may be transferred only to a vessel that has a commercial permit for reef fish.

(3) The provisions of this paragraph (n)(3) are effective February 8, 1999. A fish trap endorsement is not transferable except as follows:

(i) An owner of a vessel with a fish trap endorsement may transfer the endorsement to another vessel owned by the same entity.

(ii) A fish trap endorsement is transferable upon a change of ownership of a permitted vessel with such endorsement from one to another of the following: Husband, wife, son, daughter, brother, sister, mother, or father.

(iii) When a change of ownership of a vessel with a fish trap endorsement is directly related to the disability or death of the owner, the RD may issue such endorsement, temporarily or permanently, with the commercial vessel permit for Gulf reef fish that is issued for the vessel under the new owner. Such new owner will be the person specified by the owner or his/her legal guardian, in the case of a disabled owner, or by the will or executor/administrator of the estate, in the case of a deceased owner. (Paragraphs (m)(3) and (m)(4) of this section apply for the transfer of a commercial vessel permit for Gulf reef fish upon disability or death of an owner.)

(iv) A fish trap endorsement may be transferred to a vessel with a commercial vessel permit for Gulf reef fish whose owner has a record of landings of reef fish from fish traps in the Gulf EEZ, as reported on fishing vessel logbooks received by the SRD from November 20, 1992, through February 6, 1994, and who was unable to obtain a fish trap endorsement for the vessel with the reported landings.

(4) The owner of a vessel that is to receive a transferred endorsement must return the originals of the endorsed commercial vessel permit for Gulf reef fish and the unendorsed permit to the RD with an application for a fish trap endorsement for his or her vessel.

(5) A fish trap endorsement that is not renewed or that is revoked will not be reissued. Such endorsement is considered to be not renewed when an application for renewal is not received by the RD within 1 year of the expiration date of the permit.

* * * * *

(p) * * *

(3) * * *

(i) * * * (Paragraphs (m)(3) and (m)(4) of this section apply for the transfer of a commercial vessel permit for Gulf reef fish upon disability or death of an owner.)

* * * * *

3. In § 622.31, in paragraph (a), the reference to ''§ 622.4'' is revised to read ''§ 622.4 or § 622.17'' and paragraph (c) is revised to read as follows:

§ 622.31 Prohibited gear and methods.

* * * * *

(c) *Fish traps.* (1) A fish trap may not be used in the South Atlantic EEZ.

(2) A fish trap may not be used or possessed in the Gulf EEZ west of 85°30' W. long. and, effective February 8, 2007, may not be used or possessed in the Gulf EEZ.

(3) A fish trap used other than where authorized in paragraph (c)(1) or (c)(2) of this section may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

* * * * *

4. In § 622.32, paragraph (b)(2)(iii) is revised to read as follows:

§ 622.32 Prohibited and limited harvest species.

* * * * *

(b) * * *

(2) * * *

(iii) Red drum and Nassau grouper may not be harvested or possessed in or from the Gulf EEZ. Such fish caught in the Gulf EEZ must be released immediately with a minimum of harm.

* * * * *

§ 622.37 [Amended]

5. In § 622.37(d)(4), the word ''Nassau,'' is removed.

6. In § 622.40, paragraph (a)(2) is revised to read as follows:

§ 622.40 Limitations on traps and pots.

(a) * * *

(2) *Gulf EEZ.* A fish trap in the Gulf EEZ may be pulled or tended only by a person (other than an authorized officer) aboard the vessel with the fish trap endorsement to fish such trap. If such vessel has a breakdown that prevents it from retrieving its traps, the owner or operator must immediately notify the nearest NMFS Office of Enforcement and must obtain authorization for another vessel to retrieve and land its traps. The request for such authorization must include the requested effective period for the retrieval and landing, the persons and vessel to be authorized to retrieve the traps, and the point of landing of the traps. Such authorization will be specific as to the effective period, authorized persons and vessel, and point of landing. Such authorization is valid solely for the removal of fish traps from the EEZ and for harvest of fish incidental to such removal.

* * * * *

7. In § 622.42, paragraph (a)(3) is revised to read as follows:

§ 622.42 Quotas.

* * * * *

(a) * * *

(3) Shallow-water groupers, that is, all groupers other than deep-water groupers, jewfish, and Nassau grouper, including scamp before the quota for shallow-water groupers is reached, combined—9.8 million lb (4.4 million kg), round weight.

* * * * *

§ 622.43 [Amended]

8. In § 622.43(b)(1), the words ''bartered, traded, or'' are removed.

9. In § 622.48, paragraph (d)(1) is revised to read as follows:

§ 622.48 Adjustment of management measures.

* * * * *

(d) * * *

(1) For a species or species group: Target date for rebuilding an overfished species, TAC, bag limits, size limits, vessel trip limits, closed seasons or areas, gear restrictions, quotas, and reopening of a fishery prematurely closed.

* * * * *

[FR Doc. 96–29500 Filed 11–22–96; 8:45 am]

BILLING CODE 3510–22–F

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50 CFR Part 622

[I.D. 111896A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery Off the Southern Atlantic States; Amendment 2

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

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the South Atlantic Fishery Management Council has submitted Amendment 2 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region for review, approval, and implementation by NMFS. Written comments are requested from the public.

DATES: Written comments must be received on or before January 24, 1997.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702.

Requests for copies of Amendment 2, which includes a final supplemental environmental impact statement, a regulatory impact review, and a social impact assessment should be sent to the South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, SC 29407–4699; Phone: (803) 571–4366; Fax: (803) 769–4520.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–570–5305.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any fishery management plan or amendment to the Secretary of Commerce for review and approval, disapproval, or partial disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an amendment, immediately publish a document in the Federal Register stating that the amendment is available for public review and comment.

Amendment 2 would: (1) Add brown and pink shrimp to the fishery management unit; (2) define overfishing for brown and pink shrimp; (3) define optimum yield for brown and pink shrimp; (4) require the use of certified bycatch reduction devices (BRDs) in all penaeid shrimp trawls in the exclusive economic zone in the South Atlantic; (5) establish a framework procedure for the Regional Administrator, Southeast Region, NMFS, to certify new BRDs, to decertify BRDs, and to specify and modify certification criteria and BRD testing requirements.

NMFS expects to publish proposed regulations that would implement Amendment 2 shortly for public review and comment.

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

Dated: November 19, 1996.

Gary C. Matlock,

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

[FR Doc. 96–30042 Filed 11–20–96; 2:33 pm]

BILLING CODE 3510–22–F

50 CFR Part 648

[I.D. 110796F]

RIN 0648–AF01

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Revised Measures for Amendment 5

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

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces that the Mid-Atlantic Fishery Management Council (Council) has revised and resubmitted for Secretarial approval three measures that were originally disapproved in the Secretarial review of Amendment 5 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP). NMFS is requesting comments from the public; copies of the revised measures for Amendment 5, and Amendment 5 itself, may be obtained from the Council (see **ADDRESSES**).

DATES: Comments on the revised measures of Amendment 5 that have been resubmitted must be received on or before January 24, 1997.

ADDRESSES: All comments should be sent to Dr. Andrew A. Rosenberg, Regional Administrator, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930-3799. Mark the outside of the envelope ''Comments on Resubmitted SMB 5''.

Copies of the revised measures that were disapproved earlier in Amendment 5, the environmental assessment, and the regulatory impact review are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19904-6790.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 508-281-9104.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each Regional Fishery Management Council submit any FMP or FMP amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson-Stevens Act also requires that the Secretary, upon receiving the FMP or FMP amendment, immediately make them available for public review and comment. The Secretary will consider the public comments in determining whether to approve the FMP or FMP amendment.

The revised measures would establish: (1) A revised overfishing definition for Atlantic mackerel that would restrict allowable biological catch (ABC) to a fishing mortality rate of $F_{0.1}$ and would cap ABC at 405,000 mt for 1 year, (2) a moratorium vessel permit for *Illex* squid with a 5-year sunset provision, and (3) a 5,000–lb (2.26–mt) incidental catch permit for *Illex* squid. The transmit date for this Amendment is November 6, 1996.

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

Dated: November 20, 1996.

Gary C. Matlock,

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

[FR Doc. 96–30043 Filed 11–20–96; 2:33 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 228
Monday, November 25, 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

Food and Consumer Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Form FCS–806, Claim for Reimbursement (National School Lunch, School/Breakfast and Special Milk Programs)

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the public to comment on the proposed Food and Consumer Service (FCS) use of Form FCS–806, Claim for Reimbursement, to collect data to determine the amount of reimbursement sponsors and other providers in the National School Lunch, School Breakfast and Special Milk Programs will be eligible to receive.

DATES: Comments on this notice must be received by January 24, 1997 to be assured of consideration.

ADDRESSES: Send comments to: Frank Duesing, Accounting Division, Financial Management, Food and Consumer Service, USDA, 3101 Park Center Drive, Room 415, Alexandria, Virginia 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Frank Duesing, (703) 305–2870.

SUPPLEMENTARY INFORMATION:

Title: Form FCS–806, Claim for Reimbursement, (National School Lunch, School Breakfast and Special Milk Programs).

OMB Number: 0584–0284.

Expiration Date of Approval: July 31, 1996.

Type of Request: Reinstatement, without change, of a previously approved information collection for which approval has expired.

Abstract: The National School Lunch, School Breakfast and Special Milk Programs' Claim for Reimbursement Form is used to collect meal and cost data from sponsors and other providers in order to determine the amount of reimbursement for meals or milk served. The completed forms are sent to the Food and Consumer Service's Regional Offices where they are entered into a computerized payment system. The payment system computes earned reimbursement.

Earned reimbursement in the National School Lunch, School Breakfast, and Special Milk Programs is based on performance, that is, an assigned rate per meal or half pint of milk served, with cost comparisons to free milk and severe need breakfasts. To fulfill the earned reimbursement requirements set forth in National School Lunch, School Breakfast, and Special Milk Program Regulations issued by the Secretary of Agriculture (7 CFR 210.8, 220.11, 215.10), the meal and cost data must be collected on form FCS–806. This form is an intrinsic part of the accounting system being used currently by the subject programs to ensure proper reimbursement as well as to facilitate adequate record keeping.

This request is being made to extend the current information collection for an additional three years. Current methods are the only practical means of collecting this information considering the resources of form users.

The information collected is used by FCS to manage, plan, evaluate, and account for Federal Government resources. The reports and records are required to ensure the proper and judicious use of public funds.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours per response.

Respondents: The respondents are National School Lunch, School Breakfast and Special Milk Programs sponsors and other providers.

Estimated Number of Respondents: 1200.

Estimated Number of Responses per Respondent: 9.

Estimated Total Annual Burden on Respondents: 5,400 hours.

Copies of this information collection can be obtained from Cato Watson, Agency Information Collection Coordinator, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302.

Dated: November 12, 1996.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 96–30050 Filed 11–22–96; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Cost Study for Single-Family Value-in Place.

Form Number(s): C–702(BS), C–702(CB).

Agency Approval Number: None.

Type of Request: New Collection.

Burden: 1,520 hours.

Number of Respondents: 7,600.

Avg Hours of Response: 12 minutes.

Needs and Uses: The Census Bureau produces a monthly data series on the value of private single-family residential construction put in place. Estimates for the series are derived from the Bureau's Survey of Construction (SOC) by using a mathematical model and construction progress patterns. The application of the mathematical model requires us to subtract out nonconstruction costs from sales price or contract value that we collect for the SOC and add construction costs not normally

included in the contract value. The factors representing these corrections to the cost need to be updated in order to bring them up to date with today's housing market and recent innovations in construction. The factors currently in use were derived from two studies conducted in the early 1980's. The Census Bureau will conduct a special one-time study to re-estimate these factors based on current single-family construction data. In the study a subset of the SOC respondents for single-family housing completions will be asked to provide the Census Bureau with up to nine construction cost items. The Census Bureau will use the information collected in the study to revise the models and factors that will be applied to the sales price and contract price for private single-family residential construction.

Affected Public: Businesses or other for-profit organizations.

Frequency: One time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–29964 Filed 11–22–96; 8:45 am]

BILLING CODE 3510–07–M

Bureau of the Census

1997 Business Expenditures Survey

ACTION: Proposed agency information collection activity; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 24, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Sheldon Ziman, Bureau of the Census, AGFS, IMALL 300–19, Washington, DC (301)763–7596.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to conduct the 1997 Business Expenditures Survey (BES), previously known as the Assets and Expenditures Survey (AES), as part of the 1997 Economic Censuses. This information collection will supplement basic economic statistics produced by the 1997 Censuses of Wholesale Trade, Retail Trade, and Service Industries, and is the sole source of detailed comprehensive statistics on business operating expenses of domestic merchant wholesale, retail, and service businesses. Data will be collected only from employer businesses included in the business current sample surveys (BSR–97) database. This information will be used by the Bureau of Economic Analysis to benchmark national economic accounts such as the input-output account, and to derive economic measures of value produced, such as value added. Other government agencies, private industry, and academia also will use these data for policy making, market and economic research, and planning. Detailed inquiries on fixed assets and capital expenditures, included in the 1992 survey, have been dropped.

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect the data. These forms will initially supplement those mailed to respondents included in the Annual Surveys of Merchant Wholesale, Retail Trade, and Service Industries. The latter surveys provide data on sales, purchases, and inventories needed to supplement the operating expenses data required for the computation of measures of value produced. Since the main Economic Census due date of February 12 would likely pose undue respondent burden for the types of inquiries to be asked, the survey's due date will be March 12. Reasonable time extensions will be offered to further reduce this burden. Reminder letters and telephone calls will be directed to those not responding by the extension or due date.

III. Data

OMB Number: [not available]

Form Numbers—9 forms will be used:

1997 BES form	Supplement to annual survey—
B–451(S) ...	Wholesale alpha form B–451.
B–450(S) ...	Wholesale E.I. form B–450.
B–151(S) ...	Retail E.I. form B–151.
B–151A(S)	Retail E.I. form B–151A.
	Retail E.I. form B–151D.
B–151D(S)	Retail alpha form B–153.
	Retail alpha form B–153D.
B–153(S)	
B–153D(S)	Service alpha (A) and E.I. (E) reporting units covered in the B–500 series).
B–500(S1)	
B–500(S2)	

Note: Alpha reporting units cover all trade-specific locations of companies with multiple Employer Identification (E.I.) numbers in a particular trade. All other reporting units are covered under trade-specific company E.I. numbers.

Type of Review: Regular Review.

Affected Public: Large and small businesses, other for-profit organizations, and non-profit institutions.

Estimated Number of Respondents: 60,100 (all employers). This reflects the addition of part of the real estate industry to the scope of the survey, consistent with the Service Annual Survey.

Estimated Time Per Response: The average for all respondents is 1.07 hours. For alpha companies (generally large multiunits), the range is .7 to 4.5 hours, averaging 1.7 hours. For E.I. companies (generally smaller), the range is .3 to 3.8 hours, averaging 1.0 hours.

Estimated Total Burden Hours: The total annual burden for fiscal year 1998 is 64,296 hours. The decrease from the 1992 survey reflects the elimination of inquiries covering fixed assets and detailed capital expenditures.

Estimated Total Cost: Included in the total cost of the 1997 Economic Census, estimated to be $218 million.

Respondents' Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 131, 193, 195, and 224.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: November 18, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–29962 Filed 11–22–96; 8:45 a.m.]

BILLING CODE 3510–07–P

The 1997 Study of Public Attitudes Toward Administrative Records Use (SPARU)

ACTION: Proposed agency information collection activity; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 24, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) should be directed to Randall Neugebauer, Bureau of the Census, Room 3587–3, Washington, DC 20233–7100, (301) 457–3952.

SUPPLEMENTARY INFORMATION:

I. Abstract

In the design for the 2000 census, the Census Bureau plans to expand the use of administrative records. Administrative records may be used to estimate characteristics of non-responding households, supplement missing data for respondents that return incomplete forms, and to help improve estimation of the number of persons missed within households. Collection of Social Security numbers would assist efforts to accurately match administrative records information. The purpose of the 1997 SPARU is to study the public's attitudes regarding the Census Bureau's planned use of administrative records in the 2000 Census and a proposal to collect the Social Security number of each household member in the decennial census. The 1997 SPARU will be a repeat of a survey conducted during the summer of 1996, known as the 1996 SPARU (0607–0822). This research, in conjunction with results from the 1996 SPARU and the first attitudinal survey conducted in 1995, will enable the Census Bureau to assess change in the public's attitudes.

Results of the 1996 SPARU will be released in December 1996. The estimated final response rate is 65 percent with 1,210 completed interviews. Midway through the interviewing period, it was reported that completed interviews averaged less than 15 minutes. The size of the questionnaire is expected to be about the same for the 1997 SPARU. To maintain continuity, the content of the questionnaire will be mostly the same. Two developments, however, will cause some change to the content. As determined by Census Bureau experts, the contractor, and outside expert consultation, the questions yielding insignificant or meaningless results will be dropped. The Census Bureau also will for the first time gauge the public's understanding of and opinion on ''within household privacy.'' The Census Bureau strictly abides by its confidentiality laws at the household level. However, when the Census Bureau must re-contact a household to get more complete responses, the census taker may provide information to a member of the household other than the initial respondent. The 1997 SPARU will probe the public's attitude regarding this aspect of ''privacy principles'' and the Census Bureau's past practices.

II. Method of Collection

A contractor will conduct the survey with telephone interviewing using an automated survey instrument and a random digit dialing sampling design.

III. Data

OMB Number: 0607–0822.

Form Numbers: The automated survey instrument will not have a form number.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,200.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 300.

Estimated Total Annual Cost: $140,099.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 United States Code, Section 193.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 18, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–29963 Filed 11–22–96; 8:45 am]

BILLING CODE 3510–07–M

Economics and Statistics Administration

2000 Census Advisory Committee, Public Meeting

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of Public Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463, as amended by P.L. 94–409, P.L. 96–523, and P.L. 97–375), we are giving notice of a meeting of the 2000 Census Advisory Committee. The meeting will convene on Wednesday,

December 11, 1996, at 8:30 a.m. at the Embassy Suites Hotel, 1250 22nd Street, NW, Washington, DC 20037, and adjourn on Thursday, December 12, at 4:15 p.m.

The Advisory Committee is composed of a Chair, Vice Chair, and up to thirty-five member organizations, all appointed by the Secretary of Commerce. The Advisory Committee will consider the goals of Census 2000 and user needs for information provided by that census, and provide a perspective from the standpoint of the outside user community about how operational planning and implementation methods proposed for Census 2000 will realize those goals and satisfy those needs. The Advisory Committee shall consider all aspects of the conduct of the 2000 census of population and housing, and shall make recommendations for improving that census.

DATES: On Wednesday, December 11, 1996, the meeting will begin at 8:30 a.m. and adjourn for the day at 4:30 p.m. On Thursday, December 12, 1996, the meeting will begin at 8:30 a.m. and adjourn at 4:15 p.m.

ADDRESSES: The meeting will take place at the Embassy Suites Hotel, 1250 22nd Street, NW, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT:

Anyone wishing additional information about this meeting, or who wishes to submit written statements or questions, may contact Maxine Anderson-Brown, Committee Liaison Officer, Department of Commerce, Bureau of the Census, Room 3039. Federal Building 3, Washington, D.C. 20233, telephone 301–457–2308.

SUPPLEMENTARY INFORMATION: A brief period will be set aside for public comment and questions. However, individuals with extensive questions or statements for the record must submit them in writing to the Commerce Department official named above at least three working days prior to the meeting.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Maney; her telephone number is 301–457–2308.

Dated: November 19, 1996.

Everett M. Ehrlich,

Under Secretary for Economic Affairs Economics and Statistics Administration.

[FR Doc. 96–30017 Filed 11–22–96; 8:45 am]

BILLING CODE 3510–EA–M

International Trade Administration

[A–533–809]

Certain Forged Stainless Steel Flanges From India; Preliminary Results of New Shipper Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of new shipper antidumping duty administrative reviews.

SUMMARY: In response to requests by two manufacturer/exporters, Isibars Ltd. (Isibars) and Patheja Forgings and Auto Parts Ltd. (Patheja), the Department of Commerce (the Department) is conducting new shipper administrative reviews of the antidumping duty order on certain forged stainless steel flanges (flanges) from India. The review covers sales during the period September 1, 1995 through February 29, 1996. We have preliminarily determined that Isibars sold subject merchandise at not less than normal value (NV) during the period of review (POR), and that Patheja has a dumping margin of 4.80%. Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: November 25, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or John Kugelman, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–2704 or 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

Isibars, by letters dated February 29, April 12, and April 22, 1996, and Patheja, by a letter dated February 28, 1996, each requested a new shipper review pursuant to section 751(a)(2)(B) of the Act and section 353.22(h) of the Department's interim regulations, which govern determinations of antidumping duties for new shippers. These provisions state that, among other requirements, a producer or exporter requesting a new shipper review must include with its request the date on which the merchandise was first entered, or withdrawn from warehouse, for consumption, or, if it cannot certify as to the date of first entry, the date on which it first shipped the merchandise for export to the United States (interim regulations, section 353.22(h)(2)(i)).

Neither respondent was able to provide the shipment date at the time of their requests for review because the shipments had not yet occurred. However, both companies did certify that the shipments were imminent. Based on the information which the respondents provided in their requests we determined that the requirements cited above were adequately fulfilled. The respondents later provided the shipment dates in their questionnaire responses.

On May 6, 1996, the Department published a notice of initiation these new shipper reviews of Isibars and Patheja (61 FR 20223). The Department is now conducting these reviews in accordance with section 751 of the Act and section 353.22 of its interim regulations.

Scope of the Reviews

The products covered by this order are certain forged stainless steel flanges both finished and not finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld neck, used for butt-weld line connection; threaded, used for threaded line connections; slip-on and lap joint, used with stub-ends/butt-weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above-described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS

subheadings are provided for convenience and customs purposes. The written description of the scope of this order remains dispositive.

The reviews cover two Indian manufacturers/exporters, Isibars and Patheja, and the period September 1, 1995 through February 29, 1996.

Export Price (EP)

We used EP, in accordance with section 772(a) of the Act, based on the price from the respondents because the sales were made prior to importation into the United States, and constructed export price was not otherwise indicated.

We based date of sale on the date of the purchase order, because respondents have provided clear evidence that sale terms were agreed to in writing in the purchase order. Moreover, because respondents produced the subject merchandise to order, renegotiation of material terms was unlikely.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses, which were comprised of customs brokerage and handling expenses, home market inland freight, international freight, and insurance. No other adjustments were claimed or allowed.

Normal Value (NV)

A. Viability

For Isibars, in order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Isibars—volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because Isibars—aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV.

Patheja had no domestic or third country sales of flanges during the POR. Therefore, in accordance with section 773(a)(4) of the Act, we used constructed value for comparison with EP.

B. Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, at 829–831, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Isibars did not request an adjustment for LOT. To ensure that no such adjustment was necessary, we requested and examined information on the selling activities associated with each phase of marketing in each of Isibars's markets; since there were no differences in such selling activities in either market, and since all sales in both markets were at a single LOT, we compared sales at this sole LOT.

C. Constructed Value (CV)

For Patheja, in accordance with section 773(e) of the Act, we calculated CV based on Patheja's cost of materials and fabrication employed in producing the subject merchandise, selling, general and administrative expenses (SG&A) incurred in connection with the production and sale of the foreign like product, credit expenses on U.S. sales, and U.S. packing costs. We used the costs of materials, fabrication, SG&A, and profit as reported in the CV portion of Patheja's questionnaire response. We based Patheja's profits on the amounts it realized in connection with the production and sale in India of merchandise in the same general category of products as the subject merchandise, in accordance with Section 773(e)(1)(B) of the Act. Since payment had not been made, in calculating credit expenses on Patheja's U.S. sale, we used the number of days between shipment from the factory and the date of the supplemental questionnaire response, the latest date for which we have information on the record concerning the sale in question. We used the U.S. packing costs reported in the U.S. sales portion of Patheja's questionnaire response.

D. Price-to-Price Comparisons

For Isibars, for price-to-price comparisons, we based NV on the prices at which the foreign like products were first sold for consumption in the home market to an unaffiliated party, in the usual commercial quantities, in the ordinary course of trade, and at the same level of trade as the EP, in accordance with section 773(a)(1)(B) of the Act. Isibars made all home market and EP sales of subject merchandise at the same level of trade.

Pursuant to section 777A(d)(2) of the Act, for Isibars we compared the EPs of individual U.S. transactions to the average prices of contemporaneous sales of the foreign like product. We calculated NV based on FOB factory as reported. There were no packing costs on home market sales. Prices were reported net of value-added taxes (VAT) and, therefore, no adjustment for VAT was necessary. We made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses. We added U.S. packing expenses to Isibars' home market prices. No other adjustments were claimed or allowed.

Preliminary Results of the Reviews

As a result of our comparison of EP to NV, we preliminarily determine that the following weighted-average dumping margins exist:

Manufacturer/ exporter	Period	Margin percent
Isibars	9/1/95–2/29/96	0.00
Patheja	9/1/95–2/29/96	4.80

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 34 days after the date of publication, or the first workday thereafter. Case briefs from interested parties may be submitted not later than 20 days after the date of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 27 days after the date of publication. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. The Department will issue the final results of the new shipper administrative reviews, including the results of its analysis of issues raised in any case or rebuttal briefs, within 90 days of issuance of these preliminary results.

Upon completion of these new shipper reviews, the Department will issue appraisement instructions directly to the Customs Service. The results of these reviews shall be the basis for the assessment of antidumping duties on entries of merchandise sold during the POR and covered by the determination and for future deposits of estimated duties.

Furthermore, upon completion of these reviews, the posting of a bond or security in lieu of a cash deposit, pursuant to section 751(a)(2)(B)(iii) of the Act and section 353.22(h)(4) of the Department's interim regulations, will no longer be permitted and, should the final results yield a margin of dumping, a cash deposit will be required for each entry of the merchandise. The following deposit requirements will be effective upon publication of the final results of these new shipper antidumping duty administrative reviews for all shipments of flanges from India manufactured by Isibars or Patheja, entered, or withdrawn

from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed companies will be those established in the final results of these new shipper administrative reviews; (2) for exporters not covered in these reviews, but covered in previous reviews or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, previous reviews, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 162.14 percent, the all others rate established in the LTFV investigation (59 FR 5994, February 9, 1994).

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These new shipper administrative reviews and this notice are in accordance with section 751(a)(2)(B) of the Act (19 U.S.C. 1675(a)(2)(B)) and 19 CFR 353.22(h).

Dated: November 1, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–30044 Filed 11–22–96; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Institute of Standards and Technology (NIST) will meet Tuesday, December 10, 1996, from 8:30 a.m. to 5:00 p.m., and on Wednesday, December 11, 1996, from 8:30 a.m. to 10:00 a.m. The Visiting Committee on Advanced Technology is composed of fifteen members appointed by the Director of the NIST who are eminent in such fields as business, research new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. On December 10, 1996, the agenda will include an update on NIST programs; report on NIST facilities program, report on Applied Technology Program Focused Program: Materials Processing for Heavy Manufacturing, presentation on introduction of advanced structural ceramics, presentation on future of NIST, discussion of the Institute budget; and, on December 11, 1996, laboratory tour of NIST. The discussion on the Institute budget scheduled to begin at 4:15 p.m. and end at 5:00 p.m., on December 10, 1996, will be closed.

DATES: The meeting will convene December 10, 1996, at 8:30 a.m. and will adjourn at 10:00 a.m. on December 11, 1996.

ADDRESSES: The meeting will be held in the Employees Lounge (seating capacity 80, includes 38 participants), Administration Building, at NIST, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Chris E. Kuyatt, Visiting Committee Executive Director, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–6090.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on August 15, 1996, that portions of the meeting of the Visiting Committee on Advanced Technology which involve discussion of proposed funding of the Manufacturing Extension Partnership and the Applied Technology Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of the staffing issues of management and other positions at NIST may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: November 19, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 96–30051 Filed 11–22–96; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 111496A]

Marine Mammals; Scientific Research Permit (P623)

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. D. Ann Pabst, University of North Carolina Wilmington, Biological Sciences, 601 South College Road, Wilmington, NC 28403–3297, has applied in due form for a permit to take humpback whales (*Megaptera novaeangliae*), North Atlantic right whales (*Eubalaena glacialis*), fin whales (*Balaenoptera physalus*), Atlantic bottlenose dolphins (*Tursiops truncatus*), harbor porpoise (*Phocoena phocoena*), beaked whales (*Mesplodon* sp.), and pelagic dolphins (*Stenella* sp.) for purposes of scientific research.

DATES: Written comments must be received on or before December 26, 1996.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9250); and

Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (813/893–3141).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-

West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the Federal Register, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23). The applicant seeks authorization to harass during photo-identification studies and aerial and vessel surveys, up to 1,200 humpback whales (*Megaptera novaeangliae*) annually over a 5-year period. In addition, the following non-target species may be harassed during the course of the research: North Atlantic right whales (*Eubalaena glacialis*), fin whales (*Balaenoptera physalus*), Atlantic bottlenose dolphins (*Tursiops truncatus*), harbor porpoise (*Phocoena phocoena*), beaked whales (*Mesplodon* sp.), and pelagic dolphins (*Stenella* sp.).

Dated: November 14, 1996.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–29983 Filed 11–22–96; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

November 19, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing import limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The import restraint limits for textile products, produced or manufactured in El Salvador and exported during the period January 1, 1997 through December 31, 1997 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC). The Guaranteed Access Levels are being established pursuant to Memoranda of Understanding (MOUs) dated September 26, 1994 and July 6, 1995 between the Governments of the United States and El Salvador and July 18, 1996 for Category 342/642.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits and guaranteed access levels for 1997.

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). Information regarding the 1997 CORRELATION will be published in the Federal Register at a later date.

Requirements for participation in the Special Access Program are available in Federal Register notice 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; 60 FR 2740, published on January 11, 1995, 61 FR 49439, published on September 20, 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 ATC, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 19, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1997, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in El Salvador and exported during the period beginning on January 1, 1997 and extending through December 31, 1997, in excess of the following restraint limits:

Category	Twelve-month limit
340/640	1,024,895 dozen.
342/642	337,500 dozen.
352/652	7,000,000 dozen.

Imports charged to these category limits for the period January 1, 1996 through December 31, 1996 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

Pursuant to Memoranda of Understanding dated September 26, 1994 and July 6, 1995 between the Governments of the United States and El Salvador; and under the terms of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987), 54 FR 50425 (December 6, 1989) and 61 FR 49439 (September 20, 1996), effective on January 1, 1997, guaranteed access levels are being established for properly certified textile products assembled in El Salvador from fabric formed and cut in the United States in the following categories which are re-exported to the United States from El Salvador during the period January 1, 1997 through December 31, 1997:

Category	Guaranteed Access Level
340/640	1,000,000 dozen.
342/642	400,000 dozen.
352/652	30,000,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of January 6, 1995, shall be denied entry unless the Government of El Salvador authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–30049 Filed 11–22–96; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Honduras

November 19, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing import limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The import restraint limits for textile products, produced or manufactured in Honduras and exported during the period January 1, 1997 through December 31, 1997, are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC). The Guaranteed Access Levels are being established pursuant to a Memorandum of Understanding (MOU) dated September 15, 1995 between the Governments of the United States and Honduras.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1997 limits and guaranteed access levels.

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). Information regarding the 1997 CORRELATION will be published in the Federal Register at a later date.

Requirements for participation in the Special Access Program are available in Federal Register notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; 61 FR 38236, published on July 23, 1996, and 61 FR 49439, published on September 20, 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 MOU, 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.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 19, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1997, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Honduras and exported during the period beginning on January 1, 1997 and extending through December 31, 1997, in excess of the following restraint limits:

Category	Twelve-month limit
352/652	10,674,200 dozen of which not more than 7,865,200 dozen shall be in Categories 352–K/652–K [1].
435	14,982 dozen.

[1] Category 352–K: only HTS numbers 6107.11.0010, 6107.11.0020, 6108.19.9010, 6108.21.0010, 6108.21.0020, 6108.91.0005, 6108.91.0015, 6108.91.0025, 6109.10.0005, 6109.10.0007, 6109.10.0009, 6109.10.0037; Category 652–K: 6107.12.0010, 6107.12.0020, 6108.11.0010, 6108.11.0020, 6108.22.9020, 6108.22.9030, 6108.92.0005, 6108.92.0015, 6108.92.0025, 6109.90.1047 and 6109.90.1075.

Imports charged to these category limits for the period January 1, 1996 through December 31, 1996 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

Additionally, pursuant to the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987), 54 FR 50425 (December 6, 1989), 61 FR 49439 (September 20, 1996), effective on January 1, 1997, guaranteed access levels are being established for properly certified textile products assembled in Honduras from fabric formed and cut in the United States in textile products in the following categories which are re-exported to the United States from Honduras during the period January 1, 1997 through December 31, 1997 in the following amounts:

Category	Guaranteed Access Level
352/652	50,000,000 dozen.
435	35,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of July 18, 1996 shall be denied entry unless the Government of the Republic of Honduras authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs

exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements

[FR Doc.96–30048 Filed 11–22–96; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits and Amendment of Quota and Visa Requirements for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

November 19, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits and amending quota and visa requirements.

EFFECTIVE DATE: December 1, 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) 927–6704. 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.

In a Memorandum of Understanding (MOU) dated November 1, 1996, the Governments of the United States and Indonesia agreed that goods classified in HTS numbers 5516.14.0005, 5516.14.0025, 5516.14.0085 (Category 611), 5408.24.9010, 5408.24.9040 (Category 618); 5408.34.9085 and 5516.24.0085 (Category 629) which are produced or manufactured in Indonesia and imported on or after December 1, 1996 will no longer be subject to quota and visa requirements. The new designations for Categories 611, 618 and 629 will be 611–O, 618–O and 629–O, respectively.

Also, the two governments agreed to increase the 1996 limits for Categories 336/636 and 342/642 for special swing, reducing the limit for Category 618–O to account for the increase.

Effective on December 1, 1996, goods in Categories 611, 618 and 629, produced or manufactured in Indonesia and exported from Indonesia on or after December 1, 1996 must be accompanied by a 611–O, 618–O or 629–O part-category visa. Goods currently visaed as 625/626/627/628/629 which are exported from Indonesia on or after December 1, 1996 shall be visaed as merged Categories 625/626/627/628/629–O, or the correct category or correct part-category corresponding to the actual shipment. There will be a grace period from December 1, 1996 through December 31, 1996 during which goods exported from Indonesia in Categories 611, 618 and 629 may be accompanied by the whole or new part-category visa. During the grace period merged Categories 625/626/627/628/629 may be accompanied by the whole merged category, the new merged part-category visa, or the correct whole or part category visa corresponding to the actual shipment.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to adjust limits and amend export quota and visa requirements.

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 52 FR 20134, published on May 29, 1987; and 60 FR 62410, 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, the Uruguay Round Agreement on Textiles and Clothing and the November 1, 1996 MOU, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 19, 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 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on December 1, 1996, goods classified in HTS numbers 5516.14.0005, 5516.14.0025, 5516.14.0085 (Category 611), 5408.24.9010, 5408.24.9040 (Category 618); 5408.34.9085 and 5516.24.0085 (Category 629) which are produced or manufactured in Indonesia and imported on or after December 1, 1996 will no longer be subject to quota and visa requirements, pursuant to a Memorandum of Understanding dated November 1, 1996 between the Governments of the United States and Indonesia and under the terms of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing. The new designations for Categories 611, 618 and 629 will be 611–O [1], 618–O [2] and 629–O [3], respectively.

Also effective on December 1, 1996, you are directed to adjust the current limits for the following categories:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
336/636	615,844 dozen.
342/642	384,088 dozen.
618–O	1,113,422 square meters.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

Effective on December 1, 1996, you are directed to amend further, the directive dated May 19, 1987, to require a part-category visa for Categories 611–O, 618–O and 629–O, produced or manufactured in Indonesia and exported from Indonesia on or after December 1, 1996. Goods currently visaed as 625/626/627/628/629 which are exported from Indonesia on or after December 1, 1996 shall be visaed as merged Categories 625/626/627/628/629–O, or the correct category or correct part-category corresponding to the actual shipment. There will be a grace period from December 1, 1996 through December 31, 1996 during which goods exported from Indonesia in Categories 611, 618 and 629 may be accompanied by the whole or new part-category visa. During the grace period goods in merged Categories 625/626/627/628/629 may be accompanied by the whole merged category, the new merged part-category visa, or the correct whole or part category visa corresponding to the actual shipment.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs

[1] Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085.

[2] Category 618–O: all HTS numbers except 5408.24.9010 and 5408.24.9040.

[3] Category 629–O: all HTS numbers except 5408.34.9085 and 5516.24.0085.

exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–30047 Filed 11–22–96; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

[CFDA No. 84.116N]

Fund for the Improvement of Postsecondary Education—Special Focus Competition (Invitational Priority: Institutional Cooperation and Student Mobility in Postsecondary Education between the United States, Canada and Mexico); Notice Inviting Application for New Awards for Fiscal Year (FY) 1997

PURPOSE OF PROGRAM: To provide grants to improve postsecondary education opportunities by focusing on problem areas or improvement approaches in postsecondary education.

SUPPLEMENTARY INFORMATION: This program is a Special Focus Competition pursuant to 34 CFR 630.11(b)(1) to support projects addressing a particular problem area or improvement approach in postsecondary education. The competition also includes an invitational priority to encourage proposals designed to support the formation of educational consortia of American, Canadian and Mexican institutions to encourage cooperation in the coordination of curricula, the exchange of students and the opening of educational opportunities throughout North America.

The invitational priority is issued in cooperation with Canada and Mexico. Canadian and Mexican institutions participating in any consortium proposal responding to the invitational priority may apply, respectively, to Human Resources Development Canada and the Mexican Bureau of University Development for additional funding under separate Canadian and Mexican competitions.

Eligible Applicants: Institutions of higher education or combinations of such institutions and other public and private nonprofit educational institutions and agencies.

Deadline for Transmittal of Applications: March 14, 1997.

Deadline for Intergovernmental Review: May 13, 1997.

Applications Available: December 2, 1996.

Available Funds: $1,150,000.

Estimated Range of Awards: $100,000–$150,000, for three years.

Estimated Average Size of Awards: $102,000, for three years.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75 (except as noted in 34 CFR 630.4(a)(2)), 77, 79, 80, 82, 85, and 86; and (b) the regulations for this program in 34 CFR Part 630.

Priorities

Invitational Priorities

Under 34 CFR 75.105(c)(1) and 34 CFR 630.11(b)(1), the Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Invitational Priority: Projects that support consortia of institutions of higher education that promote institutional cooperation and student mobility between the United States, Mexico and Canada.

Selection Criteria

In evaluating applications for grants under this program competition, the Secretary uses the following selection criteria chosen from those listed in 34 CFR 630.32:

(a) *Significance for Postsecondary Education.* The Secretary reviews each proposed project for its significance in improving postsecondary education by determining the extent to which it would—

(1) Achieve the purposes of the program competition, as referenced in § 630.11(b)(1), by addressing a particular problem area or improvement approach in postsecondary education;

(2) Address an important problem or need;

(3) Represent an improvement upon, or important departure from, existing practice;

(4) Involve learner-centered improvements;

(5) Achieve far-reaching impact through improvements that will be useful in a variety of ways and in a variety of settings; and

(6) Increase the cost-effectiveness of services.

(b) *Feasibility.* The Secretary reviews each proposed project for its feasibility by determining the extent to which—

(1) The proposed project represents an appropriate response to the problem or need addressed;

(2) The applicant is capable of carrying out the proposed project, as evidenced by, for example—

(i) The applicant's understanding of the problem or need;

(ii) The quality of the project design, including objectives, approaches, and evaluation plan;

(iii) The adequacy of resources, including money, personnel, facilities, equipment, and supplies;

(iv) The qualifications of key personnel who would conduct the project; and

(v) The applicant's relevant prior experience;

(3) The applicant and any other participating organizations are committed to the success of the proposed project, as evidenced by, for example—

(i) Contribution of resources by the applicant and by participating organizations;

(ii) Their prior work in the area; and

(iii) The potential for continuation of the proposed project beyond the period of funding (unless the project would be self-terminating); and

(4) The proposed project demonstrates potential for dissemination to or adaptation by other organizations, and shows evidence of interest by potential users.

(c) *Appropriateness of funding projects.* The Secretary reviews each application to determine whether support of the proposed project by the Secretary is appropriate in terms of availability of other funding sources for the proposed activities.

In accordance with 34 CFR 630.32 the Secretary announces the methods that will be used in applying the selection criteria.

The Secretary gives equal weight to the selection criteria on significance, feasibility, and appropriateness. Within each of these criteria, the Secretary gives equal weight to each of the criteria listed above. In applying the criteria, the Secretary first analyzes an application in terms of each individual criterion. The Secretary then bases the final judgement of an application on an overall assessment of the degree to which the applicant addresses all selection criteria.

For Applications or Information Contact: Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 7th and D Streets, S.W., Room 3100, ROB–3, Washington, D.C. 20202–5175. Telephone: (202) 708–5750 between the hours of 8 a.m. and 5 p.m., Eastern Standard Time, Monday through Friday. Individuals may also request applications by submitting the name of

the competition, their name, and postal mailing address to the e-mail address (FIPSE@ED.GOV). By January 15, 1997, individuals will also be able to obtain the application text from the Internet address (http://www.ed.gov/prog__info/FIPSE/). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server (at GOPHER://gcs.ED.GOV/); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 20 U.S.C. 1135–1135a–3.

Dated: November 18, 1996.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 96–30026 Filed 11–22–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Research Financial Assistance Program Notice 97–04; Natural and Accelerated Bioremediation Research Program

AGENCY: Office of Energy Research, DOE.

ACTION: Notice inviting research grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research (ER), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for research grants in the Natural and Accelerated Bioremediation Research (NABIR) Program. The NABIR Program is made up of the following scientific research elements: Acceleration; Assessment; Biogeochemical Dynamics; Biomolecular Science and Engineering; Biotransformation and Biodegradation; Community Dynamics and Microbial Ecology, and System Engineering, Integration, Prediction, and Optimization. The NABIR program also includes a social-legal element called Bioremediation and its Social Implications and Concerns (BASIC). Grant applications are being solicited in each of the first six scientific research elements, as well as in the BASIC element, but not in the System Engineering, Integration, Prediction, and Optimization element.

DATES: Applicants are encouraged (but not required) to submit a preliminary application for programmatic review. Early submission of preliminary applications is encouraged, to allow time for meaningful dialogue. A brief preliminary application should consist of two to three pages of narrative describing the research objectives and methods of accomplishment together with a brief summary of the principal investigator's publication and research background; only one copy is required. The deadline for receipt of formal applications is 4:30 p.m., E.S.T., January 30, 1997, to be accepted for merit review and to permit timely consideration for award in fiscal year 1997. An original and seven copies of the application must be submitted; however, applicants are requested not to submit multiple applications using more than one delivery or mail service.

ADDRESSES: If submitting a preliminary application, referencing Program Notice 97–04, it should be sent e-mail to john.houghton@oer.doe.gov. Formal applications referencing Program Notice 97–04 on the cover page must be forwarded to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 97–04. This address must also be used when submitting applications by U.S. Postal Service Express Mail or any other commercial overnight delivery service, or when hand-carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. John Houghton, Environmental Sciences Division, ER–74, Office of Health and Environmental Research, Office of Energy Research, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–8288, e-mail john.houghton@oer.doe.gov, fax (301) 903–8519.

SUPPLEMENTARY INFORMATION: The mission of the NABIR Program is to provide the scientific understanding needed to use natural processes and to develop new methods to accelerate those processes for the bioremediation of contaminated soils, sediments, and groundwater at DOE facilities. The program will be implemented through seven interrelated scientific research elements (Acceleration, Assessment, Biogeochemical Dynamics, Biomolecular Science and Engineering, Biotransformation and Biodegradation, Community Dynamics and Microbial Ecology, and System Engineering, Integration, Prediction, and Optimization); and a social and legal element called Bioremediation and its Social Implications and Concerns (BASIC). A document entitled Natural and Accelerated Bioremediation Research Program Plan (DOE/ER–0659T) contains an initial planning description of the NABIR Program and each of the science elements. It is available via the Internet using the following web site address: http://www.er.doe.gov/production/oher/nabir/cover.html. The NABIR Program Plan is also available from the Office of Scientific and Technical Information, P.O. Box 62, Oak Ridge, TN 37831 (DOE and DOE grantees only) and the U.S. Department of Commerce, Technology Administration, National Technical Information Service, Springfield, VA 22161, (703) 487–4650 (public source). Additional information about NABIR, such as references to infrastructure that could be available to the research community, can be accessed from the NABIR Homepage: http://www.lbl.gov/NABIR/. Each scientific research element is directed by a program manager from OHER, who is responsible for providing support and overall direction for the element, including determining the relevance of the proposed research to the goals and objectives of the program element to the NABIR and other DOE programs. The NABIR program also has Science Team Leaders, selected through a previous peer review process, who will provide scientific leadership and coordination to the community of NABIR investigators.

Program Focus

The NABIR Program supports long-term, hypothesis-driven research directed at specific topics that will provide the understanding necessary to develop effective new technologies for DOE site cleanup. This research will help determine the future viability of bioremediation technologies at the DOE sites. The NABIR Program will not support research to evaluate the risk to humans or to the environment. Although the program is directed at specific goals, it supports research that is more fundamental in nature than demonstration projects.

The initial theme for the NABIR Program will be an emphasis on field-scale research and metal and radionuclide contamination, specifically on the metals and radionuclides associated with weapons production. However, the research program will support laboratory, theoretical, modeling, and other non-field research

projects, if they fill important gaps that would be necessary to complete understanding for field-scale applications. The study of real problems might iterate between, for example, the laboratory and the field. Investigators without access to laboratories licensed to work with radionuclides may propose research with non-radioactive surrogates of radionuclides, or collaboration with a licensed laboratory. The NABIR program will initially emphasize the bioremediation of metals and radionuclides in the subsurface below the root zone, including both thick vadose and saturated zones. Typically, the bioremediation of metals and radionuclides involves, but is not limited to, mobilization and immobilization scenarios. Consideration of organic contaminants, such as solvents and complexing agents that would be important substrates, facilitators, inhibitors, or carbon or electron donors or acceptors, can be included in the proposed research to the extent that they influence the primary goal of understanding the remediation of metals and radionuclides. Applicants are encouraged to review Chemical Contaminants on DOE Lands, DOE/ER–0547T, available at the OHER Homepage: http://www.er.doe.gov/production/oher/EPR/pub__epr.html, for a compilation of wastes and waste mixtures at the DOE sites.

NABIR is a research program designed to serve as a foundation for microbial in situ bioremediation techniques. Although ''spillover'' benefits of the research to other cleanup needs such as the use of bioreactors to process waste streams are anticipated, NABIR supports investigations into bioremediation of subsurface waste sites. This emphasis includes research that will assist the application of in situ bioremediation in conjunction with other cleanup methods, for example, using bioremediation to mobilize radionuclides so that pump-and-treat techniques could be more effective. Problems characterized by large areas with low-concentration contamination are emphasized over problems of localized, high concentrations. Research on phytoremediation will not be supported during this initial funding period.

In research plans that involve the potential release of chemicals, enzymes, and/or microorganisms to the field (both at contaminated and non-contaminated control sites), applicants should discuss how they will involve the public or stakeholders in their research, beginning with experimental design through completion of the project. All applicants should discuss other relevant societal issues, where appropriate, which may include intellectual property protection, communication with and outreach to affected communities (including members of affected minority communities where appropriate) to explain the proposed research.

NABIR Infrastructure

The NABIR program anticipates selecting at least one Field Research Center (FRC) located on a DOE site. The FRC will serve as a central facility for researchers to use at their option.

However, FRCs will not be available (or even identified) for at least a year, because of a current National Environmental Policy Act (NEPA) review of the NABIR Program. Therefore, applicants are encouraged to use any site that is presently available to them, including but not limited to DOE sites. Investigators should describe how their research will interface with or transfer to field scale research at their site. Applicants should access the NABIR Homepage: http://www.lbl.gov/NABIR/ for a listing of available sites and facilities.

A centrally-maintained database will be developed to provide limited data, such as site characterization and kinetics data, needed by a broad segment of investigators. Applications shall include a short discussion of the Quality Assurance and Quality Control (QA/QC) measures that will be applied in data gathering and analysis activities. Successful grantees will be expected to coordinate their QA/QC measures with NABIR program personnel.

Scientific Research Elements

The following sections describe each of the six NABIR scientific research elements and the emphasis that is given preference in this solicitation. Applicants may propose research that transcends more than one research element; it is also anticipated that many applications could be placed in more than one element. However, each application should state the one science element most closely aligned with the proposed research, to facilitate scientific review.

Biotransformation and Biodegradation: The goal of all bioremediation efforts is to reduce the potential toxicity of chemical contaminants in the field by using living organisms or their products to mineralize, degrade, transform, mobilize, or immobilize contaminants. There is already a significant base of knowledge about many pathways for organic chemical degradation, and several important contaminant degradation mechanisms are presently under detailed investigation. Despite the successful contributions of existing knowledge about biodegradation and biotransformation mechanisms, there is still need for additional research. At present, the understanding of biotransformation and biodegradation pathways and mechanisms in the field is incomplete. Although the degradation of many organic compounds and the biotransformation of some inorganic compounds in laboratory cultures have been well described, it is unclear how this information relates to bioremediation processes under field conditions. The biotransformation of metals and radionuclides in thick vadose zones is poorly understood. Successful laboratory studies have not allowed for predictions about the fate of complex chemical mixtures that include metals and radionuclides in the field. It would be useful to know the metabolic pathways taken by mixtures of chemicals in the presence of complex microbial communities in vadose zones and their interfaces with saturated zones and the waste plume. It would be equally useful to understand the kinetics of desirable metal and radionuclide biotransformations and the physicochemical factors affecting those kinetics. Research is needed to address questions such as:

- How can laboratory studies be used to accurately represent field situations and allow for predictions of chemical fate?
- How important are microbial species interactions in the biotransformation of metals and radionuclides?
- How do organic co-contaminants affect the biotransformation of metals and radionuclides?
- What factors control the kinetics of desirable metal and radionuclide biotransformations in vadose and saturated zones?
- Can biological processes be harnessed to permanently sequester metals and/or radionuclides in the subsurface?
- What are the metal- and radionuclide-transforming capabilities of indigenous microorganisms in deep vadose or saturated zones representative of DOE sites?

Community Dynamics and Microbial Ecology: Fundamental research in Community Dynamics and Microbial Ecology at both the molecular and the organismal level is needed to understand better the natural intrinsic processes of bioremediation in mixed contaminant sites. A more complete understanding of energetics and biogeochemical transformation at the community level may ultimately

provide the ability to control or stimulate communities capable of transformation and to channel carbon flow (particularly of polluting organic compounds) through these communities or populations. It is essential to understand the roles and interactions of diverse communities in order to understand how and to what extent the structure of the biological community influences the course of bioremediation and to what extent the environmental factors influence community dynamics in sites containing metals and radionuclides. This need is especially critical to successful bioremediation of diffuse metals and radionuclides in thick vadose and deep saturated zones. Research should be directed toward the identification and characterization of microbial communities at contaminated sites, and toward understanding the dynamics of extant microbial communities under the influence of metals and radionuclides. Research is needed to address questions such as:

- Is there sufficient biological activity and diversity in thick vadose zones to support natural and/or accelerated bioremediation of metals and radionuclides?
- What are the effects of metals and radionuclides on microbial community activity and diversity, including both metabolic and genetic activity and diversity?
- Do microbial (population) interactions occur within communities present in vadose zones contaminated with metals and radionuclides?
- What kind of measurement (assessment) technology must be developed to interrogate microbial communities for their activity and diversity before, during, and after bioremediation?

Biomolecular Science and Engineering: The overall goal of research in the Biomolecular Science and Engineering element is to use molecular and structural biology to enhance understanding of bioremediation and to genetically modify macro-molecules and organisms to improve their bioremedial activities. Using information and data gained from other program elements, the molecules, enzymes, and enzyme pathways that are most effective for bioremediation of metals and radionuclides will be identified. Initial DOE objectives and priorities for research in Biomolecular Science and Engineering are to: (i) identify, clone, and sequence novel genes and promoters important to the bioremediation of metals and radionuclides; and (ii) construct or enhance bioremedial enzymatic pathways by identifying active genes from different procaryotic, eukaryotic and archaeal organisms and inserting those genes into one or more organisms that can survive and compete effectively in a contaminated subsurface environment. Research in these areas is encouraged that includes:

- How can we identify and characterize important genes and proteins that detoxify mixed contaminants or that affect the ability of organisms to live and survive under contaminated conditions?
- How can we identify and characterize genes from different organisms that can work together to improve bioremediation?
- How can we identify critical promoter elements that induce or regulate bioremedial genes or gene clusters?
- How can we develop expression systems for genes with an emphasis on the use of organisms that will survive in contaminated environments?
- How can we develop organisms with improved enzymatic pathways for bioremediation by combining genes from different organisms into a single organism with an emphasis on the use of soil organisms or organisms that will survive in other types of contaminated environments?

Biogeochemical Dynamics: Successful bioremediation of metals and radionuclides at DOE sites is closely linked to understanding the complex and dynamic interplay of hydrological, geochemical, and biological processes within geological media that are themselves spatially and temporally heterogeneous. Understanding the natural biogeochemical processes that control the mobility and form of radionuclides is one of the most challenging problems affecting the future viability of bioremediation at DOE sites, particularly within the thick vadose zones and saturated zones below the root zone where much of the contamination resides.

DOE cleanup problems are at the field scale, and the immediate priority in biogeochemical dynamics is to scale up the existing scientific knowledge base on underlying mechanisms and processes governing metal and radionuclide behavior to the field. Focus will be on (i) understanding how natural biogeochemical processes control the mobility and stability of contaminants in waste mixtures, including the biogeochemical processes that modify the form and behavior of contaminants in mixtures; and (ii) the influence of spatial heterogeneity in chemical, microbiological, and physical processes on the transport and transformation of contaminant mixtures.

Research within biogeochemical dynamics seeks to quantify the intrinsic biogeochemical processes that influence the form and behavior of contaminants and which can lead to development of new concepts for *in situ* bioremediation. New and creative scientific approaches are sought that address the following fundamental research questions:

- What are the principal biogeochemical reactions that govern mixed contaminant concentration, chemical speciation, and distribution between the aqueous and solid phases in the vadose and saturated zones?
- What are the thermodynamic and kinetic controls on these reactions?
- What are the major factors controlling the rate and extent of oxidation and reduction of multivalent radionuclides and naturally-occurring metals in various mineral phases? How can these factors be manipulated to enhance or limit the mobility of contaminants?
- What are the geochemical, microbiological, and transport processes and their interactions that control biological availability, transformation, and movement of contaminant mixtures?
- What are the interdependent distributions of microbiological, chemical, and physical properties and processes that have scale-dependent effects on biogeochemical phenomena and contaminant behavior? How can this information be scaled to the field?
- How can fundamental understanding of biogeochemical dynamics be used to develop innovative *in situ* remediation concepts for application to DOE sites?

Assessment: Current methods for measuring and evaluating the effectiveness of bioremediation are inadequate and, in most cases, undeveloped. Demonstrating the effectiveness of bioremediation will require documentation for direct impacts, such as loss of contaminants from the site, or indirect impacts, such as product accumulation and detoxification. The two primary objectives of research in the Assessment program element are to develop innovative and effective methods for assessing (i) bioremediation rate and activity, including microbial community structure and dynamics, biotransformation processes and rates, and electron flow; and (ii) bioremediation end points, including not only the concentrations of the contaminants and byproducts but also the stability, bioavailability, and toxicity of residual end-products. NABIR will not, however, fund projects that

examine human health risks of end points.

This element will focus on developing techniques for assessing the bioremedial activities of individual strains and functional groups within a community, as well as validate existing and emerging laboratory and field techniques. Priority will be given to research applications that could result in techniques and/or instrumentation that: (i) operate in real time; (ii) operate in field- scale heterogeneous environments; (iii) are cost-effective; and (iv) determine endpoints which more closely approximate limited or non-bioavailability. Research is sought to answer questions such as:

- Can quantitative techniques be adapted or developed for measurement of microbial community structure, movement, activity, and effectiveness during bioremediation?
- How can geophysical, geochemical, and hydrologic properties critical to bioremediation effectiveness be determined?
- What new methods might be developed to interpret complex data sets, including temporal and spatial variability in support of bioremediation management?
- Can bioremediation endpoints that accurately measure bioavailability be quantitatively established?

Acceleration: This program element will address effective delivery of microorganisms to contaminated zones, where bacteria and/or archaea can transform, mobilize, or immobilize toxicants, particularly metals and radionuclides in thick vadose and deep saturated zones. Highest priority will be on research that defines issues of microbial transport, such as chemical and physical heterogeneity and geochemistry. The fundamental processes that affect microbial survival are included in the Community Dynamics and Microbial Ecology Program Element.

Building on new knowledge being developed in other program elements on microbial community dynamics, biogeochemical processes governing the form and behavior of inorganic solutes and the effects of heterogeneity on these processes, research is needed to address questions such as:

- What factors control the delivery and transport of microorganisms and genetic elements in heterogeneous subsurface systems?
- What are the coupled effects of chemical, biological, and hydrologic processes on transport, such as attachment/detachment of microbial cells (including viruses and genetic elements) to mineral grains in concert with advection and dispersion of cells and chemicals during flow through porous media?
- How can key controlling factors and coupled processes be evaluated and scaled to the field for acceleration of natural processes?

Basic

The introduction of non-native or genetically engineered microorganisms or the manipulation of the environment to change its microbial composition or chemical characteristics has the potential to raise concerns among those who may live or work nearby. Great care is required to involve the affected communities and stakeholders in any plans to use novel agents and/or processes to remediate a contaminated site; for example, a deliberate release of a non-indigenous microorganism, the purposeful manipulation of a microbial community, or the mobilization of a hazardous chemical. Although it may be many years before work under the auspices of this program gets to that point, it is wise to begin to consider some of the issues involved now.

The Bioremediation and its Societal Implications and Concerns (BASIC) component of the NABIR program is directed at these larger societal implications of bioremediation. DOE seeks to encourage applications that address effective ways to articulate the risks and benefits attendant to *in situ* bioremediation to stakeholders, and effective ways to involve affected communities in bioremediation research and decision making. The DOE also solicits applications for the preparation and dissemination of educational materials in any appropriate medium that will enhance understanding of the scientific as well as the societal aspects of NABIR among the public or specified groups. If an educational effort for a specific group is proposed, the value to NABIR of that group or community should be explained in detail. In addition, the DOE encourages applications for the support of conferences focusing on the legal and societal implications of NABIR. Applications should demonstrate knowledge of any relevant literature and should include detailed plans for the gathering and analysis of factual information and the associated societal implications. All proposed research applications should address the issue of efficient dissemination of results to the widest appropriate audience.

Administrative Information

To provide a consistent format for the submission, review and solicitation of grant applications submitted under this notice, the preparation and submission of grant applications must follow the guidelines given in the *Application Guide for the Office of Energy Research Financial Assistance Program 10 CFR Part 605.*

Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the *Application Guide for the Office of Energy Research Financial Assistance Program*. The Application Guide is available from the U. S. Department of Energy, Office of Energy Research, ER–74, 19901 Germantown Road, Germantown, MD 20874–1290. Telephone requests may be made by calling (301) 903–3338. Electronic access to ER's Financial Assistance Application Guide is possible via the World Wide Web at: http://www.er.doe.gov/production/grants/grants.html. The Office of Energy Research (ER), as part of its grant regulations, requires at 10 CFR 605.11(b) that a grantee funded by ER and performing research involving recombinant DNA molecules shall comply with the National Institutes of Health ''Guidelines for Research Involving Recombinant DNA Molecules'' (51 FR 16958, May 7, 1986), or such later guidelines as may be published in the Federal Register. Grantees must also comply with other federal and state laws and regulations as appropriate, for example, the Toxic Substances Control Act (TSCA) as it applies to genetically modified organisms. Although compliance with NEPA is the responsibility of DOE, grantees proposing to conduct field research are expected to provide information necessary for the DOE to complete the NEPA review and documentation. The research description must be 15 pages or less, exclusive of attachments, and must contain an abstract or summary of the proposed research (to include the hypotheses being tested, the proposed experimental design, and the names of all investigators and their affiliations). Attachments include curriculum vitae, QA/QC plan, a listing of all current and pending federal support, and letters of intent when collaborations are part of the proposed research.

Applications will be subjected to formal merit review (peer review) and will be evaluated against the following evaluation criteria which are listed in descending order of importance codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;

2. Appropriateness of the Proposed Method or Approach;

3. Competency of Applicant's personnel and Adequacy of Proposed Resources;

4. Reasonableness and Appropriateness of the Proposed Budget.

Also, as part of the evaluation, program policy factors become a selection priority.

Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

It is anticipated that up to $10 million will be available for multiple awards to be made in FY 1997 and early FY 1998 in the categories described above, contingent on availability of appropriated funds. Applications may request project support up to three years, with out-year support contingent on availability of funds, progress of the research, and programmatic needs. Annual budgets for most of the six scientific research element projects are expected to range from $200,000 to $500,000 total costs. Annual budgets for most of the BASIC projects are expected not to exceed $100,000. Researchers are encouraged to team with investigators in other disciplines where appropriate. DOE may encourage collaboration among prospective investigators, to promote joint applications or joint research projects, by using information obtained through the preliminary applications or through other forms of communication.

Although the required original and seven copies of the application must be submitted, researchers are asked to submit an electronic version of their abstract of the proposed research in ASCII format and their e-mail address to Karen Carlson by e-mail at karen.carlson@oer.doe.gov. Additional information on the NABIR Program is available at the following web site: http://www.lbl.gov/NABIR/. For researchers who do not have access to the world wide web, please contact Karen Carlson; Environmental Sciences Division, ER–74; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; (301) 903–3338 phone; (301) 903–8519 fax; karen.carlson@oer.doe.gov; for hard copies of background material mentioned in this solicitation. Curriculum vitae should be submitted in a form similar to that of NIH or NSF (two to three pages), see for example: http://www.nsf.gov:80/bfa/cpo/gpg/fkit.htm#forms-9.

Related Funding Opportunities

Investigators may wish to obtain information about the following related funding opportunities:

Department of Energy, Office of Environmental Management: The Environmental Management Science Program (EMSP). Contact: Carol Henry, Science and Policy Director, Office of Integrated Risk Management, EM–52, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, e-mail carol.henry@em.doe.gov. Phone 202–586–7150. The EMSP home page is available at web site: www.em.doe.gov.science.

DOE/EPA/NSF/ONR Joint Program on Bioremediation, Dr. Robert E. Menzer, U.S. Environmental Protection Agency, National Center for Environmental Research and Quality Assurance, 401 M Street, SW, Washington, DC 20460, menzer.robert@epamail.epa.gov., phone (202) 260–5779.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC, on November 13, 1996.

John Rodney Clark,

Associate Director for Resource Management, Office of Energy Research.

[FR Doc. 96–30016 Filed 11–22–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP97–11–001]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 19, 1996.

Take notice that on November 14, 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 November 1, 1996:

Third Revised Sheet No. 10
Substitute Second Revised Sheet No. 49

ANR states that the above-referenced tariff sheets are being filed in compliance with the Commission's October 30, 1996 ''Order Accepting and Suspending Tariff Sheets Subject to Conditions'' in the captioned proceeding. The revised tariff sheets address directed changes to ANR's Rate Schedule FSS.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties 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. 96–29973 Filed 11–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–90–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

November 19, 1996.

Take notice that on November 12, 1996, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP97–90–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon four delivery points and the service related thereto located in Cochise County, Arizona under El Paso's blanket certificate issued in Docket No. CP82–435–000 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.

El Paso proposes to abandon by removal four metering and/or tap facilities located in Cochise County, Arizona. The four facilities are the Campbell Shaft Delivery Point (Meter No. 20–152), Douglas Smelter Delivery Point (Meter No. 30–071), Douglas Smelter House No. 1 Meter Station (Meter No. 20–154–01) and the Douglas Smelter House No. 2 Tap (Meter No. 20–155–01). El Paso states that these facilities enabled it to sell and deliver, on a direct sale basis, natural gas to Phelps Dodge Mining Company, a Division of Phelps Dodge Corporation (Phelps Dodge), for use in its mining, smelting and metallurgical operations in southern Arizona.

El Paso understands that the mining and smelting operations that received natural gas at the subject facilities are no longer functioning and therefore no longer in need of natural gas service. El

Paso states that, in recognition of these circumstances, Phelps Dodge has requested that El Paso abandon and remove the facilities and service at the four delivery points.

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 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 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. 96–29981 Filed 11–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–296–005]

KN Interstate Gas Transmission Co., Notice of Compliance Filing

November 19, 1996.

Take notice that on November 12, 1996 KN Interstate Gas Transmission Co. (KNI) tendered for filing certain revised tariff sheets in compliance with Commission's November 4, 1996 Order in the above referenced proceeding. In particular, KNI submitted for filing as part of its FERC Gas Tariff, the following tariff sheets with a requested effective date of August 1, 1996.

Third Revised Volume No. 1–A

Second Substitute Original Sheet No. 4–D

Third Revised Volume No. 1–B

Second Substitute Original Sheet No. 57
Third Substitute Original Sheet No. 86
Substitute Original Sheet No. 87
Substitute Original Sheet No. 88

KNI also submitted for filing as part of its FERC Gas Tariff, the following tariff sheets with a requested effective date of October 1, 1996:

Third Revised Volume No. 1–A

Substitute First Revised Sheet No. 4–D
Substitute Second Revised Sheet No. 4–D

Any person desiring to protest this filing 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. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the 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. 96–29976 Filed 11–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–320–004]

Koch Gateway Pipeline Company; Notice of Proposed Change in FERC Gas Tariff

November 19, 1996.

Take notice that on November 14, 1996, Koch Gateway Pipeline Company (Koch) tendered for filing its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheet, to be effective August 31, 1996:

Substitute Second Revised Sheet No. 2901

Koch states that this tariff sheet clarifies Koch's definition of negotiated rate to comply with the Commission's October 30, 1996 Order on Requests for Rehearing and Clarification.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. 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 appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–29975 Filed 11–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–98–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

November 19, 1996.

Take notice that on November 13, 1996, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, P.O. Box 58900, Salt Lake City, Utah 84158–0900, filed in Docket No. CP97–98–000 a request pursuant to Sections 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for approval and permission to operate two meter stations as certificated delivery points for deliveries to Mid-America Pipeline Company (MAPCO), successor in interest to Gulf Gas Utilities Company, under the blanket certificate issued in Docket No. CP82–433, 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.

Northwest states that it proposes to operate the Lisbon and Dolores meter stations (formerly known as the Gulf Gas No. 1 and Gulf Gas No. 2 meter stations), located in San Juan County, Utah and Montezuma County, Colorado, respectively, as certificated delivery points. Northwest further states that MAPCO recently acquired Gulf Gas Utilities' interest in its gas supply and transportation agreements, including the A–89 agreement, and certain facilities located downstream of the subject meter stations. Northwest asserts that MAPCO requested Northwest to take the necessary action to make the meter stations available as delivery points for open access transportation under MAPCO's Rate Schedule TI–1 Part 284 transportation agreement dated April 20, 1994 (E–48 agreement), as reported in Docket No. ST95–1124. Northwest further asserts that MAPCO has requested Northwest to transfer the volumes and priority dates established under the A–89 agreement to its E–48 agreement, and subsequently terminate the A–89 agreement, upon approval of the prior notice authorization sought herein. Northwest indicates that it will shortly seek the necessary waivers of its first-come, first-served and priority of service tariff provisions in order to maintain the priority dates established under the A–89 agreement under the E–48 agreement.

Any person or the Commission's Staff may, within 45 days after 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 or notice of intervention 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 therefore, 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 notwithdrawn 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. 96–29980 Filed 11–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–88–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

November 19, 1996.

Take notice that on November 12, 1996, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP97–88–000 a request pursuant to Sections 157.205, 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 157.216) for authorization to upgrade its Spokane West Meter Station in Spokane County, Washington by partially abandoning certain existing facilities and constructing and operating upgraded replacement facilities under Northwest's blanket certificate issued in Docket No. CP82–433–000 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.

Northwest proposes to upgrade the Spokane West Meter Station by removing the two existing 6-inch turbine meters, the existing 750,000 Btu per hour heater and approximately 250 feet of existing 4-inch inlet piping and appurtenances and installing two new 8-inch turbine meters, a 1,900,000 Btu per hour heater, a new 6-inch tap valve on the lateral line and approximately 200 feet of 6-inch inlet piping and appurtenances.

Northwest states that the meter station upgrade is necessary to accommodate a request by The Washington Water Power Company for increased delivery point capacity at this point for service under existing firm transportation agreements.

Northwest states that as a result of the proposed upgrade, the maximum design capacity of the meter station will increase from approximately 18,733 Dth per day at 250 psig to approximately 34,945 Dth per day at 250 psig.

Northwest estimates the total cost of the proposed meter station upgrade to be approximately $357,400.

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 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 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. 96–29982 Filed 11–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–337–001]

Pacific Gas Transmission Company; Notice of GSR Reconciliation Report

November 19, 1996.

Take notice that on November 12, 1996, Pacific Gas Transmission Company (PGT) tendered for filing a Reconciliation of Gas Supply Recovery Costs (GSR) Report pursuant to its August 13, 1996 filing to terminate the Initial GSR Collection Period in its FERC Gas Tariff, First Revised Volume No. 1–A. That filing was approved by a Letter Order dated September 11, 1996, effective on August 15, 1996.

PGT asserts that the purpose of this filing is to submit for filing and acceptance a reconciliation of its actual GSR surcharge revenues and GSR costs to be collected through surcharge. PGT states that $319,423 remains unrecovered as of August 15, 1996; however, PGT is not proposing to establish a new surcharge to recover this deficiency.

PGT states that a copy of this filing has been served upon all jurisdictional customers and upon interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed on or before November 26, 1996. 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. 96–29974 Filed 11–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–137–042]

Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

November 19, 1996.

Take notice that on October 16, 1996, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a refund report pursuant to the Stipulation and Agreement (Settlement) approved by Commission's letter order dated November 4, 1993 in Docket No. RP92–137–015, *et al.* The refund covers the period September 1, 1992 through August 31, 1995.

On December 23, 1994, the U.S. Court of Appeals for the D.C. Circuit reversed and remanded the Commission's order in this proceeding (42 F.3d 659 (D.C. Cir. 1994)). On April 10, 1996, the Commission issued its order (April 10 Order) on remand.

Transco states that on September 17, 1996, it refunded amounts to contesting parties, and their replacement shippers based on the difference between the demand charges computed using the capital structure and rate of return approved in the April 10 Order and the demand charges set forth in the Settlement. Transco states that its report shows refunds totalling $3,249,674.16, including $559,687.03 in interest.

Transco further states that copies of this filing are being served upon each affected customer and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 26, 1996. 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. 96–29977 Filed 11–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–99–000]

Wisconsin Public Service Corporation; Notice of Application

November 19, 1996.

Take notice that on November 14, 1996, Wisconsin Public Service Corporation (Public Service), 700 North Adams Street, P.O. Box 19001, Green Bay, Wisconsin 54307–9001, filed in Docket No. CP97–99–000 an application pursuant to Section 7(f) of the Natural Gas Act (NGA) for a service area determination, all as more fully set forth in the application on file with the Commission and open to public inspection.

Public Service states that it is a local distribution company operating service areas for the sale and distribution of natural gas in the States of Wisconsin and Michigan. Public Service receives natural gas from ANR Pipeline Company (ANR) at its Marinette, Wisconsin and Menominee, Michigan city-gates and sells gas received from ANR at retail to customers located in Wisconsin and Michigan. Public Service states that, in providing service to its customers, it has the capability to transport gas approximately four miles, via a twelve-inch, river-crossing distribution main, across the Menominee River between Marinette, Wisconsin and Menominee, Michigan. Public Service states that its local distribution of natural gas within Wisconsin is regulated by the Public Service Commission of Wisconsin and its local distribution of natural gas within Michigan is regulated by the Michigan Public Service Commission.

Public Service requests a service area determination for an area consisting of its Marinette, Wisconsin and Menominee, Michigan service areas and Public Service's rights-of-way connecting the designated areas. Additionally, Public Service requests: (i) a determination that Public Service qualifies as a local distribution company for purposes of Section 311 of the National Gas Policy Act (NGPA): (ii) a waiver of all reporting and accounting requirements and rules and regulations that are normally applicable to natural gas companies under the NGA and NGPA; (iii) such further relief as the Commission may deem appropriate.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 10, 1996, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Public Service to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–29979 Filed 11–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EC97–2–000, et al.]

Commonwealth Edison Company, et al.; Electric Rate and Corporate Regulation Filings

November 18, 1996.

Take notice that the following filings have been made with the Commission:

1. Commonwealth Edison Company

[Docket No. EC97–2–000]

Take notice that on November 1, 1996, Commonwealth Edison Company (ComEd) filed an application pursuant to Section 203 of the Federal Power Act and Section 33 of the Commission's Regulations for authority to sell certain transmission facilities to Kincaid Generation, L.L.C.

Comment date: December 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Commonwealth Edison Company of Indiana, Inc.

[Docket No. EC97–3–000]

Take notice that on November 1, 1996, Commonwealth Edison Company of Indiana, filed an application pursuant to Section 203 of the Federal Power Act and Section 33 of the Commission's Regulations for authority to sell certain transmission facilities located in Hammond, Indiana to State Line Energy, L.L.C.

Comment date: December 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Doswell Limited Partnership, Doswell II Limited Partnership, Diamond Energy, Inc., Diamond-Hanover, Inc., New DHI, Inc., and North Anna Power Company

[Docket No. EC97–4–000]

Take notice that on November 5, 1996, Doswell Limited Partnership; Doswell II Limited Partnership; Diamond Energy, Inc.; Diamond-Hanover, Inc.; New DHI, Inc. and North Anna Power Company (Applicants) submitted for filing an application under Section 203 of the Federal Power Act (16 U.S.C. § 824b) and Part 33 of the Commission's Regulations (18 CFR Part 33) seeking authorization from the Commission for the reorganization of certain of Doswell Limited Partnership's owners, confirmation of rates previously accepted for filing, waiver of certain filing requirements and requesting expedited consideration.

Comment date: December 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Western Systems Power Pool

[Docket No. ER91–195–026]

Take notice that on November 6, 1996, the Western Systems Power Pool (WSPP), filed certain information to update its October 30, 1996, quarterly filing. This data is required by Ordering Paragraph (D) of the Commission's June 27, 1991 Order (55 FERC ¶ 61,495) and Ordering Paragraph (C) of the Commission's June 1, 1992, Order on Rehearing Denying Request Not To Submit Information, And Granting In Part and Denying In Part Privileged Treatment. Pursuant to 18 CFR 385.211, WSPP has requested privileged treatment for some of the information filed consistent with the June 1, 1992 order. Copies of WSPP's informational filing are on file with the Commission, and the non-privileged portions are available for public inspection.

5. North American Energy Conservation Inc., Citizens Lehman Power Sales, Stand Energy Corporation, IEP Power Marketing, LLC, Power Clearinghouse, Inc., Nordic Electric, L.L.C., NFR Power, Inc.

[Docket No. ER94–152–011; ER94–1685–010; ER95–362–007; ER95–802–006; ER95–914–006; ER96–127–002; ER96–1122–002; (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On October 30, 1996, North American Energy Conservation, Inc. filed certain information as required by the Commission's February 10, 1994, order in Docket No. ER94–152–000.

On November 6, 1996, Citizens Lehman Power Sales filed certain information as required by the Commission's February 2, 1995, order in Docket No. ER94–1685–000.

On October 30, 1996, Stand Energy Corporation filed certain information as required by the Commission's February 24, 1995, order in Docket No. ER95–362–000.

On November 12, 1996, IEP Power Marketing, LLC filed certain information as required by the Commission's May 11, 1995, order in Docket No. ER95–802–000.

On November 5, 1996, Power Clearinghouse, Inc. filed certain information as required by the Commission's May 11, 1995, order in Docket No. ER95–914–000.

On October 31, 1996, Nordic Electric, L.L.C. filed certain information as required by the Commission's December 1, 1995, order in Docket No. ER96–127–000.

On November 13, 1996, NFR Power, Inc. filed certain information as required by the Commission's April 2, 1996, order in Docket No. ER96–1122–000.

6. Eastern Power Distribution, Inc., National Power Management Company, Superior Electric Power Corp., VTEC Energy Inc., Greenwich Energy Partners, L.P., Ocean Energy Services Inc., EnergyChoice, L.L.C.

[Docket No. ER94–964–012; ER95–192–008; ER95–1747–004; ER95–1855–004; ER96–116–004; ER96–588–002; ER96–827–003 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On November 7, 1996, Eastern Power Distribution, Inc. filed certain information as required by the Commission's April 5, 1994, order in Docket No. ER94–964–000.

On November 4, 1996, National Power Management Company filed certain information as required by the Commission's January 4, 1995, order in Docket No. ER95–192–000.

On November 4, 1996, Superior Electric Power Corporation filed certain information as required by the Commission's October 23, 1995, order in Docket No. ER95–1747–000.

On October 16, 1996, VTEC Energy Inc. filed certain information as required by the Commission's November 6, 1995, order in Docket No. ER95–1855–000.

On October 16, 1996, Greenwich Energy Partners, L.P. filed certain information as required by the Commission's December 20, 1995, order in Docket No. ER96–116–000.

On November 4, 1996, Ocean Energy Services Inc. filed certain information as required by the Commission's January 19, 1996, order in Docket No. ER96–588–000.

On November 4, 1996, EnergyChoice, L.L.C. filed certain information as required by the Commission's March 21, 1996, order in Docket No. ER96–827–000.

7. Washington Water Power Company

[Docket No. ER96–3152–000]

Take notice that on November 5, 1996, Washington Water Power Company tendered for filing an amendment to its September 30, 1996, filing in the above-referenced docket.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Arkansas, Inc.

[Docket No. ER97–257–000]

Take notice that on October 29, 1996, Entergy Arkansas, Inc. (EAI) tendered for filing a letter stating EAI's intent to propose certain changes to the rate formulas contained in the Transmission Service Agreement between EAI and Louisiana Energy & Power Authority.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. CINERGY Services, Inc.

[Docket No. ER97–310–000]

Take notice that on November 1, 1996, CINERGY Services, Inc. (Cinergy) tendered for filing a service agreement under Cinergy's Open Access Transmission service Tariff entered into between Cinergy and Florida Power and Light Company.

Cinergy and Florida Power and Light Company are requesting an effective date of October 15, 1996.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Citizens Utilities Company

[Docket No. ER97–311–000]

Take notice that on November 1, 1996, Citizens Utilities Company tendered for filing a notice of intent to provide transmission service for Rochester Electric Light & Power Company under Citizens' FERC Electric Tariff No. 28. Citizens will provide transmission of up to 500 Kw of capacity and associated energy from Hydro-Quebec during the period of November 1, 1996, to March 31, 1997.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER97–312–000]

Take notice that on November 1, 1996, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) jointly tendered for filing the existing Exhibit VII and revised Exhibits VIII and IX to the Agreement to Coordinate Planning and Operations and Interchange Power and Energy Between Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin).

Exhibit VII sets forth the specification of the rate of return on common equity to determine the overall cost of capital. The return on common equity for calendar year 1997 is the same as that used for 1996.

Exhibit VIII sets forth the specification of average monthly coincident peak demands for calendar year 1997 for each of the Companies. A statement of the impacts of these coincident peak demands on each company has been filed. These coincident peak demands were determined upon three years' data consisting of 18 months of actual and 18 months of projected peak demands. The change from the use of the average of the 12 monthly peak demand allocation method to the use of the 36 months was approved in Docket No. ER87–279–000.

Exhibit IX sets forth a specification of depreciation rates certified by the Wisconsin Public Service Commission (PSCW) and the Minnesota Public Utilities Commission (MPUC). A statement of the impact of the depreciation rates on each company has been filed.

The NSP Companies request an effective date of January 1, 1997, for this filing. Copies of the filing letter and

Exhibits VII, VIII and IX have been served upon the wholesale and wheeling customers of the Companies. Copies of the filing have been mailed to the State Commissions of Michigan, Minnesota, North Dakota, South Dakota and Wisconsin.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Electric and Gas Company

[Docket No. ER97–313–000]

Take notice that on November 1, 1996, Public Service Electric and Gas Company (PSE&G) tendered for filing an agreement to provide non-firm transmission service to Electric Clearinghouse, Inc., pursuant to PSE&G's Open Access Transmission Tariff presently on file with the Commission in Docket No. OA96–80–000.

This agreement supersedes PSEG's existing non-firm transmission agreement with ECI currently on file with the Commission (Rate Schedule FERC No. 128).

PSE&G further requests waiver of the Commission's regulations such that the agreement can be made effective as of November 1, 1996.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Southern California Edison Company

[Docket No. ER97–314–000]

Take notice that on November 1, 1996, Southern California Edison Company (Edison) tendered for filing a change in rate for scheduling and dispatching services as embodied in Edison's agreements with the following entities:

Entity	FERC schedule no.
1. City of Anaheim	130, 246.6, 246.8, 246.13, 246.29, 246.32.1, 246.33.1 246.36, 246.43.
2. City of Azusa	160, 247.4, 247.6, 247.8, 247.24, 247.29, 247.29.6.
3. City of Banning	159, 248.5, 248.7, 248.9, 248.24, 248.29.
4. City of Colton	162, 249.4, 249.6, 249.8, 249.24, 249.29.
5. City of Riverside	129, 250.6, 250.8, 250.10, 250.15, 250.21, 250.27, 250.30, 250.35, 250.41, 250.44, 250.46, 250.50.
6. City of Vernon	149, 154.24, 172, 207, 272, 276.
7. Arizona Electric Power Cooperative	132, 161.
8. Arizona Public Service Company	185, 348.
9. California Department of Water Resources	112, 113, 181, 342.
10. City of Burbank	166.
11. City of Glendale	143.
12. City of Los Angeles Department of Water and Power	102, 118, 141, 163, 188.
13. City of Pasadena	158.
14. Coastal Electric Services Company	347.
15. Imperial Irrigation	259, 268.
16. Metropolitan Water District of Southern California	292.
17. M–S–R Public Power Agency	153, 339.
18. Northern California Agency	240.
19. Pacific Gas and Electric Company	117, 147, 256, 318.
20. PacifiCorp	275.
21. Rainbow Energy Marketing Corporation	346.
22. San Diego Gas & Electric Company	151.
23. Western Area Power Administration	120.

Edison requests that the revised rate for these services be made effective January 1, 1997.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. PECO Energy Company

[Docket No. ER97–315–000]

Take notice that on November 1, 1996, in order to comply with the Commission's unbundling requirements in Order 888, PECO Energy Company (PECO) filed revised sheets to its FERC Electric Tariff Original Volume No. 4 (the Tariff). PECO requested an effective date of July 9, 1996 for the revised sheets.

PECO states that copies of its filing have been served on the Pennsylvania Public Utility Commission and on all customers who have executed service agreements under the Tariff.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. PECO Energy Company

[Docket No. ER97–316–000]

Take notice that on November 1, 1996, PECO Energy Company (PECO) filed revised sheets to its FERC Electric Tariff Original Volume No. 1 (the Tariff). The revised sheets contain modifications to certain terms and conditions of the Tariff, which would result, among other things, in market based Class P transactions. PECO requested an effective date of January 9, 1997, for the revised sheets.

PECO states that copies of its filing have been served on the Pennsylvania Public Utility Commission and on all customers who have executed service agreements under the Tariff.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. PECO Energy Company

[Docket No. ER97–317–000]

Take notice that on November 1, 1996, in order to comply with the Commission's unbundling requirements in Order 888, PECO Energy Company (PECO) filed revised sheets to its FERC Electric Tariff Original Volume No. 1 (the Tariff). PECO requested an effective date of July 9, 1996 for the revised sheets.

PECO states that copies of its filing have been served on the Pennsylvania Public Utility Commission and on all customers who have executed service agreements under the Tariff.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Florida Power & Light Company

[Docket No. ER97–318–000]

Take notice that on November 1, 1996, Florida Power & Light Company (FPL) tendered for filing a proposed notice of cancellation of an umbrella service agreement with Lakeland Electric & Water for Firm Short-Term transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed cancellation be permitted to become effective on July 9, 1996.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Continental Energy Services, Inc.

[Docket No. ER97–319–000]

Take notice that on November 1, 1996, Continental Energy Services, Inc. (Continental) petitioned the Commission for (1) blanket authorization to sell electricity at market-based rates; (2) acceptance of Continental's Rate Schedule FERC No. 1; (3) waiver of certain Commission Regulations' and (4) such other waivers and authorizations as have been granted to other power marketers, all as more fully set forth in Continental's petition on file with the Commission.

Continental states that it intends to engage in electric power transactions as a broker and as a marketer. In transactions where Continental acts as a marketer, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with purchasing parties.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Carolina Power & Light Company

[Docket No. ER97–321–000]

Take notice that on November 1, 1996, Carolina Power & Light Company (CP&L) tendered for filing Amendments to the PCA By And Between CP&L and NCEMC. The Amendments relate to the August 27, 1993, Power Coordination Agreement between CP&L and the North Carolina Electric Membership Corporation. CP&L has requested an effective date of January 1, 1997.

CP&L states that copies of the filing have been served on NCEMC as well as the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Entergy Services, Inc.

[Docket No. ER97–322–000]

Take notice that on November 1, 1996, Entergy Services, Inc. (ESI), acting as agent for Entergy Arkansas Inc. (EAI), Entergy Gulf States, Inc. (EGS), Entergy Louisiana, Inc. (ELI), Entergy Mississippi, Inc. (EMI), and Entergy New Orleans, Inc. (ENO), (collectively ''Entergy'') submitted for filing a wholesale electric service agreement between EGS and East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc. (SRG&T), and Tex-La Electric Cooperative of Texas, Inc. (Tex-La) and also a First amendment to an Interchange Agreement between ESI, EAI, EL, EMI, ENO and SRG&T and ETEC whereby the parties proposed to add EGS and Tex-La to such Interchange Agreement. ESI requests that the Interconnection Agreement and the wholesale electric service agreement be permitted to become effective January 1, 1997.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Southern California Edison Company

[Docket No. ER97–323–000]

Take notice that on November 1, 1996, Southern California Edison Company (Edison) tendered for filing a change in rate for scheduling and dispatching services as embodied in Edison's agreements with Southern California Water Company, FERC Rate Schedule No. 349.3.

Edison requests that the revised rate for these services be made effective January 1, 1997.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. The Detroit Edison Company

[Docket No. ER97–324–000]

Take notice that on November 1, 1996, The Detroit Edison Company (DE) submitted for filing a market-based Power Sales Tariff (WPS–2) to permit DE to make wholesale sales to eligible customers of electric power at market-determined prices, including sales not involving DE's generation or transmission.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. The Detroit Edison Company

[Docket No. ER97–325–000]

Take notice that on November 1, 1996, The Detroit Edison Company (DE) submitted for filing a Wholesale Power Sales Tariff (WPS–1) to permit DE to make wholesale electric generation sales to eligible customers. The tariff includes a Power Sales Schedule.

DE requests an immediate effective date and accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served upon the Michigan Public Service Commission.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. West Texas Utilities Company

[Docket No. ER97–326–000]

Take notice that on November 1, 1996, West Texas Utilities Company (WTU) submitted for filing a Power Supply Agreement (PSA), dated June 21, 1996, between WTU and the City of Weatherford, Texas (Weatherford) and Amendment No. 1, dated October 31, 1996, to the PSA. Under the PSA, as amended, WTU and energy in excess of the power and energy provided by Weatherford's own generating units.

WTU requests an effective date of December 1, 1996 for the PSA and, accordingly, seeking waiver of the Commission's notice requirements. Copies of this filing have been served on Weatherford and the Public Utility Commission of Texas.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–404–000]

Take notice that on November 7, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Citizens Lehman Power Sales (CLP).

Con Edison states that a copy of this filing has been served by mail upon CLP.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

26. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–405–000]

Take notice that on November 7, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant

to its Open Access Transmission Tariff to Equitable Power Services Company (EPS).

Con Edison states that a copy of this filing has been served by mail upon EPS.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

27. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–406–000]

Take notice that on November 7, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access transmission Tariff to Federal Energy Sales, Inc. (FES).

Con Edison states that a copy of this filing has been served by mail upon FES.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

28. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–407–000]

Take notice that on November 7, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Pennsylvania Power & Light Company (PP&L).

Con Edison states that a copy of this filing has been served by mail upon PP&L.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

29. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–408–000]

Take notice that on November 7, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to North American Energy Conservation (NAEC).

Con Edison states that a copy of this filing has been served by mail upon NAEC.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

30. Portland General Electric Company

[Docket No. ER97–409–000]

Take notice that on November 7, 1996, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff, (Docket No. OA96–137–000) an executed Service Agreement for Firm Point-to-Point Transmission Service with PacifiCorp.

Pursuant to 18 CFR 35.11 and the Commission's Order issued July 30, 1993 (Docket No. PL93–2–002), PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the executed Service Agreement to become effective November 1, 1996.

Copies of this filing were caused to be served upon the entities listed in the body of the filing letter.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

31. Great Bay Power Corporation

[Docket No. ER97–410–000]

Take notice that on November 7, 1996, Great Bay Power Corporation (Great Bay), tendered for filing two service agreements between Boston Edison Company and Great Bay and United Illuminating Company and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on May 17, 1996, in Docket No. ER96–726–000. The service agreements are proposed to be effective November 1, 1996.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

32. Commonwealth Electric Company Cambridge Electric Light Company

[Docket No. ER97–411–000]

Take notice that on November 7, 1996, Commonwealth Electric Company (Commonwealth) on behalf of itself and Cambridge Electric Light Company (Cambridge), collectively referred to as the ''Companies'', tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements between the companies and Western Power Services, Inc. (WPS).

These Service Agreements specify that WPS has signed on to and has agreed to the terms and conditions of the Companies' Power Sales and Exchanges Tariffs designated as Commonwealth's Power Sales and Exchanges Tariff (FERC Electric Tariff Original Volume No. 3) and Cambridge's Power Sales and Exchanges Tariff (FERC Electric Tariff Original Volume No. 5). These Tariffs, approved by FERC on April 13, 1995, and which have an effective date of March 20, 1995, will allow the Companies and WPS to enter into separately scheduled transactions under which the Companies will sell to WPS capacity and/or energy as the parties may mutually agree.

The Companies request an effective date as specified on each Service Agreement.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

33. FirstEnergy System/Ohio Edison Company

[Docket No. ER97–412–000]

Take notice that on November 8, 1996, Ohio Edison Company, The Cleveland Electric Illuminating Company, Pennsylvania Power Company, and The Toledo Edison Company (the Companies), tendered for filing and approval an Open Access Tariff for the proposed FirstEnergy System.

FirstEnergy Corp. will be the holding company for the companies, which pursuant to a merger agreement will be operated on a single-system basis. The Companies request that this proceeding not be consolidated with the merger proceeding. The proposed Open Access Tariff will provide transmission service over the combined FirstEnergy transmission system at a single postage stamp rate when the merger is made effective.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

34. Ohio Valley Electric Corporation

[Docket No. ER97–414–000]

Take notice that on November 8, 1996, Ohio Valley Electric Corporation (OVEC), tendered for filing a Service Agreement dated October 9, 1996, for Non-Firm Point-to-Point Transmission Service (the Service Agreement) between the Dayton Power and Light Company (DP&L) and OVEC. OVEC proposes an effective date of October 9, 1996 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to DP&L.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Order No. 888 compliance filing (Docket No. OA96–190–000).

Copies of this filing were served upon The Public Utilities Commission of Ohio and DP&L.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

35. Carolina Power & Light Company

[Docket No. ER97–415–000]

Take notice that on November 8, 1996, Carolina Power & Light Company (Carolina), tendered for filing executed Service Agreements between Carolina and the following Eligible Entities: SCANA Energy Marketing, Inc.; CPS Utilities; and The Power Company of America, L.P. Service to each Eligible Entity will be in accordance with the terms and conditions of Carolina's Tariff No. 1 for Sales of Capacity and Energy.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

36. PacifiCorp

[Docket No. ER97–416–000]

Take notice that on November 8, 1996, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Service Agreements with Electric Clearinghouse, Inc. and Southern Energy Marketing, Inc. under, PacifiCorp's FERC Electric Tariff, Original Volume No. 11.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

37. Louisville Gas and Electric Co.

[Docket No. ER97–417–000]

Take notice that on November 8, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Electric Clearinghouse, Inc. under Rate GSS.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

38. Wisconsin Public Service Corporation

[Docket No. ER97–418–000]

Take notice that on November 8, 1996, Wisconsin Public Service Corporation (WPSC), tendered for filing Supplement No. 10 to its service agreement with Consolidated Water Power Company (CWPCO). Supplement No. 10 provides CWPCO's contract demand nominations for January 1997–December 2001, under WPSC's W–3 tariff and CWPCO's applicable service agreement.

The company states that copies of this filing have been served upon CWPCO and to the State Commissions where WPSC serves at retail.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

39. Wisconsin Public Service Corporation

[Docket No. ER97–419–000]

Take notice that on November 8, 1996, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and Dairyland Power Cooperative. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11. WPSC also filed a refund compliance report.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

40. ProLiance Energy, LLC

[Docket No. ER97–420–000]

Take notice that on November 8, 1996, ProLiance Energy, LLC (ProLiance), tendered for filing pursuant to Rules 205 and 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205 and 385.207, and 18 CFR 35.12, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its Rate Schedule No. 1, to be effective the earlier of January 8, 1997, or the date of a Commission order granting approval of this Rate Schedule.

ProLiance intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where ProLiance purchases power, including capacity and related services from producers, and resells such power to other purchasers, ProLiance will be functioning as a marketer. In ProLiance's marketing transactions, ProLiance proposes to charge rates mutually agreed upon by the parties. In transactions where ProLiance does not take title to the electric power and/or energy, ProLiance will be limited to the role of a broker and will charge a fee for its services. ProLiance is not in the business of producing nor has any plans to acquire title to any electric power facilities.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed-upon prices.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

41. Atlantic City Electric Company

[Docket No. ER97–421–000]

Take notice that on November 8, 1996, Atlantic City Electric Company (ACE), tendered for filing an executed service agreement under which ACE will provide capacity and energy to AIG Trading Corporation (AIG), CNG Power Services Corporation (CNG) and AYP Energy, Inc. (AYP); and an unexecuted service agreement with Pacificorp Power Marketing (Pacificorp) in accordance with the ACE wholesale power sales tariff.

ACE states that a copy of the filing has been served on AIG, CNG, AYP and Pacificorp.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

42. The Dayton Power and Light Company

[Docket No. ER97–422–000]

Take notice that on November 8, 1996, The Dayton Power and Light Company (Dayton), tendered for filing an executed Master Electric Interchange Agreement between Dayton and Enron Power Marketing, Inc. (EPMI).

Pursuant to the rate schedules attached as Exhibit B to the Agreement, the parties will provide to each other power and/or energy for resale.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

43. Central Illinois Light Company

[Docket No. ER97–423–000]

Take notice that on November 12, 1996, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and service agreements for two new customers.

CILCO requested an effective date of November 1, 1996.

Copies of the filing were served on all affected customers, parties and the Illinois Commerce Commission.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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 (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30009 Filed 11–22–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EG97–17–000, et al.]

Island Power Corporation, et al.; Electric Rate and Corporate Regulation Filings

November 19, 1996.

Take notice that the following filings have been made with the Commission:

1. Island Power Corporation

[Docket No. EG97–17–000]

On November 12, 1996, Island Power Corporation (''IPC'') filed with the Federal Energy Regulatory Commission (''Commission'') an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

IPC is the owner of a 7 MW eligible facility located in San Jose on the island of Occidental Mindoro, Republic of the Philippines.

Comment date: December 10, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. The Power Company of America, L. P.

[Docket Nos. EC97–6–000 and ER97–441–000]

On November 1, 1996, The Power Company of America, L.P. tendered for filing an Application for Amended Blanket Authorization, Certain Waivers, Disclaimer of Jurisdiction and Request for Expedited Approval.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Ogden Power International Holdings, Inc.

[Docket No. EG97–19–000]

On November 12, 1996, Ogden Power International Holdings, Inc. (''OPIH'') filed with the Federal Energy Regulatory Commission (''Commission'') an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

OPIH, through its affiliate Island Power Corporation (''IPC''), is the owner of a 7 MW eligible facility located in San Jose on the island of Occidental Mindoro, Republic of the Philippines. OPIH, through its affiliate Edison Bataan Cogeneration Corporation (''Bataan''), owns and operates a 58 MW eligible facility in Bataan on the island of Luzon, Republic of the Philippines.

Comment date: December 9, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Florida Municipal Power Agency

[Docket No. EL97–6–000]

Take notice that on October 25, 1996, Florida Municipal Power Agency tendered for filing a Petition for Declaratory Order in response to a September 12, 1996, Order of the United States District Court for the Middle District of Florida.

Comment date: December 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Jersey Central Power & Light Company

[Docket No. EL97–9–000]

Take notice that on November 6, 1996, Jersey Central Power & Light Company filed a Petition for Declaratory Order approving Revised Depreciation Rates in the above-referenced docket.

Comment date: December 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Allegheny Electric Cooperative, Inc. v. Pennsylvania Electric Company, and Metropolitan Edison Company, doing business as GPU Energy

[Docket No. EL97–10–000]

Take notice that on November 8, 1996, Allegheny Electric Cooperative, Inc. tendered for filing a complaint against Pennsylvania Electric Company and Metropolitan Edison Company for failure to provide reliable and firm electric service.

Comment date: December 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Northwest Generating Cooperative

[Docket No. EL97–11–000]

Take notice that on November 14, 1996, Pacific Northwest Generating Cooperative (PNGC), filed a petition for authority to sell power at market-based rates, for certain waivers and for deficiency relief.

Specifically, PNGC petitions the Commission to (1) accept for filing PNGC's initial Rate Schedule to sell power at market-based rates; (2) grant PNGC blanket authority to make market-based sales of energy and capacity under this rate schedule for the purposes specified herein; (3) grant waiver of Order No. 889 for certain PNGC cooperative members that have limited transmission and do not operate a control area; (4) issue a declaratory order finding that certain cooperative members of PNGC do not own, control or operate interstate transmission; and (5) grant such waivers and authorizations as have been granted by the Commission to other filing marketers, including, but not limited to, cost-of-service filing requirements and Subparts B and C of 18 CFR Part 35 and 18 CFR Parts 41, 45, 101, and 141, and blanket approval under Section 204 of the Federal Power Act and Part 34 of the Commission's Regulations of future issuances of securities and assumptions of liability.

Comment date: December 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Illinois Power Company

[Docket No. ER96–1485–002]

Take notice that on October 18, 1996, Illinois Power Company tendered for filing its refund report in the above-referenced docket.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Louisville Gas and Electric Company

[Docket No. ER96–2553–001]

Take notice that on October 17, 1996, Louisville Gas and Electric Company tendered for filing its refund report in the above-referenced docket.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. United Power Technologies, Inc.

[Docket No. ER97–122–000]

Take notice that on November 14, 1996, United Power Technologies, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. MidAmerican Energy Company

[Docket No. ER97–425–000]

Take notice that on November 12, 1996, MidAmerican Energy Company,

106 East Second Street, Davenport, Iowa 52801, tendered for filing a proposed revision to its Rate Schedule for Power Sales, FERC Electric Rate Schedule, Original Volume No. 5 consisting of First Revised Sheet No. 10, superseding Original Sheet No. 10.

MidAmerican states that the revision requires MidAmerican to separately state prices for capacity, energy, transmission services and ancillary services when MidAmerican obtains transmission service under its Open Access Transmission Tariff for transactions under the Rate Schedule for Power Sales.

MidAmerican proposes an effective of November 14, 1996, for the rate schedule change. Accordingly, MidAmerican requests a waiver of the 60-day notice requirement for this filing.

Copies of the filing were served upon MidAmerican's customers under the Rate Schedule for Power Sales and the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Boston Edison Company

[Docket No. ER97–426–000]

Take notice that on November 12, 1996, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for Sonat Power Marketing, L.P. (Sonat). Boston Edison requests that the Service Agreement become effective as of November 1, 1996.

Edison states that it has served a copy of this filing on Sonat and the Massachusetts Department of Public Utilities.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Delmarva Power & Light Company

[Docket No. ER97–430–000]

Take notice that on November 12, 1996, Delmarva Power & Light Company (Delmarva), tendered for filing service agreements providing for firm point-to-point transmission service to Duke/Louis Dreyfus pursuant to Delmarva's open access transmission tariff.

Delmarva states that a copy of the filing was provided to Duke/Louis Dreyfus.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Delmarva Power & Light Company

[Docket No. ER97–431–000]

Take notice that on November 12, 1996, Delmarva Power & Light Company (Delmarva), tendered for filing a service agreement providing for non-firm point-to-point transmission service from time to time to Morgan Stanley Capital Group, Inc. pursuant to Delmarva's open access transmission tariff. Delmarva asks that the Commission set an effective date for the service agreement of October 25, 1996, the date on which it was executed.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Delmarva Power & Light Company

[Docket No. ER97–432–000]

Take notice that on November 12, 1996, Delmarva Power & Light Company (Delmarva), tendered for filing service agreements providing for firm point-to-point transmission service to the City of Dover pursuant to Delmarva's open access transmission tariff.

Delmarva states that copies of the filing were provided to the City of Dover and its agent, Duke/Louis Dreyfus.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Delmarva Power & Light Company

[Docket No. ER97–433–000]

Take notice that on November 12, 1996, Delmarva Power & Light Company (Delmarva), tendered for filing a service agreement providing for non-firm point-to-point transmission service from time to time to The Power Company of America, L.P. pursuant to Delmarva's open access transmission tariff. Delmarva asks that the Commission set an effective date for the service agreement of November 11, 1996, the date on which it was executed.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Delmarva Power & Light Company

[Docket No. ER97–434–000]

Take notice that on November 12, 1996, Delmarva Power & Light Company (Delmarva), tendered for filing a service agreement providing for non-firm point-to-point transmission service from time to AIG Trading Corp. time to pursuant to Delmarva's open access transmission tariff. Delmarva asks that the commission set an effective date for the service agreement of November 6, 1996, the date on which it was executed.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. South Carolina Electric & Gas Company

[Docket No. ER97–436–000]

Take notice that on November 12, 1996, South Carolina Electric & Gas Company (SCE&G) submitted a service agreement, dated November 1, 1996, establishing SCANA Energy Marketing, Inc. (SCANA) as a customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon SCANA and the South Carolina Public Service Commission.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Illinois Power Company

[Docket No. ER97–437–000]

Take notice that on November 12, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Electric Clearinghouse, Inc. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of November 1, 1996.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Illinois Power Company

[Docket No. ER97–438–000]

Take notice that on November 12, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Sonat Power Marketing, L.P. will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of October 15, 1996.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Illinois Power Company

[Docket No. ER97–439–000]

Take notice that on November 12, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements

under which Sonat Power Marketing, L.P. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of November 1, 1996.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Delmarva Power & Light Company

[Docket No. ER97–440–000]

Take notice that on November 12, 1996, Delmarva Power & Light Company, tendered for filing executed umbrella service agreements with Carolina Power & Light Company; The Cincinnati Gas & Electric company, PSI Energy, Inc. and Cinergy Services, Inc.; Electric Clearinghouse, Inc.; Rainbow Energy Marketing Corporation; The Power Company of America, L.P.; and TransCanada Power Corp. under Delmarva's market rate sales tariff, FERC Electric Tariff, Original Volume No. 14, filed by Delmarva in Docket No. ER96–2571–000.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Puget Sound Power & Light Company

[Docket No. ER97–442–000]

Take notice that on November 12, 1996, Puget Sound Power & Light Company, tendered for filing an agreement amending its wholesale for resale power contract with the Port of Seattle (Purchaser). A copy of the filing was served on Purchaser.

Puget states that the agreement changes the term of the wholesale for resale power contract.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. PacifiCorp

[Docket No. ER97–443–000]

Take notice that on November 12, 1996, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, the annual facilities charge calculation under PacifiCorp Rate Schedule FERC No. 298.

PacifiCorp requests that an effective date of December 31, 1996 be assigned to the annual facilities charge calculation.

Copies of this filing were supplied to Southern California Edison Company, Pacific Gas & Electric Company, the Washington Utilities and Transportation Commission, the Public Utility Commission of Oregon and the Public Utilities Commission of the State of California.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. Cinergy Services, Inc.

[Docket No. ER97–444–000]

Take notice that on November 12, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and City of Hamilton, Ohio.

Cinergy and City of Hamilton, Ohio are requesting an effective date of November 1, 1996.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

26. The Washington Water Power Company

[Docket No. ER97–445–000]

Take notice that on November 15, 1996, Rate Schedule FERC 179, effective November 12, 1992 and filed with the Federal Energy Regulatory Commission (FERC) by The Washington Water Power Company, is to be cancelled. Notice of the proposed cancellation is to be served upon the following:

Mr. Lance Elias, Montana Power Company, 40 East Broadway, Butte, MT 59701

Mr. Kelvin Ketchum, B.C. Hydro & Power Authority, c/o 970 Burrard Street, Vancouver, BC V6Z IY3

Mr. Dick Arkills, Pend Oreille PUD, Box Canyon Dam, Box 547, Ione, WA 99139–0547

Mr. Jonah Tsui, Seattle city Light, 1015 Third Avenue, Seattle, WA 98104

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

27. The Washington Water Power Company

[Docket No. ER97–446–000]

Take notice that on November 12, 1996, The Washington Water Power (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12, the Flathead/Clark Fork/Pend Oreille coordination Agreement. The term of the Agreement is to commence on November 15, 1996 and continue through July 31, 1997.

WWP requests that the Commission accept the amended filing effective November 15, 1996 and waive the 60-day notice requirement. No parties will be adversely effected by the granting of this waiver.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

28. Virginia Electric and Power Company

[Docket No. ER97–447–000]

Take notice that on November 12, 1996, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Coral Power, L.L.C. and Virginia Power, dated March 29, 1996, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Coral Power, L.L.C. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

29. Kansas City Power & Light Company

[Docket No. ER97–448–000]

Take notice that on November 12, 1996, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated October 11, 1996, between KCPL and Electronic Clearinghouse, Inc. (ECI). KCPL proposes an effective date of October 11, 1996, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service between KCPL and ECI.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order in Docket No. OA96–4–000.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

30. The Montana Power Company

[Docket No. ER97–449–000]

Take notice that on November 12, 1996, The Montana Power Company (MPC), tendered for filing pursuant to the Federal Power Act, 16 U.S.C. 824d (1994), a rate schedule under which MPC proposes to charge market-based rates for wholesale sales of electric power.

MPC intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where MPC sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

31. Pacific Gas and Electric Company

[Docket No. FA93–12–001]

Take notice that on October 21, 1996, Pacific Gas and Electric Company tendered for filing its refund report in the above-referenced docket.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

32. PECO Power Company, Susquehanna Power Company

[Docket Nos. FA95–37–001 and FA95–55–001]

Take notice that on October 11, 1996, PECO Power Company and Susquehanna Power Company tendered for filing refund reports in the above-referenced dockets.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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 (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30011 Filed 11–22–96; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11374–001, Iowa]

Butler County Conservation Board; Notice of Availability of Final Environmental Assessment

November 18, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for exemption from licensing for the proposed Greene Milldam Hydroelectric Project, located on the Shell Rock River, Butler County, Iowa, and has prepared a Final Environmental Assessment (FEA) for the project. In the FEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–29972 Filed 11–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 1417 and 1835]

Central Nebraska Public Power and Irrigation District, Nebraska Public Power District; Notice of Public Briefing

November 19, 1996.

The U.S. Department of the Interior has requested an opportunity to brief Commission staff on the contents of the draft biological opinion of the effects of the Platte River projects on threatened and endangered species in the project area. The Commission will hold a briefing for that purpose on December 4, 1996, starting at 9:00 a.m. in Conference Room No. 3M–1, located on the 3rd Floor of the Commission headquarters at 888 First Street, NE., Washington, DC.

The briefing will be recorded by a stenographer, and all briefing statements (oral and written) will become part of the Commission's public record of this proceeding. Anyone wishing to receive a copy of the transcripts of the briefing may contact Ann Riley & Associates by calling (202) 293–3950, or writing to 1612 K Street, NW., Suite 300, Washington, DC 20006.

Anyone wishing to comment in writing on the briefing must do so no later than January 3, 1997. Comments should be addressed to: Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Reference should be clearly made to: the Kingsley Dam (Project No. 1417) and North Platte/Keystone Diversion Dam (Project No. 1835).

For further information, please contact Frankie Green at (202) 501–7704.

Lois D. Cashell,

Secretary.

[FR Doc. 96–29978 Filed 11–22–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5655–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; Reinstatement of an Existing ICR; Confidentiality Rules. ICR #1662.01

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 proposed and/or continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Confidentiality Rules. ICR #1662.01 OMB #2020–0003, expires 1/31/97. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 24, 1997.

ADDRESSES: Office of General Counsel, Finance and Operations Division, 401 M Street, SW., Washington, DC 20460, Mailstop 2377.

FOR FURTHER INFORMATION CONTACT: Jonathan S. Baker, Assistant General Counsel, (202) 260–6542/(202)–260–0020 (fax)/ baker.jonathan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those who submit to EPA documents claimed as confidential business information.

Title: CONFIDENTIALITY RULES. EPA ICR #1662.01 OMB Control #2020–0003, expires 1/31/97.

Abstract: EPA administers a great variety of statutes pertaining to the protection of the environment, (e.g., the Toxic Substances Control Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability

Act, Clean Water Act, Federal Water Pollution Control Act, etc.), each with differing data collection requirements and differing requirements for disclosure of information to the public. The Agency collects chemical, process, waste stream, financial, and other data from tens of thousands of facilities in many, if not most, sectors of American business. Companies frequently consider this information vital to their competitive position, and claim the information as confidential business information (CBI).

In the course of its daily business, the Agency often has a need to communicate this information in rulemaking to its contractors, in response to Freedom of Information Act (FOIA) requests to members of the general public, 5 U.S.C. 552, in litigation to various plaintiffs, etc. To manage this volume of confidential information while protecting both the confidentiality of competitively valuable information and the rights of FOIA requestors, EPA instituted in 40 CFR Part 2, Subpart B, a set of procedures for handling and disclosing CBI. These procedures derive their authority from FOIA, the Trade Secrets Act (18 U.S.C. 1905), and the confidentiality provisions of the environmental statutes that EPA administers.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The EPA is soliciting 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; and

(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.

Burden Statement: Based upon EPA's past history of FOIA and other requests for information claimed as confidential and other events generating requests for confidentiality substantiations, EPA estimates that there will be a total of 1008 respondents per year. The annual estimated burden for this collection is 9.4 hours per respondent. No capital costs are estimated to be incurred by respondents.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: November 20, 1996.

Ray E. Spears,

Associate General Counsel, Finance and Operations Division.

[FR Doc. 96–30039 Filed 11–22–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5654–9]

Public Meetings of the Urban Wet Weather Flows Advisory Committee, the Storm Water Phase II Advisory Subcommittee, and the Sanitary Sewer Overflow Advisory Subcommittee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is given that the Environmental Protection Agency (EPA) is convening separate public meetings for the Urban Wet Weather Flows (UWWF) Advisory Committee; the Storm Water Phase II Advisory Subcommittee; and the Sanitary Sewer Overflow (SSO) Advisory Subcommittee. These meetings are open to the public without need for advance registration. The UWWF Advisory Committee will continue discussions of issues related to monitoring, watershed framework, storm water effluent limitations, no exposure, physical impacts, and water quality standards in a wet weather context. The Storm Water Phase II Advisory Subcommittee will continue discussions on issues concerning the framework for Phase II implementation. The SSO Advisory Subcommittee will continue discussions on key issues and the overall SSO strategy.

Note: The Storm Water Phase II Advisory Subcommittee meeting has been changed from December 12–13 to December 11–13.

The meeting will now begin on the afternoon of December 11 instead of the morning of December 12.

DATES:

(1) *Sanitary Sewer Overflow Advisory Subcommittee:*
- December 16–17, 1996

(2) *Storm Water Phase II Advisory Subcommittee:*
- December 11–13, 1996
- February 20–21, 1997

(3) *Urban Wet Weather Flows (UWWF) Advisory Committee:*
- January 9–10, 1997
- April 28–29, 1997

The SSO Advisory Subcommittee meeting starts at 10:00 a.m. EST and ends at 5:00 p.m. On the second day, the meeting will begin at 8:30 a.m. and end at 4:00 p.m. The UWWF Advisory Committee meetings will begin at 10 a.m. EST and end at 5:30 p.m. On the second day, the meetings will run from 8:00 a.m. until 3:30 p.m. On December 11, the Storm Water Phase II meeting will begin at 1:30 p.m. and end at 5:30 p.m. On December 12, the Storm Water Phase II meeting will begin at 9:00 a.m. EST and end at 5:30 p.m. On the third day, the meeting will begin at 9:00 a.m. and end at 4:30 p.m.

ADDRESSES: There is a change in meeting locations. The following meetings will be held at the Washington National Airport Hilton Hotel, 2399 Jefferson Davis Highway, Arlington, Virginia (Crystal City). (The Hilton's telephone number is (703) 418–8667):

- The SSO meeting of December 16–17, 1996.
- The Storm Water Phase II meeting of February 20–21, 1997.
- The UWWF meeting of April 28–29, 1997.

The following meetings will be held at the Holiday Inn Historic-District, 625 First Street, Alexandria, Virginia. The Holiday Inn's telephone number is (703) 548–6300:

- The Storm Water Phase II meeting of December 11–13, 1996.
- The UWWF Advisory Committee meeting of January 9–10, 1997.

FOR FURTHER INFORMATION CONTACT: For the UWWF Advisory Committee meeting, contact Will Hall, Office of Wastewater Management, at (202) 260–1458, or Internet: hall.william@epamail.epa.gov

For the Phase II Subcommittee meeting, contact Sharie Centilla, Office of Wastewater Management, at (202) 260–6052 or Internet: centilla.sharie@epamail.epa.gov

For the SSO meeting, contact Charles Vanderlyn, Office of Wastewater Management, at (202) 260–7277 or Internet: vanderlyn.charles@epamail.epa.gov

Dated: November 14, 1996.

Michael B. Cook,

Director, Office of Wastewater Management, Designated Federal Official.

[FR Doc. 96–30037 Filed 11–22–96; 8:45 am]

BILLING CODE 6560–50–P

COUNCIL ON ENVIRONMENTAL QUALITY

CERCLA Order Authority for Federal Natural Resource Trustees—Solicitation of Comment

AGENCY: Council on Environmental Quality.

ACTION: Notice.

SUMMARY: The Council on Environmental Quality (CEQ) has established a federal interagency task force to coordinate federal implementation of Executive Order 13016 which delegates administrative order authority under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601 *et. seq.*) to the federal natural resource trustees. 61 FR 45871 (August 30, 1996). The task force will focus on the development of a memorandum of understanding (MOU) among federal agencies to ensure coordination, efficiency and effectiveness. The MOU will clarify the roles and responsibilities of the relevant federal agencies and provide appropriate guidance for issuance of administrative orders. The signatory agencies to this MOU will be the Environmental Protection Agency, the United States Coast Guard, the Department of the Interior, the National Oceanic and Atmospheric Administration on behalf of the Department of Commerce, and the Departments of Agriculture, Defense, and Energy. To assure that relevant areas of concern are addressed in this memorandum of understanding CEQ invites interested parties to submit comments regarding implementation of Executive Order 13016.

DATES: Comments must be submitted by December 26, 1996.

ADDRESSES: Comments should be sent to Bradley M. Campbell, Associate Director, Council on Environmental Quality, Old Executive Office Building, Washington, DC 20501.

FOR FURTHER INFORMATION CONTACT: Bradley M. Campbell, Council on Environmental Quality, Old Executive Office Building, Washington, D. C. 20501, 202–456–6224.

Dated: November 19, 1996.

Elisabeth A. Blaug,

Associate General Counsel.

[FR Doc. 96–29992 Filed 11–22–96; 8:45 am]

BILLING CODE 3125–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Export-Import Bank Advisory Committee Open Special Meeting

SUMMARY: The Advisory Committee was established by P.L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

TIME AND PLACE: Thursday, December 12, 1996, at 9:30 a.m. to 12:00 noon. The meeting will be held at EX–IM Bank in Room 1143, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

AGENDA: The meeting agenda will include a discussion of several thought provoking questions covering Charter Renewal, Legislative Strategy, Key Industries/Lundine Report and improving the Advisory Committee process.

PUBLIC PARTICIPATION: The meeting will be open to public participation; and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joyce Herron, Room 1215, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565–3503, not later than December 9, 1966. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to December 12, 1996, Joyce Herron, Room 1215, 811 Vermont Avenue, N.W., Washington, D.C. 20571, Voice (202) 565–3955 or TDD: (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: Joyce Herron, Room 1215, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565–3503.

Kenneth Hansen,

General Counsel.

[FR Doc. 96–30144 Filed 11–21–96; 12:47 pm]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

November 19, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarify of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by January 24, 1997.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0012.

Title: Application for Additional Time to Construct a Radio Station.

Form No.: FCC 701.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other For-Profit.

Number of Respondents: 200.

Estimated Time Per Response: 2 hours.

Total Annual Burden: 400 hours.

Needs and Uses: FCC 701 is used when applying for additional time to

construct a radio or satellite station. Sections 308, 309, 319 of the Communications Act are the legal authorities for the requirement. Ruleparts 21, 23 and 25 and 101 promulgate the collection. In addition to the requirements in the form, applicants may be subject to other requirements.

FCC 701 is used by agency staff to determine whether to grant the applicant's request for an additional period of time to construct a station. A space for the applicant to provide an Internet address is being added to the form. This will provide an additional option of reaching the applicant should the FCC have any questions concerning the application. The Yes/No question for the drug certification has been deleted and certification to this item has been made part of the Certification text. The FCC is required to collect the applicant's Taxpayer Identification Number to comply with the Debt Collection Improvement Act of 1996.

OMB Approval Number: 3060–0048.

Title: Application for Consent to Transfer of Control.

Form No.: FCC 704.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other For-Profit.

Number of Respondents: 800.

Estimated Time Per Response: 8 hours.

Total Annual Burden: 6,400 hours.

Needs and Uses: Section 301(d) of the Communications Act requires that common carriers and noncommon carrier permittees or licensees contemplating a transfer of control apply for authority to make such transfer. Ruleparts 21, 23, 25 and 101 of FCC Rules and Regulations promulgate Section 310(d) of the Act. In addition to information specified on the form, applicants may be required to file other information.

Information is used by Commission personnel to determine whether an entity seeking control of an existing permittee or licensee is legally and financially qualified to become a common carrier or noncommon carrier telecommunications licensee. If the information is not submitted, the determination could not be make.

A space for the applicant to provide an Internet address is being added to the form. This will provide an additional option of reaching the applicant should the FCC have any questions concerning the application. The Yes/No question for the drug certification has been deleted and certification to this item has been made part of the Certification text. The FCC is required to collect the applicant's Taxpayer Identification Number to comply with the Debt Collection Improvement Act of 1996.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–29999 Filed 11–22–96; 8:45 am]

BILLING CODE 6712–01–P

FCC To Hold Open Commission Meeting Tuesday, November 26, 1996

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Tuesday, November 26, 1996, which is scheduled to commence at 9:30 a.m. in Room 852, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, Subject

1—International—Title: Regulation of International Accounting Rates (CC Docket No. 90–337, Phase II). Summary: The Commission will consider a framework for allowing flexibility in the International Settlements Policy.

2—Common Carrier—Title: Implementation of the Telecommunications Act of 1996; Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers. Summary: The Commission will consider revising its rules for filing formal complaints against common carriers.

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Public Affairs, telephone number (202) 418–0500.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc., at (202) 857–3800. Audio and video tapes of this meeting can be obtained from the Office of Public Affairs, Television Staff, telephone (202) 418–0460 or TTY (202) 418–1388; fax numbers (202) 418–2809 or (202) 418–7286. The meeting can be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770; and from Conference Call USA (available only outside the Washington, DC metropolitan area), telephone 1–800–962–0044.

Dated November 19, 1996.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96-30001 Filed 11-22-96; 8:45 am]

BILLING CODE 6712-01-F

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Global Link Transport, Inc., 324 Garden Road, Springfield, PA 19064, Officers: Anthony Pacitti, President, Angela Wilson, Secretary/Treasurer

Distribution Transportation Services Company, 827 West Terra Lane, O'Fallon, MO 63366, Officers: Tom Komadina, Sr., President, Donna Komadina, Vice President

East West North South Forwarding, Inc., 2315 N.W. 107 Ave., 1M57, Box 25, Miami, FL 33172, Officer: Ashok Kitchloo, President

Dated: November 19, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–29998 Filed 11–22–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 9, 1996.

A.Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. James R. Bruton, De Leon, Texas; to acquire an additional .95 percent, for a total of 10.59 percent, of the voting shares of F & M Bancshares, Inc., De Leon, Texas, and thereby indirectly acquire Farmers & Merchants Bank, De Leon, Texas.

Board of Governors of the Federal Reserve System, November 19, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–29968 Filed 11-22-96; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company 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 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, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 19, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Pineries Bankshares, Inc., Stevens Point, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Mattoon State Bank, Mattoon, Wisconsin.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First Pecos Bancshares, Inc., Midland, Texas; to acquire 21.34 percent of the voting shares of First National Bank of Fort Stockton, Ft. Stockton, Texas.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Great Basin Financial Corporation, Elko, Nevada; to become a bank holding company by acquiring 100 percent of the voting shares of Great Basin Bank of Nevada, Elko, Nevada.

Board of Governors of the Federal Reserve System, November 19, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–29969 Filed 11-22-96; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Quarterly Public Health Assessments and Addendum Completed; Correction

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Correction.

SUMMARY: A notice was published in the Federal Register on September 27, 1996 (61 FR 50827), entitled, ''Quarterly Public Health Assessments and Addendum Completed.'' This notice is corrected as follows:

On page 50827, third column, under the ''Public Health Assessments and Addendum Completed or Issued'' section, in the ''NPL Sites'' heading, for the ''Annie Creek Mine Tailings (Reliance Tailings—Leade—(PB96–188784),'' please change the State heading from ''South Carolina'' to ''South Dakota.''

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 96–30019 Filed 11–22–96; 8:45 am]

BILLING CODE 4163–70–P

Food and Drug Administration

[Docket No. 96N–0222]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the reinstatement of a collection of information regarding labeling requirements for color additives (other than hair dyes) and petitions (formerly color additive petitions), has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. This document announces the OMB approval number.

FOR FURTHER INFORMATION CONTACT: Margaret R. Wolff, Office of Information Resources Management (HFA–80), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 10, 1996 (61 FR 47756), the agency announced that the proposed information collection requirements on labeling requirements for color additives (other than hair dyes) (21 CFR 70.25 and 71.1), had been submitted to OMB for review and clearance. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB has approved the reinstatement of the information collection and assigned OMB control number 0910–0185. The approval expires on October 31, 1999. Under 5 CFR 1320.5(b), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Dated: November 18, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–30053 Filed 11–22–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Conservation Agreement for the Coral Pink Sand Dunes Tiger Beetle for Review and Comment

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of Document Availability, Public Comment Period, and Public Hearing.

SUMMARY: The Fish and Wildlife Service announces the availability of a Draft Conservation Agreement for the Coral Pink Sand Dunes tiger beetle (*Cicindela limbata albissima*). This species is a candidate for listing as endangered or threatened under the provisions of the Endangered Species Act of 1973, as amended. The Draft Conservation Agreement was developed jointly by the Utah Department of Natural Resource's Division of Parks and Recreation; the U.S. Bureau of Land Management; Kane County Commission, Utah; and the Service as a collaborative and cooperative effort. The agreement focuses on identifying, reducing and eliminating significant threats to the tiger beetle that warrant its candidate status, and on enhancing and maintaining the species population to ensure its long term conservation. The Service solicits review and comment from the public on this draft agreement.

DATES: Public hearings will be held from 6 p.m. to 9 p.m. on Wednesday, December 4, 1996, in Kanab, Utah; from 6 p.m. to 9 p.m. on Thursday, December 5, 1996, in St. George, Utah; and from 6 p.m. to 9 p.m. on Tuesday, December 10, 1996 in Salt Lake City, Utah. Comments on the Draft Conservation Agreement must be received on or before January 24, 1997 to be considered by the Service during preparation of the final Conservation Agreement and prior to the Service's determination of whether or not it will be a signatory party to the agreement.

ADDRESSES: The public hearings will be held at the Holiday Inn, 800 East Highway 89, Kanab, Utah; at the Hilton Inn, 1450 South Hilton Drive, St. George, Utah; and at the Natural Resources Auditorium, Room 1060 ''C'', Division of Natural Resources Building, 1594 West North Temple Street, Salt Lake City, Utah. Persons wishing to review the Draft Conservation Agreement may obtain a copy by contacting the Assistant Field Supervisor, U.S. Fish and Wildlife Service, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115. Written comments and materials regarding the Draft Conservation Agreement also should be directed to the same address. Comments and materials received will be available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert D. Williams, Assistant Field Supervisor (see **ADDRESSES** section) (telephone 801/524–5001).

SUPPLEMENTARY INFORMATION:

Background

The Coral Pink Sand Dunes tiger beetle (*Cicindela limbata albissima*) is a terrestrial, predaceous insect in the family Cicindelidae. The beetle is known to occur only at the Coral Pink Sand Dunes. The Coral Pink Sand Dunes comprise a dune field about eight miles long and a little less than one mile wide. These dunes are located in Kane County about seven miles west of Kanab, Utah. The southern portion of the Dunes is within the State of Utah's Coral Pink Sand Dunes State Park, managed by Utah Division of Parks and Recreation. The northern portion of the Dunes is located on public land managed by the U.S. Bureau of Land Management, Kanab Resource Area. The Bureau's portion of the dunes is within the Moquith Mountain Wilderness Study Area.

The Coral Pink Sand Dunes tiger beetle is currently a candidate species for listing under the provisions of the Act, in the Service's most recent Notice of Review (61 FR 7596). On April 19, 1994, the Southern Utah Wilderness Alliance petitioned the Service to list the Coral Pink Sand Dunes tiger beetle and designate critical habitat. On September 8, 1994, the Director of the Service approved the 90-day petition finding as providing substantive information that the species' listing may be warranted (59 FR 47293).

The Service has assessed existing and potential threats facing the species based on the five criteria as required by Section 4(a)(1) of the ESA. Within each of these criteria, several factors which have contributed to the degradation of Coral Pink Sand Dunes tiger beetle habitat and its populations were identified (59 FR 47293).

The Agreement focuses on following goals: (1) Permanently protect the Coral Pink Sand Dunes tiger beetle habitat in two designated conservation areas within the historical range of the species. (2) Establish a continuing management program which educates and enforces Coral Pink Sand Dunes tiger beetle conservation measures within the Dunes. (3) Monitor the Coral Pink Sand Dunes tiger beetle population to demonstrate that conservation measures taken in behalf of the species are maintaining it at viable population levels. (4) Gain additional biological and ecological information concerning the beetle and its dune habitat. (5) Form a conservation advisory committee to coordinate all conservation actions and to act as a information gathering, dissemination center. (6) Provide for both motorized and nonmotorized recreation within the Dunes consistent with the conservation of the Coral Pink Sand Dunes tiger beetle.

Public Comments Solicited

The Service will use information received during the public comment period and at the above mentioned public hearings in its determination as to whether it should be a signatory party to the agreements. Comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the draft documents are hereby solicited. All comments and materials received will be considered prior to the approval of any final document.

Author

The primary author of this notice is John L. England (see **ADDRESSES** section) (telephone 801/524–5001).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 19, 1996.

Mary L. Gessner,

Acting Regional Director, Denver, Colorado.

[FR Doc. 96–30020 Filed 11–22–96; 8:45 am]

BILLING CODE 4310–55–M

Preparation of an Environmental Impact Statement on a Permit Application to Incidentally Take Threatened and Endangered Species in Association with a Multiple Species Habitat Conservation Plan for the Potrero Creek and Beaumont Gateway Sites in the City of Beaumont, County of Riverside, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has under consideration for approval a draft Multiple Species Habitat Conservation Plan and an application for incidental take submitted by the Lockheed Martin

Corporation (Lockheed). In response to the plan, the Service intends to prepare an Environmental Impact Statement pursuant to the National Environmental Policy Act. The Stephens' kangaroo rat (*Dipodomys stephensi*) is the only species within the plan area for this Multiple Species Habitat Conservation Plan that is currently federally listed as threatened or endangered. However, Lockheed is also seeking coverage with respect to a number of species of plants and animals of concern that may be listed in the future. The Multiple Species Habitat Conservation Plan proposes a basis for the issuance of incidental take permits and other authorizations under the Federal Endangered Species Act and California Endangered Species Act for all the covered species. This notice describes the action proposed by Lockheed and possible alternatives, identifies mechanisms for the interested public to obtain background materials, solicits written comments on the scope and preparation of the Environmental Impact Statement, and identifies the Service official to whom questions and comments concerning the proposed action and the Environmental Impact Statement may be directed. The Service is requesting comments addressing what issues and alternatives should be considered in the development of the Environmental Impact Statement.

DATES: Written comments related to the scope and content of the Environmental Impact Statement should be received on or before December 26, 1996 at the address below.

ADDRESSES: Information, comments, or questions related to preparation of the Environmental Impact Statement and the National Environmental Policy Act process should be submitted to Mr. Gail Kobetich, Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Written comments also may be sent by facsimile to telephone (619) 431–9618.

FOR FURTHER INFORMATION CONTACT: Mr. Pete Sorensen, Assistant Field Supervisor, at the above Carlsbad address, telephone (619) 431–9440. Documents will also be available for public inspection by appointment during normal business hours (8 a.m. to 5 p.m., Monday through Friday) at the above Carlsbad address. Individuals interested in background materials, including Lockheed's draft Multiple Species Habitat Conservation Plan and the Final Environmental Impact Report for the Beaumont Gateway Specific Plan and Potrero Creek Specific Plan prepared by Lockheed and its consultants for the City of Beaumont, should contact Hugh Hewitt, representing Lockheed, at (714) 798–0500.

SUPPLEMENTARY INFORMATION: The Service listed the Stephens' kangaroo rat as an endangered species, effective October 31, 1988 (53 FR 38485). Because of its listing as an endangered species, the Stephens' kangaroo rat is protected by the Endangered Species Act's prohibition against ''take.'' This means no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect the species, or attempt to engage in such conduct (16 U.S.C. 1538). The Service, however, may issue permits to conduct activities involving endangered species under certain circumstances, including carrying out scientific purposes, enhancing the propagation or survival of the species, or incidentally taking the species in connection with otherwise lawful activities (16 U.S.C. 1539).

Lockheed is applying to the Service for a 30-year incidental take permit to incidentally take the endangered Stephens' kangaroo rat on up to 2,016 acres of occupied and potential habitat at Potrero Creek, and 14 acres of occupied and potential habitat at Beaumont Gateway, and propose their Multiple Species Habitat Conservation Plan as the basis for the issuance of the requested permit. In addition, Lockheed is seeking authorization for the incidental take of seven other currently listed species not known to occupy the Potrero Creek and Beaumont Gateway sites, and seeks incidental take assurances for 44 other species that may be listed in the future.

The Potrero Creek site supports one of the largest known contiguous populations of the Stephens' kangaroo rat, and includes a significant portion (2,000 to 2,200 acres of occupied and potential habitat, or approximately 7 percent) of the known Stephens' kangaroo rat population in Riverside County. The requested permit would allow future development of portions of the 9,117 acre Potrero Creek site, including up to 2,016 acres of occupied and potential Stephens' kangaroo rat habitat, and all of the 160 acre Beaumont Gateway site, which includes 14 acres of occupied or potential habitat, pursuant to Specific Plans approved by the city of Beaumont. The proposed developments would proceed without further mitigation for sensitive biological resources as long as the conservation program contained within the Multiple Species Habitat Conservation Plan is being properly implemented.

The Multiple Species Habitat Conservation Plan proposes the establishment and management of two open space preserves totaling 9,127 acres for sustainable multiple species uses, contribution of a $1,950 per acre fee, for a total of $5,325,450, to the Riverside County Habitat Conservation Agency for acquisition, expansion and/or long-term management of the Stephens' kangaroo rat Core Reserve System, and implementation of measures designed to minimize and/or avoid adverse effects of development of the Potrero Creek and Beaumont Gateway sites. The proposed 30-year permit will be evaluated in the Environmental Impact Statement.

The Environmental Impact Statement will consider the proposed action and a reasonable range of alternatives. Possible alternatives include:

Alternative 1: Potrero Creek and Beaumont Gateway Specific Plans (proposed project by Lockheed). This alternative involves development of the Potrero Creek and Beaumont Gateway Specific Plans, as currently approved by the City of Beaumont, in concert with implementation of the Multiple Species Habitat Conservation Plan.

Alternative 2: Stephens' Kangaroo Preservation Alternative No. 1. This alternative is intended to avoid take of the endangered Stephens' kangaroo rat by confining any proposed development on either the Potrero Creek or the Beaumont Gateway sites to areas that do not adversely affect known Stephens' kangaroo rat occupied habitat.

Alternative 3: Stephens' Kangaroo Preservation Alternative No. 2. This alternative involves a reduction in development areas on the Potrero Creek site to retain approximately 70 percent of the existing occupied habitat on the Potrero Creek site with no Stephens' kangaroo rat habitat preservation on the Beaumont Gateway site.

Alternative 4: Bureau of Land Management Area of Critical Ecological Concern Alternative. This alternative would result in the application of the Bureau of Land Management's proposed Area of Critical Ecological Concern designation upon the Potrero Creek site as described in the South Coast Resource Management Plan prepared by the Bureau of Land Management in 1994. Through a land exchange or other means acceptable to Lockheed and the Bureau of Land Management, the Potrero Creek site would be conserved and managed by the Bureau of Land Management while the Beaumont Gateway site would be developed pursuant to the approved land uses within the Beaumont Gateway Specific Plan.

Alternative 5: Stephens' Kangaroo Rat Habitat Conservation Plan Fee Area Alternative. This alternative involves development of the Potrero Creek and Beaumont Gateway sites according to approved land uses in the respective Specific Plans. In contrast to preparing and implementing a separate Multiple Species Habitat Conservation Plan as proposed, the Potrero Creek and Beaumont Gateway projects would use existing provisions in the ''Habitat Conservation Plan for the Stephens' Kangaroo Rat in Western Riverside County'' for the authorization of incidental take. Under this alternative Lockheed would be responsible for acquiring a 1:1 ratio of occupied Stephens' kangaroo rat habitat within the plan area boundary of the ''Habitat Conservation Plan for the Stephens' Kangaroo Rat in Western Riverside County.''

Alternative 6: Reduced Stephens' Kangaroo Rat Mitigation Fee Alternative. This alternative involves development of the Potrero Creek and Beaumont Gateway sites according to approved land uses in the respective Specific Plans, in concert with implementation of the Multiple Species Habitat Conservation Plan. Under this alternative the Multiple Species Habitat Conservation Plan would propose the contribution of a $500 per acre fee, for a total of $1,775,150, to the Riverside County Habitat Conservation Agency instead of the currently proposed $1950 per acre contribution.

Alternative 7: No Project. Under this alternative, no incidental take permit would be issued.

Environmental review of the Multiple Species Habitat Conservation Plan will be conducted in accordance with the requirements of the 1969 National Environmental Policy Act, as amended (42 U.S.C. 4321 et seq.), National Environmental Policy Act regulations (40 CFR parts 1500–1508), other appropriate regulations, and Service procedures for compliance with those regulations. This notice is being furnished in accordance with section 1501.7 of the National Environmental Policy Act to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the Environmental Impact Statement.

Dated: November 15, 1996.

John H. Doebel,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 96–30021 Filed 11–22–96; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[WO–210–1610–24 1A]

Approval of Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of comment period on request for comments.

SUMMARY: On September 25, 1996, the Bureau of Land Management (BLM) published a document in the Federal Register requesting comments on an information collection connected with filing protests on resource management plans and management framework plans (61 FR 50326). The regulations governing this information collection are found at 43 CFR Subpart 1610. BLM has received a request for extension of the comment period from its current November 25, 1996, ending date. By this notice, BLM is extending the comment period for an additional 30 days.

DATES: Submit comments on or before December 26, 1996.

ADDRESSES: If you wish to comment, you may:

(a) Hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L St., N.W., Washington, D.C.;

(b) Mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C St., N.W., Washington, D.C. 20240; or

(c) Transmit comments electronically via the Internet to WOComment@wo.blm.gov. Please include ''ATTN: 1004–PLAN'' in your message. If you do not receive a confirmation from the system that we have received your message, contact us directly.

You will be able to review comments at the L Street address during normal business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Carole Smith, Regulatory Affairs Group, (202) 452–0367.

Dated: November 19, 1996.

Annetta Cheek,

Leader, Regulatory Affairs Group.

[FR Doc. 96–30041 Filed 11–22–96; 8:45 am]

BILLING CODE 4310–84–P

[CO–030–06–1610–00–1784]

Southwest Resource Advisory Council Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Resource Advisory Council Meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 USC), notice is hereby given that the Southwest Resource Advisory Council (SW RAC) will meet on Thursday, December 12, 1996, at Ridgway State Park headquarters 21 miles south of Montrose, Colorado, on US Highway 550 (Dutch Charlie exit).

DATES: The meeting will be held on Thursday, December 12, 1996. It will begin at 9:00 a.m. and end at 4:30 p.m.

ADDRESSES: For additional information, contact Roger Alexander, Bureau of Land Management, Montrose District Office, 2465 South Townsend Avenue, Montrose, Colorado 81401; Telephone 970–240–5335; TDD 970–240–5366.

SUPPLEMENTARY INFORMATION: The December 12, 1996, meeting is scheduled to begin at 9:00 a.m. in the conference room at Ridgway State Park Headquarters, 21 miles south of Montrose, Colorado, on US Highway 550 (Dutch Charlie exit). The agenda will focus on public land user fees. Time will be provided for public comments.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the Montrose District Manager.

Summary minutes for Council meetings are maintained in the Montrose District Office and are available for public inspection and reproduction during regular business hours within thirty (30) days following each meeting.

Dated: November 19, 1996.

Jamie E. Connell,

Associate District Manager.

[FR Doc. 96–30012 Filed 11–22–96; 8:45 am]

BILLING CODE 4310–JB–P

[NM-030-1210-00]

Emergency Closure of a Vehicle Trail, Ladron Area of Critical Environmental Concern (ACEC) and Sierra Ladrones Wilderness Study Area (WSA), Socorro County, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Emergency closure of vehicle trail.

SUMMARY: Notice is hereby given that effective immediately, the Las Cruces District is implementing an emergency closure of an existing vehicle trail to use by any motorized vehicle or equipment. The closure is implemented in order to prevent resource degradation and protect the values of the Ladron ACEC and Sierra Ladrones WSA. The authority for this emergency closure is 43 CFR 8364.1: Closure and Restriction Orders.

The vehicle trail is located within the following public land:

T. 3 N., R. 2 W., NMPM

Sec. 35, N½NE¼, Lots 5, 6, and 10.

The subject vehicle trail begins on the east boundary of Section 35, N½NE¼, and ends at the eastern boundary of the private land located in Sections 34 and 35, all in T. 3 N., R. 2 W.

This closure is not intended to affect valid existing rights on the subject land or rights- of-way of any private landowners. Persons that are exempt from this closure are Mr. Lionel Ortega, adjacent private landowner, Mr. Charles Headen, grazing permittee and his representatives, and any Federal, State or local officer, or member of any organized rescue or firefighting force in the performance of an official duty, or any person authorized or permitted in writing by the BLM. BLM personnel conducting official duties, cooperating agency personnel, and contractors authorized by the BLM are included in the exemption from this order.

DATES: This closure was effective on November 8, 1996 and shall remain in effect until rescinded or modified by the Authorized Officer.

FOR FURTHER INFORMATION CONTACT: Ron Dunton, Socorro Resource Area Manager, or Jon Hertz, Chief, Multi-Resources, 198 Neel Avenue, NW, Socorro New Mexico, 87801 or at (505) 835-0412.

SUPPLEMENTARY INFORMATION: Violations of this closure are punishable by fines not to exceed $1,000 and/or imprisonment not to exceed 1 year.The action taken is to prevent impacts to wildlife habitat, cultural resources, scenic values, native vegetation and fragile soils resulting from indiscriminate off-road use. This closure will be evaluated in an environmental assessment to be completed by the Socorro Resource Area in the near future.

Copies of the closure order and maps showing the location of the route are available from the Socorro Resource Area Office, 198 Neel Avenue, NW, Socorro, New Mexico 87801.

Dated: November 18, 1996.

Linda S. C. Rundell,

District Manager.

[FR Doc. 96–30022 Filed 11–22–96; 8:45 am]

BILLING CODE 4310–VC–P

[CO–956–96–1420–00]

Colorado: Filing of Plats of Survey

November 12, 1996.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 am., November 12, 1996. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

The field notes representing the remonumentation of certain corners in T. 6 N., R. 94 W., T. 11 N., R. 96 W., and T. 12 N., R. 102 W., Sixth Principal Meridian, Group 750, Colorado, were accepted October 22, 1996.

The remonumentation was requested by the District Manager, Craig, Colorado.

The plats (in 6 sheets) representing the dependent resurvey of a portion of the subdivision of the south and west boundaries, a portion of the subdivisional lines, and a portion of the subdivision of section 8, and the subdivison survey of certain sections, and metes-and- bounds survey of the East boundary, Pinon Canyon Maneuver Site, T. 28 S., R. 55 W., T. 29 S., R. 55 W., T. 28 S., R. 56 W., T. 29 S., R. 56 W., T. 29 S., R. 57 W., and T. 30 S., R. 57 W., Sixth Principal Meridian, Group 1001, Colorado, was accepted October 16, 1996.

These surveys were requested by the Regional Director of Lands, Rocky Mountain Region, USDA, Forest Service, to identify the boundaries of the Comanche National Grasslands. These surveys were also requested by the Department of Defense to define the Purgatoire Canyon rim.

The plat representing the dependent resurvey of the west one mile of the south boundary, the south four miles of the west boundary, a portion of the subdivisional lines, the subdivision of certain sections, and the metes-and-bounds survey of tract 37 in T. 38 N. R. 3 W., New Mexico Principal Meridian, Group 1082, Colorado, was accepted October 28, 1996.

This survey was requested by the Director, Engineering, Rocky Mountain Region, USFS, to identify the National Forest boundaries.

The plat representing the dependent resurvey of a portion of the west boundary and subdivisional lines, and the subdivision of sections 18 and 19, T. 35 N., R. 9 W., New Mexico Principal Meridian, Group 1098, Colorado was accepted October 24, 1996.

This survey was requested by the District Manager, Montrose, Colorado, for the administrative needs of this Bureau.

The plat representing the dependent resurvey of portions of the east boundaries and subdivisional lines, and the subdivision of sections 23 and 24, T. 15 S., R. 91 W., Sixth Principal Meridian, Group 1112, Colorado, was accepted October 23, 1996.

This survey was requested by the Forest Supervisor, Grand Mesa, Gunnison and Uncompahgre National Forests, Delta, Colorado, to identify the National Forest boundaraies.

Danny L. McDonald,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 96–29966 Filed 11–22–96; 8:45 am]

BILLING CODE 4310–JB–P

[NV–030–1430–01; CACA 24052]

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 74 acres of public land in Alpine County and add it to the existing Indian Creek Recreation area. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by February 18, 1997.

ADDRESSES: Comments and meeting requests should be sent to the Carson City District Manager, BLM, 1535 Hot Springs Road, Carson City, Nevada 89706.

FOR FURTHER INFORMATION CONTACT: Tom Abbett, BLM Carson City District Office, 702–885–6000.

SUPPLEMENTARY INFORMATION: On November 4, 1996, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the United States mining laws (30 U.S.C. Ch. 2), subject to valid existing rights:

Mount Diablo Meridian

T. 10 N., R. 20 E.,

Sec. 9, S½ of the NW¼, excepting therefrom the lands conveyed to the

county of Alpine by deed recorded August 17, 1970, in Book 13, Page 145 Official Records of Alpine County, aggregating approximately 74 acres in Alpine County.

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 Carson City District Manager 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 Carson City District Manager 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 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 land use permits by BLM under existing laws and regulations.

Dated: November 6, 1996.

David Mcilnay,

Chief, Lands Section.

[FR Doc. 96–29405 Filed 11–15–96; 8:45 am]

BILLING CODE 4310–40–M

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service, DOI.

ACTION: Notice of Information Collection Solicitation.

SUMMARY: Under the Paperwork Reduction Act of 1995, the Minerals Management Service (MMS) is soliciting comments on an information collection, Cooperative Agreements (OMB Control Number 1010–0087).

DATES: Written comments should be received on or before January 24, 1997.

ADDRESSES: Comments sent via the U.S. Postal Service should be sent to: Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, P.O. Box 25165, MS 3101, Denver, Colorado, 80225–0165; courier address is: Building 85, Room A–212, Denver Federal Center, Denver, Colorado 80225; e:Mail address is: David__Guzy@smtp.mms.gov.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Procedures Staff, phone (303) 231–3046, FAX (303) 231–3194, e-Mail Dennis__Jones@smtp.mms.gov.

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act of 1995, Section 3506 (c)(2)(A), each agency shall provide notice and otherwise consult with members of the public and affected agencies concerning this collection of information in order to solicit comment to: (a) evaluate 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) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

The MMS is requesting the continuation of this collection of information, Cooperative Agreements. The Secretary of the Interior (Secretary) is authorized by the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) at 30 U.S.C. 1732, to enter into cooperative agreements utilizing the capabilities of States and Indian Tribes to carry out royalty audits and related investigation and enforcement activities. Cooperative agreements benefit both the Minerals Management Service (MMS) and the State or Tribe involved by helping to ensure proper product valuation, correct and timely production reporting, and correct and timely royalty payment through the application of an aggressive and comprehensive audit program. To be considered for a cooperative agreement States and Indian Tribes must comply with the regulations at 30 CFR 228 by submitting a request to the Director, MMS, and preparing an application detailing the work to be done. While working under a cooperative agreement, the State or Tribe must submit quarterly vouchers to claim reimbursement for the cost of eligible activities. Information required for the application is supplied voluntarily.

The MMS has simplified the process of applying for and lessened the burden of participating in cooperative agreements. The information requested is the minimum necessary to determine an applicant's ability to perform royalty audits. The MMS provides telephone assistance, written guidelines, and onsite assistance for the preparation of cooperative agreement applications, annual work plans, and quarterly reimbursement vouchers.

The initial information collection burden to cooperative agreement applicant involves becoming acquainted with the requirements and preparing the original request to the Director and preparing the application. If the agreement is approved, the burden in subsequent years includes preparing an annual work plan and budget and a quarterly request for reimbursement voucher. MMS estimates that the burden estimate to the applicant for preparing the request and application is approximately $2500 (100 hours × $25/hour). In addition, the agency estimates the burden for the annual work plan and budget (40 hours) and the quarterly request for reimbursement voucher (10 hours per quarter) is $2,500 (80 hours × $25/hour).

Dated: November 13, 1996.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 96–29984 Filed 11–22–96; 8:45 am]

BILLING CODE 4310–MR–P

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service, DOI.

ACTION: Notice of information collection solicitation.

SUMMARY: Under the Paperwork Reduction Act of 1995, the Minerals Management Service (MMS) is soliciting comments on an information collection, the Payor Information Form for Oil and Gas (OMB Control Number 1010–0033). The Royalty Policy Committee recommendations and the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 may require MMS to make changes to this information collection. MMS is evaluating both of these issues.

DATES: Written comments should be received on or before January 24, 1997.

ADDRESSES: Comments sent via the U.S. Postal Service should be sent to: Minerals Management Service, Royalty

Management Program, Rules and Procedures Staff, P.O. Box 25165, MS 3101, Denver, Colorado, 80225–0165; courier address is: Building 85, Room A–212, Denver Federal Center, Denver, Colorado 80225; e:Mail address is: David__Guzy@smtp.mms.gov.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Procedures Staff, phone (303) 231–3046, FAX (303) 231–3194, e-Mail Dennis__Jones@smtp.mms.gov.

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act of 1995, Section 3506 (c)(2)(A), each agency shall provide notice and otherwise consult with members of the public and affected agencies concerning this collection of information in order to solicit comment to: (a) evaluate 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) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

The MMS is requesting the continuation of this collection of information, the Payor Information Form for Oil and Gas. However, the Royalty Policy Committee recommendations and the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996, signed August 13, 1996, may require MMS to make changes to this information collection. MMS is evaluating both of these issues.

The Secretary of the Interior is authorized to prescribe rules and regulations to accomplish the purpose of applicable Federal laws. MMS performs the royalty management functions for the Secretary, who is responsible for the collection of royalties from lessees who produce minerals from leased Federal and Indian lands. The MMS has developed computer applications that document payment and sales volumes and values as reported by payors and also track minerals from the point of production to the point of disposition, royalty determination, or point of sale. Payor data enables MMS to provide reliable, comprehensive sources of information for Federal, State, and Indian auditors and inspectors checking payors and lease operators, as required by Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA). Failure to collect some of the PIF information would make it impossible for MMS to comply with FOGRMA Section 101(a) and assure that proper royalties are collected for mineral production from a given lease.

The consolidated database developed by MMS provides the agency the ability to verify that proper royalties are being received for minerals produced. This database is an essential part of an overall effort to improve the management of the nation's mineral resources and to ensure proper collection and accounting for revenues due from companies removing and processing oil and gas products from Federal or Indian leases. PIF information comprises an integral part of the consolidated database establishing the payor(s) for producing leases and payor accounts on these leases, and updating relevant payor information. This information collection identifies the payor(s) who pays rent, royalty or minimum royalty to MMS and identifies the products on which these payments are made.

Approximately 1,700 active oil and gas payors will submit an estimated 25,000 initial and updated PIF's annually. MMS estimates that it will take approximately 12,500 burden hours to complete these PIF's, or an average of ½ hour per PIF. MMS further estimates that it will take approximately 850 burden hours for all payors to perform the necessary record keeping directly related to the PIF, or an average of ½ hour per payor. Therefore, the total burden hours for this information collection is estimated to be 13,350 burden hours. At an estimated cost of $25 per burden hour, the total estimated cost to respondents is $333,750.

Dated: November 13, 1996.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 96–29987 Filed 11–22–96; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities, Proposed Collection; Comment Request

ACTION: Notice of information collection under review; making officer redeployment effective progress reports.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until the sixtieth day from the date published in the Federal Register. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Kristen Layman, 202–616–2896, U.S. Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, D.C. 20530.

Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Kristen Layman, 202–616–2896, U.S. Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, D.C. 20530.

Overview of this information collection:

(1) Type of Information Collection: New collection.

(2) Title of the Form/Collection: Making Officer Redeployment Effective (MORE) Progress Report.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: COPS 017/01. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: State and Local governments, private non-profit organizations, individuals, education

institutions, hospitals, and private commercial organizations (if legislation allows). Other: None.

The information collected is used to determine grantee progress on its Making Officer Redeployment Effective (MORE) Grant. Completion of such report is a condition of the MORE grant award. Upon receipt and review, the agency will notify the grantee if it is not in compliance with the terms and conditions of its grant award under this program.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 1,600 responses; 2 hours per response. The information will be collected twice per year from each respondent. Thus, there will be approximately 3,200 total yearly responses at 2 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 6,400 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 20, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–30007 Filed 11–22–96; 8:45 am]

BILLING CODE 4410–21–M

Antitrust Division

[Civil Action No. 96–5313 (RWS), S.D.N.Y.]

United States v. Alex. Brown & Sons, Inc., et al.; Public Comments and Response on Proposed Final Judgment

Pursuant to Section 2(d) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), the United States publishes below the written comments received on the proposed Final Judgment in *United States* v. *Alex. Brown & Sons, Inc.*, Civil Action No. 96–5313 (RWS), United States District Court for the Southern District of New York, together with the response of the United States to the comments.

Copies of the written comments and the response are available for inspection and copying in Room 9500 of the U.S. Department of Justice, Antitrust Division, 600 E Street, N.W., Washington, D.C. 20530 (telephone: (202) 307–7200) and for inspection at the Office of the Clerk of the United States District Court for the Southern District of New York, Room 120, United States Courthouse, 500 Pearl Street, New York, New York 10007.

Rebecca P. Dick,

Deputy Director of Operations.

Response of United States to Public Comments

Pursuant to the Antitrust Procedures and Penalties Act (''Tunney Act''), 15 U.S.C. 16 (b)–(h), the United States make and files this response to the public comments received regarding the relief described in the proposed Stipulation and Order (''proposed order'') that, if entered by the Court, would resolve this civil antitrust proceeding. The United States has carefully considered the comments received, and remains convinced that entry of the proposed order is in the public interest.

This response and the attached public comments have been submitted to the Federal Register for publication (*see* 15 U.S.C. 16(d)). Moreover, the Untied States has today certified to the Court that it has fulfilled the requirements of the Tunney Act. Upon a determination that the Untied States and the defendants have fulfilled the requirements of the Tunney Act and that entry of the proposed order would be in the public interest, the Court may enter the proposed order.

This action was initiated by the United States with the filing of a complaint on July 17, 1996. The complaint charges that the defendants—all of whom are ''market makers'' in over-the-counter (''OTC'') stocks quoted for public trading on Nasdaq,[1] had violated Section 1 of the Sherman Act, 15 U.S.C. 1, by engaging in a form of price fixing. The complaint alleges that the defendants and others adhered to and enforced a ''quoting convention'' that was designed to and did deter price competition among the defendants and other market makers in their trading of Nasdaq stocks with the general public. As a result of adherence to and enforcement of the ''quoting convention'' by the defendants, investors incurred higher transaction costs to buy and sell Nasdaq stocks than they otherwise would have.

With the filing of its complaint, the United States also filed the proposed Stipulation and Order, signed by all the defendants, which, if entered by the Court, would terminate the litigation. In addition, on July 17, 1996, the United States filed its Competitive Impact Statement (''CIS''). 15 U.S.C. 16(b). Thereafter, the defendants filed statements identifying certain communications made on their behalf, as required by the Tunney Act. 15 U.S.C. 16(g). A summary of the terms of the proposed order and the CIS, and directions for the submission of written comments relating to the proposed order to the Department, were published in *The Washington Post*, a newspaper of general circulation in the District of Columbia, and in *The New York Times*, a newspaper of general circulation in the Southern District of New York, beginning on July 29, 1996, and continuing on consecutive days through August 3, 1996, and on August 5, 1996.

The proposed order and the CIS were published in the Federal Register on August 2, 1996. 61 FR 40433–40451 (Aug. 2, 1996). The 60-day period public comment period began on August 3, 1996 and expired on October 2, 1996. In response to the solicitation of public comments, the United States received comments from three persons. These comments are attached as Exhibits 1–3.

In addition, the private plaintiffs in *In re: Nasdaq Market-Makers Antitrust Litigation*, 94 Civ. 3996 (RWS), M.D.L. No. 1023 (S.D.N.Y.), commented upon the proposed relief in the form of certain filings they made with the Court in connection with their pending motion to intervene in this case, namely (1) a memorandum in support of their motion to intervene and (2) a reply to the government's opposition to the motion. These papers are on file with the Court, and the relevant portions of these documents are attached as Exhibits 4–5.

I. Background

The complaint and proposed order are the culmination of a major, two-year-long investigation by the Department of Justice into the trading activities of Nasdaq securities dealers. The Department's investigation began in the summer of 1994, shortly after the public disclosure of an economic study by Professors William Christie of Vanderbilt University and Paul Schultz of Ohio State University (the ''Christie/Schultz study''). The Christie/Schultz study suggested that securities dealers on Nasdaq might have tacitly colluded to avoid odd-eighth price quotations on a substantial number of Nasdaq stocks, including some of the best known and most actively traded issues, such as Microsoft Corp., Amgen, Apple Computers, Inc., Intel Corp., and Cisco Systems, Inc. After the Christie/Schultz study had received wide-spread publicity, several class action lawsuits

[1] The term ''Nasdaq'' was originally an acronym for the ''National Association of Securities Dealers Automated Quotation System.'' The automated quotation system is now operated by The Nasdaq Stock Market, Inc.

alleging antitrust violations were filed against the defendants and other Nasdaq market makers.[2]

During the course of its investigation, the Department reviewed thousands of pages of documents produced by the defendants and other market participants in response to more than 350 Civil Investigative Demands (''CIDs''). The Department reviewed hundreds of responses to interrogatories that were submitted by the defendants (and others) and took more than 225 depositions of individuals with knowledge of the trading practices of Nasdaq market makers, including current and former officers and employees of the defendants and other Nasdaq market makers, as well as officials and committee members of the National Association of Securities Dealers, Inc. (''NASD''), the organization responsible for oversight of the Nasdaq market.

The Department conducted numerous telephone and in-person interviews of current and former Nasdaq stock traders, Nasdaq investors, and others with relevant knowledge of the industry, and listened to approximately 4500 hours of audio tapes of telephone calls between stock traders employed by the defendants and other Nasdaq market makers. These audio tapes had been recorded by certain of the defendants (and other market makers) in the ordinary course of their business and were produced to the Department in response to its CIDs.

The Department also reviewed and analyzed substantial quantities of data relating to trading and quoting activity in Nasdaq stocks produced in computer-readable format by the NASD. These data included data showing all market maker quote changes on Nasdaq during a twenty-month period between December 1993 and July 1995, and for selected months thereafter, including March 1996. The Department also reviewed eighteen months of data reflecting actual trades in Nasdaq stocks. Finally, the Department reviewed numerous transcripts of depositions taken by the Securities and Exchange Commission (''SEC'') in a concurrent inquiry into the operations and activities of the NASD and the Nasdaq market.

Based upon the evidence discovered during its investigation, the Department concluded that the defendants and others had been engaged for a number of years in anticompetitive conduct in violation of the Sherman Act, as alleged in the complaint. The Department challenged this conduct as violative of Section 1 of the Sherman Act. Entry of the proposed order would resolve the Department's competitive concerns regarding this conduct.

The complaint and proposed order address a mechanism by which the defendants coordinated their price quotes in certain Nasdaq stocks to increase the inside spread.[3] The central allegation of the complaint is that the defendants and others agreed to abide by a long-standing, essentially market-wide commitment to a two-part ''quoting convention.'' This ''quoting convention'' dictates the price increments a market maker can use to adjust or ''update'' its bid and ask price quotes on the Nasdaq system. Under the first part of the quoting convention, if a market maker's dealer spread in a stock is ¾ point (75 cents) or wider, the market maker is required to quote its bid and ask prices in even-eighth increments (e.g., ¼ (25 cents), ½ (50 cents), ¾ (75 cents) or 4/4 ($1). (The minimum quote increment for Nasdaq stocks trading at a price of $10 or more is ⅛ point, i.e., a much narrower increment than the ¼ point increment dictated by the quoting convention when an individual dealer spread in a stock is ¾ point or wider.) The quoting convention thus ensures that the inside spread in those stocks is maintained at ¼ point (25 cents), or wider.

Under the second part of the quoting convention, market makers can quote bid and ask prices on Nasdaq in odd-eighth increments, e.g., ⅛ (12.5 cents), ⅜ (37.5 cents), ⅝ (62.5 cents) or ⅞ (87.5 cents), only if they have a dealer spread of less than ¾ point. This requirement deters market makers from quoting bid and ask prices in odd-eighth increments because a narrower dealer spread is likely to create a greater economic risk to the market maker in trading that stock. A market maker with a narrow dealer spread is more likely than a market maker with a wide dealer spread, other things equal, to be required to trade on the ''wrong side'' of the market.[4] When the difference between a market maker's bid and ask quotes is ½ rather than ¾, a market maker may be called upon to buy (or sell) more stock than the trader wants, or buy stock when the market maker wants to sell (or vice versa).

In executing a market order on behalf of a retail customer, market makers historically bought from the customer at the inside bid, and sold to the customer at the inside ask. This execution by the market maker satisfied the retail broker's obligation of ''best execution'' for retail customers. Historically, large institutional customers have sometimes been able to negotiate prices that are better (higher bid prices and lower ask prices) than the inside spread, but the width of the inside spread influences many negotiations between market makers and their institutional customers.

Market makers thus have a significant interest in each others' price quotes because those quotes can either set each others' actual transaction prices or significantly affect those prices. This relationship creates an incentive for market makers to discourage bid and ask price competition that may have the effect of narrowing the inside spread.

Adherence to the quoting convention deterred the use of odd-eighth quotes in many stocks. This, in turn, tended to maintain the inside spread in those stocks at no less than one quarter, or twenty-five cents. This artificial floor on the inside spread in those stocks raised transaction costs on Nasdaq. The proposed order, if entered by the Court, would prohibit the defendants from continuing to adhere to and enforce the quoting convention. In addition, it would establish mechanisms that would enable the Department to determine whether the defendants have, in fact, ceased their unlawful conduct and have complied with the terms of the proposed order designed to ensure against its repetition.

[2] All of the private cases have been consolidated and assigned to this Court, M.D.L. 1023.

[3] Market makers must continuously quote the prices at which they are willing both to buy and sell individual stocks. The price an individual market maker quotes to buy a stock is known as its ''bid'' price. The price it quotes to sell a stock is known as its ''offer'' or ''ask'' price. (A market maker's bid price is always higher than its ask price.) The difference between a market maker's ''bid'' and ''ask'' is known as its ''dealer spread.'' The Nasdaq computer screen collects and displays the bid and offer prices of all the market makers in each stock. The highest bid and the lowest offer from among the quotes of all the market makers in a stock are called the ''inside bid'' and the ''inside ask,'' or—together—the ''inside quotes.'' The difference between the inside bid and the inside ask in a stock is called the ''inside spread.''

[4] To trade on the ''wrong side'' of the market means to buy a stock when one would prefer to sell the stock, or vice versa. Being required to trade on the ''wrong side'' of the market is more likely to occur if a dealer has a narrow dealer spread, than if a dealer has a wide dealer spread. For example, if a market maker has a dealer spread of fifty cents—say, 20 to 20½—when the best bid in the market is 20, the market maker is presumably trying to buy the stock (because its bid is equal to the best bid in the market). If, however, the market moves up quickly, the market maker's 20½ ask price could suddenly become the best ask price in the market, meaning that the market maker would be required to sell stock at that price. With a wider dealer spread—say, 20 to 20¾—the possibility of this occurring is less.

II. The Legal Standard Governing the Court's Public Interest Determination

A. General Standard

When the Untied States proposes to settle a civil antitrust case with a consent judgment, the Tunney Act requires the district court to determine whether ''the entry of such judgment is in the public interest.'' 15 U.S.C. 16(e).[5] The court is not, however, required ''to determine whether the resulting array of rights and liabilities 'is one that will *best* serve society,' but only to assess whether that the resulting settlement is 'within the *reaches* of the public interest.' '' *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1460 (D.C. Cir. 1995) (emphasis in original); *accord, United States* v. *Western Elec. Co.*, 993 F.2d 1572, 1576 (D.C. Cir.), *cert. denied*, 114 S. Ct. 487 (1993); *see also United States* v. *Bechtel*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975). For this reason, a court should not refuse to enter an order terminating a civil antitrust case initiated by the United States ''unless 'it has exceptional confidence that adverse antitrust consequences will result—perhaps akin to the confidence that would justify a court in overturning the predictive judgments of an administrative agency.' '' *Microsoft*, 56 F.3d at 1460 (quoting *Western Electric*, 993 F.2d at 1577). Congress did not intend the Tunney Act to lead to protracted hearings on the merits, and thereby undermine the incentives for defendants and the government to resolve civil antitrust cases through agreed-upon orders. S. Rep. No. 298, 93d Cong. 1st Sess. 3 (1973).

Tunney Act review is confined to the terms of the proposed relief and their adequacy as remedies for the violations alleged in the complaint. *Microsoft*, 56 F.3d at 1459.[6] Thus, in this case, the Court need decide only whether the proposed order is reasonably directed toward addressing the competitive concern raised by the quoting convention.

No third party has a right to demand that the proposed order be rejected or modified simply because a different order might better serve its private interests. Unless the proposed order ''will result in positive injury to third parties,'' a district court ''should not reject an otherwise adequate remedy simply because a third party claims it could be better treated.'' *Microsoft*, 56 F.3d at 1461 n.9.[7]

The United States—not any third party—represents the public interest in government antitrust cases. *See, e.g., Bechtel Corp.*, 648 F.2d at 660, 666; *Untied States* v. *Associated Milk Producers*, 534 F.2d 113, 117 (8th Cir.), *cert. denied*, 429 U.S. 940 (1976). Moreover, there is no allegation that the government has acted in bad faith in negotiating the relief. The proposed order is intended to ensure that market makers do not continue to collude through the mechanism of the quoting convention to increase transaction costs for investors in Nasdaq stocks. It will effectively accomplish this goal. Moreover, it is directed at private conduct illegal under the antitrust laws. It is not intended or designed—nor could it be—to make the Department the regulator of The Nasdaq Stock Market, Inc. The decree is also not intended to change the structure of the Nasdaq Stock Market by, for example, requiring that market-maker quotes be posted anonymously on Nasdaq, as suggested by one commentor. Exhibit 1 [letter of Professor Junius Peake, dated July 26, 1996] at 2; *see infra* text at 14–15.

III. Entry of the Proposed Order is in the Public Interest

Entry of the proposed order is clearly within the reaches of the public interest under the standards articulated in *Microsoft* and other decided cases. If entered by the Court, the proposed order would prevent each of the defendant market makers, unless otherwise specifically permitted, in connection with their market-making activities in OTC stocks, from agreeing with any other market maker:

(1) to fix, raise, lower, or maintain quotes or prices for any Nasdaq security;

(2) to fix, increase, decrease, or maintain any dealer spreads, inside spreads, or the size of any quote increment (or any relationship between or among dealer spread, inside spread, or the size of any quote increment), for any Nasdaq security;

(3) to adhere to a quoting convention whereby Nasdaq securities with a three-quarter (¾) point of greater dealer spread are quoted on Nasdaq in even-eighths and are updated in quarter-point (even-eighth) quote increments; and

(4) to adhere to any understanding or agreement (other than an agreement on one or a series of related trades) requiring a market maker to trade at its quotes on Nasdaq in quantities of shares greater than either the Nasdaq minimum or the size actually displayed or otherwise communicated by that market;[8]

In addition, the proposed order, if entered by the Court, would bar each of the defendants from engaging in any harassment or intimidation of any other market maker because such market maker:

(1) decreased its dealer spread or the inside spread in any Nasdaq security;

(2) refused to trade at its quoted prices in quantities of shares greater than either the Nasdaq minimum or the size actually displayed or otherwise communicated by that market maker; or

(3) displayed or quantity of shares on Nasdaq greater than either the Nasdaq minimum or the size actually displayed or otherwise communicated by that market maker.

Finally, Section IV(8) of the proposed order, if entered by the Court, would bar each of the defendants from refusing, or threatening to refuse, to trade (or agreeing with or encouraging any other market maker to refuse to trade) with any market maker at the defendant's published Nasdaq quotes in amounts up to the published quotation size because such market maker decreased its dealer spread, decreased the inside spread in any Nasdaq security, or refused to trade at its quoted prices in a quantity of shares greater than either the Nasdaq minimum or the size actually displayed or otherwise communicated by that market maker.

Entry of the proposed order is in the public interest. The United States urges that the Court to enter the proposed order upon a determination that the United States and the defendants have satisfied the requirements of the Tunney Act.

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[5] While not styled ''consent judgment,'' the proposed order serves the same purpose. Violations of the proposed order are punishable as civil or criminal contempt. *See, e.g., United States* v. *Schine*, 260 F.2d 552 (2d Cir. 1958), *cert. denied*, 358 U.S. 934 (1959); 18 U.S.C. 401; *see also* CIS at 3–4, 42, 49, 52.

[6] A district court exceeds its authority if it requires production of information concerning ''the conclusions reached by the Government'' with respect to the particular practices investigated but not charged in the complaint, and the areas addressed in settlement discussions, including ''what, if any areas were bargained away and the reasons for their non-inclusion in the decree.'' *Microsoft*, 56 F.3d at 1455, 1459. To the extent that comments raise issues not charged in the compliant, those comments are irrelevant to the Court's review. *Id.* at 1460.

[7] *Cf. United States* v. *Associated Milk Producers, Inc.*, 534 F.2d 113, 116 n.3 (8th Cir.) (''The cases unanimously hold that a private litigant's desire for [the] *prima facie* effect [of a litigated government judgment] is not an interest entitling a private litigant to intervene in a government antitrust case.''), *cert. denied*, 429 U.S. 940 (1976).

[8] The reference to agreements ''other than an agreement on one or a series of related trades'' is intended to make clear that a market maker is not prohibited from agreeing to buy or sell a specific quantity of stock, and that agreeing to buy or sell a quantity of shares greater than the amount initially specified in a series of related trades also does not violate the proposed order.

IV. Response to Public Comments

As noted, this case has generated three formal comments. In addition, the private plaintiffs in *In re: Nasdaq Market-Makers Antitrust Litigation*, 94 Civ. 3996 (RWS), M.D.L. No. 1023 (S.D.N.Y.), commented upon the proposed relief in the form of certain filings they made with the Court in connection with their pending motion to intervene in this case, namely (1) a memorandum in support of their motion to intervene and (2) a reply to the government's opposition are on file with the Court. Our response to each of these comments is set forth below.

Comments of Professor Junius Peake

Professor Peake is Monfort Distinguished Professor of Finance at the University of Northern Colorado. He served as a member of the Board of Governors of the NASD. He is frequently quoted nationally and internationally in both print and electronic media. *See* Exhibit 1 at 1.

In his letter, Professor Peake expresses concern that the proposed order ''will not necessarily deter retribution by firms which wish to keep spreads wider than might otherwise be the case under real competition.'' *Id.* at 2. Given his view that the proposed order will not deter retribution for spread-cutting, Professor Peake suggests that the appropriate remedy would be to require The Nasdaq Stock Market, Inc. to display market maker quotes anonymously. This would eliminate the possibility of retaliation by one market maker against another for violating the quoting convention or otherwise acting to narrow the spread in a stock for a simple and obvious reason: a firm inclined to retaliate in some way would not be able to identify the culprit firm. *Id.* at 3. In his letter, Professor Peake identifies some of the ways a market maker could—despite the proposed order—retaliate against a spread-cutter without violating the proposed order—all of them a form of refusal to deal. *Id.* at 3.[9]

The relief suggested by Professor Peake is not obtainable in this action. The Department's lawsuit charges a conspiracy among market makers. This charge involves alleged private conduct by the defendant firms. The Nasdaq Stock Market, Inc., which owns Nasdaq—and, in turn, is owned by the NASD—is not a defendant in this action, nor is the NASD. Under the law, the NASD has the authority to organize the market and establish the rules governing its operation, subject to oversight by the SEC. *See* 15 U.S.C. §§ 78o.3 and 78s. Thus, even if, hypothetically, the Department had sought the relief suggested by Professor Peake from the defendant market makers (and the defendants had agreed to it), they could not implement the structural changes in Nasdaq necessary to accomplish this result.

There has been debate in the academic literature for some time on the question of whether market makers should be required to post quotes anonymously on Nasdaq. Professor Peake has long advocated anonymity and other changes in Nasdaq. *See* Comments of Junius W. Peake and Morris Mendleson on SEC's Market 2000 Draft Release, SEC File # S7–18–92 (Nov. 3, 1992). As neither the NASD nor the SEC has acted to require anonymity on Nasdaq (a feature that, as Professor Peake notes, is available on Instinet), they have not made a judgment that having this feature on *Nasdaq* is necessary to the national market system. They are obviously free to revisit this question at any time.[10]

The proposed order will do much to decrease the likelihood that the defendants will endeavor to identify and punish spread cutters. It proscribes the illegal conduct identified in the Department's complaint. In making the ''public interest'' determination required by the Tunney Act, 15 U.S.C. 16(e), ''the court's function is not to determine whether the resulting array of rights and liabilities is the one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest.'' *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1460–61 (D.C. Cir. 1995) (emphasis in original) (internal quotations omitted). Under this standard, there is no doubt that the proposed relief is within the reaches of the public interest.

In addition, it contains terms that go a considerable distance in increasing the likelihood that recidivist behavior, if it occurs, will be identified. If entered by the Court, the proposed order will subject the defendants to punishment for civil or criminal contempt if they engage—even unilaterally—in any ''harassment or intimidation of any other market maker'' because such market maker:

(1) ''decreas[ed] its dealer spread or the inside spread in any Nasdaq security'' (proposed order, IV(A)(5));

(2) ''refus[ed] to trade at its quoted prices in quantities of shares greater than either (1) the minimum size required by Nasdaq or NASD rules or (2) the size displayed or otherwise communicated by that market maker'' (*id.*, IV(A)(6)); or

(3) ''display[ed] a quantity of shares on Nasdaq in excess of the minimum size required by Nasdaq or NASD rules'' (*id.*, IV(A)(7)).

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[9] In addition to changing the way market-maker quotes are displayed on Nasdaq, Professor Peake would strengthen competition in market making by eliminating the practice of ''preferencing.'' Exhibit 1 at 3. ''Preferencing'' occurs when a broker directs an order to a particular market maker. Pursuant to preferencing agreements, the market maker may pay the broker several cents per share for the order. The market maker then executes the order at the best price displayed on Nasdaq, although this may not be the price displayed by the market maker receiving the preferenced order. Agreements that provide for payment for a steady flow of orders are called ''payment-for-order-flow'' agreements.

Under a ''preferencing'' arrangement, the price quoted by the market maker receiving the preferenced order is irrelevant. Although it will execute order at the best price displayed on Nasdaq, the market maker receives the order without reference to its own quoted price in the stock. For this reason, some market observers believe preferencing arrangements significantly reduce incentives for market makers with preferenced order flow to compete vigorously for orders on the basis of price. (Normally, of course, in most markets, if a firm lowers its price, it can expect to increase sales. If, however, price improvement does not guarantee increased sales (order flow), a Nasdaq stock dealer will have fewer incentives to improve price and will therefore do so less frequently.)

The practice of preferencing, and especially payment-for-order-flow agreements, have been subject to considerable study and controversy. *See, e.g., Market 2000: An Examination of Current Equity Market Developments*, SEC Division of Market Regulation (January 1994). The SEC has not acted to prohibit payment-for-order-flow or other types of preferencing arrangements, and the complaint in this case did not allege that preferencing is an unreasonable restraint of trade. Under the Tunney Act, 15 U.S.C. 16, ''the court is only authorized to review the decree itself.'' *Microsoft*, 56 F.3d at 1459. The district court in *Microsoft* was held to have exceeded its authority, *id.* at 1459, by requiring production of information concerning ''the conclusions reached by the Government'' with respect to practices investigated that the government chose not to charge as violative of the Sherman Act. *Id.* at 1455.

[10] In its 1975 amendments to the securities laws, Congress established a statutory scheme clearly granting the * * * [SEC] broad authority to oversee the implementation, operation, and regulation of the national market system and at the same time to (sic) charging it with the clear responsibility to assure that the system develops and operates in accordance with Congressionally determined goals and objectives.

Sen. Rep. No. 75, 94th Cong., 1st Sess. at 8–9 (1975). These goals and objectives include ensuring that the securities markets (a) provide ''economically efficient mechanisms for the execution of transactions'' and (b) make available ''information with respect to quotations for * * * securities.'' *Id.* at 8. Fair competition is another goal of the securities laws, but, in assuring fair competition, the SEC has been admonished by the Congress not ''to compel elimination of differences between types of markets or types of firms that might be competition-enhancing.'' *Id.*

In a recent rulemaking (*see* 61 Fed. Reg. 48,290 (Sept. 12, 1996)), the SEC directed that market makers that accept limit orders must either execute those limit orders upon receipt or, if the customer limit order is priced better than the market maker's quote, display the limit order to the market in the market maker's quote. The Department submitted formal comments to the SEC strongly supporting the adoption of this rule.

The proposed order also addresses the issue of refusals to deal specifically. Under the proposed order, each defendant is prohibited, directly or through any trade association, in connection with the activities of its OTC desk in making markets in Nasdaq securities, from:

> [R]efus[ing], or threaten[ing] to refuse to trade, (or agree[ing] with or encourag[ing] any other market maker to refuse to trade) with any market maker at defendant's published Nasdaq quotes in amounts up to the published quotation size because such market maker decreased its dealer spread, decreased the inside spread in any Nasdaq security, or refused to trade at its quoted prices in a quantity of shares greater than either (1) the minimum size required by Nasdaq or NASD rules or (2) the size displayed or otherwise communicated by that market maker.

Id., IV(A)(8).

Importantly, the proposed order would not merely prohibit the defendants from engaging in the conduct described, but would require each defendant to monitor and record up to 3.5% of its traders' conversations (without the traders having knowledge of the time when this recordation was occurring) and to notify the Department of any conversation which a defendant's Antitrust Compliance Officer ''believes *may* violate'' the order. *Id*., IV(C)(5) (emphasis added).

The Department views these terms as a significant deterrent to repetition of the unlawful behavior. Further, the proposed order permits the Department to assure itself—through review of the tapes required to be created and real-time monitoring of trader conversations—that the prohibitions of the proposed order are being obeyed. *Id*., IV(C)(6)–(8).

The Department recognizes that retaliation could take a large number of different forms. But the proposed order can and does proscribe such retaliation, even though it does not, and could not, anticipate each possible form that such retaliation could take. Instead, the Department has identified broad but unambiguous categories of behavior—harassment, intimidation, refusals to deal, or threats of refusals to deal—and branded any behavior of that type, if directed at another market maker in response to that other market maker's specific pro-competitive acts, to be a violation of the proposed order.

Contrary to Professor Peake's suggestion (Exhibit 1 at 1), the relief that would be provided by the proposed order is not unnecessary and does not constitute an unwarranted burden upon the investing public or the country's corporate stock issuers. As shown, the proposed order would provide significant deterrence to revival of the defendant's unlawful conspiracy. Under the circumstances, the proposed settlement is clearly '' 'within the *reaches* of the public interest' '' (*Microsoft*, 56 F. 3d at 1460 (emphasis in original)), and ought to be entered by the Court.[11]

Comments of William Leighton

Mr. Leighton has bought and sold Nasdaq stocks, and describes himself as ''a person aggrieved and adversely affected by the proposed order.'' Exhibit 2 [letter of Sept. 9, 1996] at 1. He has written three letters to the Department, making a variety of objections to the proposed settlement. His primary objection is that the relief does not provide for the payment of damages to aggrieved persons, such as himself:

> The relief sought, which leaves the defendants in possession of the fruits of their unjust enrichment, does not enable those injured and damaged by the actions of the ''defendants'' to recover their losses. There is no provision for disgorgement by the ''defendants'' of the enormous profits which they have realized and which have occasioned huge losses to the public.

Id. As the Department pointed out in its CIS—and, as is the case with all of the Department's settlements in civil antitrust cases—the relief obtained will neither advance or impair private plaintiffs' ability to bring damages cases.[12] The assertion by Mr. Leighton that he will be ''adversely affected by the proposed order'' is, therefore, incorrect. Mr. Leighton is free to pursue a claim for damages against the Nasdaq market makers individually or as part of a class. *See Zenith Radio Corp*. v. *Hazeltine Research, Inc.*, 395 U.S. 100, 130–31 (1969); *United States* v. *Borden Co.*, 347 U.S. 514, 518 (1954). As the Supreme Court has emphasized, the ''treble damages provision wielded by the private litigant is a chief tool in the antitrust enforcement scheme, posing a crucial deterrent to potential violators.'' *Mitsubishi Motors Corp*. v. *Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 635 (1985).

As the Court knows, there is a consolidated, class-action lawsuit pending in this district in which private plaintiffs claiming to have suffered antitrust injury as a result of a price-fixing conspiracy among Nasdaq market makers are seeking monetary damages. This avenue, among others, is available to Mr. Leighton.

Mr. Leighton also objects to the entry of the proposed order because of alleged legal deficiencies in the action. For example, he suggests that the Department's complaint ''does not state a claim upon which relief could be granted because there is no Case or Controversy present in the constitutional sense.'' Exhibit 2 [letter of Aug. 7, 1996] at 1. Mr. Leighton's assertion of a lack of any Case or Controversy is based upon the defendants' consent to the entry of the proposed order before having been sued—in other words, to the negotiated settlement. *Id.; see also id*. [letter of Sept. 9, 1960 at 3.

A Case or Controversy exists here because the United States and the market maker defendants have adverse interests (*see Muskrat* v. *United States*, 219 U.S. 346, 361 (1911)) and because the United States seeks to enjoin the defendants from engaging in certain specific conduct in the future and to impose upon them certain requirements designed to ensure that they do not continue to engage in the conduct identified in the complaint as unlawful. The fact that the United States and the defendants have reached a settlement, that, if approved by the Court, would resolve the issue, does not mean that there is no justifiable controversy between them. *See, e.g., Havens Realty Corp*. v. *Coleman*, 455 U.S. 363, 371 n.10 (1982); *Coopers & Lybrand* v. *Livesay*, 437 U.S. 463, 465 n.3 (1978); *Dacanay* v. *Mendoza*, 573 F.2d 1075, 1078 (9th Cir. 1978).

Civil antitrust cases brought by the government are, more frequently than not, resolved via consent decrees. Indeed, in enacting the Tunney Act, the Congress recognized that such cases would often be resolved by consent orders. *See* 15 U.S.C. 16 (*passim*); 51 Cong. Rec. 15,824–25 (noting Congress' interest in encouraging capitulation in

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[11] Professor Peake notes that, despite long experience in the securities industry, including service on the NASD's Board of Governors, until the week before the Department's complaint and proposed settlement with the market maker defendants were filed, he had ''never before heard of * * * [the quoting] convention.'' Exhibit 1 at 2. While Professor Peake may personally have been unaware of the quoting convention, the complaint, unchallenged by the defendants, alleges the convention and the CIS describes some of the abundant evidence of its existence and effects.

[12] Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Order will neither impair nor assist the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Order has no prima facie effect in any subsequent lawsuits that may be brought against the defendants in this case. CIS at 46. The defendants, in agreeing to entry of the proposed order, have not admitted the truth of any of the allegations in the government's complaint. Entry of the proposed order will not constitute evidence against or an admission by any defendant with respect to any allegation in the complaint.

government antitrust suits, and providing that no prima facie effect would flow from such decrees entered before any testimony was taken) (1914); *United States* v. *Blue Chip Stamp Co.*, 272 F.Supp. 432, 440 (C.D. Cal. 1967) (the legality of the consent decree procedure is ''beyond question'') (quoting *Sam Fox Pub. Co.* v. *United States*, 366 U.S. 683, 689 (1961)).

Mr. Leighton also suggests that the United States is not a ''real party in interest'' here—and therefore not a proper plaintiff—because it is ''members of the public [not the government qua government] who buy or sell securities on the NASDAQ and who have suffered, and may continue to suffer, damages as a result of the alleged conduct.'' *Id*. The United States is a proper party to bring an injunctive action under Section 1 of the Sherman Act on behalf of the public. 15 U.S.C. § 4; *United States* v. *Trans-Missouri Freight Assn*, 166 U.S. 290, 309–10 (1897).[13] *See also supra* text at 22–23. Mr. Leighton's comments do not state a sound basis upon which to reject the proposed order.

Comments of Joel Steinberg

Mr. Steinberg is a plaintiff in a lawsuit against Goldman, Sachs & Company. He has communicated with the Department on five occasions in connection with this matter. Exhibit 3. Mr. Steinberg's central objection to the proposed order is that it does not require that any parties injured as a result of the conduct alleged in the complaint be compensated. *Id*. [letter of August 15, 1996] at 1. Mr. Steinberg further complains that the Department did not proceed criminally against the market makers under the antitrust laws. *Id*. [letter of August 15, 1996] at 1; *id*. [letter of August 18, 1996] at 1.

The Department exercised its prosecutorial discretion not to pursue a criminal case against the defendant market makers based upon the quoting convention because the evidence did not meet the criteria the Department has historically required in order to proceed criminally. *See Antitrust Division Manual* at III–12 (2d ed. 1987). Furthermore, to the extent that Mr. Steinberg's comments raised issues not alleged in the complaint, they are outside the scope of Tunney Act review. *Microsoft*, 56 F.3d at 1448, 1459, 1463; *see also ABA Antitrust Section, Annual Review of 1995 Antitrust Law Developments* at 171–72 (1996).

Comments of the Private Plaintiffs

The plaintiffs in *In re: Nasdaq Market-Makers Antitrust Litigation*, 94 Civ. 3996 (RWS), M.D.L. No. 1023 (S.D.N.Y.), a private, class-action civil case to recover damages under the antitrust laws for injuries allegedly sustained by persons who bought or sold Nasdaq stocks that were subject to an alleged price-fixing conspiracy among Nasdaq market makers, commented upon the proposed order in briefs filed in connection with their motion to intervene in the instant action. *See* Exhibit 4 (Excerpts from *Memorandum of Plaintiffs in the In re: Nasdaq Market-Makers Antitrust Litigation to Intervene or to Appeal as Amicus Curiae* (filed Aug. 28, 1996); Exhibit 5 (Excerpts from *Reply Memorandum in Support of Motion of Plaintiffs in the In re: Nasdaq Market-Makers Antitrust Litigation to Intervene or to Appeal as Amicus Curiae* (filed Oct. 14, 1996)).

Plaintiffs object to the provision of the proposed order that would limit use of the audio tapes to be created under it. Paragraphs IV(C) (2)–(6) of the proposed order, if entered by the Court, would require that defendants randomly monitor and tape record not less than 3.5% of their Nasdaq trader telephone conversations (up to a maximum of 70 hours per week). It would also require that they identify and produce any tapes containing conversations that may violate the proposed order and furnish the tape of any such conversation to the Antitrust Division within ten business days of its recordation. Further, paragraph IV(C)(6) specifically provides:

> Tapes made pursuant to this stipulation and order shall not be subject to civil process except for process issued by the Antitrust Division, the SEC, the NASD, or any other self-regulatory organization, as defined in Section 3(a)(26) of the Securities Exchange Act of 1934, as amended.

Plaintiffs ask ''the Court [to] reject this provision, or clarify that, by entering the Consent Decree, the Court does not bind any non-party to the Consent Decree * * *.'' Exhibit 4 at 30.

In reaching the tentative settlement of this case, the defendants agree, at the government's insistence, to conduct random taping of their traders' conversations. In negotiating this unusually strict requirement, the government agreed to the term in the proposed order that would limit the use to which the tapes could be put.[14] Since the tapes would not even be created but for the proposed order, the Court should accept the provision in the proposed order preventing their use in private litigation. *See In re LTV Securities Litigation*, 89 F.R.D. 595, 617–22 (N.D. Tex. 1981) (denying disclosure of

[13] Mr. Leighton makes other technical, legal objections to the case, the primary one being that ''it does not appear that the complaint has been served on the 'defendants.''' *Id*. [letter of Sept. 9, 1996] at 2. Citing Fed. R. Civ. P. 4, Mr. Leighton claims that deficiency would enable a defendant later to ''dismiss the attorney who has signed the stipulation and claim the Court's lack of jurisdiction over its person.'' *Id*. The defendants in this case have expressly waived service of summons, acknowledged receipt of the complaint, consented to *in personam* jurisdiction and entered their general appearance in the action. Stipulation and Order (filed Aug. 5, 1996). It is clear on this record that defendants have been adequately notified of the government's case and have acceded to the jurisdiction of the Court. *See Precision Etchings & Findings* v. *LGP Gem, LTD.*, 152 F.R.D. 433,436 (D.R.I. 1993); *A.L.T. Corp.* v. *Small Business Admin.*, 801 F.2d 1451, 1458–59 (5th Cir. 1986); Wright & Miller, *Federal Practice and Procedure: Civil* 2d § 1062 (1987).

[14] The disclosure and admissibility limitations of the proposed order apply only to tape recordings created pursuant to the proposed order. To the extent that defendants record trader conversations for their own purposes, such recordings would not be subject to the provision of paragraph IV(C)(6), which limits the disclosure and admissibility only of recordings ''made pursuant to'' the proposed order. *See also* proposed order, paragraph IV(C)(8) ([u]pon request of the Antitrust Division, a defendant must ''immediately identify all tape recordings made pursuant to * * * [the proposed] order that are in its possession or control * * *'' (emphasis added). Further, as the proposed order requires that a defendant both ''record (and listen to) not less than three and one-half percent (3.5%) of the total number of trader hours of such defendant'' (paragraph IV(C)(4) (emphasis added))—and to report potential violations to the Antitrust Division (paragraph IV(C)(5))—a defendant would have great difficultly claiming that recordings not created pursuant to the proposed order were actually made as a result of it.

While a firm might record and listen to all trader conversations for the purpose of ensuring that the tapes of such conversations would be protected from use in civil damages cases, such a decisions would be costly for the firm in two respects. In addition to the obvious economic costs, the firm would incur the obligation of reporting potential violations of the proposed order discovered during the listening process to the Department. Were violations detected, the Department could bring a contempt action. These two factors provide substantial disincentives for firms to record a greater number of hours of trader conversations that are required to be recorded under the proposed order. If a firm were to record all of its trader conversations and then to claim that they had been recorded pursuant to the proposed order, the Department could request their production at any time within 30 days. Further, the failure to report potential violations of the proposed order from among all these conversations could result a charge of contempt. This possibility would act as a disincentive to a firm claiming that recordings made, but not listened to, were actually made pursuant to the proposed order. The Department intends to ensure that, as part of the system each defendant will established to assure compliance with the proposed order, it is capable of identifying immediately upon request all tape recordings in its possession made pursuant to the proposed order. The Department may also require the defendants routinely to provide it with a schedule of the recordings to be made in advance of their actual creation. *See* proposed order, paragraph IV(C)(8); *see also* paragraph IV(C)(3). In this way, it will be clear what recordings have been made pursuant to the proposed order, and, to the contrary, what additional recordings, if any, fall outside the scope of the limitations on discovery and use of recordings made pursuant to the mandate of the proposed order.

documents prepared by Special Officer appointed, in accordance with provisions of a consent decree, to investigate and report on defendant's accounting and auditing practices).

Contrary to the facts in *Ex Parte Uppercu,* 239 U.S. 435, 440, (1915), and *Olympic Refining Co.* v. *Carter,* 332 F.2d 260, 265 (9th Cir. 1964), both cases cited by plaintiffs in their motion to intervene, the proposed order does not withhold from the public or from any present parties to litigation information that that would otherwise be available to them. Unless the proposed order is entered, the audio tapes will not be created. Should the tapes be subpoenaed in future litigation, the enforceability of this provision can be litigated at that time by parties with standing to press the issue.

Meanwhile, the Department plans, if the Court enters the proposed order, to monitor the tapes carefully and, if evidence of new or continuing violations comes to light, take appropriate enforcement action. In addition, should violations of the securities laws be indicated, the Department will refer such evidence to the SEC, the NASD, or both.

Conclusion

Entry of the proposed order is in the public interest. The United States has today certified compliance with the Tunney Act. The Court should enter the proposed order as submitted.

Dated: November 15, 1996, Washington, D.C.

Respectfully submitted,

Hays Gorey, Jr., (HG 1946), John D. Worland, Jr. (JW 1962), Jessica N. Cohen (JC 2089).

Attorneys, U.S. Department of Justice, Antitrust Division, 600 E Street, N.W., Room 9500, Washington, D.C. 20530, (202) 307–6200 phone, (202) 616–8544 fax.

Certificate of Service

I, Hays Gorey, Jr., hereby certify that on November 15, 1996, I caused to be served a true and correct copy of the foregoing Response to Public Comments by first-class mail, postage prepaid, upon:

James T. Halverson, Esq., Shearman & Sterling, 153 East 53rd Street, New York, New York 10022–4676, Attorneys for Defendant Herzog, Heine, Geduld, Inc.

Lewis A. Noonberg, Esq., Piper & Marbury, 1200 19th Street, NW, Washington, D.C. 20036–2430, Attorneys for Defendant Alex. Brown & Sons Incorporated.

Robert M. Heller, Esq., Kramer, Levin, Naftalis & Frankel, 919 Third Avenue, New York, New York 10022, Attorneys for Defendant Bear Stearns & Co., Inc.

Richard A. Cirillo, Esq., Rogers & Wells, 200 Park Avenue, 53rd Floor, New York, New York 10166, Attorneys for Defendant CS First Boston Corp.

Frank M. Holozubiec, Esq., Kirkland & Ellis, Citicorp Center, 153 East 53rd Street, 39th Floor, New York, New York 10022–4675 Attorneys for Defendant Dean Witter Reynolds, Inc.

Robert F. Wise, Jr., Esq., Davis Polk & Wardwell, 450 Lexington Avenue, New York, New York 10017, Attorneys for Defendant Donaldson, Lufkin & Jenrette Securities Corporation.

James J. Calder, Esq., Rosenman & Colin, 575 Madison Avenue, New York, New York 10022, Attorneys for Defendant Furman Selz LLC.

John L. Warden, Esq., Sullivan & Cromwell, 125 Broad Street, New York, New York 10004, Attorneys for Defendant Goldman Sachs & Co.

Charles E. Koob, Esq., Simpson Thacher & Bartlett, 425 Lexington Avenue, New York, New York 10017–3954, Attorneys for Defendant Hambrecht & Quist LLC.

Robert F. Wise, Jr., Esq., Davis Polk & Wardwell, 450 Lexington Avenue, New York, New York 10017, Attorneys for Defendant J.P. Morgan Securities Inc.

Jeffrey Q. Smith, Esq., Cadwalader, Wickersham & Taft, 100 Maiden Lane, New York, New York 10038, Attorneys for Defendant Lehman Brothers, Inc.

Catheirne A. Ludden, Esq., Morgan, Lewis & Bockius, 101 Park Avenue, New York, New York 10178, Attorneys for Defendant Mayer & Schweitzer, Inc.

Jay Fastow, Esq., Weil, Gotshal & Manges, 767 Fifth Avenue, New York, New York 10153, Attorneys for Defendant Merrill Lynch, Pierce, Fenner & Smith

Robert F. Wise, Jr., Esq., Davis Polk & Wardwell, 450 Lexington Avenue, New York, New York 10017, Attorneys for Defendant Morgan Stanley & Co. Incorporated.

Paul B. Uhlenhop, Esq., Lawrence, Kamin, Saunders & Uhlenhop, 208 South LaSalle Street, Suite 1750, Chicago, Illinois 60604 Attorneys for Defendant Nash, Weiss & Co.

Norman J. Barry, Jr., Esq., Donahue Brown Matthewson & Smyth, 20 North Clarke Street, Suite 900, Chicago, Illinois 60602, Attorneys for Defendant OLDE Discount Corporation.

Robert McCaw, Esq., Wilmer, Cutler & Pickering, 2445 M Street, NW, Washington, D.C. 20037–1420 Attorneys for Defendant PaineWebber Incorporated.

Neil S. Cartusciello, Esq., Shanley & Fisher, P.C., One World Trade Center, 89th Floor, New York, New York 10048, Attorneys for Defendant Piper Jaffray Inc.

William P. Frank, Esq., Skadden, Arps, Slate, Meagher & Flom, 919 Third Avenue, New York, New York 10022, Attorneys for Defendant Prudential Securities Incorporated.

Jeffrey I. Weinberger, Esq., Munger, Tolles & Olson, 355 South Grand Avenue, 35th Floor, Los Angeles, California 90071, Attorneys for Defendant Salomon Brothers Inc.

Brian J. McMahon, Esq., Crummy, Del Deo, Dolan, Griffinger & Vecchione, P.C., One Riverfront Plaza, Newark, New Jersey 07102, Attorneys for Defendant Sherwood Securities Corp.

Charles A. Gilman, Esq., Cahill Gordon & Reindel, 80 Pine Street, New York, New York 10005, Attorneys for Defendant Smith Barney Inc.

R. Bruce Holcomb, Esq., Dickstein Shapiro Morin & Oshinsky, L.L.P., 2102 L Street, NW, Washington, DC 20037, Attorneys for Defendant Spear, Leeds & Kellogg, LP (Troster Singer).

Philip L. Graham, Jr., Esq., Sullivan & Cromwell, 125 Broad Street, New York, New York 10004, Attorneys for Defendant UBS Securities LLC.

Hays Gorey, Jr.

Attorney, U.S. Department of Justice, Antitrust Division, 600 E Street, N.W., Room 9500, Washington, D.C. 20530.

University of Northern Colorado

Junius W. Peake, Monfort Distinguished Professor of Finance, Kepner Hall 1075F, College of Business Administration, Greeley, Colorado 80639–0019, (970) 351–2737, (970) 351–1062 FAX, jwpeake@bentley.UnivNorthCo.edu

July 26, 1996

Judge Robert Sweet,
United States District Court, The Southern District of New York, Federal Court House, Foley Square, New York, NY 10007

Re: United States of America v. Alex Brown & Sons., Inc., et al.

Your Honor: Not being an attorney, and unfamiliar with court protocol, I take the liberty of addressing this letter to you to point out some facts that you might wish to consider in deciding whether to approve the proposed Stipulation and Order between the Department of Justice (''DOJ'') and the 24 broker-dealer defendants (''the 24'') named in the above-captioned civil litigation. Needless to say, I will be glad to send copies to anyone else required, as well as to attorneys for the United States and the defendants.

In my professional opinion the proposed sanctions and agreements between the DOJ and the 24 will not serve their stated purposes, and will, therefore, merely be an unnecessary and expensive added regulatory and financial burden on the investing public and America's stock issuers.

First, may I state my personal qualifications to comment on this matter. As you will note from my letterhead, I am Monfort Distinguished Professor of Finance at the University of Northern Colorado, and have been a member of that university's faculty since 1993. Prior to that time I was in the securities industry as a practitioner and consultant from 1951 onward. I served on a number of securities industry organizations, including the National Association of Securities Dealers, Inc. (''NASD''), at which I served as district committeeman, member of several national committees, member of the Board of Governors and Vice-Chairman of the Board. I have testified before congressional committees of both the House and Senate as an expert in securities operational and structural matters, and have written and delivered papers on financial market microstructure since 1976, a number of which have been published in recognized

academic journals, and others which have appeared as chapters in books on finance. I am frequently quoted nationally and internationally in both print and electronic media.

I have also been a paid consultant to the Securities and Exchange Commission (''SEC'' or ''Commission''), the Commodity Futures Trading Commission (''CFTC'') and the Antitrust Division of the Department of Justice, although not on this matter. I have testified as an expert in Federal and state courts in securities cases, and am presently engaged as a consultant to the plaintiffs in the private civil litigation on a similar matter before your Court. However, I wish to make it clear that this letter is written solely at my own initiative as a student of market structure, and that I have had no conversations with any of the plaintiffs' attorneys or anyone else in formulating these opinions, but I have discussed the contents of this letter and my conclusions with my colleague and frequent co-author, Dr. Morris Mendelson, Professor Emeritus of Finance at the Wharton School of the University of Pennsylvania. Dr. Mendelson has asked me to state that he endorses the analysis in this letter and concurs with its conclusions.

The Nasdaq system of the NASD was designed and built at the instigation of the SEC to replace its predecessor, the Pink Sheets® published by the National Quotation Bureau. Market makers' quotations were sent to the Pink Sheets® in the afternoon, and distributed the following morning by messenger to over-the-counter traders nationally. Nasdaq commenced operations in 1971, just 25 years ago. At the time I was a member of the Board of Governors of the NASD, and participated in policy making for the Association, including the development of Nasdaq and the automation efforts of the Association.

Let me explain why the DOJ's proposed solution to the issue of alleged price-fixing, which the DOJ also refers to as a ''quoting convention,'' will not necessarily deter retribution by firms which wish to keep spreads wider than might otherwise be the case under real competition.

DOJ defines ''Quoting Convention'' as: ''any practice of quoting Nasdaq securities whereby stocks with a three-quarter (¾) point or greater dealer spread are quoted on Nasdaq in even eighths and are updated in quarter-point (even eighth) quote increments.'' (DOJ draft Stipulation and Order, page 4.)

Before newspaper articles referred to this term the week prior to the DOJ's press release on July 17th, I had never before heard of such a ''convention'' in Wall Street. However, even assuming there was a ''quoting convention'' on Nasdaq, the fact is (as documented by the DOJ) that it did not exist on Instinet, a competing proprietary trading system. Therefore, I believe that the ''quoting convention'' is a convenient fiction. Nasdaq requires the identity of market makers and their quotations to be disclosed; Instinet keeps them confidential. That is the key difference, and the reason the same market makers who berated and harassed those who ''broke the spread'' on Nasdaq would break it themselves with impunity on Instinet.

Nothing in the DOJ's proposals would require anonymity of quotations over Nasdaq. Nothing in the DOJ's proposals would require disclosure of market makers' bids and offers over Instinet. Thus, any market maker wishing to punish economically any other market maker that narrowed a spread and violated an ''unwritten'' quotation convention would be able to do so with impunity, since ''unadvertised'' economic reprisals appear not to be prohibited by the DOJ proposal, and would be almost impossible to prove.

Here is an example. Assume the following situation:

50 market makers are quoting hypothetical stock XYZA at an inside spread of ¼ point ($.25/share), such as 20 bid, offered at 20¼. Under Nasdaq and Commission rules, investors' orders must be executed at these prices or better (sales at $20/share; purchases at $20.25/share) to meet the Commission's ''best execution'' mandate. Further assume that a fifty-first ''maverick'' market maker, ''Competitive Markets & Co.''. raises its bid to 20⅛, narrowing the spread to 20⅛ bid, offered at 20¼, or ⅛ spread.

Despite the fact that not a signal one of the other 50 market makers has raised its bid, all would now be required to execute any sell orders received from firms with which they have preferencing agreements (typically retail firms which may or may not also be Nasdaq market makers) at 20⅛ per share, since the highest bid on Nasdaq is at that price. By raising its bid, Competitive Markets & Co. has cut the potential market making profits of all 50 competitors in half, from $.25/share to $.125/share. Interestingly enough, Competitive Markets & Co. may not receive any sell orders to execute at its best bid, since it probably has no preferencing arrangements with other firms. Under Nasdaq rules, it will receive only unpreferenced orders.

What form could this retaliation take without violating the DOJ's list of prohibited conduct? Here are some examples:

- A refusal to deal (or a reduction of dealings) with the ''offending'' market maker;
- Cancellation (or cost increase) of a clearing arrangement;
- Reduction or refusal to continue sending research reports;
- Removal of the offender from participation in desirable underwritings;
- Stoppage or reduction of reciprocal order flow;
- Delays in answering the telephone in trading room; and/or
- Removal of a private telephone connection.

A small or new firm, such as Competitive Markets & Co., does not wish to antagonize the larger ones, especially those as prestigious as are many of the 24. As a result, regardless of any specific prohibitions against certain conduct, the mere fact that the entire world will see better bids or offers than have been posted by the leaders will serve as a significant deterrent to firms like Competitive Markets & Co. against bettering prices, regardless of other competitive forces.

So long as the Nasdaq system requires the disclosure of the identity of market makers, and so long as the NASD permits the practice of ''preferencing,'' in which market makers agree with other firms to execute trades at the best prices being displayed on Nasdaq, regardless of whether or not that particular market maker is quoting that price, investors will not achieve the ''national market system'' the SEC was mandated to ''facilitate'' a generation ago.

Please let me know if there is anything else I should do. The reason this letter is so brief is that my wife had major cancer surgery earlier this week, and I have spent most of the time at her bedside. I am confident you understand my situation. However, I believe the American investor is entitled to the finest and most efficient market possible, and wanted to do my best to ensure that will be the case.

Respectfully submitted,

Junius W. Peake

John F. Greaney, Esq.,
Chief, Computers and Finance Section, Antitrust Division, Room #9500, U.S. Department of Justice,600 East Street, N.W., Washington, D.C. 20530

Re: 96 Civ 5313, U.S.A. v. Alex Brown & Sons, Inc., U.S.D.C., S.D.N.Y.

Dear Mr. Greaney: I refer to the ''newspaper notice'' that has appeared on August 5, 1996 in the New York Times relative to the above.

From the tenor of the notice, it would appear that the complaint does not state a claim upon which relief could be granted because there is no Case or Controversy present in the constitutional sense. Apparently, the defendants, who do not appear to have been served with the summons and complaint, have ''consented'' to a proposed order as a result of discussions with the Division before they were even charged with any wrongdoing. Such a procedure removes the matter from the Case or Controversy category and relegates it to a contract between the Division and the putative defendants. I see no jurisdictional basis for a Federal district court to enforce such a contract through contempt proceedings for violation of the contract since the putative defendants are not subject to the jurisdiction of the court unless and until they have been served.

Assuming the truth of the allegations made in the complaint, the real parties in interest appear to be the members of the public who buy or sell securities on the NASDAQ and who have suffered, and may continue to suffer, damages as a result of the alleged conduct. Millions of shares are traded every day on the NASDAQ which may or may not have been traded in violation of the acts complained of. The ''newspaper notice'' does not state how members of the public who have sustained injury and damage as a result of such conduct may invoke remedies based on the proposed order. Ordinarily this would be by intervention in the case.

The ''newspaper notice'' refers ''interested persons'' to the office of the court clerk for an examination of the file. This would entail spending several hours during a business day and the expenditure of money at 25 cents per page for copies of the documents on file. As a minimum of Due Process of Law, your office should have negotiated an agreement with the putative defendants to have the

papers printed and mailed at *their* expense to each and every buyer and seller of NASDAQ stocks. Each and every ''interested person'', that is, each person aggrieved by the putative defendants' conduct, should be given an opportunity to decide whether or not to invoke the ''remedies available to persons who may have been injured by the alleged violations'' after studying the papers. At the present time, each aggrieved person is required to go to the court clerk's office and determine for himself or herself just what these remedies are. This constitutes an imposition on millions of people who are innocently trading on NASDAQ.

This letter constitutes an initial comment on the matter. Please send me a complete set of the papers filed by the Division with the court for my further examination and comment. Thank you for your attention to this matter.

Sincerely,

William Leighton

John F. Greaney, Esq.,
Chief, Computers and Finance Section, Antitrust Division, DOJ, 600 E Street, N.W., #9500, Washington, DC 20530

Re: 96 Civ. 5313 RWS U.S.A. v. Alex Brown & Sons, Inc.

Dear Mr. Greaney: This is in further reference to the newspaper notice (''notice''), copy attached, that has appeared in The New York Times of August 5, 1996 inviting comments on the proposed settlement of the captioned action. At my request, your office has since provided me with copies of (1) the complaint, (2) the proposed stipulation and order and (3) the competitive impact statement. I have also received the Division's letter of August 30, 1996 replying to my letter dated August 7, 1996. I have traded in NASDAQ stocks during the period before and after the filing of the complaint and, therefore, I am a person aggrieved and adversely affected by the proposed order.

The relief sought, which leaves the defendants in possession of the fruits of their unjust enrichment, does not enable those injured and damaged by the actions of the ''defendants'' to recover their losses. There is no provision for disgorgement by the ''defendants'' of the enormous profits which they have realized and which have occasioned huge losses to the public. For example, according to the August 25, 1996 issue of the New York Times, copy attached, during the week ending on August 22, 1996, the following securities, among others, were traded on the NASDAQ in the stated amounts. Assuming an illegal ''inside spread'' as charged at paragraph (39) of the complaint, the loss to the public amounts to hundreds of millions of dollars, as follows:

Security	Number of shares traded during the week of August 22, 1996	Illegal charge per share	Damage to the public
Iomega	292,092,000	25¢	$73,023,000
Cisco	259,053,000	25¢	73,013,250
Intel	249,473,000	25¢	62,368,250

Multiplying these huge amounts by the number of weeks covered by the complaint (this period of time is not specifically defined at paragraph (32)), it follows that the public has been ''fleeced'' of hundreds of millions of dollars and is left without any remedy. The complaint does not seek recovery of these sums of money but it does seek ''such other relief as the Court may deem just and proper''. Such relief should consist of monetary awards to those who have been damaged and injured. The promise that there will be no damage or injury to those who will trade on NASDAQ in the future (the ''post-judgment class'') does not constitute an adequate remedy for those already the victims of the proscribed conduct (the ''pre-judgment class''). Apparently, there are pending before the Court actions on behalf of the pre-judgment class none of which have been certified as class actions and none of which can claim the benefit of the proposed Stipulation and Order. If approved by the Court, the stipulation and order will enable the ''defendants'' to resist any meaningful judgment against them based on the facts recited in the complaint.

Moreover, the complaint is fatally defective for a number of reasons. First, it does not appear that the complaint has been served on the ''defendants''. The ''defendants'' have allegedly appointed twenty-five law firms, paying substantial fees, in order to enter into a ''stipulation and order''. There is no proof that these law firms have the authority to bind the ''defendants'' to the terms of the proposed order. Any ''defendant'' who so chooses may dismiss the attorney who has signed the stipulation and claim the Court's lack of jurisdiction over its person. The ''stipulation'' is not the equivalent of the process prescribed by F.R.Civ.P. 4.

F.R.Civ.P. 12(b)(2) expressly provides for the dismissal of an action for lack of jurisdiction over the person. It is elementary that failure to serve a summons and complaint results in lack of jurisdiction over the person. F.R.Civ.P. 12(b)(3) provides for the dismissal of an action for ''insufficiency of process''. Here, no process at all was served upon the twenty-four ''defendants''. F.R.Civ.P. 17(a) provides that *every action* shall be prosecuted in the name of the real party in interest. Here, the complaint does not specify how the United States has been injured or damaged by the alleged conduct of the ''defendants'' since the United States is not trading in NASDAQ stocks. The real parties in interest are those who have traded on the NASDAQ and have lost the money which is safely ensconced in the pockets of the ''defendants''. These ''real parties in interest'' will not even be heard from unless they take the time and trouble of commenting on the proposed stipulation and order on the basis of the ''newspaper notice'' of August 5, 1996. Time will tell if other comments will be filed by other persons aggrieved.

Overriding this case is the lack of a Case or Controversy, the basic constitutional requirement for maintaining a suit in a federal court. Since the ''defendants'' have not been served with a summons and a complaint, their presence in this action is suspect because they have ''consented'' to a ''stipulation and order'' without having the obligation to do so. A complaint which is consented to by those named as defendants does not satisfy the Case or Controversy requirement. It is elementary that the federal courts do not sit to enforce contracts between agencies of the United States, such as the Antitrust Division, and private parties. Here, enforcement is to be had by invoking the Court's contempt power. In the S.D.N.Y., the contempt power in a civil case is exercised pursuant to Civil Rule 43. Therefore, to provide in a ''stipulation and order'' for the exercise of the contempt power means that the Court's docket would be flooded by proceedings pursuant to Civil Rule 43. The defendants' unjust enrichment leaves them particularly apt to resist any enforcement action by the Division. There is no provision for security for the costs of enforcement to be posted by the ''defendants''. In effect, the Division contemplates providing the ''defendants'' with a free ride in the event enforcement proceedings become necessary.

Another objectionable provision in the ''stipulation and order'' is the ''defendants' right'' to engage in conduct protected under *Noerr-Pennington* doctrine. The proposed ''stipulation and order'' is in the nature of an injunction which requires observance of F.R.Civ.P. 65(d). The ''*Noerr-Pennington*'' doctrine is not spelled out in the ''stipulation and order'', thus creating the possibility of unlimited litigation, in the context of a contempt proceeding, concerning the meaning of that doctrine.

Conclusion

For the foregoing reasons, the proposed ''Stipulation and Order'' should be rejected and the complaint dismissed, with leave to amend. A hearing on this matter should be held with the participation of persons who have filed objections or comments on the proposed action. Please advise me of the time and place of such a hearing.

Sincerely,

William Leighton

Chart and newspaper notice have not been reprinted here, however they may be

inspected in Room 3229, Department of Justice, Washington, D.C. and at the Office of the Clerk of the United States District Court for the Southern District of New York.

John F. Greaney, Esq.,
Chief, Computers and Finance Section, Antitrust Division, DOJ, 600 E Street, N.W., #9500, Washington, D.C. 20530

Re: 96 Civ. 5313 RWS, U.S.D.C., S.D.N.Y., U.S.A. v. Alex Brown & Sons, Inc. et al.

Dear Mr. Greaney: This is a further comment to the newspaper notice concerning the above case concerning which I have submitted comments on August 7 and September 9, 1996.

I have examined the docket entries in this case and have noted that on August 5, 1996, an order was entered permitting the defendants to waive service of summons, acknowledge receipt of the complaint and consent to *in personam* jurisdiction etc. I note that the Division's letter to me dated August 30, 1996 did not include a copy of the August 5 order.

As to those defendants who have complied with this order, my comments and objections concerning issues under F.R.Civ.P. 12(b)(2) and (3) no longer apply. The fact remains that these defendants have consented to be sued by signing the proposed stipulation and order on or about July 17, 1996, some three weeks before they have entered their appearances within the meaning of F.R.Civ.P. 4. The defendants' actions converts this case into a consent proceeding, not to a Case or Controversy in the constitutional sense.

I also note that on August 28, a motion to intervene was filed and is awaiting adjudication. Please send me a copy of the Division's papers answering that motion. No such papers were docketed as of September 26.

Sincerely,

William Leighton

Hon. Robert R. Sweet,
U.S.D.J., U.S.D.C., S.D.N.Y., 500 Pearl Street, New York, N.Y. 10007

Re: U.S.A. v. Alex Brown & Sons, Inc., et al. 96 Civ. 5313 RWS

Dear Judge Sweet: The comment period with respect to this case has expired on October 2, 1996. As a person aggrieved and adversely affected by the defendants' actions, I have filed comments with the Antitrust Division of the U.S. Department of Justice.

1. On August 5, 1996, an Order has been entered on the docket extending and adjourning *sine die* the defendants' time to answer or move with respect to the complaint. For ready reference, copies of the first two pages of that Order are attached.

The Order refers to a stipulation and proposed order submitted for the Court's consideration on July 17, 1996. As I have already advised the Antitrust Division, I would like to be heard in opposition to the entry of that proposed order. Thus, the purpose of this letter is to ensure that the request for oral argument is before the Court.

I would also like to take the witness stand and testify as to my own recent (1996) experiences in NASDAQ trading. F.R. Evidence 614(a) and 701. There are literally thousands of trades in NASDAQ stocks being consummated every business day. The record should show how some of these trades were made. The stipulation and proposed order of July 17, 1996 provides that no testimony should be heard. Thus, thousands of other individuals, similarly situated, will not be heard for want of a procedure to bring them before the Court.

2. I would also like to point out that the public is not represented before this Court and was not represented before the Antitrust Division for want of notice. The Antitrust Division first gave public notice of this matter on August 5, 1996. It has not given notice of a hearing before the Court. It has submitted a proposed order, copy attached, which recites that ''the entry of this stipulation and order is in the public interest''. Whereas the defendants have pocketed millions of dollars from their illegal conduct and thus have the means to retain counsel in support of their positions, the public is totally unrepresented. It is unrealistic to expect that the public, which has lost the money pocketed by the defendants, would engage in litigation over these losses. Issues such as these should he heard and decided by this Court before the matter is settled by the entry of an order. I fail to see how the ''public interest'' can be served by the elimination of the public from a proceeding looking to foreclose the assertion of damages suffered by the public.

3. Finally, I would like to point out that because no answers have been filed by the defendants, this case does not present this Court with a Controversy in the constitutional sense, see Article III of the Constitution of the United States. The proposed order would require the Court to (i) ''review the complaint'', that is the allegations of the Antitrust Division, without knowing how the defendants would plead, (ii) decide that it has ''jurisdiction over the parties to this stipulation and order'', (iii) open the courthouse doors to many contempt proceedings during the next ten years, which would require the appointment of several magistrate judges, and (iv) under these circumstances, grant ''such other relief as to the Court may seem proper''. There were no defendants before this Court on July 17, 1996 because the Order permitting them to file notices of appearance was not entered until August 5, 1996.

Respectfully,

William Leighton

cc: Hays Gorey, Jr., Esq.,

John F. Greaney, Esq.,

Attorneys for the plaintiff, United States of America, U.S. Department of Justice, Antitrust division, 600 E. Street, NW. #9500, Washington, DC 20530, and to all attorneys for the defendants:

Lewis A. Noonberg, Esq., Piper & Marbury,
Robert M. Heller, Esq., Kramer, Levin, Naftalis & Frankel.
Frank M. Holozubiec, Esq., Kirkland & Ellis
Stuart M. Gerson, Esq., Epstein Becker & Green, P.C.
John L. Warden, Esq., Sullivan & Cromwell
Jeffrey Q. Smith, Esq., Cadwalader, Wickersham & Taft
Catherine A. Ludden, Esq., Morgan Lewis & Bockus
A. Douglas Melamed, Esq., Wilmer Cutler & Pickering
Norman J. Barry, Jr., Esq., Donahue Brown Mathewson & Smyth
James J. Calder, Esq., Rosenman & Colin
Robert H. Munheim, Esq., Salomon Brothers, Inc.
Brian J. McMahon, Esq., Crummy, Del Deo, Dolan Griffinger & Vecchione
Paul B. Unlenhof, Esq., Lawrence, Kamin, Saunders & Unlenhop
Richard A. Cirillo, Esq., Rogers & Wells
Robert F. Wise, Jr., Esq., Davis Polk & Wardwell
Charles E. Koob, Esq., Simpson Thacher & Bartlett
James T. Halverson, Esq., Shearman & Sterling
Otto G. Oberemaier, Esq., Weil, Gotshal & Manges
Neil Cartusciello, Esq., Shanley & Fisher
William P. Frank, Esq., Skadden Arps Slate Meagher & Flom
Charles A. Gilman, Esq., Cahill Gordon & Reindel
Howard Schiffman, Esq., Dickstein Shapiro Morin & Oshinsky
Philiip L. Graham, Jr., Esq., Sullivan & Cromwell.

Stipulation and Order

It is hereby stipulated and agreed by the counsel of record for the parties that:

1. Defendants waive service of summons, acknowledge receipt of the Complaint, and consent to *in personam* jurisdiction before this Court.

2. Each defendant hereby enters its general appearance in the action by counsel of record listed below.

The Clerk is directed to enter the appearances as shown herein. Unless specifically objected to for reasonable cause by any party within twenty (20) days after the attorney appears herein, each attorney not a member of the Bar of this Court who is a member of the bar of any United States District Court or the highest court of any state and is acting as counsel for a party herein shall be deemed admitted *pro hac vice* to practice before this Court in connection with these proceedings.

3. The time for defendants to answer or move with respect to the Complaint is extended and adjourned *sine die* pending consideration by the Court of a stipulation and order submitted for approval on July 17, 1996.

For Plaintiff
United States of America:

Hays Gorey, Jr. (HG–1946)

John D. Worland, Jr. (JW–1962),

Attorneys, U.S. Department of Justice, Antitrust Division, 600 E. Street, N.W., Room 9500, Washington, D.C. 20530, 202/616–5119 phone, 202/616–8544 fax.

The Court having reviewed the Complaint and other filings by the United States, having found that this Court has jurisdiction over the parties to

this stipulation and order, having heard and considered the respective positions of the United States and the defendants [at a hearing on _____, 1996,] and having concluded that entry of this stipulation and order is in the public interest, it is hereby ORDERED:

THAT the parties comply with the terms of this stipulation and order;

THAT the Complaint of the United States is dismissed with prejudice;

THAT the Court retains jurisdiction to enable any of the parties to this stipulation and order to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or implementation of this stipulation and order, for the enforcement or modification of any of its provisions, or for punishment by contempt.

So ordered this _____ day of _____, 1996.

_____

United States District Judge

Ms. Janet Reno,
US Attorney General, 10th & Constitution Avenue NW, Washington, DC 20500

Dear Ms. Reno. I wrote to you a month ago concerning Goldman Sachs and their abuse of the system that we are all generally supposed to adhere to. Since that time even more abuses have surfaced including a disgusting report on Prudential Bache, and their own nefarious style of doing business.

In today's Wall St. Journal, and LA Times we see an egregious price fixing example that has been going on for thirty years. Instead of our Justice Dept. moving to stop these same offenders from ever doing business again, we see another compromise. They pay off the government with a fine, and get away ''scot free'' without so much as having to plead guilty. I am embarrassed for the Attorneys that work for you. If there is smoke and they prove it why are these thieves allowed to continue the rape of our investment community?

If your office will not stop this ongoing parade of malfeasance, then who in our government shall I write to in order to voice my concerns? How is it that companies like Goldman Sachs, Prudential Bache, Smith Barney and many more are able to continue this type of behavior as typified by their everyday *course of conduct*?

Please look into this situation personally. We in the investment community regardless of how small an entity, have nowhere else to turn in order to find the kinds of law enforcement necessary to prevent these financial highwaymen from their antics. The unfortunate truth is, that as long as we allow these activities to continue, our greater financial community suffers in confidence. Ask any small investor what he or she feels about this issue and see for yourself. Who do you invest with? Please help.

Respectfully yours,

Joel Steinberg

Ms. Janet Reno,
US Attorney General, 10th & Constitution Avenue NW, Washington, DC 20500

Dear Ms. Reno: I know you are busy, and would not be writing this letter were it not for the significance of the issue. I want to inform you of the course of conduct of the Goldman Sachs Company. I would not be privy to this information, but for the fact that I am involved in a lawsuit with them for fraud among other things. I am not alone in my complaints against them, thus my statement about their course of conduct.

In California they are being sued by the State Attorney Generals Office, for many things, and as the investigation moves forward the suit has grown from $180,000,000.00 to a whopping $600,000,000.00 with the potential for even more as the state pursues its' claims.

At the SEC we have determined a long list of securities violations, that have resulted in fines, censure, restrictions for doing business, and the list goes on in states all over the country.

The point is this, if a outlaw commits a crime in one state, and then crosses a state line for the commission of yet another crime, my understanding is that the federal government is now a potential partner in the prosecution of the offender. This is exactly the case with Goldman Sachs, and there is substantial proof to support this claim. If this is the case why are they able to keep paying fines for all these incidents of criminal activity.

In my case they have stolen my business with Fraud, Fraud in the Inducement, Lies, and blatant misrepresentation, and we have proved it in the Arbitration phase of our lawsuit against them. Nonetheless they are free to operate without any disciplinary actions against them short of perhaps a monetary fine. Charging them with financial penalties for transgressions in the business community, is tantamount to charging a Cocaine dealer Crack for what he has done wrong to society.

Goldman Sachs has thousands of tenants in dozens of shopping centers that we know of, and I can assure you that many people have been financially injured by these people.

With the false premise of being part of a redevelopment agency they have positioned themselves, and executed Mello Roos Bonds to renovate a privately owned mall outside of the redevelopment zone. This parcel of land is a distance away from the redevelopment zone, but made to look contiguous to the Thousand Oaks Blvd. Zone for the necessary approvals.

Because this Mall is privately owned, and as such would *not* qualify for the Mello Roos Bonds, they have manufactured a parking deck to donate to the city for the purpose of qualifying for the bonds. As I understand Mello Roos this is also inappropriate. They have misrepresented information to this community, so the Thousand Oaks City Council would approve the bond request. The City Attorney for the City of Thousand Oaks was the only one privy to much of this information until the completed bond books were in place. Accordingly the votes taken at the City Council meetings might in fact have been different. The bondbooks themselves have several misrepresentations including a bold faced distortion of fact relative to our lawsuit against the beneficiary of the Mello Roos Bonds, as well as others.

It is our hope in the writing of this letter to have you please look into this matter prior to the conclusion of any mediation, between the State of California and the Goldman Sachs Company.

We hope that you will take a much closer look into the activities for they should not have the privilege of doing business in this or any other state. If this sounds excessive, I will remind you that they are causing extreme hardship in my family for their purposeful acts. At the age of fifty I am first beginning to search for employment in the work force. They have stolen a business, with purposeful fraud that we loved, and operated for thirteen years. I do not have the luxury of a huge lawfirm to take our case on a contingency. So far at least the larger lawfirms that we have spoken with fear the cost, expense, and strain on their resources to get involved in a protracted battle with Goldman Sachs. We have spent our entire life savings on defending ourselves from Goldman Sachs.

I am a Veteran, a proud American, I vote always, and try to live my life as an example to my two children. My incredible loving wife of almost thirty years, and I have worked so hard to build the business they stole from us, that it defies description.

One would have to realize what it is to struggle through the retail world starting from nothing, and developing the reputation for quality and service to even begin to comprehend the enormous sacrifice we have made for our business. That struggle has all been for naught for they are trying to grind us into submission with legal fees, so that they can win by attrition, as opposed to proving their case. Please help us before we become another Goldman Sachs statistic. We are desperate for help.

We appreciate any assistance you can provide.

Very truly yours,

Joel Steinberg

Second Request for Action

From wdcun1.usdoj.gov!wdcsun1!daemon Thu Aug 1 17:10:23 1996
Date: Thu, 1 Aug 1996 17:14:09—0400
From: httpd server login <www@justice2>
Message-Id: <9608012114.AA06382@justice2.>
Reply-To: joelybrew@earthlink.net
MMDF-Warning: Parse error in original version of preceding line at justice.usdoj.gov
Apparently-To: antitrust@justice.usdoj.gov
content-length: 2636
WWW comments (Forms submission)
joelybrew@earthlink.net (Joel Steinberg) sent the following comment about The Antitrust Division's WWW server:
Joel Steinberg PO Box 2134 Thousand Oaks, CA 91358 805 497 1366

Dear Sir: I have watched in astonishment, as article after article has been written relevant to rogue dealers and brokers. In my utter amazement as virtually every newspaper that has established itself in the reporting of financial matters continues to report these violations, no one seems to take definitive action.

Where are our Government agencies, and why is this allowed to continue? In the last

year or so we have seen dozens of articles on companies like Goldman Sachs, Prudential Bache, Merrill Lynch and many others. How long will these large trading corporations be permitted to legally steal from investors throughout this country, and get away with a slap on the hand or some other ludicrous compromise? These bandits and their normal course of conduct have cost the private sector billions. Is there no agency in this country that seeks to look out for and protect the private investor from the pirates. The recent expose on the Prudential Bache fiasco left billions of dollars lost from the pockets of the private sector. The Goldman Sachs company has a disciplinary file a mile long at the SEC and no one does any thing about it. Is our government incapable of protecting its citizens, or is the hive too sweet to tamper with? Goldman Sachs donated to both the Clinton and Bush campaign. Is that why they are still in business?

They do business interstate, intrastate, internationally, and also provide Local, State and Federal Banking Services.

Among a host of other services not the least of which is the highly abused Bond business, they have been charged with the most egregious activities in the field. Their refusal to meet the criteria set up by the SEC is substantiated by the fact that their latest publicized violation show the IRS on the case for 2.5 Billion Dollars with some other offenders as well. If our officials let out the perception that any Broker, Bond Dealer, Securities Company can operate with out a care when committing these crimes they will set the tone for disaster. Why should these thieves be allowed to operate with impunity? If they only have to concern themselves with the fine they might have to pay then why should they care at all.

Sincerely,

Server protocol: HTTP/1.0 Remote host: 206.250.91.54 Remote IP address: 206.250.91.54

Birgitta C. Dickerson,

US Department of Justice, Anti-Trust Division, Bicentennial building, 600 E Street NW, Washington DC 20530

Re: United States v. Alex. Brown & Sons Inc., et al., Civil No. 96 CIV 5313 (RWS) (S.D.N.Y., July 17, 1996)

Dear Ms. Dickerson: I want to thank you for your response to my correspondence. It is my feeling that if enough people in the appropriate agencies are involved in a dialogue, that there will be a positive result.

I would like to first clarify my position. I applaud and appreciate the Justice Departments agents being involved in the process of searching out the many culprits that violate the laws that make our society so great.

My problem has more to do with the favorite son treatment the violators are given. The slap on the hand is no longer appropriate, once a company has established a recognizable ''course of conduct.'' Why allow them to pay a fine, when the conduct is repetitive?

When companies like Prudential Bache, Goldman Sachs, Morgan Stanley, and many others demonstrate their company's willingness to pay fine after fine, as settlement for their crimes and malfeasance in the market, then something is amuck. In courts all over this great land when a criminal repeatedly violates the law, the judge usually applies sterner penalties with each offense. Not so in the market dealings taking place today. Only monetary compensation seems to be the punishment for what amounts to thoroughly outrageous behavior on the part of many large traders.

In the newest well spring, Mello Roos Bonds through the Community Facilities District, large traders like Goldman Sachs find inexpensive money through redevelopment agencies, and there are repeated violations using US Government Money.

My personal mission because I am a victim of just such a ploy, has become to expose this wherever and whenever I find it. For instance, in my case the Mello Roos Bonds were used to renovate a ''Privately Owned Shopping Center.'' All my research shows me this is a clear violation of the rules. About 15 local businesses that were hardworking, taxpaying, solid Americans with families were put out of business, by this abuse of the rules for Mello Roos Bonds. Thus my interest in the punishment of these scoundrels. As a veteran and a family man I am trying to stop these abuses from going further, and hopefully find some agency that cares enough to take a closer look.

It is too late to help us, for we have lost everything in this ruse, but perhaps a stronger stance from the government will match the punishment to the crime. Conceivably when this begins, the deliberate conduct against the rules in pursuit of the easy profits will begin to ebb.

Sincerely yours,

Joel Steinberg

Hays Gorey Jr.,

U.S. Department of Justice, Antitrust Division, Bicentennial Building, 600 E Street NW 20530

Re: United States v. Alex. Brown & Sons Inc., et al., Civil No. 96 CIV 5313 (RWS) (S.D.N.Y., July 17, 1996)

Dear Mr. Hays, Thank you for your letter dated August 6, 1996, delivered August 12, 1996.

In your letter you have raised several points I am compelled to respond to. Although not my preference you raised some issues that as an American I can not let stand.

I think it is admirable that as stated in your letter, ''As a result of the proposed settlement, millions of investors will no longer be subject to the anti-competitive conduct which resulted in higher trading costs for individual investors and institutions who bought or sold stocks.'' That is great but where do those who lost as a result of these activities find their recompense?

You are correct in your assumption, I do not share the view that your agency has accomplished some great feat for justice. The Antitrust Division taking the position that the proposed relief, given the violation of law as alleged in the complaint, is adequate and effective, in my view is part of the problem. It is tantamount to charging a thief part of what he has stolen, to allow him to continue doing business, in lieu of genuine punishment for the crime.

The act of monetary compensation for the constant purposeful violations in this case and others, simply allows the ''Course of Conduct'' to continue. So you are correct I do not share your enthusiasm. In my opinion there is no equity in matching the punishment, to these crimes. It would gratify investors all over, if the Justice Department categorized these actions as criminal, because that is exactly what they are. Large dealers throughout the investment community have repeatedly demonstrated a history of trying to use loopholes to not be punished after being caught, or claim foul to misdirect the blame when cast in their direction. The pure lack of ethical conduct is demonstrated persistently in articles daily in the national print media.

Lastly, as your innuendo implies in the closing paragraph of your letter, you may presume anything you like, but in fact we have been in contact and supplied all the documentation to the President of the United States, SEC, The Attorney General for the State of California, The Attorney General for the United States Janet Reno, and in each case have done what we could to impart the relevant information as requested. It is no coincidence that Goldman Sachs is being sued by the State of California for $600,000,000.00. Perhaps you should look to see what states are involved in similar cases. You are aware or should be that they have a disciplinary file. Read it for yourself.

In our case, Mello Roos Bonds through the Community Facilities District, being compromised by the skillful manipulation of procedure, and regulation served to induce our lawsuit. So your inference, to that being my reason for correspondence with your office, is also patently incorrect.

We have learned through our own personal experience, and it is our opinion formed from investigating issues relative to our case, that the new ''in vogue'' place to violate, is the Mello Roos cache for large traders. In our case used on privately owned property, which as I understand it, is in itself a violation.

Your lack of compassion is obvious, and your tone naive. Someone needs to reexamine the whole industry, and that is the point. Punish, not settle when you find abuses. Restrict from any profit taking for one day at each offense. Charge a day or two of trading for each offense after that. Progressively increase the punishment for each offense against any faction of the investment community or the marketplace. After several offenses charge them a week.

The point is that monetary compensation for the crimes against the marketplace is not a deterrent. The Justice Department should do something about it.

Sincerely,

Joel Steinberg,

Citizen who cares.

Memorandum of Plaintiffs in the in Re: Nasdaq Market-Makers Antitrust Litigation to Intervene or to Appear as Amicus Curiae

Arthur M. Kaplan, Esq. (AK 6357),

Fine, Kaplan and Black, 23rd Floor, 1845 Walnut Street, Philadelphia, PA 19103, (215) 567–6565

Christopher Lovell, Esq. (CL 2595),
Robert A. Skirnick, Esq. (RS 2636),
LOVELL & SKIRNICK, L.L.P., 63 Wall Street, New York, NY 10005 (212) 608–1900

Leonard B. Simon, Esq. (LS 2068),
Milberg Weiss Bershad Hynes & Lerach, 600 West Broadway, 1800 One America Plaza, San Diego, CA 92101–5050, (619) 231–1058

Co-Lead Counsel for Plaintiffs in the *In Re: Nasdaq Market-Makers Antitrust Litigation* MDL 1023 (RWS)

I. Introduction

This memorandum is submitted in support of the motion by plaintiffs in the *In re: Nasdaq Market-Makers Antitrust Litigation*,[1] pursuant to Section 2(f)(3) of the Tunney Act and Rules 24(a) and 24(b) of the Federal Rules of Civil Procedure, to intervene or, in the alternative, to appear as *amicus curiae* in the above-captioned case. Plaintiffs make this motion for the purpose of (a) requiring the Department of Justice to disclose the compilation of evidence it made available to the twenty-four defendants who are parties to the Consent Decree in the process of negotiating that decree, and all evidentiary materials expressly referenced in that compilation of evidence (collectively, the ''Compilation of Evidence''); and (b) challenging the Consent Decree to the extent that it is intended or interpreted to impair the discoverability or admissibility of audiotapes made in accordance with the Consent Decree, as described in the proposed Stipulation and Order at Paragraph IV (C)(6), p. 13 and in the Competitive Impact Statement at 42–44 (the ''future audiotapes'').

The Consent Decree is the culmination of an intensive investigation during which the Antitrust Division amassed a huge volume of documents, enormous computerized data, and extensive testimony (*i.e.*, the Civil Investigative Demand (''CID'') materials. From these materials, the Department of Justice (''DOJ'') prepared the Compilation of Evidence. All twenty-four defendants who are parties to the Consent Decree have reviewed the Compilation of Evidence. Press reports reveal that the Compilation of Evidence was instrumental in the parties' entering into the Consent Decree.

Importantly, this is a ''now or never'' moment for discovery of the Compilation of Evidence. The Court expressly has discretion to disclose this evidence to plaintiffs in the Multidistrict litigation under 15 U.S.C. § 16(b) or (f)(3) at the time of consent decree approval, and as a condition of consent decree approval. After consent decree approval, the Court's power to do so disappears. Since defendants contend that the Compilation of Evidence is not within their ''custody, possession, or control'' for purposes of civil discovery, the Compilation of Evidence will slip out of the Court's control, unless it is impounded now for use in the Multidistrict litigation.

There are two separate, independently sufficient, reasons for impounding the Compilation of Evidence and releasing it to plaintiffs (pursuant to the terms of the existing Confidentiality Order). First, plaintiffs are entitled to the Compilation of Evidence to assist them in the prosecution of the private antitrust claims. Those claims, which overlap substantially with the government's allegations at issue here, have now been pending for more than two years. During that time, defendants have resisted all merits discovery.

This Court already has ruled that the CID materials are relevant to the plaintiffs' case, and not privileged. *See In re Nasdaq Market Makers Antitrust Litigation,* 929 F. Supp. 723 (S.D.N.Y. 1996). Indeed, the Department of Justice itself acknowledged the relatedness of the government and multidistrict cases by filing the government action as a related case for assignment to this Court. Release of the Compilation of Evidence will greatly expedite discovery in the Multidistrict litigation.

Second, the disclosure of the Compilation of Evidence will substantially assist the Court in deciding, pursuant to 15 U.S.C. § 16(e), whether the proposed Stipulation and Order (''Consent Decree'') is in the interest of ''the public generally and individuals alleging specific injury from the violations set forth in the complaint * * *. Indeed, only following disclosure of the Compilation of Evidence (which is material that the Antitrust Division itself considered key in settlement negotiations) can plaintiffs comment on the adequacy of the Consent Decree in an informed way.

Plaintiffs currently challenge the Consent Decree only to the extent that it purports to impair the discoverability and admissibility of audiotapes made in accordance with the Consent Decree. (*See* Stipulation and Order at Paragraph IV(C)(6), p. 13.) This provision is an apparently unprecedented effort by defendants to withhold raw evidence from victims of anticompetitive acts, and should not be countenanced.

Significantly, 15 U.S.C. § 16(e)(2) expressly provides that in approving, rejecting or modifying proposed consent decrees, the Court shall consider not only the interests of the public generally, but also specially the interests of ''individuals alleging specific injury from the violations set forth in the Complaint.''

II. Relevant Background

A. The DOJ Investigation

The Department of Justice began its investigation in October, 1994. As is clearly demonstrated by the Competitive Impact Statement, that investigation was extensive. The Department of Justice deserves congratulations on the vigor of its investigation.[2]

During its nearly two-year investigation, the Antitrust Division amassed a huge volume of documents, enormous computerized data, and extensive testimony, *i.e.*, the CID materials. According to the Competitive Impact Statement at 5, the Antitrust Division took ''over'' 225 depositions.

On July 17, 1996, twenty-four market makers entered into a settlement of the civil antitrust claims brought by the United States for engaging in price fixing of spreads in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

Along with its Complaint, the DOJ filed a Competitive Impact Statement, which summarizes a portion of the enormous body of evidence accumulated by the DOJ during the course of its two-year investigation. According to the Competitive Impact Statement:

> The Department has reviewed thousands of pages of documents that were produced by the defendants and other market participants in response to over 350 Civil Investigative Demands (''CIDS'') * * * [and] has reviewed hundreds of responses to interrogatories that were submitted by the defendants (and others). *The Department has taken over 225 depositions.* * * *
>
> The Department has reviewed and analyzed substantial quantities of market data produced in computer-readable format by the NASD * * *. Finally, the Department reviewed numerous transcripts of depositions taken by the Securities and Exchange Commission (''SEC'') in a concurrent inquiry into the operations and activities of the NASD and the Nasdaq market since the fall of 1994.

Competitive Impact Statement at 5–6 (emphasis added).

It was not until after the DOJ provided the defendants with the Compilation of Evidence, that the defendants agreed to settle the government's antitrust charges. For example, according to a May 21, 1996 *Los Angeles Times* report:

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[1] M.D.L. No. 1023, 94 Civ. 3996 (RWS) (the ''Multidistrict litigation'').

[2] The Competitive Impact Statement has been filed by the DOJ in support of the proposed consent decree, and is appended for convenience as Exhibit A hereto. Likewise, for convenience the proposed Stipulation and Order (''Consent Decree'') is appended hereto as Exhibit B.

The Justice Department, nearing the end of its antitrust investigation of the Nasdaq Stock Market, is poised to notify major Wall Street trading firms of the evidence against them * * *, sources close to the investigation said Monday.

* * * [J]ustice is now prepared to show its cards, the sources said.

''Antitrust Probe Is Bearing Down on Nasdaq,'' *Los Angeles Times,* May 21, 1996 (Exhibit C hereto).

Subsequently, on June 7, 1996, the *Los Angeles Times* reported the impact that the disclosure of the Compilation of Evidence had on these defendants:

Big Wall Street firms are scrambling to come up with a strategy after being shown what the Justice Department contends is massive evidence of collusion in setting prices of Nasdaq stocks, sources close to the civil antitrust investigation said Thursday.

*Over the last week, more than 20 Nasdaq dealer firms * * * were finally shown a compilation of the department's evidence in an investigation that has been underway since late 1994 * * *.*

After months of intense investigation, the department decided to show its strongest cards in hope of persuading dealers to negotiate a settlement * * *. *The sources said lawyers for these firms are now mulling over the evidence and consulting with their clients on whether to begin settlement talks.*

''Nasdaq Dealers Mull Next Move in Light of U.S. Probe Evidence,'' *Los Angeles Times,* June 7, 1996 (Exhibit D hereto, emphasis added).

In a follow-up article on July 13, 1996, the *Los Angeles Times* reported that, according to a source close to the government, ''the strength of the Justice Department's evidence convinced the firms that they would probably lose if the case came to trial.'' ''Nasdaq Dealers Reportedly Settle in Federal Probe,'' *Los Angeles Times,* July 13, 1996. (Exhibit E hereto.)

B. The Multidistrict Litigation

The first of the private lawsuits against Nasdaq market makers alleging collusion to widen spreads was filed in May, 1994. Those lawsuits were all consolidated before this Court by the Judicial Panel for Multidistrict Litigation.

The allegations in the Multidistrict litigation overlap substantially with those in the DOJ's complaint. However, as a result of two successive stays obtained by defendants in the Multidistrict litigation (first pending defendants' motion to dismiss and later pending class determination) defendants have not even *begun* an independent production of documents and audiotapes pursuant to plaintiffs' *first* set of discovery requests served in January 1995, and have declined to accept service of Plaintiffs' second set of requests. Currently, discovery is stayed by Paragraph 24 of Pretrial Order No. 3.

* * * * *

V. Future Audiotapes Should Not Be Rendered Unavailable to Plaintiffs in the Multidistrict Litigation

According to the Competitive Impact Statement:

[T]apes made pursuant to the proposed Order are required to be retained by each defendant for at least 30 days from the date of recording. The tapes made pursuant to the proposed Order are *not subject* to civil process *except* for process issued by the Antitrust Division, the SEC, the NASD or any other self-regulatory organization. The proposed Order directs that such tapes *not be admissible* in evidence in civil proceedings, *except* in actions, proceedings, investigations, or examinations commenced by the Antitrust Division, the SEC, the NASD, or any other self-regulatory organization.

Competitive Impact Statement at 43 (emphasis added). The proposed Stipulation and Order provides at Paragraph IV (C)(6), p. 13 (emphasis added):

Tapes made pursuant to this stipulation and order shall *not* be subject to civil process except for process issued by the Antitrust Division, the SEC, the NASD, or any other self-regulatory organization. . . . Such tapes shall *not* be admissible in evidence in civil proceedings, except in actions, proceedings, investigations, or examinations commenced by the Antitrust Division, the SEC, the NASD, or any other self-regulatory organization * * *.

Plaintiffs do not believe that this proposed provision, limiting discovery or admissibility of future audiotapes, is binding or enforceable in private antitrust litigation, as against plaintiffs and other non-parties to the Consent Decree. However, unless the Department of Justice and defendants join in this remedial construction, then plaintiffs necessarily object to this provision of the proposed Decree.

Unlike, for example, the reports by defendants' monitors regarding the tapes (*see* Competitive Impact Statement at 43), the audiotapes are raw evidence that is ordinarily discoverable to the victims of the market makers' collusion. To purportedly render future audiotapes undiscoverable and inadmissible is to tie the hands of this Court in the current Multidistrict proceedings, and those of other District Courts in any future proceedings, in advance of a concrete dispute concerning the admissibility or discoverability of particular tapes, and without briefing and argument by future adverse parties.

This proposed provision is inconsistent with and fundamentally contradicts the intended *complementary* roles of private and public antitrust enforcement discussed at 24–25, *supra.* Furthermore, this proposed provision creates a significant risk that defendants will resist the production of *any* future andiotapes whatsoever, using the argument that they were created in compliance with, and are therefore insulated by, the Consent Decree. Certainly, it is unrealistic to assume that audiotaping under the consent decree will not be comingled with the audiotaping done in the ordinary course of defendants' business.

Plaintiffs therefore request that the Court reject this provision, or clarify that, by entering the Consent Decree, the Court does not bind any non-party to the Consent Decree (including the Multidistrict plaintiffs or proposed Class) by the above language. If the Court believes that any future Court might be influenced in matters of discoverability or admissibility by defendants' self-serving effort to conceal raw evidence, then the Court should require the parties to modify the Consent Decree.

Dated: August 28, 1996

Arthur M. Kaplan, Esquire (AR 6357),
Melinda L. deLisle, Esquire,
Fine, Kaplan and Black,
1845 Walnut Street, 23rd Floor, Philadelphia, PA 19103
Christopher Lovell, Esquire (CL 2595)
Lovell & Skirnick, L.L.P.,
63 Wall Street, New York, NY 10005–2818
Leonard B. Simon, Esquire (LS 2068),
Dennis Stewart, Esquire,
Sharon T. Maier, Esquire,
Milberg, Weiss, Bershad, Hynes & Lerach
600 West Broadway, 1800 One America Plaza, San Diego, CA 92101–5050

and

Patricia M. Hynes, Esquire, Milberg, Weiss, Bershad, Hynes & Lerach,
One Pennsylvania Plaza, New York, NY 10019–0165
Robert A. Skirnick, Esquire (RS 2636),
Lovell & Skirnick, L.L.P.,
63 Wall Street, New York, NY 10005–2818
Co-Lead Counsel for Plaintiffs in the *In re: NASDAQ Market-Makers Antitrust Litigation,* MDL 1023 (RWS)
Stanley M. Grossman, Esquire,
Pomerantz Haudek Block & Grossman,
100 Park Avenue, New York, New York 10017–5516
Bruce E. Gerstein, Esquire,
Jerald M. Stein, Esquire, Garwin, Bronzaft, Gerstein & Fisher
1501 Broadway, Suite 1416, New York, New York 10036
Briefing Co-Chairs for Plaintiffs in the In re: Nasdaq Market-Makers Antitrust Litigation, MDL 1023 (RWS)

* * * * *

Reply Memorandum in Support of Motion of Plaintiffs in The in RE: NASDAQ Market-Makers Antitrust Litigation to Intervene or to Appear as Amicus Curiae

Arthur M. Kaplan, Esq. (AK 6357),
Fine, Kaplan and Black,
23rd Floor, 1845 Walnut Street, Philadelphia, PA 19103, (215) 567–6565
Christopher Lovell, Esq. (CL 2595),
Robert A. Skirnick, Esq. (RS 2636),
Lovell & Skirnick, L.L.P.,
63 Wall Street, New York, NY 10005, (212) 608–1900
Leonard B. Simon, Esq. (LS 2068), Milberg Weiss Bershad Hynes & Lerach,
600 West Broadway, 1800 One America Plaza, San Diego, CA 92101–5050, (619) 231–1058
Co-Lead Counsel for Plaintiffs in the *In Re: Nasdaq Market-Makers Antitrust Litigation* MDL 1023 (RWS)

Preliminary Statement

The Tunney Act is a ''sunshine'' act that was intended to allow significant participation by interested persons in a district court's consideration of proposed consent decrees and prevent ''judicial rubber stamping'' of proposed decrees. The principal disclosure provision under the Tunney Act, 15 U.S.C. § 16(b), is mandatory.

The Department of Justice and the defendants seek to prevent the ''sunshine'' that the Act envisions. They oppose all participation by multidistrict plaintiffs—who are the victims of the antitrust violations being addressed by the proposed consent decree. This Court should follow both the letter and the spirit of the Tunney Act by allowing the multidistrict plaintiffs to intervene in the government action to protect their interests.

The principal interests of multidistrict plaintiffs are two-fold. Multidistrict plaintiffs seek: (1) to hold the government to its mandatory disclosure obligations under the Tunney Act, particularly in regard to determinative documents; and (2) to prevent approval of section IV(C)(6) of the proposed decree, which is a protective order provision purporting to limit the discoverability and admissibility of future tape recordings in the multidistrict litigation.

Section IV(C)(6) of the proposed decree is an impermissible arrogation of power by the parties. As the Ninth Circuit stated in *Olympic Refining Company* v. *Carter,* 332 F.2d 260, 265 (9th Cir.), *cert. denied,* 379 U.S. 900 (1964), ''neither in the express nor implied terms of the statutes or rules is there any indication that a consenting defendant could gain the additional benefit of holding under seal, or stricture of nondisclosure, for an indefinite time, information which would otherwise be available to the public or at least to other litigants who had need of it.''

Regardless of whether formal intervention is granted, the Court can and should require that the Compilation of Evidence be disclosed to the multidistrict plaintiffs.[1] That result would best serve the interests of justice by obviating the need for extensive duplicative discovery in the multidistrict litigation, including the retaking of over 225 depositions. Such an outcome specifically was endorsed in both the House and Senate Reports on the Tunney Act.

I. Multidistrict Plaintiffs Should Be Granted Intervenor Status in the Government Enforcement Action

The defendants and the Department of Justice (''DOJ'') erroneously argue that multidistrict plaintiffs fail to meet the standards for intervention of right, and they further argue that the court should use its discretion to deny permissive intervention, or even *amicus* status. This Court should reject those arguments. Multidistrict plaintiffs meet all of the requirements for intervention of right. If the Court disagrees, it should nevertheless exercise its discretion and allow permissive intervention or *amicus* participation.

A. Multidistrict Plaintiffs Meet the Standards for Intervention of Right

The government argues that multidistrict plaintiffs do not meet the requirements for intervention of right because they have not demonstrated an ''interest'' that will be impaired by entry of the consent decree. Private plaintiffs have two important interests that are not represented by *any* party. First multidistrict plaintiffs have a crystal clear interest in challenging Section IV(C)(6) of the proposed consent decree, which prohibits the discoverability and admissibility of evidence in plaintiffs' own separate civil aciton. Second, multidistrict statutory disclosure obligations under the Tunney Act, so that they can comment meaningfully on the proposed consent decree and so that important evidence already gathered by the government can be impounded and utilized. The multidistrict plaintiffs' interest in these matters is diametrically opposed to positions taken by the parties to the consent decree, and the intervention of right therefore should be granted to multidistrict plaintiffs to protect their own interests.[2]

[1] Defendants and the government have chosen to designate the Compilation of Evidence presented to defendants as ''the Settlement Memorandum,'' which reflects (indeed emphasizes) its determinative role in settlement negotiation. It is class plaintiffs' understanding that this ''Settlement Memorandum'' consisted of several loose-leaf notebooks of raw evidence. Thus, class plaintiffs believe that it is accurate to use the terminology ''Compilation of Evidence'' and ''Settlement Memorandum'' interchangeably.

[2] This case, therefore, is diametrically different from *Cook* v. *Pan American World Airways, Inc.,* 636 F. Supp. 693 (S.D.N.Y. 1986) (Sweet, J.), where this Court found that intervention by certain union members in an age discrimination suit was not appropriate because the defendant union would adequately represent union members' interests. The Court held that ''the movants' interest in preserving the present system is adequately represented by existing defendants'' and ''movants' interests and defendants' interests are identical''. 636 F. Supp. at 697.

United States v. *Simmonds Precision Products, Inc.,* 319 F. Supp. 620 (S.D.N.Y. 1970) is closer to the situation at hand. In that case, the court permitted a union to intervene in government antitrust consent decree proceedings because its interest was opposed to the position taken by the parties. 319 F. Supp. at 621.

1. Multidistrict Plaintiffs Alone Have an Interest in Challenging Section IV(C)(6) of the Proposed Consent Decree

In the proposed consent decree, the parties have agreed to a provision that harms the multidistrict plaintiffs. Paragraph IV(C)(6) of the proposed consent decree is a protective order prohibiting the discoverability and admissibility of raw evidence, i.e., certain future audiotapes, for everyone except the government and other specified regulatory entities. As argued below in Section III, this is an illegal arrogation of power, for which the parties seek this Court's judicial imprimatur. Multidistrict plaintiffs are the *only* ones with an interest in preventing this abuse, and they should be allowed to intervene for that purpose.

As this Court *already* held in the *In re Nasdaq Market-Makers Antitrust Litigation,* 164 F.R.D. 346, 351 (S.D.N.Y. 1996), ''Rule 24 is the proper mechanism for a non-party to seek modification of a protective order and thus to gain access to information generated through judicial proceedings.'' *See also Northern States Power Company* v. *Westinghouse Electric Corp.,* 156 F.R.D. 168, 171 (D.Minn. 1994) (''every circuit to address the issue has concluded that intervention is the proper procedure for non-parties to challenge protective orders'') (citing cases).

The future audiotapes are not, as defendants claim, of insubstantial value to multidistrict plaintiffs. In the multidistrict action, tape recordings of the conversations among the defendants' market makers constitute some of the most important direct evidence of defendants' conspiracy.

Moreover, the multidistrict plaintiffs have alleged an ongoing conspiracy, and have sought injunctive relief. Thus, any evidence of future discussions between market makers will provide a fertile ground for discovery.

Additionally, one of multidistrict plaintiffs' theories for measuring damages involves comparing defendants' profit levels after the conspiracy ends to profit levels during the conspiracy. Of course, a before and after calculation is meaningless (or misleadingly conservative) unless plaintiffs can determine that the conspiracy no longer prevails in the designated ''after'' period. Evidence of future conversations along the market makers will be valuable in making this determination as well.

Although the defendants and the government cite a number of cases in which intervention has been denied to private plaintiffs challenging a proposed consent decree, in *none* of those cases has the proposed consent decree attempted to prohibit the discoverability or admissibility of raw evidence in litigation brought by the private plaintiffs. Multidistrict plaintiffs have a right to have questions of discoverability and admissibility of evidence in their case decided in their own case, not predetermined by agreement among parties in a different action. Therefore, under this Court's prior decision *In re Nasdaq Market-Makers Antitrust Litigation,* 164 F.R.D. at 351, the multidistrict plaintiffs have a right to intervene to challenge the protective order provision of the proposed decree.

* * * * *

B. In the Alternative, Permissive Intervention Should be Granted

The DOJ concedes, as it must, that the multidistrict action shares questions of law and fact in common with the government action, and thus the requirements for permissive intervention are satisfied. However, the DOJ urges this Court to exercise its discretion and deny intervention based on its unsupported assertion that intervention might ''unduly delay or prejudice the adjudication of the rights of the original parties.'' No explanation has been provided by the DOJ or the defendants of any actual prejudice or delay that would in fact result.

Multidistrict plaintiffs do not want to prolong these proceedings. Multidistrict plaintiffs have two principal objectives: (1) compelling the disclosure of the Compilation of Evidence (and any evidentiary materials expressly referenced therein) pursuant to the Tunney Act (and receiving an opportunity to participate meaningfully in the consent decree approval process after reviewing these materials); and (2) removing Section IV(C)(6) of the proposed consent decree. There is no reason why these objectives cannot be accomplished without undue delay.

The parties seek a judicial rubber stamp of their decision, without any meaningful comment from or participation by the victims of these antitrust violations. This Court should not grant the parties' desire to exclude injured persons from the Consent Decree approval process, particularly since 15 U.S.C. § 16(e)(2) suggests that the court should specifically consider, in addition to the more general public interest, the impact of the proposed decree on injured persons.

This Court plainly has discretion to permit permissive intervention in these circumstances. *E.g., United States* v. *American Cyanamid Co.,* 719 F.2d 558, 563 (2d Cir. 1983), *cert. denied,* 465 U.S. 1101 (1984) (affirming the district court's decision to permit permissive intervention in antitrust consent decree proceedings). For example, in *United States* v. *American Telephone and Telegraph Co.,* 552 F. Supp. 131, 218–19 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983), after initial denial, intervenor status later was granted to all who moved to intervene, and the court permitted the intervenors to file briefs, participate in proceedings and oral argument, and appeal the entry of the consent decree. 552 F. Supp. at 218–19.[4]

* * * * *

III. Section IV(C)(6) of the Proposed Consent Decree is an Arrogation of Power, and it Should Not Be Approved by This Court

Under the terms of the proposed consent decree, the defendants have agreed to tape record and monitor not less than 3.5 percent of their Nasdaq trader telephone conversations (up to a maximum of 70 hours per week). However, Section IV(C)(6) of the consent decree contains a protective order providing that tapes made pursuant to the decree are neither discoverable nor admissible in private civil actions.[11] Thus, by agreement, the parties have purported to exempt the defendants from the Federal Rules of Civil Procedure and the Federal Rules of Evidence in the multidistrict litigation, by creating their own category of non-discoverable and inadmissible documents. There is nothing that gives either an antitrust defendant or the DOJ the power to enact such a result. This Court should not put its imprimatur of approval on this illegal arrogation of power.

The only case cited in support of this unprecedented expansion of power by either the DOJ or the defendants is *In re LTV Securities Litigation,* 89 F.R.D. 595 (N.D. Tex. 1981). This case provides no support at all. In *LTV Securities* the Court held that *materials generated by an attorney,* functioning as a ''Special Officer'' appointed by the corporation to implement a consent decree, were entitled to a hybrid of the attorney-

[11] Under the protective order provision of the consent decree, ''The tapes made pursuant to the proposed Order area *not subject to civil process* except for process issued by the Antitrust Division, the SEC, the NASD, or any other self-regulatory organization. The proposed Order directs that such tapes *not be admissible in evidence in civil proceedings,* except in actions, proceedings, investigations, or examinations commenced by the Antitrust Division, the SEC, the NASD, or any other self-regulatory organization.'' Competitive Impact Statement at 43 (emphasis added).

client privilege and the privilege afforded SEC investigations.

Although the position of the ''Special Officer'' may be loosely analogous to that of the anticipated tape-monitors in this case, the discoverability of the monitors' reports, of course, has nothing to do with the underlying raw evidence—the tapes themselves. Moreover, the reasoning in *LTV Securities* depended heavily on the fact that the Special Officer was still involved in an ongoing investigation of LTV that would be impacted adversely by the discovery requested. 89 F.R.D. at 618–19. That too is not the case here. *LTV Securities* simply has no relevance to the entry of a protective order prohibiting the discovery and admissibility of raw evidence.

Olympic Refining Company v. *Carter,* 332 F.2d 260 (9th Cir.), *cert. denied,* 379 U.S. 900 (1964), is far more analogous. In *Olympic Refining, documents in a government antitrust suit had been sealed pursuant to a consent decree. A private party filed a civil action against the defendants from the government action, and sought to subpoena the sealed documents from the government's case (some of which were filed with the court under seal and some of which were retained by the government). 332 F.2d at 262–63 n.3. The district court refused to modify the protective order to permit the private plaintiffs to examine the documents. The Court of Appeals issued a writ of mandamus ordering the district court to modify the protective order to permit the private plaintiffs to have access to the previously sealed documents.*

In issuing the writ of mandamus, the Court of Appeals noted that ''[p]rivate treble-damage actions are an important component of the public interest in 'vigilant enforcement of the antitrust laws.'" 332 F.2d at 264, *quoting Lawlor* v. *National Screen Serv. Corp.,* 349 U.S. 322, 329 (1955). The Court further held that, although there are numerous benefits that a defendant can gain from entering into a consent decree, nothing in the law permits an antitrust defendant to gain a non-disclosure right over its evidence:

> [A] consenting defendant in a Government antitrust suit gains whatever benefit there may be in accepting the terms of the consent decree rather than risking a more onerous decree entered after litigation. A consenting defendant also benefits from the saving in litigation expense which is made possible by a consent decree. *But neither in the express nor implied terms of the statutes or rules is there any indication that a consenting defendant could gain the additional benefit of holding under seal, or stricture of nondisclosure, for an indefinite time, information which would otherwise be available to the public or at least to other litigants who had need of it.*

332 F.2d at 265 (emphasis added).

The defendants and the DOJ argue that but for the consent agreement, the future tape-recorded evidence in this case would not even exist. The premise for this argument, of course, is as faulty as its conclusion, as this Court well knows from the fact that at least ten defendants *already* were taping their traders before the government investigation even began. There is simply no way to determine how many of the tapes made and monitored ''pursuant'' to the consent decree would have been made (and would have been admissible evidence) even without the decree.[12]

From this erroneous premise, the DOJ and defendants illogically concluded that they have the power to do whatever they want with ''their'' evidence. This contention is without any judicial support. In *Ex parte Uppercu,* 239 U.S. 435, 36 S. Ct. 140 (1915), Justice Holmes, writing for a unanimous Court, noted that once evidence exists, it exists for everyone.

Uppercu arose after the government brought a civil action against Dwight Manufacturing Company. That case was settled and, with the consent of the parties, all of the depositions and exhibits in the case were sealed by the district court. Under the terms of the sealing agreement, the transcripts and exhibits would be available only to the government and the defendant in the original action. Uppercu, who was not a party to the original suit, sought access to the sealed depositions and exhibits in the case. The district court enforced the sealing order and denied Uppercu access.

The Supreme Court issued a writ of mandamus ordering the district court to enforce Uppercu's right of access to the sealed depositions and exhibits. Justice Holmes stated:

> *So long as the object physically exists, anyone needing it as evidence at a trial has a right to call for it,* unless some exception is shown to the general rule. We discover none here. Neither the parties to the original cause nor the deponents have any privilege, and *the mere unwillingness of an unprivileged person to have the evidence used cannot be strengthened by such a judicial fiat as this, forbidding it,* however proper and effective the sealing may have been as against the public at large.

Uppercu, 239 U.S. at 440, 36 S. Ct. at 141 (emphasis added).

Similarly, in this case, if the parties voluntarily choose to create evidence, it is beyond their power to limit anyone with a legal interest in the evidence (other than themselves) in regard to how that evidence can be used. *See In re Agent Orange Product Liability Litigation,* 821 F. 2d 139, 144 (2d Cir.) (parties that obtained sealing agreement as part of settlement of class action doubtless were aware that their settlement agreement could not limit non-parties to the agreement), *cert. denied,* 484 U.S. 953 (1987). Here, remarkably, the parties purport to do just the opposite. They purport to limit everyone in the world *except* themselves.

Section IV(C)(6) of the proposed consent decree is beyond the power of the parties. It should not be approved the Court.

Conclusion

This Court should follow both the letter and the spirit of the Tunney Act by granting multidistrict plaintiffs' motion to intervene in this proceeding, and by ordering the government to disclose the Compilation of Evidence and the evidentiary materials referenced therein. Finally, because the protective order embodied in section IV(C)(6) of the proposed consent decree is excessive and improper, this Court should refuse to put its imprimatur on it.

Dated: Oct. 14, 1996.

[12] It cannot logically be argued that all calls monitored under the consent decree will be additional calls, since at least some of the defendants were taping *every* call before the government investigation began.

Respectfully Submitted,

Arthur M. Kaplan, Esquire (AK 6357)

Melinda L. deLisle, Esquire

Glenn J. Moramarco, Esquire

Fine, Kaplan and Black

1845 Walnut Street, 23rd Floor, Philadelphia, PA 19103

Christopher Lovell, Esquire (CL 2595),

Lovell & Skirnick, L.L.P.

63 Wall Street, New York, NY 10005–2818

and

Leonard B. Simon, Esquire (LS 2068),

Dennis Stewart, Esquire,

Sharon T. Maier, Esquire,

Milberg, Weiss, Bershad, Hynes & Lerach

600 West Broadway, 1800 One America Plaza, San Diego, CA 92101–5050

and

Patricia M. Hynes, Esquire,

Milberg, Weiss, Bershad, Hynes & Lerach

One Pennsylvania Plaza, New York, NY 10019–0165

Robert A. Skirnick, Esquire (RS 2636),

Lovell & Skirnick, L.L. P.,

63 Wall Street, New York, NY 10005–2818.

Co-Lead Counsel for Plaintiffs in the *In re: Nasdaq Market-Makers Antitrust Litigation, MDL 1023 (RWS).*

* * * * *

[FR Doc. 96–29965 Filed 11–22–96; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10318, et al.]

Proposed Exemptions; GE Capital Investment Advisors, Inc.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

GE Capital Investment Advisors, Inc., Located in New York, New York

[Application No. D–10318]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 F.R. 32836, 32847, August 10, 1990). If the exemption is granted, GE Capital Investment Advisors, Inc. (GECIA) and GECIA Holdings, Inc. (Holdings) shall not be precluded from functioning as a ''qualified professional asset manager'' pursuant to Prohibited Transaction Class Exemption 84–14 (PTE 84–14, 49 FR 9494, March 13, 1984) solely because of a failure to satisfy section I(g) of PTE 84–14, as a result of General Electric Company's ownership interest in them, including any of their subsidiaries or successors which provides investment advisory, management or related services and is registered under the Securities and Exchange Act of 1934, as amended, or the Investment Advisors Act of 1940, as amended; provided the following conditions are satisfied:

(A) This exemption is not applicable to any affiliation by GECIA or Holdings with any person or entity convicted of any of the felonies described in part I(g) of PTE 84–14, other than General Electric Company; and

(B) This exemption is not applicable with respect to any convictions of General Electric Company for felonies described in part I(g) of PTE 84–14 other than those involved in the G.E. Felonies, described below.

Effective Date: This exemption, if granted, will be effective as of January 29, 1996.

Summary of Facts and Representations

Introduction: General Electric Company (G.E.), an indirect 100 percent owner of GECIA Holdings, Inc. (Holdings), has been convicted during the past ten years of certain felonies relating to G.E.'s government contracts operations. In 1995–1996, Holdings created a subsidiary, GE Capital Investment Advisors, Inc. (GECIA), solely to purchase an unrelated investment advisory and management business. G.E.'s felony convictions could bar GECIA from acting as a ''qualified professional asset manager'' (QPAM) under Prohibited Transaction Class Exemption 84–14 (PTE 84–14, 49 FR 9494, March 13, 1984). Part I(g) of PTE 84–14 requires that no person owning, directly or indirectly, 5 percent or more of the QPAM has been

convicted of certain felonies within ten years preceding the transaction for which the QPAM intends to utilize PTE 84–14. GECIA and Holdings are requesting an exemption to enable GECIA to qualify as a QPAM without regard to any failure to satisfy part I(g) of PTE 84–14 by reason of G.E.'s ownership of GECIA, under the terms and conditions described herein.

1. GECIA is a real estate investment advisory and management business located in San Francisco, California. GECIA is a wholly-owned subsidiary of Holdings, a wholly-owned subsidiary of GE Capital Services, Inc. (GECS), which is entirely owned by G.E. GECIA and Holdings (the Applicants) were organized and established by GECS solely to acquire and continue the real estate investment advisory and management business of MacFarlane Partners (MacFarlane), which was unrelated to G.E. and its affiliates. MacFarlane obtained consent from each of its existing clients to the transfer of MacFarlane client accounts to GECIA, and GECIA commenced operations on January 29, 1996 immediately following completion of the acquisition of MacFarlane. As part of the acquisition, GECIA has hired all of the investment professionals and other employees of MacFarlane, including Victor MacFarlane as the chief executive officer of GECIA.

The Applicants represent that the clientele served by GECIA's operations include large employee benefit plans subject to the Act. They maintain that, given the size and number of the plans which GECIA represents, the large number of financial service providers engaged by such plans, the breadth of the definition of ''party in interest'' under the Act, and the array of services offered by GECIA, it would not be uncommon for GECIA to propose a transaction involving a party in interest with respect to a plan for which GECIA is acting in a fiduciary capacity. The Applicants represent that the proposing of such transactions is occasionally necessary to offer plan clients adequate investment diversification opportunities, and that such opportunities will be missed if GECIA is not permitted to function as a QPAM pursuant to PTE 84–14.

2. The Applicants represent that prior to January 29, 1996, G.E. did not have any ownership interests in any of the operations of MacFarlane, which are now the operations of GECIA. They represent that Holdings and GECIA were established solely to acquire, operate and expand the business of MacFarlane, and that GECIA and Holdings do not engage in any of the business to which the G.E. Felonies, described below, pertain. The Applicants further represents that GECIA and Holdings are intended and structured to be operated and maintained separately and independently from the G.E. business operations to which the G.E. Felonies pertain, which did not involve any investment advisory, management or related services.

3. On three occasions from 1986 through 1992, G.E. pled guilty or was convicted of felonies relating to the government contract activities of G.E. and its subsidiaries (the G.E. Felonies). The Applicants represent that the G.E. Felonies did not in any way relate to any employee benefit plan or any person's authority with respect to an employee benefit plan. The Applicants describe the G.E. Felonies more specifically as follows:

(a) On May 13, 1986, G.E. pled guilty to four counts of filing false claims with the United States Air Force and 104 counts of filing false statements with the United States Air Force in connection with work performed in 1980 by G.E.'s Re-Entry Systems Operation. The Applicants represent that these counts primarily related to individual time cards that were improperly charged to certain government contracts.

(b) On February 2, 1990, G.E. was convicted of mail fraud and violations of the False Claims Act relating to the conduct in 1983 of two contract employees of a G.E. subsidiary, Management and Technical Services Co., involving failure to notify the United States Army that subcontractors had agreed to prices lower than those contained in projections for the project. The Applicants represent that neither G.E. nor any officer or employee of G.E. was accused of having knowledge of the discrepancy and withholding it from the United States Army.

(c) On July 22, 1992 G.E. pled guilty to violations of 18 U.S.C. 287 (submitting false claims against the United States), 18 U.S.C. 1957 (engaging in monetary transactions in criminally derived property), 15 U.S.C. 78m(b)(2)(A) and 78ff(a) (inaccurate books and records), and 18 U.S.C. 371 (conspiracy to defraud and commit offenses against the United States). The Applicants represent that these violations related to a series of events between 1984 and 1990, involving false statements made by employees of G.E. Aircraft Engines Division to a foreign government that led such foreign government to submit false claims to the United States relating to the purchase of weapons.

4. The Applicants represent that the G.E. Felonies did not relate in any way to the conduct or business of MacFarlane, or any investment advisor or fiduciary of an employee benefit plan. The Applicants maintain, however, that although none of the unlawful conduct involve MacFarlane's or GECIA's investment management activities or any plans covered by the Act, the criminal activities described above could preclude GECIA, as an affiliate of G.E., from serving as a ''qualified professional asset manager'' (QPAM), due to the provisions of sections I(g) and V(d) of PTE 84–14. Section I(g) of PTE 84–14 precludes a person who otherwise qualifies as a QPAM from serving as a QPAM if such person or an affiliate thereof has within the 10 years immediately preceding the transaction been either convicted or released from imprisonment as a result of certain criminal activity, including any crime described in section 411 of the Act. Because the G.E. Felonies involved crimes described in section 411 of the Act and monies transferred to or claimed by G.E., the Applicants represent that GECIA may be barred from qualifying as a QPAM.

5. Accordingly, the Applicants request an exemption to enable GECIA to function as a QPAM despite the failure to satisfy section I(g) of PTE 84–14 solely because of the G.E. Felonies and GECIA's affiliation with G.E. The Applicants request that the exemption apply not only to GECIA but to Holdings as well, in order to enable flexibility in the growth and development of GECIA's operations and to enable potential corporate reorganizations. The Applicants state that they intend that GECIA's relationships with employee benefit plans will be developed by increasing the types and amounts of services provided, or by extending the relationships into new areas. GECIA may prefer, for example, to establish a related registered investment advisor to service a particular niche of the market. However, the Applicants represent that GECIA is structured such that subsidiaries will not be established under GECIA, and any new coporate entities needed to accomodate expanded operations of GECIA will be subsidiaries of Holdings. The Applicants further maintain that inclusion of Holdings in the requested exemption is also necessary to allow GECIA or Holdings to participate in any reorganization which might eliminate one of them or change their relative position with respect to GECS, or they may be repositioned for reasons unrelated to their activities, such as a public offering of their stock. For these reasons, the Applicants are requesting that the exemption be

applicable to GECIA and Holdings and any subsidiary or successor which provides investment advisory, management or related services and is registered under the Investment Advisors Act of 1940, as amended.

The transactions covered by the proposed exemption would include the full range of transactions that can be executed by investment managers who qualify as QPAMs pursuant to PTE 84–14. If granted, the exemption will enable GECIA to qualify as a QPAM by satisfying all conditions of PTE 84–14, except that G.E.'s convictions and guilty pleas in connection with the G.E. Felonies shall not prevent satisfaction of the condition stated in section I(g) of PTE 84–14 because of affiliation with G.E. The exemption, if granted, will relate only to the Applicants' affiliation with G.E. and not to any affiliation with any other persons or entities.[1]

6. The Applicants represent that the G.E. Felonies do not create any concern that they will endanger employee benefit plans for which GECIA proposes to serve as a QPAM. The Applicants note that all of the G.E. Felonies occurred before the creation of GECIA and its acquisition of the MacFarlane business, and that all of the G.E. Felonies involved areas of business unrelated to employee benefit plans and the activities of GECIA. The Applicants represent that prior to its incorporation, substantial efforts were devoted to identifying possible relationships between its proposed provision of real estate management services to plans and the existing business activities of G.E. and its affiliates, and understanding the potential legal issues related thereto. As a result, the Applicants represent that care has been taken to situate GECIA and Holdings separate from other unrelated business activities of G.E. and its affiliates, particularly those involved with the G.E. Felonies, and that GECIA and Holdings are isolated organizationally from the G.E. operations and entities formerly involved in the G.E. Felonies.

Furthermore, the Applicants represent that they are committed to a strong legal compliance program, developing their own policies and procedures to promote compliance with applicable laws including the Act. In this regard, the Applicants note that GECIA has established its own general counsel, independent of G.E., with responsibility for supervising legal compliance. Under the general counsel's direction, GECIA has adopted written compliance policies designed to ensure compliance with the Act, and written materials relating to such policies have been provided to applicable employees. The Applicants represent that GECIA conducts employee training programs, including on-site seminars by outside counsel, on the requirements of the Act. The Applicants conclude that the efforts in these compliance measures constitute substantial amounts of time, effort and resources to avoid any failure by GECIA to comply with the Act and other applicable laws.

7. In summary, the Applicants represent that the criteria of section 408(a) of the Act are satisfied for the following reasons: (a) The G.E. Felonies occurred prior to any affiliation between G.E. and GECIA, and did not involve any conduct on the part of GECIA; (b) GECIA constitutes a continuation of the operations of MacFarlane, which was not involved in any of the G.E. Felonies and which was unrelated to G.E. prior to acquisition by GECIA; (c) GECIA has committed to a legal compliance program featuring written policies and procedures to prevent illegal activity; and (d) The exemption will permit the Applicants to engage in a broader variety of investments and services on behalf of client employee benefit plans which demand diverse investment opportunities.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Summit Sheet Metal, Inc. Defined Benefit Pension Plan (the Plan) Located in Anaheim, California

[Application No. D–10330]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) by the Plan of certain real property (the Property) to Messrs. Milton J. Chasin, Donald E. Hanson, and Gale N. Searing, parties in interest with respect to the Plan; provided that the following conditions are satisfied: (a) the Sale is a one-time transaction for a lump sum cash payment; (b) the purchase price is the fair market value of the Property as determined on the date of the Sale by a qualified, independent appraiser; and (c) the Plan will incur no commissions or any other expenses from the proposed Sale.

Summary of Facts and Representations

1. The sponsoring employer of the Plan is the Summit Sheet Metal, Inc. (the Employer), a California corporation, which has manufactured sheet metal for over 20 years for the construction industry located primarily in southern California. The Employer has formerly resolved to terminate its business operations and is in the process of dissolution. Messrs. Milton J. Chasin, Donald E. Hanson, and Gale N. Searing, who each own a one-third interest in the Employer, are its only remaining employees.

2. The Plan is a defined benefit plan with approximately $3.18 million in total assets, as of October 16, 1996, and three participants who are equal owners of the Employer. The trustee and administrator of the Plan are the three owners of the Employer. CalTrust, located in Costa Mesa, California, is the third-party recordkeeper for the Plan.

The Employer has formally resolved to terminate the Plan, and has received a determination from the Pension Benefit Guaranty Corporation that the Plan is no longer insured. In addition, the Plan is currently in termination process with the Internal Revenue Service.

The remaining three participants in the Plan have attained normal retirement age and intend to retire within the next few months and transfer their respective interests in the Plan to their respective Individual Retirement Accounts (IRA).

3. The Property, acquired solely as an investment in 1988 by the Plan from an unrelated person, is an unencumbered, fully developed parcel of commercial real estate, which is located at 12707 and 12717 Los Neitos Road, Santa Fe Springs, California on approximately 1.17 acres. The applicants represent that the Property is serviced by all the necessary public utilities and consists of a single story metal building and a single story concrete block building with a mezzanine for office space, and has been leased and used only by unrelated third-parties with respect to the Plan. The Property was determined in 1993 by the Environmental Protection

[1] For example, any affiliation of the Applicants with any company or individual convicted of any of the felonies described in section 411 of the Act, other than G.E. with respect to the G.E. Felonies described herein, is not within the scope of the exemption proposed herein. Furthermore, any future convictions of or guilty pleas by G.E. for felonies described in part I(g) of PTCE 84–14 are not within the scope of the exemption proposed herein.

Agency (EPA) to be located within a potential toxic waste clean-up site.

The applicants represent that several attempts to sell the Property by the Plan to unrelated persons have been unsuccessful, primarily, because of the uncertainty of the costs in cleaning up the toxic waste found by the EPA.

Mr. Claude J. Demers, Real Estate Broker with California Real Estate Properties, Inc. of Huntington Beach, California, in a letter dated September 3, 1996, represented that his listing agreement on the Property had expired August 31, 1996, after every major industrial broker in Orange County was contacted with little response and no serious inquiries received. Mr. Demers further represented that the lack of market demand for the Property and the potential liability because of the hazardous materials on the Property effects the value of the Property. In addition, Mr. Demers represented that several financing institutions commented that even if a serious buyer were found, financing the Property would still be a major obstacle to overcome.

The Property was appraised as of June 20, 1996, and determined to have a fair market value of $410,000. The appraisal was done by the Grubb & Ellis Company Appraisal and Consulting Services, Orange, California and signed by Paul M. Meade, Vice President, State Certification #AG001947, and Donald L. Hoelzel, Independent Review Appraiser, State Certification #AG00732. The appraiser represented that it had no interest in the Property and was independent of the Employer and the participants of the Plan. The appraiser also represented that the only impact on the Property of the EPA determination is the stigma associated with its proximity to the contained toxic waste and the subsequent value reduction.

4. The applicants represent that the Plan has been unable to interest anyone in purchasing the Property because of the EPA determination, and the trustees of the Plan are unable to locate an IRA custodian willing to accept the Property as an asset of an IRA. Therefore, the three remaining participants of the Plan desire to purchase the Property so that the Plan may be terminated and its assets rolled-over into their respective IRAs.

The applicants represent that the Sale would be in the best interests of the Plan and its participants and beneficiaries because the Sale would avoid the risk of future costs of clean-up and the anticipated depreciation in value of the Property. Also the parties involved expect to terminate as soon as possible the Plan and the Employer.

5. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a) of the Act because (a) the Sale of the Property involves a one-time transaction for cash; (b) the Plan will not incur any payment of commissions or any other expenses from the Sale; (c) the Plan will be able to terminate and roll-over its remaining assets into three separate IRAs for the benefit of the three remaining participants; (d) the Property has been appraised by a qualified, independent appraiser; and (e) the Plan will receive as consideration for the Sale no less than the fair market value of the Property as of the date of the Sale.

Notice to Interested Persons: Because Messrs. Chasin, Hanson, and Searing, the applicants, are the sole participants of the Plan, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of this notice in the Federal Register.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Skana Enterprises, Inc. Defined Benefit Pension Plan (the Plan) Located in Kodiak, Alaska

[Application No. D–10342]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) the proposed loan (the Loan) of $157,500 by the Plan to Skana Enterprises, Inc. (Skana), the Plan's sponsor and a disqualified person with respect to the Plan, and (2) the personal guarantee of the Loan by Mr. Ralph Bolton (Mr. Bolton), a disqualified person with respect to the Plan, provided the following conditions are satisfied: (a) The terms of the Loan are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (b) the Loan does not exceed 25% of the assets of the Plan; (c) the Loan is secured by a first deed of trust on real property (the Property) which has been appraised by a qualified independent appraiser to have a fair market value not less than 150% of the amount of the Loan; (d) the fair market value of the Property remains at least equal to 150% of the outstanding balance of the Loan throughout the duration of the Loan; (e) the Plan's independent fiduciary has determined that the Loan is appropriate for, in the best interest of, and protective of the Plan; and (f) the Plan's independent fiduciary will monitor compliance with the terms of the Loan and conditions of the exemption throughout the duration of the transaction, taking any action necessary to safeguard the Plan's interest, including foreclosure on the Property in the event of default.[2]

Summary of Facts and Representations

1. Skana is a corporation located in Kodiak, Alaska, which is engaged in the business of commercial fishing for seafood. The Plan is a defined benefit plan with one participant, Mr. Bolton. The approximate aggregate fair market value of the Plan's assets is $670,000.

2. Skana wishes to borrow $157,500 from the Plan to purchase a parcel of real property in Kodiak, Alaska. The Loan will be amortized over a 15 year period, with equal semi-annual payments of principal and interest over the 15 year term. The interest rate for the Loan will be 9.25% per annum. The proposed terms of the Loan were submitted to Mr. Duane E. Dudley, Vice President of the Bank of America Alaska, N.A. in Anchorage, Alaska. Mr. Dudley approved the Loan, but recommended that certain of the proposed terms should be amended, such as raising the interest rate to 9.25% per annum. Mr. Dudley has represented that the terms of the Loan, as amended, are commercially reasonable.

3. The Loan will be secured by the Property, which consists of land and the timber located thereon, situated on East Devils Road in Lincoln City, Oregon. Char Brown of The Prudential Taylor & Taylor Realty Company in Lincoln City, Oregon, has appraised the land as having a fair market value, excluding the timber value, of $200,000 as of September 17, 1996. Ms. Brown represents that she is a qualified, independent realtor who has worked in the small town of Lincoln City for five years and is well acquainted with the values of all the properties in the area. The timber on the Property has been valued by D.J. Davis Cutting, Inc. of Otis, Oregon as having a fair market value of $193,277.75 as of September

[2] Since Mr. Bolton is the sole owner of Skana and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

15, 1996. Thus, independent experts have determined that the fair market value of the Property is $393,277.75, which is approximately 2.5 times the principal amount of the Loan. The applicant represents that the Plan will have first priority interest in the collateral, and the Plan's interest will be perfected under applicable state law. Mr. Bolton will also personally guarantee the Loan to the Plan.

4. The Plan has appointed Drugge & Associates (Drugge), a CPA firm in Seattle, Washington, as its independent fiduciary for purposes of this transaction. Drugge represents that it performs accounting and tax services for Skana, but fees generated from Skana represent less than one percent of its annual service revenues. Mr. Jon Krueger of Drugge has represented that all terms and conditions of the Loan are at least as favorable to the Plan as the Plan could obtain in an arm's-length transaction with an unrelated party, and represent fair market value terms. Drugge has determined that the Loan is appropriate for the Plan, in the Plan's best interests as an investment for its portfolio, and protective of the Plan and its participant. Drugge represents that it will monitor compliance by Skana with the terms and conditions of the Loan and of the exemption proposed herein throughout the term of the Loan, taking whatever action is necessary to safeguard the Plan's interest, including foreclosure on the collateral in the event of default.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria contained in section 4975(c)(2) of the Code for the following reasons: (a) The Loan represents less than 25% of the assets of the Plan; (b) the terms of the Loan will be at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (c) the Loan will be secured by a first deed of trust on the Property, which has been appraised by qualified, independent experts to have a fair market value approximately 2.5 times the Loan amount; (d) Mr. Bolton will personally guarantee the Loan; (e) Drugge, the Plan's independent fiduciary, has determined that the transaction is appropriate for the Plan and in its best interests; (f) Drugge will monitor the transaction and take whatever action is necessary to enforce the Plan's rights under the Loan; and (g) Mr. Bolton is the only participant in the Plan to be affected by the transaction, and he desires that the transaction be consummated.

Notice to Interested Persons: Since Mr. Bolton is the only Plan participant to be affected by the proposed transaction, the Department has determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due within 30 days from the date of publication of this notice of proposed exemption in the Federal Register.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 19th day of November 1996.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration.

[FR Doc. 96–29900 Filed 11–22–96; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice [96–136]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Subcommittee on Propulsion Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a NAC, Aeronautics Advisory Committee, Subcommittee on Propulsion meeting.

DATES: December 11, 1996, 8:30 a.m. to 5 p.m.; and December 12, 1996, 8:30 a.m. to 4 p.m.

ADDRESSES: National Aeronautics and Space Administration, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135.

FOR FURTHER INFORMATION CONTACT: Dr. Carol J. Russo, National Aeronautics and Space Administration, Lewis Research Center, Building 86, Room 100, 21000 Brookpark Road, Cleveland, OH 44135, 216/433–2965.

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:

—NASA Aeronautics Program Overviews

—NASA Lewis Aeropropulsion Overview

—Restructured Base Overview

—Materials & Structures ARTS Overview

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: November 18, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer.

[FR Doc. 96–29995 Filed 11–22–96; 8:45 am]

BILLING CODE 7501–01–M

OFFICE OF MANAGEMENT AND BUDGET

Information Collection Activity Under OMB Review

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*), this notice announces that an information collection request has been submitted to the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs for processing under 5 CFR 1320.10. The information collection request is for the proposed information collection contained in the recent revision of Office of Management and Budget (OMB) Circular A–21, ''Cost Principles for Educational Institutions,'' published in the Federal Register on May 8, 1996 (61 FR 20880). The first notice, as required by the Paperwork Reduction Act, was published in the Federal Register on May 30, 1996 (61 FR 27109).

The information collection request involves a submission of the Cost Accounting Standards Board's (CASB) Disclosure Statement (DS–2) by educational institutions receiving more than $25 million in federally-sponsored agreements. Circular A–21's information collection requirement covers approximately 20 educational institutions not subject to CASB's regulatory requirement for filing the DS–2, pursuant to Public Law 100–679, which was previously approved and assigned OMB control number 0348–0055 (which expires August 31, 1997).

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the revision, contact Gilbert Tran, Office of Federal Financial Management, OMB (telephone: 202–395–3993).

ADDRESSES: Written comments should be sent by February 24, 1997 to: Edward Springer, Office of Information and Regulatory Affairs, OMB, Room 10236, New Executive Office Building, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: Pursuant to the May 30, 1996, notice, OMB received one comment on this proposed information collection. The comment and OMB's response is summarized below.

The commenter stated that the OMB estimate of 120 hours for completing the Disclosure Statement (DS–2) is understated. Instead, the commenter estimated preparation time for the DS–2 to range from 200 hours to 2000 hours per affected institution.

OMB disagrees that the preparation of the DS–2 can take as much as 2000 hours to complete unless a university does not currently have adequate written cost accounting policies for Federal grants and contracts. The DS–2 is a 20-page document that provides a summary of an educational institution's cost accounting system for Federal grants and contracts. OMB's estimated time for the completion of DS–2 does not include the development of any cost accounting policies for Federal grants and contracts; instead, it reflects the effort by a university to document the existing cost policies at the institution. Furthermore, the cost accounting practices used for Federal grants and contracts should be already documented as required by Subpart C, Section ____.21, Standards for financial management systems, in OMB Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.''

G. Edward DeSeve,

Controller.

[FR Doc. 96–29997 Filed 11–22–96; 8:45 am]

BILLING CODE 3110–01–P

PENSION BENEFIT GUARANTY CORPORATION

Request for Comment on Proposed Extension of Approval of Collection of Information Under the Paperwork Reduction Act; Qualified Domestic Relations Order Submitted to the PBGC

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request OMB extension of approval.

SUMMARY: The Pension Benefit Guaranty Corporation intends to request that the Office of Management and Budget (''OMB'') extend the approval for a collection of information under the Paperwork Reduction Act. The information collection relates to model forms contained in a PBGC booklet (''Divorce Orders & PBGC'') providing guidance on how to submit a proper qualified domestic relations order to the PBGC. The effect of this notice is to advise the public of, and to solicit public comment on, the extension of approval of this collection of information.

DATES: Comments should be submitted to the PBGC by January 24, 1997.

ADDRESSES: All written comments should be addressed to: The Office of the General Counsel, Pension Benefit Guaranty Corporation, Suite 340, 1200 K Street, NW., Washington, DC 20005. The comments will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 240, 1200 K Street, NW., Washington, DC 20005, between the hours of 9 a.m. and 4 p.m. Copies of the booklet, ''Divorce Orders & PBGC,'' may be obtained by calling PBGC's Customer Service Center at 1–800–400–PBGC or writing to the PBGC QDRO Coordinator, P.O. Box 19153, Washington, DC 20036–0153. The booklet also is available from the PBGC Homepage on the World Wide Web, at http://www.pbgc.gov.

FOR FURTHER INFORMATION CONTACT: James L. Beller, Attorney, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTAL INFORMATION: The Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) establishes policies and procedures for controlling the paperwork burdens imposed by Federal agencies on the public. The Act vests the OMB with regulatory responsibility over these burdens, and OMB has promulgated rules on the clearance of collections of information by Federal agencies.

On September 10, 1996, the PBGC published a notice (61 FR 47774) of its request for approval, on an emergency basis, of a new collection of information relating to guidance on the submission of qualified domestic relations orders (''QDROs'') to the PBGC. OMB approved the collection of information with an expiration date of March 31, 1997. The PBGC intends to seek three-year approval for this collection of information.

The PBGC is a federal agency that insures the benefits of nearly 42 million working men and women in about 55,000 private-sector defined benefit pension plans. A defined benefit pension plan that does not have enough money to pay benefits may be terminated if the employer responsible for the plan faces severe financial difficulty, such as bankruptcy, and is unable to maintain the plan. In such an event, the PBGC becomes trustee of the plan and pays benefits, subject to legal limits, to plan participants and beneficiaries.

The benefits of a pension plan participant generally may not be assigned or alienated. Title I of ERISA provides an exception for domestic relations orders that relate to child

support, alimony payments, or marital property rights of an alternate payee (a spouse, former spouse, child, or other dependent of a plan participant). The exception applies only if the domestic relations order meets specific legal requirements that make it a QDRO. The PBGC reviews submitted domestic relations orders to determine whether the order is qualified before paying benefits to an alternate payee.

The PBGC receives many inquiries on the requirements for QDROs. Many domestic relations orders, both in draft and final form, do not meet the applicable requirements. The PBGC works with practitioners on a case-by-case basis to ensure that their orders are amended to meet applicable requirements. This process is time-consuming for practitioners and for the PBGC.

To simplify the process, the PBGC has included model QDROs and accompanying guidance in a booklet, ''Divorce Orders & PBGC,'' that attorneys and other professionals who are preparing QDROs for plans trusteed by the PBGC may submit to the PBGC after receiving court approval. These models and the guidance are intended to assist parties by making it easier to comply with ERISA's QDRO requirements in plans trusteed by the PBGC.

The requirements for submitting a QDRO are established by statute. The model QDROs and accompanying guidance do not create any additional requirements and will result in a reduction of the statutory burden. The PBGC estimates that it will receive 333 QDROs each year from prospective alternate payees; that the average burden of preparing a QDRO with the assistance of the guidance and model QDROs in PBGC's booklet will be 1/4 hour of the alternate payee's time and $400 in professional fees if the alternate payee hires an attorney or other professional to prepare the QDRO, or 10 hours of the alternate payee's time if the alternate payee prepares the QDRO without hiring an attorney or other professional; and that the total annual burden will be 113 hours and $132,000.

The PBGC is soliciting public comments to:

(i) Evaluate whether the 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 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; and

(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.

Issued at Washington, DC, this 20th day of November 1996.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 96–30027 Filed 11–22–96; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–37964; File No. SR–CHX–96–28]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Clearing the Post.

November 19, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 4, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the terms of Substance of the Proposed Rule Change

The Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') proposed to amend Article XX, Rule 10, interpretations and policies .01.

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*

On May 30, 1996 the Securities and exchange Commission approved a proposed rule change that established a minor rule violation plan (the ''Plan''.[3] A violation of the Exchange's clearing the past rule (Article XX, Rule 10) is included within the plan.[4] Under current procedures, violators may be fined either by the Minor Rule Violation Panel or by the Exchange's Committee on Floor Procedure but not both.[5] If a violation is handled under the Plan, violators may be fined not less than $100 nor more than $2,500 per violation. Alternatively, the exchange's Committee on Floor Procedure currently has the authority to impose a $50 fine for violations of the clearing the post rule.[6] the Exchange believes, however, that minor violations of the clearing the post rule are better handled through the Plan rather than by the Committee on Floor Procedure. The Exchange believes that using the Plan as the lone summary fine procedure will achieve a uniform procedure for imposing fines for violations of this Exchange rule.

2. *Statutory Basis*

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 37255 (May 30, 1996), 61 FR 28918 (approving File No. SR–CHX–95–25).

[4] *See* supra note 3.

[5] The Minor Rule Violation Panel is appointed by the President of the Exchange and consists of three floor members (one member of the Committee on Floor Procedure, one member of the Committee's Rules Subcommittee, and one member not on the Committee or any of its subcommittees.) *See* supra note 3.

[6] CHX Article XX, Rule 10, Interpretations and Policies .10.

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.

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–96–28 and should be submitted by December 16, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–30025 Filed 11–22–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37962; File No. SR–PHLX–96–40]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Incorporated; Notice of Filing of Proposed Rule Change Relating to Equity Margin Rules

November 19, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 1, 1996, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 PHLX, pursuant to Rule 19b–4 of the Act,[2] hereby proposes to amend Rules 721, 722, and 723.

1. The proposed amendment to PHLX Rule 721 will now provide for initial customer margin requirements. Specifically, a customer must deposit at least the greater of the amount specified by Regulation T or $2,000 equity, except that cash need not be deposited in excess of any security purchased.

2. The proposed amendment to PHLX Rule 722 will now provide for good faith margin requirements in instances where a member organization carries the proprietary account of another broker-dealer in compliance with the requirements of Regulation T. The rule will further provide that the member organization may not carry the account in a deficit position and must deduct from its own net capital the difference between the margin required by other sections of this rule and the equity on deposit.

3. Rule 723 will be completely restated. Revised Rule 723 will specifically be applicable to customer day-trading activities. This rule will require a customer to have sufficient equity to meet the margin required on either the long or short transaction, whichever occurred first on an intra-day basis. For purposes of this rule, the term ''customer'' will be defined, as it is in Rule 722(e)(2), to not include ''a broker or dealer from whom a security has been purchased or to whom a security has been sold for the account of a member organization or its customers.''

In addition, a prohibition against free riding in a customer's cash account has been included in order to preclude a customer from making a practice of paying for a security by selling the same security on an intra-day basis.

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 PHLX intends to amend Rules 721, 722, and 723 in order to harmonize the PHLX's margin rules with those of the other self-regulatory organizations (''SROs'').

Specifically, amended Rule 721 will be identical to the initial customer equity margin requirements of the New York Stock Exchange (''NYSE''), the American Stock Exchange (''AMEX'') and the Pacific Stock Exchange (''PSE'').[3]

The proposed amendment to Rule 722 is intended to provide for good faith margin in instances where a member organization carries the proprietary account of another broker-dealer in compliance with the requirements of Regulation T. The PHLX proposes adding these provisions so as to parallel its margin rule with that of the NYSE.[4]

Rule 723 is proposed to be completely restated. In this regard, Exchange research has identified that the current text of Rule 723 has not been amended since at least 1937.[5] Accordingly, the arcane text predates all modern margin and capital rules of the PHLX. In lieu of the outdated provisions of Rule 723,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Rule 431(b); AMEX Rule 462; PSE Rules 2.15(e), 2.16(a).

[4] *See* Rule 431(e)(6).

[5] In researching the history of Rule 723 the PHLX reviewed Exchange guides from as far back as the 1930's, wherein, the rule appeared exactly as it now reads. Furthermore, rule 723 itself makes no reference to ever having been amended. *See* PHLX Rule 723.

The Exchange proposes replacing such text with the current customer day-trading provisions and the prohibition against free-riding which have been promulgated by the other major SROs.[6] The pre-amended version of Rule 723 applied to member and member firm trading which is now governed by PHLX Rules 722 and 703.[7]

Other major SROs do not have any intra-day margin requirements governing member trading.[8] The ''daylight'' trading requirements of the PHLX serve no current purposes other than to force PHLX members to meet intra-day trading requirements on transactions which were not specifically exempted by the obsolete rule. In addition, because other major exchanges do not have these intra-day requirements, the PHLX has been placed at a competitive disadvantage. Members are forced to actively manage non-exempted transactions on an intra-day basis in order to maintain compliance with the rule, while other exchanges' margining and capital requirements are only imposed at the end of the business day. Furthermore, the proposed day trading and free riding provisions provide additional protection in the market where it is most needed. Accordingly, the PHLX rules should be brought into harmony with the other exchanges so as to relieve these competitive disadvantages.

2. Statutory Basis

The proposed rule change is based on Section 6(b)(5) of the Act in that it is designed to remove impediments to and perfect the mechanism of a national market system and 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 any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

[6] The PHLX proposes adopting the language promulgated by the New York Stock Exchange. *See* NYSE Rule 431(f)(8)(B)(C) and (f)(9).

[7] Rule 722 concerns margin accounts, and Rule 703 concerns financial responsibility and reporting.

[8] The NYSE, AMEX and the PSE do not have intra-day margining requirements for members. The NYSE does however, have intra-day margining requirements for customers.

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 Exchange. All submissions should refer to File No. SR–PHLX–96–40 and should be submitted by December 16, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–30024 Filed 11–22–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before January 24, 1997.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S. W., Suite 5000, Washington, D. C. 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: ''Annual Survey of Job Retention and Creation in the Delta Program.''

Type of Request: New Request.

Form No.: 1989.

Description of Respondents: Delta Loan Recipients.

Annual Responses: 500.

Annual Burden: 83.5.

Comments: Send all comments regarding this information collection to Gregory Diercks Delta Program Manager, Office of Financial Assistance, Small Business Administration, 409 3rd Street, S. W., Suite 8300 Washington, D.C. 20416. Phone No.: 202-205–7538.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 96–29967 Filed 11–22–96; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comments on the Negotiation of a Bilateral Trade Agreement Between the United States and the Socialist Republic of Vietnam

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that the United States is in the process of negotiating a bilateral trade agreement with the Socialist Republic of Vietnam. USTR invites comments from the public on how the trade agreement can be used to address concerns or goals of U.S. persons and businesses with respect to trade with Vietnam. Comments in particular might address current Vietnamese practices that affect(a) market access for U.S. exports, such as tariffs and non-tariff measures, (b) trade and investment in services; and (c) any

other measure that impedes trade in goods and services with the United States. Comments received will be considered in developing U.S. positions and objectives in the process of negotiating the bilateral trade agreement.

DATES: Comments should be submitted on or before noon on Monday, December 16, 1996.

ADDRESSES: Comments may be submitted to Joseph Damond, Director for Southeast Asia, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Joseph Damond, Director for Southeast Asia, at (202) 395–6813, or Thomas Robertson, Associate General Counsel, at (202) 395–6800.

SUPPLEMENTARY INFORMATION: The United States is currently in the process of negotiating a bilateral trade agreement with Vietnam. That agreement will be subject to the terms of Title IV of the Trade Act of 1974, as amended (19 USC 401 et seq.), which defines the terms of trade relations with non-market economies. Title IV mandates that bilateral trade agreements between the United States and countries subject to its provisions address a number of issues, including (1) suspension or termination for national security reasons, (2) safeguard arrangements, (3) the protection of intellectual property rights, (4) the settlement of commercial differences and disputes, (5) the promotion of trade, and (6) consultations. In addition to these provisions, the trade agreement may address other issues, including the following: the grant of most-favored-nation treatment and national treatment to the products of the other country; the grant of trading rights; the elimination of market access barriers (e.g., tariffs, import and export restrictions, quotas, licensing requirements, customs valuation, and fees and charges); the transparency of legal and regulatory regimes; state trading and industrial subsidies; government procurement; trade-related investment measures; trade in services; and investment restrictions..

USTR invites written comments from the public on market access and any other issues to be addressed in the course of the negotiations with Vietnam on the bilateral trade agreement. All comments will be considered in developing U.S. positions and objectives during these negotiations on each of the issues noted above or otherwise raised by the public. Issues of interest might include, but are not necessarily limited to: (a) comments on possible tariff reductions and the removal of border measures such as quotas or import licensing requirements; (b) uniform application of the trading system; (c) the provision of national treatment and nondiscriminatory treatment for imports, especially in the area of domestic taxation; (d) transparency in application of trade laws and regulations; (e) right of appeal in cases involving application of trade laws and other laws concerning trade-related issues, such as protection and enforcement of intellectual property rights (IPR), foreign investment and services; (f) customs processing issues, such as document certification prior to export, fees, customs valuation, and certification requirements; (g) subsidies and domestic support and incentives; (h) safeguard and unfair trade practice procedures applied to imports; (i) plant, animal, and human health and safety requirements; (j) food standards and other technical barriers to trade; (k) activities of state trading enterprises, including restrictions and other trade-distorting practices; (l) price controls and policies; (m) government procurement practices; and (n) the trade-related aspects of investment policies and the protection and enforcement of IPRs. Market access issues for services include, but are not limited to, the right of establishment for U.S. services providers, the ability to provide services on a cross-border basis, and the ability of persons to enter temporarily to provide services. Information on products or practices subject to these negotiations should include, whenever appropriate, the relevant import or export tariff classification number used.

Public Comment: Requirements for Submissions

Comments must be in English and provided with fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenting party. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

A person requesting that information or advice contained in a comment submitted by that person, other than business confidential information, be treated as confidential in accordance with section 135(g)(2) of the Trade Act of 1974(19 U.S.C. 2155)—

(1) Must so designate that information or advice;

(2) Must clearly mark the material as ''CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

USTR will maintain a file containing the public versions of comments, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington DC 20508. The public file will include a listing of any comments made to USTR from the public with respect to the proceeding. An appointment to review the public file may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Jennifer Hillman,

General Counsel.

[FR Doc. 96–30013 Filed 11–22–96; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 186X)]

Norfolk and Western Railway Company—Abandonment Exemption—in Polk County, IA

Norfolk and Western Railway Company (NW) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 1.21-mile line of railroad between Station 422+69.9 and Station 486+64 in Clive, Polk County, IA.

NW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.*—

Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 25, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by December 5, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 16, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NW has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 29, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 18, 1996.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Board will accept late-filed trail use requests as long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–30006 Filed 11–22–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

International Trade Data System Project Office; 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. 3505(c)(2)(A)). Currently, the International Trade Data System Project Office within the Department of the Treasury is soliciting comments concerning the North American Trade Automation Prototype (NATAP).

DATES: Written comments should be received on or before January 31, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to The Department of the Treasury, International Trade Data Systems Project Office, Attn.: William Nolle, 1301 Constitution Ave., NW, ICC–3130, Washington, DC 20229, Telephone (202) 927–1826.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the instructions should be directed to The Department of the Treasury, International Trade Data Systems Project Office, Attn.: William Nolle, 1301 Constitution Ave., NW, ICC–3130, Washington, DC 20229, Telephone (202) 927–1826. Information concerning NATAP can also be obtained at the following Web Site: www.itds.treas.gov.

SUPPLEMENTARY INFORMATION:

Title: North American Trade Automation Prototype (NATAP)

OMB Number: 1501–0162

Abstract: After extensive consultation with the trade community in the three countries, the NAFTA Information Exchange and Automation Working Group developed the North American Trade Automation Prototype (NATAP). NATAP is a prototype developed by the U.S., Canada, and Mexico to experiment with standardized data, advanced automation, technologies, communications, and encryption designed to reduce costs and improve trade among the three NAFTA countries. This is mandated by Article 512 of the NAFTA. NATAP has been endorsed by the three governments and their trade communities as a limited six month test to be conducted at two US/Canada and four US/Mexico border locations. After the six month prototype, NATAP will stop; the governments and trade community will conduct joint and individual evaluations of the concepts experienced in NATAP and will determine the next steps in the development of improved North American trade processes.

In addition to the international aspects of North American trade, the intent of the U.S. Treasury, International Trade Data System Project Office is to demonstrate the integration of individual U.S. federal agency trade procedures into a comprehensive international trade process that includes the clearance and admissibility of goods, drivers/crew, and conveyances for purposes of enforcement, revenue, health and safety, etc.

Current Actions: The three governments have agreed to a six month test for NATAP. However, given the nature of NATAP and the extensive coordination of activities among the participating federal trade agencies in three separate countries and the installation of technology at all locations, involving federal, state/provincial, local, and private interests the Working Group and the trade community have agreed that the six month prototype period will begin for all six locations after NATAP becomes operational at the last location. While NATAP may be operational at the first location on November 1, 1996, the last location may not be operational until March 1, 1997. Accordingly, the official prototype period would not begin until March 1, 1997. Due to these unforseen and unpredictable delays, the Department of Treasury is requesting that this clearance be effective until December 21, 1997.

Volunteers have agreed to participate in NATAP in order to provide traders with the opportunity to experiment with these advanced technologies and procedures with minimal expense. Through their evaluation of NATAP, they will have input into future trade processes and requirements.

Type of Review: Extension.

Affected Public: Importers, exporters, customs house brokers, carriers (truck and rail) who have volunteered to participate in NATAP.

Estimated Number of Respondents: There are approximately 120 U.S. participants. Estimated number of respondents is 120.

Estimated Time per Respondents: Each response will not exceed 7 minutes.

Estimated Total Annual Burden Hours: 6,300 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or include in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information and the prototype will 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 this information to be collected; (d) ways to minimize the burden of information on respondents, including the use of automated collection techniques or other forms of information technology; (e) estimates of capital start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 19, 1996.

William L. Nolle,

International Trade Analyst.

[FR Doc. 96–30014 Filed 11–22–96; 8:45 am]

BILLING CODE 4810–25–M

Submission for OMB Review; Comment Request

November 15, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the focus group interviews described below during the mid-December 1996 to early-January 1997 timeframe, the Department of Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by November 27, 1996. To obtain a copy of this survey, please contact the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.

Project Number: PC:V 96–022.

Type of Review: Revision.

Title: Opinion Research Group, Strategic Planning Division Refund Focus Group.

Description: The objective of these focus group interviews is to gather feedback from taxpayers on their expectations regarding refunds and the refund process. The groups will also solicit information regarding taxpayer perceptions of how long it should take to receive a refund and when during the process taxpayers decide to call IRS to inquire about the status of their refunds. This information will be used to help IRS design a plan on how to communicate the refund process with taxpayers.

Respondents: Individuals or households.

Estimated Number of Respondents: 54

Estimated Burden Hours Per Respondent:

Screening interviews—5 minutes
Focus group interviews—2 hours
Travel to site—1 hour

Frequency of Response: Other.

Estimated Total Reporting Burden: 195 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–30015 Filed 11–22–96; 8:45 am]

BILLING CODE 4830–01–P

[Treasury Directive 27–04]

Organization and Functions of the Office of the Under Secretary (International Affairs)

November 17, 1996.

1. *Purpose.* This Directive describes the organization and functions of the Office of the Under Secretary (International Affairs).

2. *The Under Secretary (International Affairs)* advises and assists the Secretary and Deputy Secretary in the formulation and execution of U.S. international policy. These responsibilities include the development of policies and guidance of the Department's activities in the areas of international financial, economic and monetary affairs, trade and investment policy, international debt, environmental and energy policy, and U.S. participation in international financial institutions. The Under Secretary helps coordinate United States economic policies with finance ministries of the other G–7 industrial nations (France, Germany, Japan, United Kingdom, Canada, and Italy) and participates in preparing the President for annual G–7 economic summits. Reporting to the Under Secretary is the Assistant Secretary, including all of the functions of that office.

3. *The Assistant Secretary (International Affairs)* reports to the Secretary through the Under Secretary (International Affairs) and the Deputy Secretary. The incumbent is a principal adviser to the Secretary, Deputy Secretary, and Under Secretary (International Affairs) in their exercise of international financial, economic, monetary, trade, investment, environmental and energy policies and programs.

4. *Organization Structure.* The Assistant Secretary (International Affairs) supervises the Office of Program Services, the Counselor for Middle East Affairs, and six Deputy Assistant Secretaries: International Monetary and Financial Policy; Asia, the Americas and Africa; International Development, Debt and Environmental Policy; Trade and Investment Policy; Eurasia and the Middle East; and Technical Assistance Policy. The functions and responsibilities of the Deputy Assistant Secretaries are defined by the Assistant Secretary. The Deputy Assistant Secretaries serve under the policy guidance of the Assistant Secretary. Each Deputy Assistant Secretary supervises a number of offices managed by Directors. See the attached organization chart.

5. *The Deputy Assistant Secretary (International Monetary and Financial Policy)* supervises: the Office of International Banking and Securities Markets; the Office of International Monetary Policy; the Office of Foreign Exchange Operations; and the Office of Industrial Nations and Global Analyses. The incumbent serves as a policy adviser to the Assistant Secretary (International Affairs) and is responsible for the following functions.

a. Formulates and implements Treasury policies concerning:

(1) maintenance and operation of a smoothly functioning international monetary system;

(2) coordination of economic policy among industrial nations through bilateral relationships, the Economic

Summit/G–7 process, the G–10 finance ministries and central banks, and the Organization for Economic Cooperation and Development (OECD) framework;

(3) development and conduct of U.S. monetary and financial relations with other nations;

(4) U.S. participation in the International Monetary Fund (IMF);

(5) foreign exchange operations and management of U.S. reserve assets; and

(6) international capital markets.

b. Provides analyses and forecasts of economic, monetary and financial developments in, and the policies of, the major industrial nations and maintains representatives at U.S. embassies in key industrial countries and at the OECD.

c. Analyzes and forecasts regional and global payment patterns and their implications for the functioning of the monetary system and the international economy.

d. Analyzes and assembles information relating to international banking, portfolio investment and insurance matters and the international practices of U.S. and foreign banks, their regulatory authorities, and the impact of their activities on the operation of the international monetary system.

e. Provides analyses relating to the formulation of coordinated international economic policies among major industrial nations.

f. Prepares analyses and reports on current developments and near-term prospects for the U.S. current-account balance and capital flows.

g. Develops analytic techniques for the study of current international economic issues, uses macroeconomic models as tools for analysis of issues, and provides econometrics modeling assistance to other offices.

h. Provides direction to the Federal Reserve Bank of New York concerning Exchange Stabilization Fund (ESF) operations under the authority of the Secretary of the Treasury and other Treasury officials who are delegated such authority to assure that operations of the Federal Reserve System concerning the ESF are coordinated. In this regard, the incumbent intensively monitors foreign exchange markets and maintains continuing monitoring of gold markets and related developments.

6. *The Deputy Assistant Secretary (Asia, the Americas and Africa)* supervises: the Office of East and South Asian Nations; the Office of African Nations; the Office of Latin American and Caribbean Nations; and the Mexico Task Force. The incumbent serves as a policy adviser to the Assistant Secretary (International Affairs) and is responsible for the following functions.

a. Formulates, evaluates, and implements Treasury policy and positions in the areas of international economics and finance dealing with the developing and emerging market countries of Asia, the Americas, and sub-Saharan Africa, and bilateral financial and economic assistance policies concerning these countries.

b. Monitors the relations of individual developing and emerging market countries of Asia, the Americas, and sub-Saharan Africa with the international financial institutions (IFIs) and IFI programs in those countries; reviews and evaluates relations with, and programs developed by, the IFIs involving these developing and emerging market countries.

c. Formulates U.S. foreign economic policies and programs concerning developing and emerging market countries of Asia, the Americas, and sub-Saharan Africa as they relate to international monetary stability and U.S. economic policy.

d. Develops, and monitors closely, policy recommendations regarding U.S. financial relations with the developing and emerging market countries of Asia, the Americas, and sub-Saharan Africa, including overseeing compliance with the U.S.-Mexico financial agreements of 1995, timely payment of principal and interest due from Mexico and debt repayment by other countries, rescheduling and other financial and economic policy issues.

e. Analyzes financial sector liberalization programs and foreign exchange systems in the developing and emerging market countries of Asia, the Americas, and sub-Saharan Africa and, as delegated by the Assistant Secretary, negotiates with various countries to encourage greater openness in their financial sectors and market-oriented exchange regimes.

f. Maintains acute awareness of financial and economic policies of these developing and emerging market countries, including stationing of Treasury representatives in key countries.

g. Assists senior Administration officials by identifying and evaluating existing programs, issues and projects and by developing new and viable approaches, techniques, and alternatives for programs involving such considerations as:

(1) liberalization of capital markets;

(2) more effective utilization of bilateral and development funds in the developing and emerging market countries of Asia, the Americas, and sub-Saharan Africa;

(3) greater integration of these developing and emerging market countries into the international financial and economic system;

(4) more effective utilization of multilateral channels for assistance;

(5) development of stable fiscal and monetary practices as well as a commitment to economic reform and adjustment in developing and emerging market countries of Asia, the Americas, and sub-Saharan Africa; and

(6) protection of the U.S. balance of payments and similar international monetary matters affecting the finances of the developing and emerging market countries of Asia, the Americas, and sub-Saharan Africa.

7. *The Deputy Assistant Secretary (International Development, Debt and Environmental Policy)* supervises: the Office of Multilateral Development Banks (MDBs); and the Office of International Debt Policy. The incumbent serves as a policy adviser to the Assistant Secretary (International Affairs) and is responsible for the following functions.

a. Formulates, evaluates, and implements Treasury policy and positions on a wide range of economic, financial, and environmental issues pertaining to U.S. participation in the MDBs and international debt policy. This includes continuing liaison with nongovernmental organizations; foreign governments and international organizations; other Federal agencies; and academic and research institutions.

b. Advises the Assistant Secretary (International Affairs) on matters that concern:

(1) MDB financial, lending, and governance policies;

(2) MDB environmental policies and procedures;

(3) U.S. business and export opportunities through MDB lending;

(4) Treasury positions on specific MDB loans and technical assistance proposals; and

(5) economic and financial issues pertaining to U.S. international debt policy.

c. Develops and presents Treasury positions for Federal interagency and international discussions concerning formulation of negotiating objectives, strategies, and tactics, as well as implementation of MDB replenishment, lending, and borrowing practices, programs, and objectives.

d. Coordinates, within Treasury and with other agencies, implementation of the Enterprise for the Americas Initiative including, among other things, working with Congress to gain needed authorization and appropriations, leading negotiations on bilateral debt reduction, and carrying out Treasury's

role as Chair of the President's Enterprise for the Americas Board.

e. Develops, evaluates and implements Treasury policies, positions, and initiatives concerning commercial bank debt, capital market developments, official bilateral debt, and U.S. Government bilateral debt.

f. Reviews policies of international and interagency bodies involved in development financing, such as the Development Assistance Committee of the OECD, the United Nations (UN) Conference on Trade and Development and other UN organizations, the Interagency Country Risk Assessment System, the Overseas Private Investment Corporation, and the National Advisory Council on International Monetary and Financial Policies.

g. Provides technical advice on issues involved in international debt management and policies.

h. Prepares policy guidance for U.S. participation in the Boards of Directors of the MDBs and for use by the Secretary of the Treasury in that official's role as U.S. Governor of the MDBs.

8. *The Deputy Assistant Secretary (Trade and Investment Policy)* supervises: the Office of International Trade; the Office of International Investment; the Office of Trade Finance; and the Office of Financial Services Negotiations. The incumbent serves as a policy adviser to the Assistant Secretary (International Affairs) and is responsible for the following functions.

a. Formulates, evaluates, and implements Treasury positions on:

(1) U.S. trade and commercial policy in general;

(2) multilateral and bilateral trade negotiations;

(3) financial services negotiations, concerning such matters as the General Agreement on Trade in Services;

(4) trade finance matters with respect to the Export-Import Bank, the Commodity Credit Corporation, and international organizations, such as the OECD;

(5) U.S. military sales abroad;

(6) trade programs, such as the General System of Preferences and textile regimes;

(7) direct investment issues, including matters pertaining to national security implications of mergers and acquisitions of U.S.-based firms by foreign entities, expropriation, the Oversees Private Investment Corporation, and bilateral investment treaties; and

(8) basic natural resources which are not energy-related, in particular, non-fuel minerals and agricultural commodities.

b. Provides the staff chair of the interagency Committee on Foreign Investment in the United States established by Executive Order 11858, as amended, and chaired by Treasury.

c. Coordinates investigations under the Exon-Florio amendment (section 5021 of Public Law 100–418) to the Defense Production Act to determine the effects on national security of foreign acquisitions, mergers, or takeovers of U.S. companies.

d. Drafts recommendations to the President on whether to prohibit or suspend transactions which are investigated under Exon-Florio, and drafts, in cooperation with the Office of the General Counsel, regulations issued pursuant to Exon-Florio.

e. Develops and implements Treasury policies within the incumbent's areas of responsibility which arise in such international fora as the World Trade Organization (WTO), the IMF, the International Bank for Reconstruction and Development, and various committees of the OECD.

f. Develops trade finance policy and provides the lead U.S. Government negotiator on OECD Export Credit Arrangement issues; and leads and coordinates interagency, U.S. Government implementation of Arrangement policies and agreements.

g. Develops negotiating objectives and strategy, and provides the lead U.S. negotiator on financial services, excluding insurance matters, in the WTO.

9. *The Deputy Assistant Secretary (Eurasia and the Middle East)* supervises: the Office of Central and Eastern European Nations; and the Office of Middle Eastern and Central Asian Nations. The incumbent serves as a policy adviser to the Assistant Secretary (International Affairs) and is responsible for the following functions.

a. Formulates, evaluates, and implements Treasury policies and positions in the areas of international economics and finance dealing with countries in Central and Eastern Europe, the Middle East, North Africa, and Central Asia, and bilateral financial and economic assistance policies concerning these countries.

b. Advises the Assistant Secretary (International Affairs) on the implications of financial and economic developments in these areas.

c. Develops U.S. foreign economic policies and programs with respect to Central and Eastern Europe, the Middle East, North Africa, and Central Asia as they relate to international monetary stability and U.S. economic policy.

d. Formulates, and monitors closely, policy recommendations regarding U.S. financial relations with Central and Eastern Europe, the Middle East, North Africa, and Central Asia, including debt repayment and rescheduling and other financial and economic policy issues.

e. Reviews and evaluates the relations with and programs developed by IFIs and other Federal agencies involving countries of Central and Eastern Europe, the Middle East, North Africa, and Central Asia.

f. Maintains acute awareness of financial and economic policy of these countries including stationing of Treasury representatives in key countries.

g. Identifies and evaluates existing projects, programs and issues, and develops new and viable approaches, techniques, and alternatives to assist Treasury officials in developing policies regarding Central and Eastern Europe, the Middle East, North Africa, and Central Asia involving such considerations as:

(1) more effective utilization of development funds;

(2) greater integration of countries of Central and Eastern Europe, the Middle East, North Africa, and Central Asia into the international financial and economic system;

(3) more effective utilization of multilateral channels for assistance;

(4) development of stable fiscal and monetary practices and a commitment to economic reform and adjustment; and

(5) protection of the U.S. balance of payments and similar international monetary matters affecting the finances of countries of Central and Eastern Europe, the Middle East, North Africa, and Central Asia.

10. *The Deputy Assistant Secretary (Technical Assistance Policy)* supervises the following offices: the Office of Technical Assistance and the U.S.-Saudi Arabian Joint Commission Program Office. The incumbent serves as a policy adviser to the Assistant Secretary (International Affairs) on economic and financial technical assistance and is responsible for the following functions.

a. Develops, evaluates and implements Treasury policies and positions on economic and financial technical assistance to transitional and developing countries including Eastern Europe and the former Soviet Union.

b. Serves as U.S. coordinator of the U.S.-Saudi Arabian Joint Commission on Economic Cooperation and chairs its Interagency Advisory Policy Group.

c. Serves as principal Treasury representative in interagency meetings and international negotiations concerning the provision of economic and financial technical assistance to foreign countries.

d. Maintains close contact with the various IFIs and other international organizations to monitor their technical assistance efforts and coordinate U.S. bilateral financial and economic technical assistance in order to maximize program effectiveness and optimize program efficiency.

e. Provides timely and pertinent policy advice to senior Treasury officials, including legislative proposals and administrative actions that relate to technical assistance.

f. Manages multi-million dollar interagency allocation agreements which provide bilateral economic and financial technical assistance to foreign countries.

g. Provides oversight of all administrative and operational functions of Treasury economic and financial technical assistance programs, including authority to approve interagency and international agreements for conducting technical assistance.

11. *Counselor for Middle East Affairs* serves as a policy adviser to the Assistant Secretary (International Affairs) for specialized financial and economic policy issues on the Middle East including multilateral development, selected regional macroeconomic issues, energy policy issues, and the financial interrelationship of the various Middle East countries.

12 *The Office of Program Services* is responsible for performing various management and administrative functions, such as personnel, travel, budget, information technology, security, correspondence control, distribution of reports, and responses to Freedom of Information Act and General Accounting Office requests.

13. *Cancellation.* Treasury Directive 27–04, ''Organization and Responsibilities of the Office of the Assistant Secretary (International Affairs),'' dated November 19, 1986, is superseded.

14. *Expiration Date.* This Directive expires three years after the date of issuance unless cancelled or superseded prior to that date.

15. *Office of Primary Interest.* The Office of the Under Secretary (International Affairs).

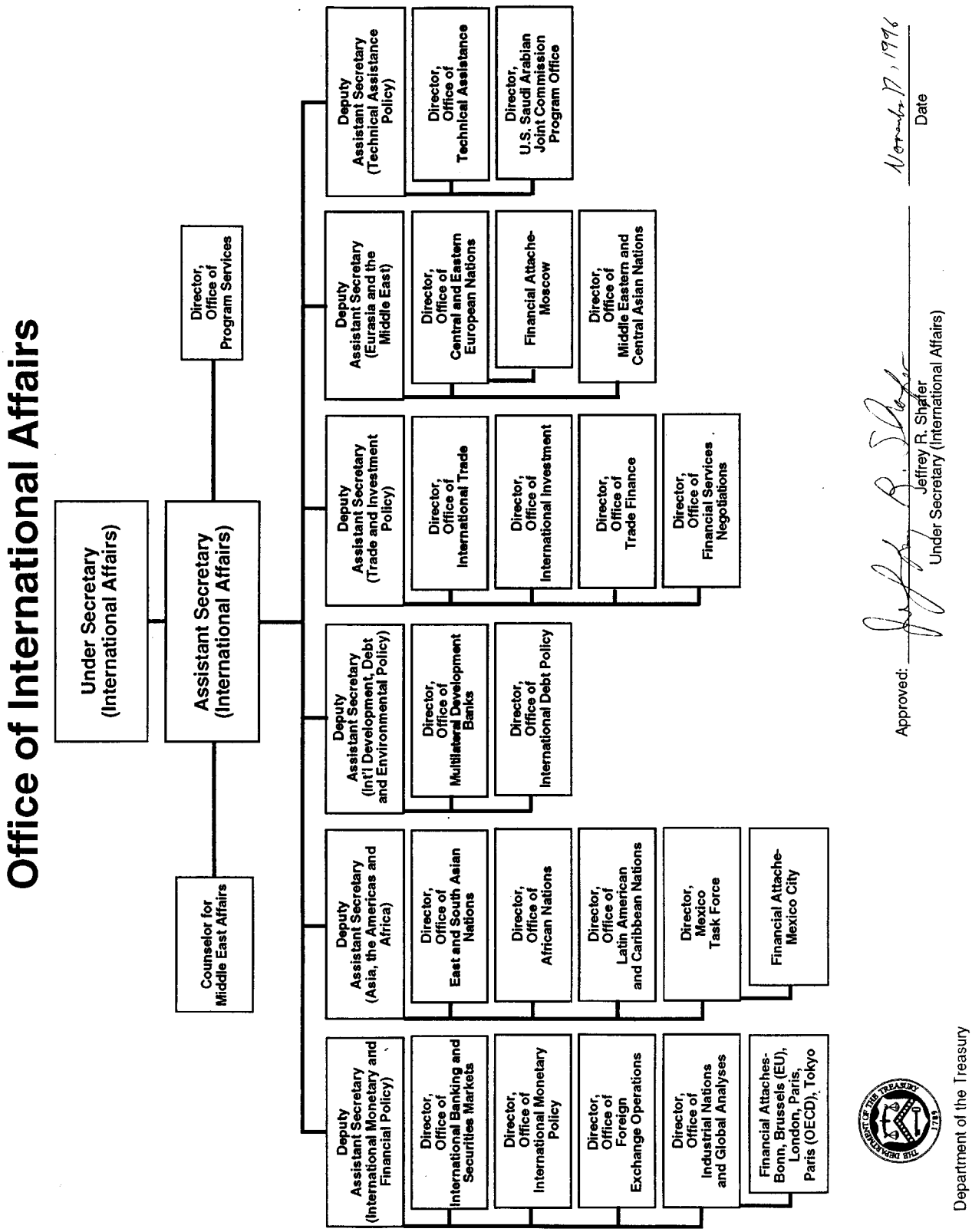
Jeffrey R. Shafer,

Under Secretary (International Affairs).

BILLING CODE 4810–25–P

TD 27-04
11-17-96

Attachment



Approved: _____ November 17, 1996
Jeffrey R. Shafer
Under Secretary (International Affairs)
Date

Department of the Treasury

[FR Doc. 96–29970 Filed 11–22–96; 8:45 am]

BILLING CODE 4810–25–C

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA); Amendments to Previously Published Notice for the Bank Enterprise Award Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of funds availability; amendment to previously published notice.

SUMMARY: The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et. seq.*) authorizes the Community Development Financial Institutions Fund (hereafter referred to as ''the Fund'') to provide assistance to insured depository institutions for the purpose of promoting investments in Community Development Financial Institutions (''CDFIs'') and facilitating increased lending and provision of financial and other services in economically distressed communities. Insured depository institutions and CDFIs are defined terms under an interim rule (12 CFR part 1806) published in the Federal Register on October 19, 1995 and subsequently amended on January 23, 1996 and February 29, 1996. The BEA Program is subject to the interim rule. The interim rule establishes the program requirements. This notice amends a Notice of Funds Availability published in the Federal Register on October 19, 1995. The notice is amended to permit applicants to select, with the consent of the Fund, a six-month Assessment Period that differs from the six-month period specified in the previously published NOFA. The notice also gives the Fund more flexibility with respect to establishing any limitations on the maximum amount that may be awarded to an applicant.

ADDRESSES: All questions concerning this notice should be addressed to the Director, Community Development Financial Institutions Fund, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington DC 20220.

FOR FURTHER INFORMATION CONTACT: Kirsten S. Moy, Director, Community Development Financial Institutions Fund at (202) 622–8662. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

I. Background

As part of a national strategy to facilitate revitalization and increased availability of credit and investment capital in distressed communities, the Community Development Banking and Financial Institutions Act of 1994 provides that a portion of funds appropriated to the Fund be distributed through the BEA Program. The BEA Program is largely based on the Bank Enterprise Act of 1991 although Congress significantly amended the program to facilitate greater coordination with other activities of the Fund. The program is designed to encourage insured depository institutions to make equity investments or otherwise support Community Development Financial Institutions or increase lending and other services provided within distressed communities. This Notice amends the Notice of Funds Availability published in the Federal Register on October 19, 1995 inviting applications for assistance.

II. Award Amounts

The October 19, 1995 notice indicated that ''the anticipated maximum award under this Notice is $1 million. However, the Fund, in its sole discretion, reserves the right to award amounts in excess of $1 million for applications of exceptional merit.'' This notice revises the earlier notice by deleting the last two sentences under the heading III. ''Designation Factors'' and substituting in their place the following sentence: ''The Fund may, in its sole discretion, establish any limitations on the maximum amount that may be awarded to an applicant, as deemed appropriate by the Fund.''

III. Baseline Period and Assessment Period Dates

In the notice published in the Federal Register on October 19, 1995, Applicants were instructed to project Qualified Activities that they anticipated carrying out during a six-month Assessment Period. Such Assessment Period began on January 1, 1996 and ended on June 30, 1996. However, the Fund has determined that in order to achieve the purposes of the Bank Enterprise Award Program it is necessary to permit Applicants to select from several alternative six-month Assessment Period options. Such alternative Assessment Period options are intended to give Applicants adequate time to complete the activities proposed in their original application. Since the Fund, for a variety of reasons, took longer than originally anticipated to complete all reviews and evaluations necessary to estimate whether any Applicant potentially qualified for a Bank Enterprise Award, and since Applicants reasonably waited to hear from the Fund with respect to whether they potentially qualified for an award before completing many of their proposed activities, the Fund concluded that in order to be fair to Applicants it needed to allow Applicants the option of choosing a different six-month Assessment Period from the one originally contemplated by the October 19, 1995 Notice. All Applicants were notified of their Assessment Period options through written correspondence issued on August 19, 1996.

The October 19, 1995 notice is revised in the fourth sentence under the heading IV. ''Baseline and Assessment Period Dates.'' In the notice, the sentence currently reads as follows: ''Such assessment period will begin January 1, 1996 and end on June 30, 1996.'' It is hereby amended to read as follows: ''Unless another six-month period is agreed to by the Fund and the Applicant, such assessment period will begin on January 1, 1996 and end on June 30, 1996.''

IV. Other Matters

(a) Paperwork Reduction Act. For details on the information collection requirements of the rule and this Notice, the reader should refer to the interim rule (12 CFR Part 1806) published in the Federal Register on October 19, 1995 and subsequently amended on January 23, 1996 and February 29, 1996.

(b) Environmental Impact. Pursuant to Treasury Directive 75–02, the Department of the Treasury has determined that implementation of the BEA Program under the interim rule is categorically excluded from the National Environmental Policy Act of 1969 (21 U.S.C. 4332) and does not require an environmental review. The determination is available for public inspection between 9:30 a.m. and 4:30 p.m. weekdays at the offices of the Fund at 1777 F Street, N.W., 7th Floor, Washington D.C. 20006.

Authority: 12 U.S.C. 4703, 4717; Chapter X, Pub. L. 104–19, 109 Stat. 237; 12 CFR 1806.206(a).

Dated: November 18, 1996.

Kirsten S. Moy,

Director, Community Development Financial Institutions Fund.

[FR Doc. 96–29994 Filed 11–22–96; 8:45 am]

BILLING CODE 4810–70–P

Fiscal Service

Proposed Collection of Information: Pools and Associations Annual Letter

AGENCY: Finacial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the report ''Pools and Associations—Annual Letter.''

DATES: Written comments should be received on or before January 24, 1997.

ADDRESSES: Direct all written comments to Financial Management Service, 3361–L 75th Avenue, Landover, Maryland 20785.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Dorothy Martin, Room 630–F, 3700 East-West Highway, Hyattsville, Maryland 20782, (202) 874–6850.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Pools and Associations—Annual Letter

OMB Number: 1510–0008

Form Number: None.

Abstract: This report is sent to pools and associations recognized by Treasury Department as authorized reinsurers of non-federal businesses. The information collected identifies, for certified companies, a range of acceptable reinsurers, based on the number of companies in the association and the percentage of participation in the pool or association.

Current Actions: Extension of currently approved collection

Type of Review: Regular

Affected Public: Business or other for-profit

Estimated Number of Respondents: 100

Estimated Time per Respondent: 1 hour 30 minutes

Estimated Total Annual Burden Hours: 150 hours

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget 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.

Dated: November 20, 1996.

Mitchell A. Levine,

Assistant Commissioner.

[FR Doc. 96–30028 Filed 11–22–96; 8:45 am]

BILLING CODE 4810–35–M

Proposed Collection of Information: States Where Licensed for Surety

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the report ''States Where Licensed for Surety.''

DATES: Written comments should be received on or before January 24, 1997.

ADDRESSES: Direct all written comments to Financial management Service, 3361–L 75th Avenue, Landover, Maryland 20785.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Dorothy Martin, Room 630–F, 3700 East-West Highway, Hyattsville, Maryland 20782, (202) 874–6850.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506 (c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: States Where Licensed for Surety

OMB Number: 1510–0013

Form Number: FMS 2208

Abstract: This information is collected to provide Federal bond approving officers with a current list of states where insurance companies are licensed to transact surety business. Bond approving officers must be assured that all licensing requirements have been met before they can accept a bond written by a specific surety company.

Current Actions: Extension of currently approved collection

Type of Review: Regular

Affected Public: Business or other for-profit

Estimated Number of Respondents: 318

Estimated time Per Respondent: 1 hour

Estimated Total Annual Burden Hours: 318 hours

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of management and Budget 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) estimate of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: November 20, 1996.

Mitchell A. Levine,

Assistant Commissioner.

[FR Doc. 96–30029 Filed 11–22–96; 8:45 am]

BILLING CODE 4810–35–M

Corrections

Federal Register
Vol. 61, No. 228
Monday, November 25, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 94-15]

Michael J. Septer, D.O., Grant of Request To Modify Continuation of Registration With Restrictions

Correction

In notice document 96–26321, beginning on page 53762, in the issue of Tuesday, October 15, 1996, make the following correction:

On page 53762, in the second column, in the tenth line ''825(a)(4)'' should read ''824(a)(4)''.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201

[Release Nos. 33-7361; 34-37912; IC-22310; IA-1596]

Adjustments to Civil Monetary Penalty Amounts

Correction

In rule document 96–28596 beginning on page 57773 in the issue of Friday, November 8, 1996, make the following correction:

On page 57774, in the third column, beginning in the third line the amendatory instruction is corrected to read as follows:

''For the reasons set forth in the preamble, part 201, Title 17, Chapter II of the Code of Federal Regulations is amended by adding Subpart E to read as follows.''

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. PS-142; Notice 3]

Program Framework for Risk Management Demonstrations

Correction

In notice document 96–29367 beginning on page 58605 in the issue of Friday, November 15, 1996 make the following corrections:

1. On page 58605, in the third column, in the fourth line from the bottom, ''(Insert 60 days from publication date)'' should read ''January 14, 1997''.

2. On page 58606, in the first column, in the seventh line, ''(Insert 30 days from publication date)'' should read ''December 16, 1996''.

BILLING CODE 1505–01–D

Federal Register

Monday
November 25, 1996

Part II

Environmental Protection Agency

40 CFR Part 261, et al.

Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 262, 264, 265, 270, and 271

[IL–64–2–5807; FRL–5634–4]

RIN 2060–AG44

Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the authority of the Resource Conservation and Recovery Act (RCRA), as amended, the EPA has published standards (59 FR 62896, December 6, 1994) to reduce organic air emissions from certain hazardous waste management activities to levels that are protective of human health and the environment. (The standards are known colloquially as the ''subpart CC'' standards due to their inclusion in subpart CC of parts 264 and 265 of the RCRA subtitle C regulations). These air standards apply to certain tanks, containers, and surface impoundments (including tanks and containers at generators' facilities) used to manage hazardous waste capable of releasing organic waste constituents at levels which can harm human health and the environment.

The EPA previously has stayed the effective date of those rules administratively in order to receive and evaluate comments and ultimately to revise the rules in an appropriate manner. Today's action amends and clarifies the regulatory text of the final standards, clarifies certain language in the preamble to the final rule, and in doing so provides additional options for compliance that give owners and operators increased flexibility in meeting the requirements of the rules while still providing sufficient controls to be protective of human health and the environment. In addition, today's action suspends the applicability and implementation of subpart CC of Parts 264 and 265 from October 6, 1996, to December 6, 1996.

DATES: These amendments are effective October 6, 1996. The applicability and implementation of Subpart CC of Parts 264 and 265 is suspended from October 6, 1996, to December 6, 1996.

ADDRESSES: This document is available on the EPA's Clean-up Information Bulletin Board (CLU–IN). To access CLU–IN with a modem of up to 28,800 baud, dial (301) 589–8366. First time users will be asked to input some initial registration information. Next, select ''D'' (download) from the main menu. Input the file name ''RCRAAMEN.ZIP'' to download this notice. Follow the on-line instructions to complete the download. More information about the download procedure is located in Bulletin 104; to read this type ''B 104'' from the main menu. For additional help with these instructions, telephone the CLU–IN help line at (301) 589–8368.

Docket. The supporting information used for this rulemaking is available for public inspection and copying in the RCRA docket. The RCRA docket numbers pertaining to this rulemaking are F–91–CESP–FFFFF, F–92–CESA–FFFFF, F–94–CESF–FFFFF, F–94–CE2A–FFFFF, F–95–CE3A–FFFFF and F–96–CE4A–FFFFF. The RCRA docket is located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. Hand delivery of items and review of docket materials are made at the Virginia address. The public must have an appointment to review docket materials. Appointments can be scheduled by calling the Docket Office at (703) 603–9230. The mailing address for the RCRA docket office is RCRA Information Center (5305W), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability, permitting, enforcement and rule determinations, contact the appropriate regional representative:

Region I:
Stephen Yee, (617) 565–3550, U.S. EPA, Region I, JFK Federal Building, Boston, MA 02203–0001

Region II:
Abdool Jabar, (212) 637–4131, John Brogard, 637–4162, Jim Sullivan, 637–3812, U.S. EPA, Region II, 290 Broadway, New York, NY 10007–1866

Region III:
Linda Matyskiela,(215) 566–3420, U.S. EPA, Region III, 841 Chestnut Building, Philadelphia, PA 19107

Region IV:
Denise Housley, (404) 562–8495, Rick Gillam, 562–8498, Judy Sophianolpoulos, 562–8604, U.S. EPA, Region IV, 345 Courtland Street, N.E., Atlanta, GA 30365

Region V:
Charles Slaustas, (312) 886–6190, Ros Del Rosario, 886–6195, Uylaine McMahan, 886–4454, U.S. EPA, Region V, 5AE–26, 77 West Jackson Street, Chicago, IL 60604

Region VI:
Michelle Peace, (214) 665–7430, David McQuiddy, 665–6722, U.S. EPA, Region VI, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733

Region VII:
Don Lininger, (913) 551–7724, Ken Herstowski, 551–7631, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101

Region VIII:
Mindy Mohr, (303) 312–6525, U.S. EPA, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466

Region IX:
Stacy Braye, (415) 774–2056, Jean Daniel, 774–2128, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA

Region X:
Linda Liu, (206) 553–1447, David Bartus, 553–2804, U.S. EPA, Region X, OAQ–107, 1200 Sixth Avenue, Seattle, WA 98101

For general information about the RCRA Air Rules, or specific rule requirements of RCRA rules, please contact the RCRA Hotline, toll-free at (800) 424–9346. For questions about testing or analytical methods mentioned in this notice, please contact the Emission Measurement Center (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5374. For information concerning the analyses performed in developing this rule, contact Ms. Michele Aston, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Note: The EPA notes that this published preamble differs in two respects from that signed by the Administrator on October 4, 1996. First, the EPA has altered the wording of the **DATES** section of the rule to indicate that these amendments are suspended between the period October 4, 1996, and December 6, 1996. The alteration is in the use of the new term, ''suspend.'' The result of this alteration is equivalent to that in the version of the rule signed October 4, 1996; namely, that the final regulations, as amended by the action signed October 4, 1996, take effect on December 6, 1996. The reason for the altered language is essentially due to conventions in printing format. The EPA has also added an explanation in the preamble to clarify that, in revising this terminology, the EPA is not altering its intent that the effective date of the regulations will be December 6, 1996.

Second, with respect to the issue of whether RCRA subpart AA and BB standards apply to recycling units (i.e., units performing the actual process of recycling) at 90-day generator facilities, the October 4, 1996, preamble did not clearly reflect the text of the regulation or the Agency's intention. The Agency's intent is that recycling units which are exempt from RCRA under 40 CFR 261.6(c)(1) are not subject to subpart AA and

BB standards under 40 CFR part 264 or 265, unless some other unit at the facility has to obtain a RCRA permit. In addition, it is the Agency's intent that units recycling waste that have permit-exempt status by virtue of the provisions of 40 CFR 262.34 (the 90-day unit provision), but are not exempt under the requirement of 40 CFR 261.6(c)(1), are subject to the 40 CFR part 265, subpart AA and BB standards. The preamble discussion contained in the version of this notice signed October 4, 1996, did not clearly distinguish between these two populations, and thus could have easily been interpreted to be contrary to this intent. The EPA has edited the preamble text to clearly reflect its intent.

The EPA believes that making this clarifying change can be done without re-proposing the edited preamble language. In promulgating the October 4, 1996, signed amendments, the EPA did not voice any intention to deviate from previous regulatory actions under this rulemaking that, when applying to generator facilities, subpart AA and BB requirements cover only 90-day tanks and containers (see December 6, 1994, promulgated rule 59 FR at page 62909; final rule Background Information Document, EPA–453/R–94–076b, at page 7–11; July 22, 1991, proposed rule at 56 FR at page 33530; proposed rule Background Information Document, EPA–450/3–89–023c, at page L–3). For this purpose, the EPA does not consider a recycling unit which is exempt from permitting under 40 CFR 261.6(c)(1) to be a 90-day tank or container. Any suggestion in the October 1996 preamble that these recycling units would all be covered would have expanded the scope of the underlying rule, contrary to EPA's stated intent.

The primary reason EPA is correcting the preamble language now (as opposed to a later Federal Register notice, perhaps with a public comment period) is to minimize any confusion on this issue. The best way to do so is to have the Federal Register publication be accurate, not to issue a later notice correcting and clarifying preamble language. The EPA is therefore making changes to be incorporated into this Federal Register notice, in an effort to correct any potentially confusing preamble discussions before publication. This revised notice will replace the version of the notice signed by the Administrator on October 4, 1996, which was previously available on the EPA's CLU–IN electronic bulletin board.

SUPPLEMENTARY INFORMATION:

Regulated Entities

The entities potentially affected by this action include:

Category	Examples of regulated entities
Industry	Businesses that treat, store, or dispose of hazardous waste and are subject to RCRA subtitle C permitting requirements, or that accumulate hazardous waste on-site in RCRA permit-exempt tanks or containers pursuant to 40 CFR 262.34(a).
Federal Government.	Federal agencies that treat, store, or dispose of hazardous waste and are subject to RCRA subtitle C permitting requirements, or that accumulate hazardous waste on-site in RCRA permit-exempt tanks or containers pursuant to 40 CFR 262.34(a).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in the amendments to the regulation affected by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 264.1080 and § 265.1080 of the RCRA subpart CC air rules. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Background

Section 3004(n) of RCRA requires EPA to develop standards to control air emissions from hazardous waste treatment, storage, and disposal facilities as may be necessary to protect human health and the environment. This requirement echoes the general requirement in section 3004(a) and section 3002(a)(3) to develop standards to control hazardous waste management activities as may be necessary to protect human health and the environment. The Agency has issued a series of regulations to implement the section 3004(n) mandate; these regulations control air emissions from certain process vents and equipment leaks (part 264 and part 265 subparts AA and BB), and emissions from certain tanks, containers, and surface impoundments (the subpart CC standards, which are the primary subject of today's action).

The EPA is today amending the final subpart AA, BB, and CC standards. Since the publication of the final subpart CC rule (59 FR 69826, December 4, 1994), the EPA has published three Federal Register documents to delay the effective date of that rule. The first (60 FR 26828, May 19, 1995) revised the effective date of the standards to be December 6, 1995. The second (60 FR 56952, November 13, 1995) revised the effective date of the standards to be June 6, 1996. The third (61 FR 28508, June 5, 1996) further postponed the effective date for the rule requirements until October 6, 1996. The EPA has also issued an indefinite stay of the standards specific to units managing wastes produced by certain organic peroxide manufacturing processes (60 FR 50426, September 29, 1995).

On August 14, 1995, the EPA published a Federal Register document entitled, ''Proposed rule; data availability'' (60 FR 41870) and opened RCRA Docket F–95–CE3A–FFFFF to accept comments on revisions that the EPA was considering for the final subpart CC standards. The EPA accepted public comments on the appropriateness of these revisions through October 13, 1995. Throughout 1995 and into the present year, the EPA also engaged in repeated discussions with representatives of the groups filing petitions for review challenging the subpart CC standards.

Sixty-four comment letters were received by the EPA in response to the August 14, 1995 notice of ''Proposed rule; data availability;'' the commenters included companies affected by the rules, trade associations, consulting companies, and one State environmental agency. Most comment letters contained multiple comments. Comments generally supported the proposed amendments although many offered specific criticisms and suggested changes. The EPA considered all comments on the proposed rule amendments in developing the final amendments published today.

In the August 14, 1995 notice of ''Proposed rule; data availability,'' the EPA requested comment on specific revisions to the final subpart CC tank, surface impoundment, and container standards that the EPA was considering. The notice identified those provisions of the final rule that the revisions would potentially affect which included the waste determination procedures, the standards (or technical requirements) for tanks and containers, and the applicability of the final standards to units that operate with air emission controls in accordance with certain Clean Air Act standards. In addition, it was noted that the revisions would reduce the monitoring, inspection, recordkeeping, and reporting requirements for affected tanks, surface impoundments, and containers.

To further inform the affected public of the major clarifications, compliance options, and technical amendments

being considered, the EPA conducted a series of seminars during August and September of 1995. A total of six seminars were held nationally. (Refer to EPA RCRA Docket No. F–95–CE3A–FFFFF, Item No. F–95–CE3A–S0017.) During these seminars, additional comments were received on the RCRA air rules for tanks, surface impoundments, and containers. These comments were also considered by the EPA in developing these amendments.

On February 9, 1996, the EPA published a Federal Register notice (61 FR 4903), ''Final rule; technical amendment,'' which made clarifying amendments in the regulatory text of the final standards, corrected typographical and grammatical errors, and clarified certain language in the preamble to the final rule to better convey the EPA's original intent.

Today's action amends provisions of the final subparts AA, BB, CC rules to better convey the EPA's original intent, to provide additional flexibility to owners and operators who must comply with the rules, and to change the effective date of the requirements contained in the subpart CC rules. The amendments to subparts AA, BB, and CC that are being promulgated today are discussed below in various sections of this preamble. Comments received on the proposed amendments and the EPA's responses to those comments are also discussed together with the changes being made by today's action. Some commenters submitted comments on aspects of the original rule that were unaffected by, and not reopened by the proposed amendments. These comments are outside the scope of the rulemaking for the proposed amendments and, therefore, these comments, although perhaps mentioned, are not addressed in this rulemaking.

In today's amendments, certain sections of the subpart CC rules are reprinted in total; this accounts, in large part, for the lengthy amendatory language contained in today's amendments. Reprinting of entire sections of the rule is being done for two reasons. First, some sections of the rule have been entirely redrafted to improve organizational structure and drafting clarity and to avoid ambiguity while only making minor revisions to the basic control requirements of the rule. Second, in other sections of the rule, the technical requirements have been changed significantly or options added to increase flexibility for the source owner or operator. Therefore, to ensure the rule is implemented as intended and for the convenience of the public, the EPA decided to reprint these entire sections. In doing so it was not intended to completely reopen these entire sections of the rule for judicial review or legal challenge. As provided by section 7006(a), judicial review is not newly available for aspects of the subparts AA, BB, and CC rules that were already finalized more than 90 days ago, and which are not substantively addressed by today's amendments.

The information presented in this preamble is organized as follows:

I. Subpart I—Use and Management of Containers and Subpart J—Tank Systems
II. Subpart AA—Air Emission Standards for Process Vents: Standards for closed-Vent Systems and Control Devices
III. Subpart BB—Air Emission Standards for Equipment Leaks
IV. Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers
  A. Suspension of Subpart CC Rule Requirements
  B. Retention of Final Compliance Date
  C. Applicability
  D. Definitions
  E. Standards: General
  F. Waste Determination Procedures
  G. Standards: Tanks
  H. Standards: Surface impoundments
  I. Standards: Containers
  J. Standards: Closed-Vent Systems and Control Devices
  K. Inspection and Monitoring Requirements
  L. Recordkeeping and Reporting Requirements
V. Administrative Requirements
  A. Docket
  B. Paperwork Reduction Act
  C. Executive Order 12866 Review
  D. Regulatory Flexibility Act
  E. Unfunded Mandates
VI. Legal Authority

I. Subpart I—Use and Management of Containers and Subpart J—Tank Systems

Under the existing RCRA regulations, hazardous waste generators who accumulate waste on-site for up to 90 days in tanks and containers (''90-day tanks and containers'' or ''90-day units'') may permissibly do so without obtaining a storage permit provided the generator complies with certain conditions specified in 40 CFR 262.34(a). The conditions include compliance with the requirements of 40 CFR part 265, subpart I when the waste is accumulated in a container and 40 CFR part 265, subpart J when the waste is accumulated in a tank.

The subpart CC regulations proposed by the EPA on July 22, 1991 (56 FR 33491) contained provisions to amend the conditions with which a hazardous waste generator must comply to exempt 90-day tanks and containers from RCRA subtitle C permitting requirements, namely to comply with standards set out in subparts AA, BB, CC applicable to tanks and containers. The EPA took comments on this proposed action and responded to those comments in (among other places) the preamble to the 1994 final subpart CC regulations. The 1994 final rules regarding 90-day tanks and containers were the same as those proposed.

As noted in Section VI.D of the preamble to the 1994 final subpart CC RCRA air rules (59 FR 62910, December 6, 1994), the organic air emissions from 90-day tanks and containers are sufficient to have an adverse and significant effect upon human health and the environment and therefore ''led the EPA to require that these units comply with the appropriate air emission control requirements of the subpart AA, BB, and CC standards to maintain an exemption from permitting.''

Commenters requested that EPA clarify precisely when 90-day units are subject to the subpart AA, BB, and CC standards, and, in a related question, requested clarification as to when these rules would apply to units that are engaged in recycling. With respect to when the subpart AA, BB, and CC rules apply to 90-day units that are not recycling units (for example, tanks or containers that store hazardous waste before recycling), the EPA intends that the subpart AA, BB, or CC standards apply so long as the substantive applicability provisions of one or more of these subparts is satisfied. This means, for example, that if the 90-day units are receiving hazardous waste with organic concentrations of at least 10 per cent by weight, the subpart BB standards would apply to the associated equipment components; on the other hand, if the units only receive hazardous waste below this applicability threshold, the subpart BB requirements would not apply (see § 265.1050(b)). Similarly, the subpart CC air emission control requirements would apply to a 90-day tank or container if the owner or operator does not demonstrate that the hazardous waste stored in the unit contains average volatile organic concentrations below 500 ppmw. It should be noted that the fact that one of these subparts applies does not automatically mean that the others apply as well. Thus, for example, if a generator manages hazardous waste with organic concentration of 500 ppmw in a tank

equipped with an open-ended valve, the unit would be subject to the subpart CC standards (See § 265.1080(a)). This does not mean that the open-ended valve is also automatically subject to the subpart BB standards; rather, the respective applicability section of those provisions would have to be satisfied before they would apply.

The EPA notes further, however, that the applicability of the subpart AA and BB standards, prior to publication of the final subpart CC rule in December 1994, was conditioned on there being another unit at the facility otherwise requiring a RCRA permit—the notion being that the subpart AA and BB rules by themselves would not require a facility to obtain a RCRA permit (see Section V of the preamble in 55 FR 25449, June 21, 1990, and §§ 265.1030(b)(2) and 265.1050(b)(2)).[1] This consideration does not apply to 90-day units, since these units are not subject to RCRA permitting requirements in any case. In addition, the risks posed by these units is the same whether or not another unit at the plant has received a RCRA permit; the EPA evaluated and discussed these risks when promulgating the December 1994 final rule and found that substantive controls were necessary to protect human health and the environment. See 59 FR at 62910 and also Appendix L, 90–Day Tanks and Container Impacts, in ''Hazardous Waste TSDF—Background Information for Proposed RCRA Air Emission Standards'' (EPA–450/3–89–023c), June 1991. Consequently, subparts AA and BB apply to 90-day tanks and containers whether or not another unit at the facility has to obtain a RCRA permit (assuming the other applicability criteria in the rule are satisfied, as explained above). For this purpose, the EPA does not consider a recycling unit which is exempt from permitting under 40 CFR 261.6(c) to be a 90-day tank or container. The EPA is adding clarifying language as a part of today's rule amendments to make clear that applicability of subparts AA and BB to 90-day units is not conditioned on another unit at the generator's facility obtaining a RCRA permit.

With respect to the commenters' questions regarding applicability of the subpart AA, BB, CC rules to recycling units (i.e., units actually performing the recycling function, such as a solvent distillation column), EPA notes the following principles. The revised applicability sections to subparts AA and BB state that units that have permit exempt status by virtue of 40 CFR 262.34, including recycling units, will now be subject to subparts AA and BB. In practice, the EPA does not believe that this will include many, if any, recycling units. This is because such units typically are exempt from RCRA permitting by virtue of 40 CFR 261.61(c)(1). Thus, the net effect of these amendments, with respect to recycling units, is to preserve the status quo of regulating those units which are located at a facility which must obtain a RCRA permit for some other unit.

In addition, subpart CC does not apply to recycling units. Section 261.6(d), Requirements for recyclable materials, for example, does not indicate that recycling units must comply with the subpart CC provisions. The reason these provisions do not apply is that the standards are not normally appropriate for recycling units handling volatile hazardous wastes; rather, the subpart AA standards are the appropriate standards. The emission mechanisms for traditional hazardous waste storage tanks (e.g. circular above-ground units with open tops or covered open tops) differ significantly from the emission mechanism of the distillation-type unit used for recycling and certain treatment operations (e.g. air strippers and thin-film evaporators) regulated under subpart AA. Recycling units typically emit air pollutants through some type of process vent, and consequently are controlled under the subpart AA process vent standards. The suppression-type controls (e.g. covers) prescribed for traditional storage and treatment tanks in subpart CC simply are not suitable for most distillation-type units.

Finally, EPA is slightly amending the applicability sections of subparts AA and BB to make clear that these standards can apply to non-recycling units that are located at either TSDF sites or generator accumulation sites, assuming that the units otherwise satisfy the subpart AA or BB applicability requirements. Thus, for example, a steam stripper engaged in conventional hazardous waste treatment at a permitted TSDF could be subject to the subpart AA standards. The risks posed by the types of units enumerated in subparts AA and BB are the same, whether or not they are recycling or non-recycling units, so any distinction between them is unfounded. In fact, today's language merely clarifies the coverage of the existing subpart AA and BB rules, since those rules already cover all units (i.e. recycling and non-recycling) that are subject to the permitting requirements of part 270, and thus covers non-recycling units.

The following examples illustrate these principles.

1. Generator A stores volatile spent solvents (F001) in 90 day tanks before recycling them in an on-site distillation column. The facility has one other unit requiring a RCRA permit. The volatile organic concentration of the waste exceeds the subpart AA, BB and CC applicability thresholds.

In this case, the 90-day storage tanks and associated equipment components are subject to the subpart BB and subpart CC standards, since the substantive applicability standards of both subparts are satisfied. Subpart AA does not apply to the spent solvent storage tanks (assuming the tanks are not distillation, fractionation, thin-film evaporation or other type of unit set out in § 265.1030(b), the subpart AA applicability section). The distillation column (and its associated equipment) is subject to the subpart AA and BB standards, but not the subpart CC standards since subpart CC does not apply to recycling units.

2. Same facts as Example 1 except that the waste contains less than 10 percent total organics and greater than 500 ppmw volatile organics.

In this case, the spent solvent storage tank is subject to the subpart CC standards but the associated equipment components are not subject to the subpart BB standards (since subpart BB does not apply to hazardous wastes with less than 10 percent total organic content). The distillation column is subject to the subpart AA standards for the reasons explained in Example 1. This example illustrates that applicability of one of the subparts (AA, BB, or CC) does not automatically mean that the standards from the other subparts also apply. The substantive applicability provisions of each subpart still must be satisfied.

II. Subpart AA—Air Emission Standards for Process Vents: Standards for Closed-Vent Systems and Control Devices

On the subject of closed-vent systems and control devices, commenters requested a provision for control device downtime to allow for preventive, routine, or non-routine maintenance; an exemption for control devices subject to 95 percent efficiency requirements in other rules from performance test and design analysis requirements; an exemption from monitoring requirements for closed-vent system components that operate under negative pressure; a revision such that only spent carbon removed from a carbon adsorption system that is a hazardous waste must be managed in accordance with subpart CC requirements; and a reduction in the closed-vent system and

[1] The subpart CC rules are not so conditioned.

control device inspection and monitoring requirements.

The EPA has decided to amend certain of the control device and closed-vent system standards of subpart AA in 40 CFR parts 264 and 265 so that these requirements are consistent and up-to-date with the general decisions the EPA has made regarding inspection, monitoring, maintenance, repair, malfunctions, recordkeeping, and reporting requirements for organic air emission control devices and associated closed-vent systems installed and operated to meet requirements of other regulations under the Clean Air Act or RCRA (e.g., National Emission Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery Operations, 61 FR 34140, July 1, 1996). These revisions are both consistent with the integration provisions of RCRA Section 1006(b), which require that RCRA standards be consistent and not duplicative of Clean Air Act standards, and also are a part of the EPA's overall approach of allowing unit-specific Clean Air Act standards to be used in lieu of control requirements under RCRA subpart CC. (See § 265.1080(b)(7) in today's amended rule.) The changes to the control device and closed-vent system standards in no way affect the overall performance or emission reductions achieved by the control devices and closed-vent systems. Therefore, the revised standards are considered by the EPA to be equally protective to those already adopted, and thus adequate to protect human health and the environment. The revisions to the standards for closed-vent systems and control devices in subpart AA of 40 CFR parts 265 and 264 include the changes described below.

The monitoring requirement for a condenser in § 264.1033(f)(2)(vi)(B) and § 265.1033(f)(2)(vi)(B) is being revised such that only the temperature of the exhaust vent stream from the condenser exit must be continuously monitored; the requirement to monitor the coolant fluid temperature exiting the condenser is being dropped. This revision reduces the owner's or operator's monitoring and recordkeeping burden while maintaining the EPA's ability to ensure that the emission control equipment is properly operated and maintained to achieve the required emission reduction.

The closed-vent system requirements in § 264.1033 and § 265.1033 are being revised such that a closed-vent system that is designed to operate at a pressure below atmospheric pressure is not required to be monitored by Method 21 procedures either initially or annually. For these negative pressure systems, an initial visual inspection and annual follow-on inspection is required; in addition, a pressure gauge or other pressure measurement device is required to verify that negative pressure is maintained in the closed-vent system when the control device is operating. As noted in section 10 of the preamble to the earlier subpart CC rule clarifications (61 FR 4910, February 9, 1996), ''the EPA had intended to not require annual monitoring of closed-vent system components which operate under pressure such that all emissions are routed to a control device even if a leak or hole exists in the component. A component that continuously operates under negative pressure would satisfy this intent * * *'' In today's action, the EPA is removing the requirement for the initial leak detection monitoring for negative pressure systems; this change reduces owner or operator burden resulting from any redundant or non-productive monitoring.

Unsafe-to-monitor and delay of repair provisions for closed-vent systems are being added. Corresponding recordkeeping requirements also are being added. This common sense change is made to avoid creating any unsafe conditions as a result of the monitoring requirements of subpart AA, § 264.1033 and § 265.1033. This revision adds the same type of unsafe-to-monitor and delay of repair provisions that are contained for pumps and valves in the subpart BB—Air Emission Standards for Equipment Leaks as well as in other equipment leak standards promulgated under the Clean Air Act.

On April 23, 1996, the EPA published a notice of data availability (61 FR 17863) addressing the narrow issue of whether ''Other Thermal Treatment Facilities'' subject to regulation under subpart P of part 265 (40 CFR 265.370 through 265.383) are eligible to receive for regeneration spent activated carbon which is a hazardous waste. In the December 6, 1994 final subpart CC standards (59 FR 62896), the EPA established a requirement that spent activated carbon removed from a control device had to be managed at particular types of facilities, namely regulated boilers or industrial furnaces, or ''thermal treatment units that (are) permitted under subpart X of 40 CFR part 264 or subpart P of (part 265).'' See 40 CFR 265.1033(l)(1) as promulgated at 59 FR 62935 (December 6, 1994). A parallel requirement was contained in 40 CFR 264.1033(m), but no reference to subpart P was included (59 FR 62927). In the February 9, 1996 technical correction notice, the EPA amended these provisions to clarify that they apply only to activated carbon which is a hazardous waste, and that interim status boilers and industrial furnaces which had certified compliance and interim status incinerators could treat such activated carbon. (See 61 FR 4910, 4911, and 4913.) In doing so, the EPA removed the reference to subpart P facilities in § 265.1033(l)(1), thus removing such facilities from eligibility to receive hazardous waste spent activated carbon.

As a part of today's amendments, EPA is restoring the eligibility of subpart P facilities to treat hazardous waste spent activated carbon. So long as the hazardous waste spent activated carbon is managed safely by such facilities, there is no automatic reason to preclude such facilities' eligibility to manage the spent carbon. However, because the subpart P standards do not contain substantive air emission control provisions that assure that any hazardous organic constituents desorbed from the carbon are adequately controlled rather than emitted to the atmosphere during regeneration or other treatment, the EPA is requiring that units receiving such hazardous wastes meet the control requirements of the subpart CC rules or are units which are subject to emission control requirements under 40 CFR part 61 or part 63. With respect to this last point, this means that the actual unit must meet a part 61 or 63 control standard for hazardous air pollutants. If the standard is no control or if compliance with the standard is determined on a plant-wide (viz. averaging among units) basis, then it could not be used in place of the subpart CC standards.

It should be noted that the EPA is imposing this requirement regardless of the organic content of the carbon being regenerated, so long as the activated carbon is a hazardous waste. This is because the purpose of the carbon is to capture organic emissions, and it is the Agency's judgment that in light of this purpose, the carbon will be saturated with organics which would need to be captured or destroyed and not released indiscriminately during the regeneration process (see 56 FR 7200, February 21, 1991).

Finally, in order to assure maximum flexibility for protective compliance, the EPA is adding that permitted facilities (i.e., Part 264 facilities) complying with either the subpart CC standards, or a part 61 or 63 Clean Air Act standard, are also eligible to receive spent carbon (which is a hazardous waste) for regeneration. Such facilities certainly would be operating protectively and so should be eligible to receive spent carbon. The EPA notes, however, that this provision may be redundant in light

of the provision in the existing rule stating that units which have received a subpart X permit are eligible to receive such activated carbon (§ 265.1033(m)(1)(i)), but commenters indicated a preference for this clarification of eligibility. In order that there be no confusion, the EPA is adding it to the final rule.

III. Subpart BB—Air Emission Standards for Equipment Leaks

Commenters requested that the EPA incorporate into the subpart BB standards recent changes that have been made to other national standards that require equipment leak detection and repair programs. In response, revisions to the emission standards for equipment leaks consist of incorporating changes to the requirements so that the subpart BB requirements in parts 264 and 265 are consistent and up-to-date with the general decisions the EPA has made regarding leak detection and repair program requirements for organic air emission control in other regulations under the Clean Air Act (e.g., National Emission Standards for Hazardous Air Pollutants (NESHAP): Off-Site Waste and Recovery Operations, 61 FR 34140, July 1, 1996, or the National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks, 40 CFR part 63, subpart H, 59 FR 19402, April 22, 1994, i.e., the HON). These revisions are consistent with the integration provisions of RCRA Section 1006(b) which require that RCRA standards be consistent and not duplicative of Clean Air Act Standards and are a part of the EPA's overall approach of allowing Clean Air Act standards to be used in lieu of control requirements under RCRA TSDF air rules. The changes to the subpart BB equipment leak standards in no way affect the overall performance or emission reductions achieved. Therefore, the revised standards are considered by the EPA to be equally protective as those being replaced. The revisions to the standards for equipment leaks in subpart BB of 40 CFR parts 265 and 264 include the changes described below.

The applicability provisions of subpart BB (§ 264.1050 and § 265.1050) are revised to exclude equipment that contains or contacts affected hazardous waste for a period of less than 300 hours per calendar year from the equipment leak control requirements. This change parallels the applicability provisions in the Hazardous Organic National Emission Standard for Hazardous Air Pollutants (''HON''). (Supporting information for this decision is contained in the CAA docket A–90–20, item II-B–5.)

The sampling connection system requirements of subpart BB are being revised consistent with the HON such that gases displaced during filling of the sample container are not required to be collected or captured. In the context of the HON, EPA explained that it was not necessary to require control of those vapors. Also, the requirement for no detectable emissions to the atmosphere during return of the purged hazardous waste stream to the hazardous waste management process line, or during collection and recycling of the purged hazardous waste, is being eliminated. Upon further review, the EPA has determined that the emissions from these extremely small amounts of hazardous waste can be adequately controlled if the owner or operator stores the sample waste in a covered container, and ensures it is treated or disposed in a manner consistent with the requirements for the waste stream from which it was extracted.

Under today's amendments, any connector that is inaccessible or is ceramic or ceramic-lined is exempt from the monitoring and recordkeeping requirements of subpart BB as is the case in recent EPA rules such as the HON. (See Section VI.C of the HON preamble for further discussion regarding the rationale for these changes to EPA's equipment leak standards, 59 FR 19445, April 22, 1994)

IV. Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

A. Suspension of Subpart CC Rule Requirements

Today's rule is being signed on October 4, 1996, and the substantive requirements of the rule take effect on December 6, 1996. The EPA is clarifying here that, for all practical purposes, December 6, 1996, is the effective date of the rule. The EPA is further clarifying that the December 6, 1994, rule, which was stayed until October 6, 1996, is not taking effect during the two months between October 6, 1996, and December 6, 1996, the reason being that it is superseded by these October 4, 1996, amendments.

To accomplish this result, the EPA is indicating (in the **DATES** block of this Federal Register document), that the applicability and implementation of Subpart CC of Parts 264 and 265 is suspended until December 6, 1996. The result, as just stated, is that: (1) The December 1994 rules are replaced by the amended rules as of October 4, 1996; and (2) members of the regulated community are not subject to any of the requirements in the October 4, 1996, amended rule between October 4, 1996, and December 6, 1996.

The EPA specified in the 1994 final rule a schedule that established the compliance dates by which different requirements of the final rule must be met. These requirements and compliance dates (all of which are December 6, 1996, or later) are explained further in the final rule (59 FR 62896, December 6, 1994) under **SUPPLEMENTARY INFORMATION.** Today's amendments do not change the dates by which compliance with all the requirements must be achieved. Thus, all compliance dates for the final rule, as amended today, remain as published in the 1994 final rule (59 FR 62896).

Given that the EPA is amending the rule in ways that would increase compliance flexibility and reduce certain regulatory requirements (and in no cases would increase the stringency of the standards or eliminate a previously existing compliance option), the EPA considers it appropriate to suspend the requirements that became effective October 6, 1996, for two months to December 6, 1996. By December 6, 1996, affected sources will have had ample time to make any necessary alterations to their compliance plans in response to today's amendments. Affected sources have been on notice of the final regulations since they were published in December 1994. The EPA expects that by early 1995, most facilities had begun preparing their implementation strategies and planning for any necessary equipment modifications, in anticipation of the originally scheduled implementation date of June 6, 1995. Thus, the EPA considers a two-month suspension to provide sufficient time for affected facilities to become familiar with the revised requirements contained in the amended standards, and to make any necessary revisions to their implementation strategies.

B. Retention of Final Compliance Date

The December 6, 1994 published rule set a final compliance date of December 8, 1997, by which time all required air emission control equipment must be operating (59 FR 62897). The EPA does not believe that suspending the rule requirements necessitates any postponement of the December 8, 1997 compliance date. The final compliance date was chosen to allow time for facility modifications that may be involved in the compliance approach of certain facilities. The EPA believes that, for many air emission control applications, the required control devices can be installed and in operation within several months.

However, the EPA agrees that under some circumstances, the owner's or operator's approach to complying with the air emission control requirements under the subpart CC standards may involve a major design and construction project which requires a longer time to complete. In recognition of these cases, the EPA decided that it is reasonable to allow up to December 8, 1997, for affected facilities to install and begin operation of air emission controls required by the subpart CC standards (See Hazardous Waste TSDF Background Information Document for Promulgated Organic Air Emission Standards, EPA–453/R–94–076b, page 9–7).

The final rule requirements that may necessitate a major modification, as described above, for tanks are paragraphs (b) through (d) of 40 CFR 264.1084 and 265.1085. These paragraphs specify air emission control equipment that must be operated on tanks receiving affected hazardous waste. Similarly, the requirements that may necessitate such a major modification for surface impoundments are paragraphs (b) through (e) of 40 CFR 264.1085 and 265.1086. These paragraphs specify air emission control equipment that must be operated on surface impoundments receiving affected hazardous waste. To comply with these requirements for tanks and surface impoundments, facilities may choose to construct new hazardous waste management units to replace existing units, or may choose to modify existing hazardous waste management units. Examples of facility equipment modifications that could require an extended period of compliance would be replacing a large open surface impoundment with a series of covered tanks, or fitting an existing open tank with a fixed roof vented to a control device. The EPA recognizes that such major modifications or new construction can require several months or more, and therefore allows until December 8, 1997, for facilities to comply with the air emission control requirements of the final subpart CC standards.

In addition, certain States may require that a facility obtain a permit modification prior to performing a major modification such as those described above. The EPA recognizes that such a permit modification can be a lengthy process, and therefore felt it was appropriate to afford an extended compliance period to allow such modifications to be obtained (59 FR 62919). The EPA does not expect that such a lengthy period of implementation would be required in circumstances other than those described above, although § 264.1082(c) allows that such a period is available if necessary.

The final rule provisions that justified a compliance date of December 8, 1997, are not among those that are affected by the revisions being made under today's action. Specifically, the EPA is not considering either a broader applicability or more stringent control requirements for covers and air emission controls on tanks and surface impoundments. All affected facilities thus have been on notice of the final rule air emission control requirements for these units since the final CC rule publication on December 6, 1994. Therefore, the EPA does not consider it appropriate to postpone the compliance date of December 8, 1997, by which all required air emission control equipment must be operating.

It should be noted that the Regional Administrator may elect to extend the implementation date for control equipment at a facility, on a case by case basis, to a date later than December 8, 1997, when special circumstances that are beyond the facility owner's or operator's control delay installation or operation of control equipment and the owner or operator has made all reasonable and prudent attempts to comply with the requirements of the subpart CC rules (see § 265.1082).

C. Applicability

Numerous comments were received concerning overlap between the RCRA subpart CC rules and Clean Air Act NESHAP, particularly the HON. Most commenters argued that subpart CC requirements should not apply to units, either 90-day generators or TSDF, meeting Clean Air Act control requirements, including units meeting standards through emissions averaging.

The EPA fully recognizes that in developing air standards to meet congressional directives established by provisions in the Clean Air Act and Resource Conservation and Recovery Act, the potential exists for regulatory overlap. However, it is the EPA's intention to minimize, if not eliminate, regulatory overlap to the extent that the Agency is allowed under the different legislative acts. Section 1006(b) of RCRA indeed requires that the air standards be consistent with and not duplicative of Clean Air Act standards. Similarly, the Clean Air Act voices a strong preference for consistency of CAA section 112 standards and RCRA standards where practicable (see section 112(n)(7)).

The EPA is aware that at some sites managing hazardous wastes, the owner or operator of the hazardous waste treatment, storage, and disposal facility could be subject to the RCRA air rules under subparts AA, BB, and CC and also subject to a Clean Air Act NESHAP standard such as the Off-Site Waste rule or the HON. At a particular TSDF, some waste management units may be required to use air emission controls under one or the other, but not both, a Clean Air Act NESHAP and the RCRA air rules. However, some other waste management units could be subject to using air emission controls to comply with both sets of rules. It is unnecessary for owners and operators of those waste management units subject to air standards under both sets of rules to perform duplicative testing and monitoring, keep duplicative sets of records, or perform other duplicative actions.

In Section VI.A, *Development of Air Standards Under RCRA*, of the preamble to the final rule (59 FR 62906, December 6, 1994), the EPA discussed the potential for duplication between the RCRA air rules and various rules being developed under the Clean Air Act maximum achievable control technology (MACT) program but noted that the air standards developed under RCRA section 3004(n) did not duplicate or contradict existing NESHAP or new source performance standards (NSPS). As the MACT program has matured and additional standards have been developed, the EPA is now aware that the possibility for overlap is greater than was originally thought.

The EPA has decided that the best way to eliminate any regulatory overlap is to amend the RCRA rules to exempt units that are using air emission controls in accordance with the requirements of applicable Clean Air Act NESHAP or NSPS regulations. Therefore, the subpart CC applicability is amended to exempt any hazardous waste management unit that the owner or operator certifies is equipped with and operating air emission controls in accordance with an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63, with the sole exception of tanks being controlled through the use of an enclosure rather than a cover. (The EPA's rationale for placing additional conditions on that control approach is explained in detail in sections E and G of this preamble.) Providing this exemption eliminates the possibility of duplicative or conflicting requirements for those TSDF tanks, surface impoundments, or containers using organic emission controls in compliance with a NESHAP but also subject to requirements under the RCRA standards. It is important to note that this exemption only applies to those

units using organic air emission controls. This seems to EPA to be the best way to assure that air emissions from hazardous waste management units are controlled to the extent necessary to protect human health and the environment. A unit that does not use the required air emission controls but is in compliance with a NESHAP through an ''emission averaging'' or ''bubbling'' provision does not qualify for the exemption since EPA lacks assurance that emissions from the unit are controlled to the extent necessary to protect human health and the environment.[2]

Similarly, if the Clean Air Act standard for the particular unit is no control (for example, because the MACT floor for the source category is no control and the Agency decided not to apply controls more stringent than the floor), the exemption from the RCRA standards would not apply since the unit would not actually be controlled under provisions of the MACT standard. Again, as stated above, the EPA believes the best way to assure protectiveness in this national rule is to require controls on each particular unit.

Section 3004(n) of RCRA, of course, requires that EPA control emissions from (among other things) tanks, surface impoundments, and containers as may be necessary to protect human health and the environment. Some of the Clean Air Act standards, in contrast, are technology-based controls implementing the provisions of section 112(d) of the Clean Air Act. The EPA, however, has found that under some circumstances a technology-based standard may satisfy the RCRA protectiveness requirement by adequately controlling air emissions and thus adequately controlling risk or controlling risk sufficiently that the Clean Air Act section 112(f) residual risk process need not be interdicted. See 60 FR at 32593 (June 23, 1995), the preamble for final MACT standards for the secondary lead source category, and 61 FR at 17369–370 (April 19, 1996), the preamble for proposed MACT standards for hazardous waste combustion units.

The EPA is finding here that where there are MACT air emission control requirements for a specific unit otherwise covered by subpart CC, the MACT requires the same technical air emission controls as would be required under subpart CC. Thus, it follows that compliance with the MACT requirements would thus afford equal protectiveness as would be achieved under subpart CC, and therefore can be considered to satisfy the RCRA protectiveness requirements. This is a conscious effort on the Agency's part to provide consistency of requirements where at all possible in its rulemakings.[3]

The technical requirements for the RCRA air rules in subpart CC as amended are essentially the same as those published by the EPA under the MACT program (e.g., those in subparts OO, PP, and QQ of part 63). A unit controlled under one or the other set of requirements would achieve the same emission reduction and performance level; and the various requirements thus provide the same level of protection.

D. Definitions

Definitions are being added for closure device, continuous seal, enclosure, hard-piping, in light material service, malfunction, metallic shoe seal, no detectable organic emissions, safety device, and single-seal system and other definitions are being revised consistent with their use in the amended regulation. These amended or added definitions do not directly affect the substance of the subpart CC standards, but rather, serve to clarify the 1994 final provisions, or today's amended provisions, of the final regulations.

E. Standards: General

1. Action Level

Several major changes are being made to the general standards for the final subpart CC rule. First, the average VO concentration action level for hazardous waste required to be managed in the units using air emission controls under the rule is being changed to 500 ppmw (as determined at the point of waste origination). Units managing hazardous wastes determined by the owner or operator to have average VO concentrations that remain less than 500 ppmw are not required to use air emission controls under the rule.

The EPA considered a range of possible values to establish the VO concentration limit for the Subpart CC RCRA air rules. The EPA proposed a VO concentration value of 500 ppmw to be used as the action level for the rule (56 FR 33491, July 22, 1991) and promulgated an action level of 100 ppmw in the 1994 final subpart CC rule (59 FR 62897). However, in promulgating this value, the EPA acknowledged that some hazardous waste management units subject to the subpart CC RCRA air rules could be subject to other Clean Air Act NESHAP and NSPS with differing action levels (59 FR 62903, 62906, and 62907).

The EPA received comments in response to the August 14, 1995 Federal Register notice, stating that the 100 ppmw VO concentration action level promulgated by the EPA for the subpart CC RCRA air rules is inappropriate (e.g., the action level cannot be justified on the basis of risk and the action level is too close to the detection limit of method 25D; this results in numerous waste determination errors such as false positives) and is inconsistent with other applicable Clean Air Act NSPS and NESHAP (i.e, the Off-Site Waste rule,

[2] EPA believes it is both reasonable and legally permissible to interpret section 3004(n) to apply to specific waste management units. Section 3004(n) addresses specific unit types (''open tanks, surface impoundments, and landfills''), and the overarching requirement to control air emissions at hazardous waste management ''facilities'' can reasonably be construed as applying to individual units. See *Mobil Oil Corp. v. EPA*, 871 F. 2d 149, 152–54 (D.C. Cir. 1989). On the other hand, ''facilities'' might also be construed to apply to an entire plant, *id.* at 153. Consequently, EPA is not indicating by the discussion in the text that an averaging approach is legally foreclosed. Certain types of site-specific demonstrations, for example, might indicate the appropriateness of an averaging approach to demonstrating that air emissions from hazardous waste management are sufficiently controlled. In such a situation, EPA could interpret the term ''facility'' as applying to an entire plant. What EPA is finding in this rule is that for this national rule (i.e., in the absence of potential case-specific demonstrations), the best way of assuring that emissions from hazardous waste tanks, containers, and impoundments are sufficiently controlled is to require control of each particular unit.

[3] For example, EPA, in promulgating the final requirements for the Off-Site Waste and Recovery Operations NESHAP (61 FR 34147, July 1, 1996), added a series of new subparts to 40 CFR part 63. These subparts included Subpart OO—National Emission Standards for Tanks - Level 1, Subpart PP—National Emission Standards for Containers, Subpart QQ—National Emission Standards for Surface Impoundments, Subpart RR—National Emission Standards for Individual Drain Systems, and Subpart VV—National Emission Standards for Oil-Water Separators and Organic-Water Separators. These standards are essentially identical to the requirements for tanks, containers, and impoundments found in the RCRA subpart CC rule under discussion in this notice.

The EPA set out at length in the Off-Site Waste rule preamble (59 FR 62908) the Agency's goal as to integration of these various air standards, ''the EPA decided to promulgate the air emission control requirements for selected types of units in individual subparts for ease of reference, administrative convenience, and as a step towards assuring consistency of the air emission control requirements applied to similar types of units under different rules. The EPA believes adopting the format of codifying the air emission control requirements for specific unit types in individual subparts will provide significant advantages to both regulated industries and to the Agency.''

''A major advantage for using the unit-specific subpart format for NESHAP and other air rules is for those situations when more than one rule applies to a particular source (e.g., a tank) and each of these rules requires use of air emission controls on that source (e.g., a fixed roof). By establishing unit-specific subparts, all of the rules will reference a common set of design, operating, testing, inspection, monitoring, repair, recordkeeping, and reporting requirements for air emission controls. This eliminates the potential for duplicative or conflicting air emission control requirements being placed on the unit by the different rules, and assures consistency of the air emission control requirements applied to the same types of units.''

the HON, and the proposed new source performance standard (NSPS) for volatile organic compound emissions from the synthetic organic chemical manufacturing industry wastewater (59 FR 46780, September 12, 1994), all apply to wastes and/or wastewaters and all have higher action levels). The commenters recommended that the EPA select a higher action level of 500 ppmw for the rule, consistent with the above noted Clean Air Act rules.

The EPA considered the comments received regarding the action level, other revisions being considered for the final subpart CC RCRA air rules, and changes that the EPA anticipates making for other waste and wastewater related rules. The EPA concluded that a reexamination of the action level determination was appropriate. Based on consideration of the information available to the Agency regarding emissions from hazardous waste management TSDF operations, the EPA has concluded that an average VO concentration value of 500 ppmw is reasonable and accomplishes an adequate general level of protection, as compared with the 100 ppmw action level of the 1994 published rule. As was discussed in Section V.C. of the preamble published on December 6, 1994 (59 FR 62905), all five of the control options considered for the final rule are estimated to achieve similar levels of substantial reductions in nationwide organic emissions from TSDF and in annual cancer incidence. Under the new action level of 500 ppmw, the MIR for most of the 2,300 TSDF nationwide are estimated to be below the target MIR range of between 1×10^{-4} and 1×10^{-6}.

Thus, while the action levels at 100 ppmw and 500 ppmw are not equally protective of human health and the environment to the extent ascertainable by the modeling methodology used, these action levels do achieve the same general range of protection and were in the zone of reasonable values being considered by EPA for selection as the action level for the final rule. After further consideration, the EPA has concluded that the degree of incremental risk reduction at the 500 ppmw action level is so small as to not warrant the inconsistency and attendant disruption with other air rules applicable to hazardous waste TSDF. This incremental risk reduction is made less relevant by the fact that the EPA has already stated in the preamble to the final rule (59 FR 62905) that (even at the 100 ppmw action level), ''the EPA is further evaluating the waste management practices and the specific chemical compounds composing the organic emissions from those individual TSDF for which the MIR values are estimated to be greater than the historical RCRA target MIR levels. Following this evaluation, the EPA will determine what other actions, such as the use of section 3005(c)(3) omnibus permitting authority or additional rulemaking, are necessary to attain the health-based goals of RCRA section 3004(n).''

2. Treatment Alternatives

The treatment alternatives in the General Standards (§ 264.1083 and § 265.1083) are being revised where appropriate to reflect the new action level of 500 ppmw. The treatment alternatives contained in the General Standards of the subpart CC RCRA air rules provide owners or operators with a selection of alternative provisions for determining when a treated hazardous waste is no longer required to be managed in units meeting the air emission control requirements of the rule. The alternatives contained in the final CC rules published December 6, 1994 are being revised as a result of the change in the action level. The volatile organic concentration criteria contained in some of the alternatives are being revised upward to reflect the higher action level of 500 ppmw. Additional alternatives also are being added to the rule to provide greater flexibility to the owner or operator in the treatment of hazardous waste. The changes being made to the General Standards by today's action are described below.

For the treatment option that requires an organic reduction efficiency for the process of at least 95 percent and an average VO concentration of the waste at the point of waste treatment of less than 50 ppmw (§ 264.1082(c)(2)(ii)), the criteria for the average VO concentration of the treated waste is raised to 100 ppmw in direct response to the change in the action level. The value of 50 ppmw was chosen for the 1994 final rule to provide some added level of demonstration that co-mingled wastes streams had achieved a level of organic reduction through treatment, rather than through dilution (see 59 FR 62915, December 6, 1994). The selection of 50 ppmw in the 1994 final rule guaranteed that hazardous waste streams with VO concentrations of 2,000 ppmw or less at their point of waste origination were being reduced by 95% organics through treatment, as opposed to dilution. For today's final rule, EPA considers it appropriate to modify that 50 ppmw value to be 100 ppmw. In part, EPA is making this modification in response to comments that the value of 50 ppmw was too close to the level of detection for the test method 25D, and was therefore a very difficult and costly demonstration for the facility. After further consideration, the EPA feels that an exit concentration value of 100 ppmw is much less difficult and costly for a facility to make. Further, when combined with the revised action level of 500 ppmw for the overall rule, an exit value of 100 ppmw will ensure that the majority of hazardous waste streams are achieving the 95% reduction through treatment, as opposed to dilution that may occur through commingling.

For the treatment option that allows mixed hazardous waste to be treated by an organic destruction or removal process that reduces the VO concentration of the hazardous waste to meet a site-specific treatment process exit concentration limit (§ 264.1082(c)(2)(v)); the requirement that only hazardous waste enter the process is being removed. The exit concentration limit is being revised to be the lowest average VO concentration at the point of waste origination for each individual waste stream entering the process or 500 ppmw, whichever value is lower (this latter change is consistent with the revised action level for the standards also contained in today's action). Upon evaluation of this option, the EPA agreed with commenters that making these revisions will allow operators to use this option with a greater number of waste management systems, while still ensuring that reductions in VO concentrations are achieved through organic treatment or removal, as opposed to dilution.

A treatment option (§ 264.1082(c)(2)(vi)) is being added that requires an organic reduction efficiency for the process equal to or greater than 95 percent, and the average VO concentration of each individual waste stream entering the process is certified by the owner or operator to be less than 10,000 ppmw at the point of waste origination. This option is being added in response to commenters' concerns that many waste treatment operations have a multitude of waste streams being co-mingled early in the treatment process, and it would be infeasible for an operator to evaluate each waste stream. Further, the commenters stated that for these same treatment systems, the concentration of the hazardous waste streams at their point of waste origination is relatively low (e.g. 600 ppmw), and the exit concentration that would be required to demonstrate a 95% removal efficiency (in this example 30 ppmw) is below the level of detection of many organic test methods. Therefore, the EPA considered it reasonable to allow the owner or

operator to document the 95% organic removal efficiency of the control device, and certify that no waste streams greater than 10,000 ppmw at their point of origination were entering the centralized treatment process. The EPA chose the upper value of 10,000 ppmw because any waste stream with less than 10,000 volatile organic concentration, when treated with a 95% efficient organic control device, would be reduced to below 500 ppmw (and thus would not require further control under the subpart CC regulations. The EPA considers the combination of these two criteria (95% efficient organic control device, and waste streams below 10,000 ppmw VO concentration at their point of waste origination) to be adequate to ensure that any waste stream entering the treatment process is adequately treated for the purpose of the subpart CC standards.

3. Exemptions

An exemption from subpart CC control requirements is added to the General Standards to further clarify that a tank or surface impoundment used for biological treatment of hazardous waste in accordance with provisions in the subpart CC General Standards (§ 265.1082(c)(2)(vi) or § 264.1082(c)(2)(vi)) is exempt from the control device requirements under the rule. This was the Agency's intent in the 1994 promulgated rule, but several commenters advised the EPA that this intent was not evident. Therefore, the EPA is making this addition to the General Standards to more clearly describe this intent.

The following two exemptions are being added to the subpart CC General Standards in order to avoid the potential overlap of the subpart CC rules with RCRA standards established as part of the Land Disposal Restrictions (LDR) and to avoid overlap with the recently promulgated Benzene Waste Operations NESHAP.

In response to commenters' requests that compliance with applicable LDR treatment standards be reinstated as a subpart CC treatment alternative, an exemption from the subpart CC control requirements is being added for a tank, surface impoundment, or container if the material placed in the unit is a hazardous waste that meets the numerical concentration limits for organics applicable to the hazardous waste, as specified in 40 CFR part 268 (Land Disposal Restrictions) under Table—''Treatment Standards for Hazardous Waste'' in 40 CFR 268.40, or has been treated by the treatment technology established by EPA for the waste in 40 CFR 268.42(a), or treated by an equivalent method of treatment approved by EPA pursuant to 40 CFR 268.42(b).

The EPA in fact originally proposed such a provision (see 56 FR 33491, July 22, 1991), and commenters stressed again that wastes meeting LDR requirements for organics would have reduced organic concentrations sufficiently so that there need not be air emission controls on the units receiving the wastes. Upon reflection, EPA now agrees with these comments. The LDR treatment standards are based on the performance of Best Demonstrated Available Technology and are deemed sufficient to minimize threats to human health and the environment posed by land disposal of the waste. See 51 FR 40572, November 7, 1986 and RCRA section 3004(m)(1). In fact, the standards for most organics reflect the performance of combustion technology, which destroys organics to non-detectable levels, so that the treatment standard is actually the analytic detection limit for the organic times a factor which reflects technological variability. Consequently, it is EPA's finding here that units receiving wastes that satisfy these standards for organics need not be controlled further, since the organics in the wastes are already reduced to levels where threats posed by release of the organics have been minimized.

The EPA notes that, to be exempt from the subpart CC standards, the waste must meet the LDR treatment standards for that waste whether or not the waste actually is prohibited (or restricted) from land disposal, i.e., whether or not the waste is going to be ultimately land disposed. Thus, for example, if an organic ignitable waste is going to be managed in tanks and ultimately disposed of in a manner not involving land disposal, in order for the tanks to be exempt from subpart CC (assuming the subpart CC rules otherwise apply), the waste would have to meet the treatment standards for D001 wastes. It should be clear from this example that the treatment standards are being used here as a means of demonstrating that further control of air emissions from the waste is not necessary to protect human health and the environment. This determination does not hinge on whether the waste is being land disposed (i.e., on whether the waste would otherwise have to be treated to meet the standard as a precondition to land disposal).

The EPA is amending the 1994 final rule to address certain of the commenters' concerns regarding applicability of the subpart CC rules to incinerator bulk feed tanks (that is, tanks used for bulk feed of hazardous waste to an incinerator). A standard industry practice is to control the air emissions from these tanks by enclosing the tank and feed operation, and venting emissions for the enclosure through a closed-vent system to an organic emission control device. The EPA has received comments stating that some industry members have alternate designs which allow them to effectively operate bulk incinerator feed systems using a tight-fitting cover on the tank and enclosing the feed line, with all emissions vented to a control device.

The EPA is addressing two issues with respect to those former bulk feed operations. The first is the efficiency of the organic control device, and whether existing facilities must replace those devices previously installed to comply with the Benzene Waste Operations NESHAP. The second issue is whether an enclosure can provide adequate capture and control of organic emissions from an open tank, when compared with a tight-fitting cover on that tank.

The subpart CC rules require 95% reduction of total organics in vapor streams, by weight. The Benzene Waste Operations NESHAP (40 CFR part 61, subpart FF) requires 98% reduction of benzene in vapor streams. This distinction is appropriate, given the Benzene Waste Operations NESHAP's purpose to control benzene specifically, and the subpart CC rule's purpose to control total organics (including benzene). However, incinerator bulk feed operators have installed non-combustion control devices (such as activated carbon systems and condensers) which achieve 98% reduction of benzene, but do not effectively achieve 95% reduction of total organics. (This is because benzene is more amenable to certain reduction technologies than other organic compounds.)

The EPA has decided that it is not justified to require owners and operators to replace these relatively new control devices, which were installed pursuant to EPA regulation, and is therefore adding an exemption for control devices installed on such systems.[4] The EPA is making this decision chiefly due to the high replacement cost, action in reliance on EPA's Benzene Waste Operations

[4] Although there is probably some degree of decrease in protectiveness between these control devices and the proscribed 95% total organic control device requirements, EPA considers that difference to be not significant enough to warrant the substantial dislocations noted above. With respect to newly constructed control devices, there would be obviously, no such dislocations, and EPA therefore, does not believe there is any reason to forego the full protection provided by the 95% total organic control device efficiency requirements.

NESHAP, and the desire for consistency among the various standards controlling organic constituents.

With respect to enclosures used in lieu of a discreet tank cover, the issue is the same as that which EPA is addressing for all tank systems (see Section G of this Preamble.)

F. Waste Determination Procedures

Under the subpart CC RCRA air rules, air emission controls are not required for a hazardous waste management unit when the unit manages hazardous waste having an average VO concentration less than the action level (i.e., 500 ppmw at the point of waste origination). As part of the procedure for determining the VO concentration of the hazardous waste, the EPA allowed that an owner or operator could use either: (1) Direct measurement using Method 25D for preparation and analysis of samples of the waste collected in accordance with the procedures specified in the rule; or (2) the owner's or operator's knowledge of the VO concentration in the waste based on information, as specified in the rule.

In response to comments received concerning Method 25D relating to aggressiveness, expense, and repeatability of the method, the EPA decided to add other appropriate test methods that an owner or operator can choose to use for direct measurement of the VO concentration of a hazardous waste (see discussion below). In addition, the EPA is making certain other changes to facilitate the use of organic concentration data obtained using other test methods not specifically listed in the rule. The EPA believes that the changes being incorporated into the waste determination requirements in conjunction with changes to the applicability and action level for the subpart CC RCRA air rules for tanks, surface impoundments, and containers provide a range of options for determining the VO concentration of a hazardous waste such that every owner and operator of a facility subject to the final rule has available practical and inexpensive waste determination alternatives.

The EPA developed Method 25D to provide a relative measure of the potential for specific volatile organic compounds to be emitted from waste materials. When using Method 25D, the waste is analyzed to determine the total concentration, by weight, of all organics purged from the waste sample. However, some commenters stated that measuring all organics resulted in an overly aggressive method. Commenters suggested that there is some universe of organic compounds which usually do not volatilize, but which some test methods would measure. In a practical sense, the EPA does not consider it equitable to require air emission controls for wastes that do not contain organic compounds which are likely to volatilize. In response to these comments, the EPA is amending the waste determination procedures to allow the owner or operator to discount any contribution to the total volatile organic concentration that is a result of including a compound with a Henry's law constant of less than 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3] at 25 degrees Celsius. The Henry's law constant of a compound is one indication that is commonly used to predict the potential of a compound to volatilize.

If the waste contains compounds with Henry's law constants below the cutoff level, the VO concentration for the waste can be adjusted to exclude the VO concentration of these compounds from the total VO concentration for the waste stream. The contribution to the measured total VO concentration for the waste that is made by a specific compound can be determined by multiplying the actual concentration of the compound in the waste times the appropriate compound-specific adjustment ''f_m factor'' to obtain the Method 25D VO concentration. The VO concentration for the compound, with a Henry's law constant of less than 0.1 Y/X, can then be subtracted from the total VO concentration measured for the waste. In order to identify those compounds with a Henry's law constant below the cutoff level, the EPA has published a table listing the known compounds as part of today's amendments. The Henry's law constant value used as the cutoff in determining the VO concentration of a waste has been used in other EPA regulations (e.g., the Off-Site Waste and Recovery Operations NESHAP and the HON) and was selected based on modeling studies to identify and classify compounds with a significant potential for air emissions when present in a waste/wastewater system. With this amendment to the waste determination procedures, the EPA considers Method 25D to be an appropriate method for determining the VO concentration of hazardous wastes subject to the subpart CC RCRA air rules. Therefore, Method 25D continues to be an approved test method for determining the VO concentration of a waste, although other methods are allowed as direct measurement under today's amendment. This is discussed in greater detail below.

Other test methods have been developed by the EPA for use in rulemakings under the Clean Water Act that measure the concentration of organic pollutants in municipal and industrial wastewaters (see appendix A to 40 CFR part 136). Commenters suggested that certain of these test methods are applicable to EPA air rulemakings affecting hazardous waste and wastewater management units. After extensive review, the EPA decided that as alternatives to using Method 25D for direct measurement of VO concentration in a hazardous waste for the subpart CC RCRA air rules it is appropriate to add Methods 624, 625, 1624, and 1625 (all contained in 40 CFR part 136, appendix A) and Methods 8260(B) and 8270(C) (both in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'' in EPA Publication SW–846) when these methods are used under certain specified conditions. It is important to note that for each of these methods there is a published list of chemical compounds which the EPA considers the method appropriate to measure. The owner or operator may only use these methods to measure compounds that are contained on the list associated with that method, unless specified validation procedures are also performed. Further, for the purpose of a waste determination, the owner or operator must evaluate the mass of all VO compounds in a waste that have a Henry's Law value above the 0.1 Y/X cutoff. Therefore, the owner or operator is responsible for determining that the analytical method being used for a waste determination is sufficient to evaluate all of the applicable organic compounds that are contained in the waste. If an owner or operator chooses to use a method other than Method 25D to analyze a waste that contains unknown compounds or many different compounds, it may be necessary to perform screening analyses to verify that the alternate analytical method chosen is, in fact, appropriate to evaluate all the necessary compounds.

Because these methods measure the total concentration of various constituents, owners and operators may choose to ''correct'' these measured values to equate to the values that would be measured using Method 25D. This is accomplished by multiplying the total concentration measured values times the appropriate compound-specific adjustment ''f_m factor'' to obtain the Method 25D VO concentration. The EPA has published lists of the compound-specific adjustment factors

in other rulemakings; see Table 1 in the Off-Site Waste and Recovery Operations NESHAP (40 CFR part 63, subpart DD) and Table 34 in the HON (40 CFR part 63, subpart G). Compound specific adjustment factors (f_m factors) for additional compounds can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

Sufficient recovery study results are available for Methods 1624 and 1625 to correct for possible bias, and therefore, these methods are considered adequate by the EPA to characterize the concentration of a hazardous waste sample. In addition, Methods 624 and 625 are appropriate provided the initial calibration of the analytical system is performed with the target compounds to be measured. Methods 8260(B) and 8270(C) are also considered appropriate provided that formal quality assurance procedures are established, followed, and records are maintained to cover those elements of the methods considered relevant to measuring the actual concentration of organic compounds. The quality assurance program must address procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, and preparation steps as well as addressing the overall accuracy and precision of the specific method used.

Sample collection procedures and sample recovery conditions are established by Method 25D (40 CFR part 60, Appendix A). For the hazardous wastes typically managed in the operations subject to the RCRA air rules, the EPA has concluded that using Method 25D sample collection procedures and sample recovery conditions for other analysis methods is reasonable for the purpose of this rulemaking. However, none of the other methods discussed above specifies a sample collection and handling procedure that the EPA considers adequate to minimize the volatilization of organics from the sample prior to analysis. Therefore, to ensure that an adequately representative sample of a hazardous waste is analyzed by the method, an owner or operator that chooses to use either Method 624, 625, 1624, 1625, 8260(B) or 8270(C) for the subpart CC RCRA air rules is required to develop and follow a written sampling plan. Similarly, such a plan is required for alternative methods validated by EPA Method 301 in appendix A of 40 CFR part 63, or the ''Alternative Validation Procedure for EPA Waste and Wastewater Methods'' in appendix D of 40 CFR part 63. This plan must describe a step-by-step procedure for collecting representative samples of the hazardous waste such that material integrity is maintained and minimal loss of organics from the sample occurs throughout the collection and analysis process. An example of an acceptable sampling plan is one that incorporates sample collection and sample handling procedures similar to those specified in Method 25D. The sampling plan is to be maintained on-site in the facility records.

It should be noted that as long as one of the allowable test methods is being used for direct measurement of the VO concentration of a hazardous waste, the EPA would only enforce against the facility on that basis (i.e., using the same test method), unless the method used is not appropriate for the hazardous waste managed in the unit. For example, if the method is not suitable for use on semi-volatile organic compounds and the waste is known to contain organic compounds that are classified as semi-volatile, then the method is not appropriate.

In the published rule, the EPA allows use of knowledge-of-the-waste as the basis for a waste determination (§ 265.1084(a)(2)). Among the waste determination techniques that would have been considered knowledge, was analysis by methods other than 25D, if the alternate method had been validated using Test Method 301, from appendix A of part 63. Certain commenters indicated that it was not clear in the 1994 final rule that data from non-validated methods could be used to make a waste determination, with those results being again, considered knowledge-of-the-waste (as opposed to direct measurement). Today EPA is clarifying that, and, also in response to comments, the EPA has decided to allow organic concentration test data that are validated in accordance specifically with Sections 5.1 and 5.3 and the corresponding calculations in Section 6.1 or 6.3 of Method 301 to be used as direct measurement data. This makes validation of the alternative test method a self-check of the method being validated. Also, if appropriate, owners and operators may choose to ''correct'' values measured by the alternative test method to equate to the values that would be measured using Method 25D by multiplying the measured values times the appropriate compound-specific adjustment ''f_M factor.''

In addition, as discussed in Section II.G of the preamble to the final Off-Site Waste and Recovery Operations NESHAP (61 FR 34140, July 1, 1996), the EPA promulgated a less rigorous validation procedure, ''Alternative Validation Procedure for EPA Waste and Wastewater Methods,'' in Appendix D to 40 CFR part 63 as an alternative to Method 301 for the validation of a test method established by the EPA Office of Water (OW) or the EPA Office of Solid Waste (OSW) when this EPA test method is used for air emission standards. The EPA decided it is appropriate to allow organic concentration test data that are validated in accordance with this method to be used as direct measurement data because it is considered to produce equally reliable validation results. Other test methods not previously mentioned that are used to measure organic concentrations in the waste shall be validated according to section 5.1 or 5.3, and the corresponding calculations in section 6.1 or 6.3, or Method 301 of Appendix A of 40 CFR part 63.

The main point that must be reemphasized regarding direct measurement of VO concentration is that, although the EPA is amending the rule to allow various test methods other than Method 25D to be used in a waste determination, the owner or operator must use a test method(s) that is appropriate for the compounds contained in the waste. The method(s) used for the waste determination must be suitable for and must reflect or account for all compounds in the waste with a Henry's Law constant equal to or greater than 0.1 Y/X at 25 degrees Celsius.

In a further clarification, today's action is revising the waste determination procedures such that for both point of waste origination and point of waste treatment, no distinction is made for batch or continuous processes or for whether the owner or operator is the generator or receives the waste from off-site. The owner or operator chooses an averaging period appropriate for the hazardous waste stream of not more than 1 year. As has been noted previously, a site sampling plan is required that describes the procedure for collecting representative samples of the hazardous waste stream such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained.

As was originally promulgated in the 1994 final rule, in the event that the Regional Administrator and the owner or operator disagree on a determination of the average VO concentration of a hazardous waste stream at the point of waste origination using knowledge, then direct measurement shall be used to establish compliance. As noted above,

because of the expansion of analysis methods in today's amendments, direct measurement to establish compliance is not limited to Method 25D, but can be performed using any of the methods specified in the rule or any test method validated as specified in the rule, as appropriate for the waste managed in the unit. Because of the expansion of analysis methods, the rule has been revised such that, if the Regional Administrator determines that the method used by the owner or operator for a waste determination using direct measurement was not appropriate for the waste managed in the unit, then the Regional Administrator may choose an appropriate method to verify the waste determination.

G. Standards: Tanks

The subpart CC tank standards have been revised to address comments on the proposed technical amendments, to be consistent with tank standards established for related Clean Air Act NESHAP, and to reduce the inspection, monitoring, recordkeeping, and reporting requirements. In general, the amendments published today establish two levels of air emission control (referred to as Level 1 and Level 2 controls) for tanks managing hazardous waste having a maximum organic vapor pressure less than 76.6 kilopascals (kPa). The control level applicable to a tank required to use controls is determined by the tank design capacity and the maximum organic vapor pressure of the material in the tank. Ranges of capacity and vapor pressure limits or criteria have been established for tanks. However, tanks used for waste stabilization processes are required to use specific air emission controls.

For a tank to meet Level 1 controls, the revised final rule specifies that the hazardous waste be managed in a tank using a fixed-roof. For the Level 2 controls, the revised final rule requires that hazardous waste be managed in one of the following: (1) A fixed-roof tank equipped with an internal floating roof; (2) a tank equipped with an external floating roof; (3) a tank vented through a closed-vent system to a control device; (4) a pressure tank; or (5) a tank located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control device.

A tank is allowed to use the Level 1 controls if it meets the conditions that were in the 1994 final subpart CC rule to qualify for control by only a fixed roof, with several revisions to the conditions. In response to comments, the condition that the waste is neither mixed, stirred, agitated, nor circulated within the tank is being dropped; the condition on heating the waste is being revised to require that the hazardous waste in the tank not be heated to a temperature that is greater than the temperature at which the maximum organic vapor pressure of the waste was determined; and the condition that the hazardous waste not be treated by a process that produces an exothermic reaction is being dropped. The EPA agrees with commenters that these conditions are redundant given the criteria based on determination of a maximum organic vapor pressure. The conditions that are being dropped from the rule thus are adequately accounted for in the maximum organic vapor pressure criteria.

The owner or operator of a tank that qualifies for the Level 1 controls may choose to use Level 2 controls. A tank that does not qualify for the Level 1 controls is subject to the Level 2 controls.

Tank Level 1 control requirements consist of a fixed roof meeting the design, operation, inspection, and recordkeeping requirements specified in the rule. Because of commenters' concerns with the safety of workers during tank cleaning, the operating requirements are being clarified to explicitly include the removal of accumulated sludge or other residues from the bottom of the tank as a time when the opening of closure devices or removal of the fixed roof is allowed. In response to commenters' concerns that the subpart 1994 CC rules (inadvertently) required that a conservation vent must discharge through a closed-vent system to a control device, the revised rule states that a pressure relief device, such as a conservation vent which vents to the atmosphere, is allowed for the purpose of maintaining the tank internal pressure in accordance with the tank design specifications. Normal operating conditions that might require a pressure relief device to open include internal pressure buildup as a result of loading operations or diurnal ambient temperature fluctuations.

To reduce the inspection, monitoring, and recordkeeping burden of the rule, a number of rule revisions are being made in response to comments. The semiannual inspection requirement for the fixed roof and closure devices is being changed to an annual inspection requirement. The EPA considers this change to greatly reduce the requirements placed on the tank operators, while not affecting the protectiveness of the rules. The regulations still require tanks to be operated with covers that do not have visible openings or gaps; therefore, any openings or gaps will still need to be immediately repaired. The instrument monitoring requirements are being dropped, EPA's rationale being that the fixed roofs are allowed to operate with a conservation vent, and thus, leaks detectable only by an instrument are relatively insignificant. The time during which repair of a defect must be completed is being extended from 15 to 45 calendar days. The delay of repair provisions are being clarified to indicate that repair of a defect on a fixed roof or closure device may be delayed beyond 45 calendar days if repair would require the tank to be emptied or removed from service and no alternative capacity is available at the facility to accept the hazardous waste normally managed in the tank. The recordkeeping requirements are being clarified to explicitly define the information required for the annual inspection.

The revised Tank Level 2 air emission control requirements include options that were available in the 1994 final subpart CC rule, i.e., a tank equipped with a fixed roof and internal floating roof, a tank equipped with an external floating roof, a fixed roof vented through a closed-vent system to a control device, and a pressure tank. In addition, an option is being provided allowing the use of an enclosure vented through a closed-vent system to an enclosed combustion device or a control device designed and operated to reduce the total organic content of the inlet vapor stream by at least 95 percent by weight.

For a tank equipped with a fixed roof and internal floating roof, an operating requirement is being revised, such that, when the floating roof is resting on the leg supports, the process of filling, emptying, or refilling must be accomplished as soon as practical rather than as rapidly as possible. The rationale for this is explained in the preamble of the February 9, 1996 technical amendments (see 61 FR 4910).

Internal floating roof and external floating roof design, operating, inspection, and monitoring requirements are revised to reflect current technology and to be consistent with requirements of Clean Air Act standards for the same equipment (e.g. the off-site waste and recovery operations NESHAP, promulgated July 1, 1996). Again, this is part of the EPA's effort to promote consistency between requirements for similar types of units. Overall performance and emission reductions are effectively unchanged.

For a tank with a fixed roof that is vented through a closed-vent system to a control device, the operating, monitoring, and inspection requirements are being revised

consistent with the Tank Level 1 control requirements described previously. In summary, the times when opening of closure devices or removal of the fixed roof are allowed are being clarified, the rule is being clarified to allow the opening of a safety device, the semiannual inspection required for the fixed-roof and closure devices is changed to an annual inspection requirement, monitoring requirements are dropped, the time during which repair of a defect must be completed is extended from 15 to 45 calendar days, the delay of repair provisions are being clarified to indicate that repair of a defect on a fixed roof or closure device may be delayed beyond 45 calendar days, and the recordkeeping requirements are being clarified to explicitly define the information required for the annual inspection.

In response to the numerous comments regarding establishment of criteria to identify or define a pressure tank, the pressure tank requirements are being clarified to state that the tank shall be designed to operate with no detectable organic emissions during filling to the tank design capacity and the subsequent compression of the vapor headspace in the tank.

For the control option being added as a part of these amendments that allows the use of an enclosure vented through a closed-vent system to an enclosed combustion device or alternative control device, the enclosure must be designed and operated in accordance with the criteria for a permanent total enclosure as specified in 40 CFR 52.741, Appendix B, Procedure T-Criteria for and Verification of a Permanent or Temporary Total Enclosure. The EPA is adding this control option in response to comments from, among others, members of the hazardous waste stabilization industry and the incineration industry, who maintain that certain waste handling or treatment operations (e.g. incinerator bulk feed systems and stabilization) can not feasibly be conducted in covered tanks.

The EPA has made a number of revisions to the regulations that address this concern. As noted earlier, the increased VO concentration action level (from 100 ppmw to 500 ppmw) plus the inapplicability of the rule to hazardous wastes that meet the LDR standard for organic hazardous constituents should sharply reduce the number of situations where a metal-bearing waste undergoing stabilization would also be subject to the subpart CC standards.

In addition, the EPA reexamined the data in the record for those wastes that may undergo stabilization and still be subject to the Subpart CC requirements; this includes data supplied by waste management companies after promulgation of the 1994 final CC rule, in response to EPA's solicitation (see 59 FR 62912, December 6, 1994). However, the data currently available to the EPA do not support the commenters' assertions that no controls at all are needed for these wastes undergoing stabilization. All currently available data indicate that a significant fraction, by mass, of organics in waste are volatilized during stabilization processes.[5]

The EPA recognizes that certain stabilization and waste handling operations can only be feasibly conducted in open tanks (and containers). For such operations, where a cover is impractical, the most practical alternative is a permanent total enclosure that achieves high capture efficiency of the organic compounds emitted from the open tank (or container) and routes them through a closed-vent system to an organic control device. The EPA defines a permanent total enclosure as a ''permanently installed enclosure that completely surrounds a source of emissions such that all (VOC) emissions are captured and contained for discharge through a control device.'' The EPA has developed a set of criteria (in 40 CFR 52.741, appendix B) to ensure high capture efficiencies through proper design and operation of an enclosure and to eliminate the need for expensive and disruptive capture efficiency performance tests. The EPA method states that if a facility meets the criteria for a permanent total enclosure and all emissions are directed to a control device, the capture efficiency may be assumed to be 100 percent and measurement requirements are waived. The EPA has concluded that these enclosure criteria are appropriate for application to waste stabilization operations, bulk feed tank operations, and other waste handling situations where an owner or operator may deem a covered tank impractical; the design and operational criteria allow for necessary worker access to perform necessary operations, while assuring a high capture efficiency. Therefore, in this limited situation, use of an enclosure and control device that meets the criteria specified in the rule, for both the enclosure and the control device, is considered to provide the same level of emission reduction performance as does the other control options provided in the rule for tanks and thus achieves the same level of protection.

One commenter argued that the permanent enclosure criteria are inappropriate because they were originally developed for use in another industry (the paint and coating industry). However, the EPA considers these criteria appropriate for ensuring adequate design and operation of any enclosure used to capture organic emissions. The criteria are not prescriptive, that is, they do not specified detailed design and operation conditions. Rather, the criteria are just that: Parameters that must be evaluated, and minimum or maximum values that must be met for each parameter. These criteria are the only description known to the Agency that ensure an enclosure is effective in: (1) Preventing significant volumes of organics from escaping to the atmosphere, (2) capturing the organics from within the enclosure, and (3) routing the organics from within the enclosure to a control device.

The permanent total enclosure criteria specifies: (1) Maximum total area for natural draft openings, or NDO (which are holes in the enclosure that allow passage of organics through to the atmosphere), (2) minimum distance from emission points to NDO, (3) minimum face velocity to ensure sufficient negative pressure, (4) closure of any accesses that were not open for the purpose of performing the criteria calculations, and (5) routing of all emissions to a control device. All of these are parameters that would require consideration in the evaluation of any enclosure's effectiveness. Further, the minimum and maximum values specified in the permanent total enclosure criteria were chosen by EPA specifically for the purposes of ensuring adequate capture of organic emissions from industrial operations, such as paint and coating operations. The paint and coating industry operations are similar enough to other industrial operations, including waste treatment, that it is appropriate to use the permanent total

[5] Recent data supplied to EPA (including information contained in docket F–94–CE3A–FFFFF, and information submitted by subpart CC rule commenters to the EPA's Office of Solid Waste and Emergency Response) do not lead the Agency to conclude otherwise. Rather, the data submitted indicate that numerical quantification methods, or test methods, used to measure the mass of organics emitted during stabilization do not yield consistent or precise results when waste streams below 500 ppmw VO concentration are evaluated. These data, among other factors, prompted the Agency to raise the action level to 500 ppmw. However, the data submitted did not support any revision to the Agency's policy of requiring stabilization of organics to be performed in units with air emission controls. The Agency maintains that stabilization, and other operations that raise the temperature of the waste or agitate the waste, increase the rate of volatilization or organics in the waste. Therefore, it follows that a regulation that considers it appropriate to control the organic emissions from storage of hazardous waste would consider it at least as important to control the organic emissions during treatment of hazardous waste.

enclosure criteria for specifying enclosure integrity elsewhere.

One commenter remarked that the costs to retrofit two particular existing enclosures to the permanent total enclosure criteria would be prohibitive. The EPA does not agree with that remark. After reviewing that data, the EPA estimates that it would be less costly for that facility to upgrade those enclosures than it would be for any facility to retrofit an existing tank with an air-tight cover, which is the requirement for other tanks subject to the subpart CC standards.[6]

Safety devices, as defined in the rule, may be installed on the enclosure, as needed. The closed-vent system and enclosed combustion device or alternative control device must be designed and operated in accordance with standards in subpart CC. The enclosure is required to be inspected initially and annually thereafter. When defects are detected, the owner or operator must make first attempts at repair no later than 5 calendar days after detection and complete repair within 45 days.

Finally, in response to commenters' concerns with the feasibility of transferring solids and sludges between containers and tanks in a ''closed system'' as required by the final rules, the closed system transfer requirements for hazardous wastes transferred to or from a tank and another waste management unit subject to subpart CC control requirements are being revised such that transfer of hazardous waste between a tank and container is not required to be done in a closed system.

H. Standards: Surface Impoundments

Revisions are being made to the subpart CC surface impoundment standards so that, where relevant and appropriate, the inspection, monitoring, recordkeeping, and reporting requirements for surface impoundments are consistent with the requirements established for tanks in subpart CC and for surface impoundments under the Clean Air Act NESHAP. A discussion of these revisions is presented below.

More design and installation information is being included for rigid covers. A provision is being added that clarifies the intent of the 1994 final subpart CC rule, that venting to a control device is not required and that opening of closure devices or removal of the cover is allowed to remove accumulated sludge or other residues from the bottom of the surface impoundment. A provision is being added that explicitly allows opening of a safety device installed on the cover, closed-vent system, or control device at any time conditions require it to do so to avoid an unsafe condition. Also under the technical amendments published today, visual inspection of the rigid cover and closure devices is required initially and annually thereafter, rather than semiannually; leak detection monitoring is only required initially; and there are no requirements for periodic monitoring (as discussed above, the EPA does not consider it warranted to survey for non-visible leaks, while allowing conservation vents to route emissions to the atmosphere). The repair period for a defect also is being extended from 15 to 45 days to be consistent with other CAA regulations (e.g. the HON).

The floating membrane cover design and installation requirements are being clarified, e.g., language is being added to clarify that the ''floating membrane cover shall be designed to float during normal operations on the surface of the liquid contained in the surface impoundment.'' A provision is being added that allows the floating membrane cover to be equipped with emergency cover drains for removal of storm water. Opening of a safety device installed on the cover is allowed at any time conditions require it to do so to avoid an unsafe condition. Visual inspection of the floating membrane cover and closure devices is required initially and annually, rather than semiannually. The leak detection monitoring requirements for floating membrane covers are being dropped. The repair period for a defect is being extended from 15 to 45 days.

The closed system transfer requirements for hazardous wastes transferred to or from a surface impoundment and another waste management unit subject to subpart CC control requirements are being revised such that transfer of hazardous waste between a surface impoundment and container is not required to be done in a closed system. This change is being made to provide consistency within the subpart CC rules; containers are not subject to transfer requirements among other containers; therefore, the EPA does not consider it necessary to require closed transfer between containers and surface impoundments.

I. Standards: Containers

The subpart CC container standards are being significantly revised under today's amendments to address comments on the proposed changes to the container requirements, to make this rule compatible with the existing U.S. Department of Transportation (DOT) regulations for transporting hazardous materials, and to reduce any unnecessary inspection, monitoring, recordkeeping, and reporting requirements.

1. Control Requirements

Commenters stated that promulgated air emission control requirements for containers are impractical to implement or require equipment that is commercially unavailable. Also, commenters stated that the requirements should be consistent with the container air emission control requirements under the Clean Air Act rules.

Since promulgation in December 1994, the EPA has obtained more information on the practices and equipment currently used to manage hazardous waste in containers. Based on consideration of this information, the EPA decided to revise the air emission control requirements for containers to better reflect the container organic emission potential, the various container types, and the common container management practices used for hazardous waste operations. The EPA believes that these revised requirements are technically feasible and practical to implement on all types of containers that the Agency expects to be subject to the rule. These revisions are described in detail later in this section of today's notice.

The EPA is addressing consistency between the air emission control requirements for containers (as well as

[6] The EPA further notes that one of the two enclosures described in this commenter's submission would require only the sealing of a natural draft opening which is too close to an emission point. The other enclosure would require an increase in the face velocity, which could possibly be achieved by closing some of the natural draft openings in the enclosure. The cost to close a natural draft opening is not at all prohibitive; in many instances it can be accomplished with a patch and some air-tight caulk or foam. However, it is conceivable that the facility may need to increase the capacity of the control device for this second enclosure, in order to be able to effectively handle the resulting increased air flow. However, the EPA considers it highly relevant to note that the commenter states that his permitting authority has confirmed the tank inside this enclosure is not subject to the subpart CC standards; therefore, the enclosure would not be required to meet the permanent total enclosure criteria referenced by the subpart CC standards. It should be noted that costs associated with achieving a level of protectiveness required under RCRA 3004(n) are not a consideration in the selection of standards.

The EPA considers it also noteworthy to mention that a hazardous waste treatment industry group polled its members that operate incinerator bulk feed tanks, and was informed that all the member companies polled either: (1) Currently perform the bulk feed operations using covered tanks, (2) currently perform the bulk feed operations inside enclosures which already meet all of the permanent total enclosure criteria, or (3) would consider it reasonable to (and are willing to) upgrade or modify their existing enclosures to meet the permanent total enclosure criteria.

the other affected waste management units) in the RCRA rules and those contained in Clean Air Act NESHAP or NSPS by amending the RCRA rules to include an exemption for those affected units using organic emission controls in accordance with the requirements of any applicable NESHAP or NSPS. Because the Clean Air Act controls for containers are essentially the same as those required under the RCRA air rules, they are considered to provide the same level of protection. In addition, allowing the use of DOT containers is also consistent with the EPA's general objective of avoiding duplication and promoting consistency. The EPA has thoroughly evaluated the control requirements for DOT containers and has worked with DOT in developing these revisions. The EPA concluded that containers that meet applicable DOT requirements under 49 CFR parts 173, 178, 179, and 180 are equivalent in their overall emission reduction performance and therefore provide the same level of protection as do the initial requirements of the final subpart CC rules.

The revised container standards for the subpart CC RCRA air rules establish three levels of air emission control. The control level applicable to a container is determined by the container design capacity, the total organic content of the hazardous waste material in the container, and use of the container. For example, containers with a design capacity less than or equal to 0.1 m^3 (approximately 26 gallons) are not subject to any requirements under the rule, as was the case in the 1994 promulgated CC rule.

Under today's revised subpart CC rule, Level 1 controls are allowed for the following container categories (except when the container remains uncovered for waste stabilization or certain other treatment processes): (1) Containers having a design capacity greater than 0.1 m^3 and less than or equal to 0.46 m^3 (approximately 119 gallons); and (2) containers with a design capacity greater than 0.46 m^3 and used to manage hazardous wastes that do not meet the definition of ''in light material service'' (i.e., used to manage a hazardous waste where the vapor pressure of one or more of the components in the material is greater than 0.3 kPa at 20 °C, and the total concentration of the pure components having a vapor pressure greater than 0.3 kPa at 20 °C is equal to or greater than 20 percent by weight). Level 2 controls are required for containers with a design capacity greater than 0.46 m^3 and used ''in light material service,'' except when the container remains uncovered for waste stabilization or certain other treatment processes. Level 3 controls are required for containers having a design capacity greater than 0.1 m^3 that must remain uncovered for waste stabilization processes.

For the containers allowed to use Level 1 controls, the amended rule requires that the hazardous waste be managed either: (1) In a container that meets the relevant DOT regulations on packaging hazardous materials for transportation under 49 CFR parts 173, 178, 179, and 180; or (2) a covered container that meets the requirements specified in the 1994 final CC rule (40 CFR parts 264 and 265). No additional requirements are specified by today's revised final rule for containers complying with the applicable DOT regulations. In the case when an owner or operator elects to comply with the covered container requirements (i.e., non-DOT containers), the container must be equipped with a tight-fitting cover that has no visible gaps, spaces, holes, or other openings. The rule does require a visual inspection when the cover is applied and annually thereafter, if the container remains in on-site storage for a period longer than 1 year. No testing for detectable organic emissions using Method 21 is required. No recordkeeping and reporting are required under the revised final rule for containers using Level 1 controls. The EPA has agreed with commenters' suggestions that any increases in enforceability of the subpart CC standards does not justify the expense and time required by an owner or operator to make and maintain records for the subpart CC regulations for hazardous waste in containers. The vast majority of containers subject to the subpart CC standards are not at a given site for more than 90 days; therefore, the burden associated with maintaining additional records (that is, in addition to existing records required under other applicable regulations, such as the RCRA subpart I, or DOT container requirements) for all containers used to store hazardous waste was deemed to be considerably greater than the recordkeeping requirements for tanks or surface impoundments (particularly when compared with the relatively low volume of hazardous waste, nationwide, that is managed in containers versus tanks and surface impoundments).

For the containers required to use Level 2 controls, today's revised final rule requires that the hazardous waste be managed in one of the following: (1) A container that meets the relevant DOT regulations on packaging hazardous materials for transportation under 49 CFR parts 173, 178, 179, and 180; or (2) a container that operates with ''no detectable organic emissions''; or (3) a container that has been demonstrated within the preceding 12 months to be vapor-tight by using Method 27. Specific design, operating, inspection and monitoring, repair, recordkeeping, and reporting requirements for containers tested using either Method 21 or 27 are specified in the rule.

No additional requirements are specified in the final rule for containers complying with the applicable DOT regulations. However, for compliance with the subpart CC rules, no exceptions under the 40 CFR parts 178 or 179 regulations are allowed for DOT containers except for lab packs meeting the exceptions for combination packaging specified in 40 CFR 173.12(b). In addition, the EPA based its decision to allow use of DOT containers for compliance with the subpart CC rules on the specifications, testing, maintenance, and other requirements for containers that can be reused or refilled under DOT regulations (the typical practice at hazardous waste TSDF). For the purpose of complying with the subpart CC rules, the EPA does not consider it appropriate that a container which is a ''non-reusable container (NRC)'' or ''single-trip container (STC)'' according to DOT requirements, be repeatedly used while at the facility site (i.e., emptied and refilled) for the handling of hazardous waste subject to subpart CC rules. Before a DOT container can be reused, even within the boundaries of a facility site, it must comply with the DOT reconditioning and reuse provisions of the hazardous materials regulations in 49 CFR 173.28.

For the containers required to use Level 3 controls, the revised final rule requires that an open container be placed in an enclosure vented through a closed-vent system to a control device or a covered container be vented directly to a control device. If an enclosure is used, the enclosure is to be designed in accordance with the criteria for a permanent total enclosure as specified in 40 CFR 52.741, Appendix B, Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure. The use of a permanent total enclosure and the design and operating criteria for these enclosures are discussed further in Section G of this preamble.

2. Loading Operations

Requirements for loading hazardous waste into a container are also being revised by today's action in response to the numerous comments received by EPA on this topic. Under the revised final rule there are no requirements for

loading hazardous waste into containers using Level 1 controls. The rationale for this is explained in the preamble to the February 9, 1996 technical amendments (see 61 FR 4909). For containers using Level 2 controls, the loading requirements have been revised to allow the owner or operator the flexibility to use any appropriate loading method that will minimize exposure of the hazardous waste to the atmosphere and thereby reduce organic air emissions, to the extent practical considering the physical properties of the hazardous waste and good engineering and safety practices. Examples of container loading procedures that the EPA considers to meet these requirements include, but are not limited to, using a submerged-fill pipe or other submerged-fill method to load liquids into the container; or using a vapor-balancing or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations.

3. Inspection, Monitoring, Recordkeeping, and Reporting

After consideration of the comments regarding the burden associated with certain aspects of the inspection, monitoring, recordkeeping, and reporting requirements for containers, and review of the effect of these requirements on the emission reduction achieved by these standards, the EPA has determined that it is appropriate to simplify these requirements in today's amendments. Owners and operators of containers using either Container Level 1 or Container Level 2 controls in accordance with the provisions of the rule are required to visually inspect the container and its cover and closure devices to check for defects at the time the owner or operator first manages a hazardous waste in the container or accepts possession of the container at the facility with the exception of those containers emptied within 24 hours of being received. Also, in the case when a container used for managing hazardous waste remains at the facility for a period of 1 year or more, the container and its cover and closure devices are to be visually inspected to check for defects at least once every 12 months.

Under the revisions published here, there are no requirements for periodic Method 21 leak monitoring of containers. The EPA considers this revision appropriate, in light of the relatively low volume of hazardous waste managed in containers (as compared to that volume managed in tanks and surface impoundments) and the transitory nature of containers (i.e. the vast majority of containers, nationwide, do not remain on a given site longer than 90 days). The time and expense required by operators to perform periodic Method 21 monitoring on containers does not seem to be warranted by any anticipated increase in emission reductions or enforceability of the subpart CC standards.

There is only one recordkeeping requirement and no reporting requirements under this rulemaking for containers using either Container Level 1 or Container Level 2 controls. The recordkeeping requirement is to maintain in the facility record a copy of the procedure used to determine that containers with capacities equal to or greater than 0.46 m^3 and do not meet the applicable DOT regulations are not managing hazardous waste in ''light material service.''

Information is also being added to the rule concerning the duration of time that the cover or closure devices can be open for the purpose of adding hazardous waste to or removing hazardous waste from the container or performing other routine activities, such as sampling the hazardous waste in the container. Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure-relief device that vents to the atmosphere is allowed to maintain container internal pressure within design specifications during normal operating conditions, e.g., to release pressure resulting from loading operations or diurnal temperature changes. Opening of a safety device, as defined in the rule, is allowed at any time conditions require it to do so to avoid an unsafe condition.

J. Standards: Closed-Vent Systems and Control Devices

As previously discussed in this preamble under the revisions to the subpart AA provisions for control devices and closed-vent systems, the subpart CC control device and closed-vent system standards are being revised by today's technical amendments to incorporate changes so that these requirements are consistent and up-to-date with the general decisions the EPA has made regarding the inspection, monitoring, maintenance, repair, malfunctions, recordkeeping, and reporting requirements for organic emission control devices and which have been published in other related standards.

In the subpart CC standards for control devices and closed vent systems, provisions are being added to allow up to 240 hours per year for periods of planned routine maintenance of a control device during which time the control device is not required to meet the performance requirements for emission reductions specified in the rule and to exempt control devices from the substantive requirements of this section during a control device system malfunction. Recordkeeping requirements for these provisions are also being added. This change is being made in response to commenters' statements that good engineering and air pollution control practices include maintenance of air pollution control equipment, and that it is reasonable to assume that all such equipment will require either maintenance or repair at some time during the life of the equipment. The EPA is adding this allowance in an attempt to encourage good maintenance of such equipment, and in recognition that if maintenance periods are not allowed, repair periods will be unavoidable; it seems more reasonable to encourage the former, while accepting that both are realities. The value of 240 hours has been selected to be consistent with other air regulations developed under the CAA, such as the HON.

K. Inspection and Monitoring Requirements

The EPA is making revisions to the inspection and monitoring requirements for the final subpart CC RCRA air rules to reflect the revisions to the rule applicability and technical requirements and reduce the burden of these requirements on owners and operators. These revisions are explained in more detail throughout the preamble, above.

L. Recordkeeping and Reporting Requirements

The EPA is changing the recordkeeping and reporting requirements for the final subpart CC RCRA air rules to reflect the revisions to the rule applicability and technical requirements and reduce the burden of these requirements on owners and operators. These revisions are explained in more detail throughout the preamble, above.

V. Administrative Requirements

A. Docket

Six RCRA dockets contain information pertaining to today's rulemaking: (1) RCRA docket number F–91–CESP–FFFFF, which contains copies of all BID references and other information related to the development of the rule up through proposal; (2) RCRA docket number F–92–CESA–FFFFF, which contains copies of the supplemental data made available for public comment prior to promulgation;

(3) RCRA docket number F–94–CESF–FFFFF, which contains copies of all BID references and other information related to development of the final rule following proposal; (4) RCRA docket number F–94–CE2A–FFFFF, which contains information pertaining to waste stabilization operations performed in tanks; (5) RCRA docket number F–95–CE3A–FFFFF, which contains information about potential final rule revisions made available for public comment; and (6) RCRA docket number F–96–CE4A–FFFFF, which contains a copy of each of the comment letters submitted in regard to the revisions that the EPA was considering for the final subpart CC standards. The public may review all materials in these dockets at the EPA RCRA Docket Office.

The EPA RCRA Docket Office is located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. Hand delivery of items and review of docket materials are made at the Virginia address. The public must have an appointment to review docket materials. Appointments can be scheduled by calling the Docket Office at (703) 603–9230. The mailing address for the RCRA Docket Office is RCRA Information Center (5305W), 401 M Street SW, Washington, DC 20460. The Docket Office is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays.

B. Paperwork Reduction Act

The information collection requirements of the previously promulgated RCRA air rules were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 1593.02) may be obtained from Sandy Farmer, Information Policy Branch (2136); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460 or by calling (202) 260–2740.

Today's amendments to the RCRA air rules should have only a minor impact on the information collection burden estimates made previously, and that impact is expected to be a reduction. The changes consist of new definitions, alternative test procedures, clarifications of requirements, and additional compliance options. The changes are not additional requirements, but rather, are reductions in previously published requirements. The overall information-keeping requirements in the rule are being reduced. Consequently, the ICR has not been revised.

C. Executive Order 12866 Review

Under Executive Order 12866, the EPA must determine whether the proposed regulatory action is ''significant'' and, therefore, subject to the OMB review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The RCRA Subpart CC air rules published on December 6, 1994, were considered significant under Executive Order 12866, and a regulatory impact analysis (RIA) was prepared. The amendments published today clarify the rule, provide more compliance alternatives, make certain regulatory provisions more lenient, and correct structural problems with the drafting of some sections. The OMB has evaluated this action, and determined it to be non-significant; thus it did not require their review.

D. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), as amended, Pub. L. 104–121, 110 Stat. 847, the EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities and therefore no initial regulatory flexibility analysis under section 604(a) of the Act is required. For the reasons discussed in the December 6, 1994 Federal Register (59 FR 62923), this rule does not have a significant impact on a substantial number of small entities. The changes to the rule do not add new control requirements to the December 1994 rule. The amendments in fact reduce the already-existing requirements. Therefore, the amendments are also not considered significant.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) given that it amends the rule published in 1994 to reduce the extent of regulation.

E. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

VI. Legal Authority

These regulations are amended under the authority of sections 2002, 3001–3007, 3010, and 7004 of the Solid Waste Disposal Act of 1970, as amended by RCRA, as amended (42 U.S.C. 6921–6927, 6930, and 6974).

List of Subjects

40 CFR Part 261

Environmental protection, Air pollution control.

40 CFR Part 262

Air pollution control, Packaging and containers, Tank.

40 CFR Parts 264 and 265

Environmental protection, Air pollution control, Control device, Hazardous waste, Inspection, Monitoring, Packaging and containers, Reporting and recordkeeping requirements, Surface impoundment, Tank, TSDF, Waste determination.

40 CFR Part 270

Administrative practice and procedure, Air pollution, Confidential business information, Hazardous waste, Permit modification, Reporting and recordkeeping requirements.

Dated: October 4, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, parts 261, 262, 264, 265, 270, and 271 of the Code of Federal Regulations are amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1a. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

1b. Section 261.6 is amended by revising paragraph (c)(1) to read as follows:

§ 261.6 Requirements for recyclable materials.

* * * * *

(c)(1) Owners and operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of subparts A though L, AA, BB, and CC of parts 264 and 265, and under parts 124, 266, 268, and 270 of this chapter and the notification requirements under section 3010 of RCRA, except as provided in paragraph (a) of this section. (The recycling process itself is exempt from regulation except as provided in § 261.6(d).)

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1c. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922, 6923, 6925, 6937 and 6938, unless otherwise noted.

2. Section 262.34 is amended by revising paragraphs (a)(1)(i) and (a)(1)(ii) to read as follows:

§ 262.34 Accumulation time.

(a) * * *

(1) * * *

(i) In containers and the generator complies with subpart I of 40 CFR part 265; and/or

(ii) In tanks and the generator complies with subpart J of 40 CFR part 265, except §§ 265.197(c) and 265.200; and/or

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

3. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924 and 6925.

Subpart I—Use and Management of Containers

4. Section 264.179 is revised to read as follows:

§ 264.179 Air emission standards.

The owner or operator shall manage all hazardous waste placed in a container in accordance with the applicable requirements of subparts AA, BB, and CC of this part.

Subpart J—Tank Systems

5. Section 264.200 is revised to read as follows:

§ 264.200 Air emission standards.

The owner or operator shall manage all hazardous waste placed in a tank in accordance with the applicable requirements of subparts AA, BB, and CC of this part.

Subpart K—Surface Impoundments

6. Section 264.232 is revised to read as follows:

§ 264.232 Air emission standards.

The owner or operator shall manage all hazardous waste placed in a surface impoundment in accordance with the applicable requirements of subparts BB and CC of this part.

Subpart AA—Air Emission Standards for Process Vents

7. Section 264.1030 is amended by revising paragraph (b); and removing the refererence ''262.34'' from the note at the end of the section to read as follows:

§ 264.1030 Applicability.

* * * * *

(b) Except for § 264.1034, paragraphs (d) and (e), this subpart applies to process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations that manage hazardous wastes with organic concentrations of at least 10 ppmw, if these operations are conducted in one of the following:

(1) A unit that is subject to the permitting requirements of 40 CFR part 270, or

(2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a hazardous waste recycling unit that is not a 90-day tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of 40 CFR part 270, or

(3) A unit that is exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a 90-day tank or container).

* * * * *

8. Section 264.1033 is amended by revising paragraph (f)(2)(vi)(B); redesignating paragraphs (l) and (m) as paragraphs (m) and (n) and revising the newly designated paragraph (n); by revising paragraph (k); and by adding paragraphs (l) and (o) to read as follows:

§ 264.1033 Standards: Closed-vent systems and control devices

* * * * *

(f) * * *

(2) * * *

(vi) * * *

(B) A temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature with an accuracy of ±1 percent of the temperature being monitored in degrees Celsius (°C) or ±0.5 °C, whichever is greater. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser exit (i.e., product side).

* * * * *

(k) A closed-vent system shall meet either of the following design requirements:

(1) A closed-vent system shall be designed to operate with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background as determined by the procedure in § 264.1034(b) of this subpart, and by visual inspections; or

(2) A closed-vent system shall be designed to operate at a pressure below atmospheric pressure. The system shall be equipped with at least one pressure gauge or other pressure measurement device that can be read from a readily accessible location to verify that negative pressure is being maintained in the closed-vent system when the control device is operating.

(l) The owner or operator shall monitor and inspect each closed-vent system required to comply with this section to ensure proper operation and maintenance of the closed-vent system by implementing the following requirements:

(1) Each closed-vent system that is used to comply with paragraph (k)(1) of

this section shall be inspected and monitored in accordance with the following requirements:

(i) An initial leak detection monitoring of the closed-vent system shall be conducted by the owner or operator on or before the date that the system becomes subject to this section. The owner or operator shall monitor the closed-vent system components and connections using the procedures specified in § 264.1034(b) of this subpart to demonstrate that the closed-vent system operates with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background.

(ii) After initial leak detection monitoring required in paragraph (l)(1)(i) of this section, the owner or operator shall inspect and monitor the closed-vent system as follows:

(A) Closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed (e.g., a welded joint between two sections of hard piping or a bolted and gasketed ducting flange) shall be visually inspected at least once per year to check for defects that could result in air pollutant emissions. The owner or operator shall monitor a component or connection using the procedures specified in § 264.1034(b) of this subpart to demonstrate that it operates with no detectable emissions following any time the component is repaired or replaced (e.g., a section of damaged hard piping is replaced with new hard piping) or the connection is unsealed (e.g., a flange is unbolted).

(B) Closed-vent system components or connections other than those specified in paragraph (l)(1)(ii)(A) of this section shall be monitored annually and at other times as requested by the Regional Administrator, except as provided for in paragraph (o) of this section, using the procedures specified in § 264.1034(b) of this subpart to demonstrate that the components or connections operate with no detectable emissions.

(iii) In the event that a defect or leak is detected, the owner or operator shall repair the defect or leak in accordance with the requirements of paragraph (l)(3) of this section.

(iv) The owner or operator shall maintain a record of the inspection and monitoring in accordance with the requirements specified in § 264.1035 of this subpart.

(2) Each closed-vent system that is used to comply with paragraph (k)(2) of this section shall be inspected and monitored in accordance with the following requirements:

(i) The closed-vent system shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in ductwork or piping or loose connections.

(ii) The owner or operator shall perform an initial inspection of the closed-vent system on or before the date that the system becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year.

(iii) In the event that a defect or leak is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (l)(3) of this section.

(iv) The owner or operator shall maintain a record of the inspection and monitoring in accordance with the requirements specified in § 264.1035 of this subpart.

(3) The owner or operator shall repair all detected defects as follows:

(i) Detectable emissions, as indicated by visual inspection, or by an instrument reading greater than 500 ppmv above background, shall be controlled as soon as practicable, but not later than 15 calendar days after the emission is detected, except as provided for in paragraph (l)(3)(iii) of this section.

(ii) A first attempt at repair shall be made no later than 5 calendar days after the emission is detected.

(iii) Delay of repair of a closed-vent system for which leaks have been detected is allowed if the repair is technically infeasible without a process unit shutdown, or if the owner or operator determines that emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. Repair of such equipment shall be completed by the end of the next process unit shutdown.

(iv) The owner or operator shall maintain a record of the defect repair in accordance with the requirements specified in § 264.1035 of this subpart.

(m) Closed-vent systems and control devices used to comply with provisions of this subpart shall be operated at all times when emissions may be vented to them.

(n) The owner or operator using a carbon adsorption system to control air pollutant emissions shall document that all carbon that is a hazardous waste and that is removed from the control device is managed in one of the following manners, regardless of the average volatile organic concentration of the carbon:

(1) Regenerated or reactivated in a thermal treatment unit that meets one of the following:

(i) The owner or operator of the unit has been issued a final permit under 40 CFR part 270 which implements the requirements of subpart X of this part; or

(ii) The unit is equipped with and operating air emission controls in accordance with the applicable requirements of subparts AA and CC of either this part or of 40 CFR part 265; or

(iii) The unit is equipped with and operating air emission controls in accordance with a national emission standard for hazardous air pollutants under 40 CFR part 61 or 40 CFR part 63.

(2) Incinerated in a hazardous waste incinerator for which the owner or operator either:

(i) Has been issued a final permit under 40 CFR part 270 which implements the requirements of subpart O of this part; or

(ii) Has designed and operates the incinerator in accordance with the interim status requirements of 40 CFR part 265, subpart O.

(3) Burned in a boiler or industrial furnace for which the owner or operator either:

(i) Has been issued a final permit under 40 CFR part 270 which implements the requirements of 40 CFR part 266, subpart H; or

(ii) Has designed and operates the boiler or industrial furnace in accordance with the interim status requirements of 40 CFR part 266, subpart H.

(o) Any components of a closed-vent system that are designated, as described in § 264.1035(c)(9) of this subpart, as unsafe to monitor are exempt from the requirements of paragraph (l)(1)(ii)(B) of this section if:

(1) The owner or operator of the closed-vent system determines that the components of the closed-vent system are unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (l)(1)(ii)(B) of this section; and

(2) The owner or operator of the closed-vent system adheres to a written plan that requires monitoring the closed-vent system components using the procedure specified in paragraph (l)(1)(ii)(B) of this section as frequently as practicable during safe-to-monitor times.

9. Section 264.1034 is amended by revising paragraph (b), introductory text, to read as follows:

§ 264.1034 Test methods and procedures.

* * * * *

(b) When a closed-vent system is tested for compliance with no detectable

emissions, as required in § 264.1033(l) of this subpart, the test shall comply with the following requirements:

* * * * *

10. Section 264.1035 is amended by adding paragraphs (c)(9) and (c)(10) and revising paragraph (d) to read as follows:

§ 264.1035 Recordkeeping requirements.

* * * * *

(c) * * *

(9) An owner or operator designating any components of a closed-vent system as unsafe to monitor pursuant to § 264.1033(o) of this subpart shall record in a log that is kept in the facility operating record the identification of closed-vent system components that are designated as unsafe to monitor in accordance with the requirements of § 264.1033(o) of this subpart, an explanation for each closed-vent system component stating why the closed-vent system component is unsafe to monitor, and the plan for monitoring each closed-vent system component.

(10) When each leak is detected as specified in § 264.1033(l) of this subpart, the following information shall be recorded:

(i) The instrument identification number, the closed-vent system component identification number, and the operator name, initials, or identification number.

(ii) The date the leak was detected and the date of first attempt to repair the leak.

(iii) The date of successful repair of the leak.

(iv) Maximum instrument reading measured by Method 21 of 40 CFR part 60, appendix A after it is successfully repaired or determined to be nonrepairable.

(v) ''Repair delayed'' and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(A) The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(B) If delay of repair was caused by depletion of stocked parts, there must be documentation that the spare parts were sufficiently stocked on-site before depletion and the reason for depletion.

(d) Records of the monitoring, operating, and inspection information required by paragraphs (c)(3) through (c)(10) of this section shall be maintained by the owner or operator for at least 3 years following the date of each occurrence, measurement, maintenance, corrective action, or record.

* * * * *

Subpart BB—Air Emission Standards for Equipment Leaks

11. Section 264.1050 is amended by revising paragraph (b), adding paragraph (f), and by removing the reference ''262.34'' from the note at the end of the section to read as follows:

§ 264.1050 Applicability.

* * * * *

(b) Except as provided in § 264.1064(k), this subpart applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in one of the following:

(1) A unit that is subject to the permitting requirements of 40 CFR part 270, or

(2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a hazardous waste recycling unit that is not a ''90-day'' tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of 40 CFR part 270, or

(3) A unit that is exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a ''90-day'' tank or container).

* * * * *

(f) Equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for a period of less than 300 hours per calendar year is excluded from the requirements of §§ 264.1052 through 264.1060 of this subpart if it is identified as required in § 264.1064(g)(6) of this subpart.

12. Section 264.1055 is revised to read as follows:

§ 264.1055 Standards: Sampling connection systems.

(a) Each sampling connection system shall be equipped with a closed-purge, closed-loop, or closed-vent system. This system shall collect the sample purge for return to the process or for routing to the appropriate treatment system. Gases displaced during filling of the sample container are not required to be collected or captured.

(b) Each closed-purge, closed-loop, or closed-vent system as required in paragraph (a) of this section shall meet one of the following requirements:

(1) Return the purged process fluid directly to the process line;

(2) Collect and recycle the purged process fluid; or

(3) Be designed and operated to capture and transport all the purged process fluid to a waste management unit that complies with the applicable requirements of § 264.1084 through § 264.1086 of this subpart or a control device that complies with the requirements of § 264.1060 of this subpart.

(c) *In-situ* sampling systems and sampling systems without purges are exempt from the requirements of paragraphs (a) and (b) of this section.

13. Section 264.1058 is amended by adding paragraph (e) to read as follows:

§ 264.1058 Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors.

* * * * *

(e) Any connector that is inaccessible or is ceramic or ceramic-lined (e.g., porcelain, glass, or glass-lined) is exempt from the monitoring requirements of paragraph (a) of this section and from the recordkeeping requirements of § 264.1064 of this subpart.

14. Section 264.1064 is amended by adding paragraph (g)(6) to read as follows:

§ 264.1064 Recordkeeping requirements.

* * * * *

(g) * * *

(6) Identification, either by list or location (area or group) of equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for a period of less than 300 hours per year.

* * * * *

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

15. Section 264.1080 is amended by adding paragraphs (b)(7) and (b)(8) to read as follows:

§ 264.1080 Applicability.

* * * * *

(b) * * *

(7) A hazardous waste management unit that the owner or operator certifies is equipped with and operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63. For the purpose of complying with this paragraph, a tank for which the air emission control includes an enclosure, as opposed to a cover, must be in compliance with the enclosure and control device requirements of

§ 264.1084(i), except as provided in § 264.1082(c)(5).

(8) A tank that has a process vent as defined in 40 CFR 264.1031.

* * * * *

16. Section 264.1082 is revised to read as follows:

§ 264.1082 Standards: General.

(a) This section applies to the management of hazardous waste in tanks, surface impoundments, and containers subject to this subpart.

(b) The owner or operator shall control air pollutant emissions from each waste management unit in accordance with standards specified in § 264.1084 through § 264.1087 of this subpart, as applicable to the waste management unit, except as provided for in paragraph (c) of this section.

(c) A tank, surface impoundment, or container is exempt from standards specified in § 264.1084 through § 264.1087 of this subpart, as applicable, provided that the waste management unit is one of the following:

(1) A tank, surface impoundment, or container for which all hazardous waste entering the unit has an average VO concentration at the point of waste origination of less than 500 parts per million by weight (ppmw). The average VO concentration shall be determined using the procedures specified in § 264.1083(a) of this subpart. The owner or operator shall review and update, as necessary, this determination at least once every 12 months following the date of the initial determination for the hazardous waste streams entering the unit.

(2) A tank, surface impoundment, or container for which the organic content of all the hazardous waste entering the waste management unit has been reduced by an organic destruction or removal process that achieves any one of the following conditions:

(i) A process that removes or destroys the organics contained in the hazardous waste to a level such that the average VO concentration of the hazardous waste at the point of waste treatment is less than the exit concentration limit (C_t) established for the process. The average VO concentration of the hazardous waste at the point of waste treatment and the exit concentration limit for the process shall be determined using the procedures specified in § 264.1083(b) of this subpart.

(ii) A process that removes or destroys the organics contained in the hazardous waste to a level such that the organic reduction efficiency (R) for the process is equal to or greater than 95 percent, and the average VO concentration of the hazardous waste at the point of waste treatment is less than 100 ppmw. The organic reduction efficiency for the process and the average VO concentration of the hazardous waste at the point of waste treatment shall be determined using the procedures specified in § 264.1083(b) of this subpart.

(iii) A process that removes or destroys the organics contained in the hazardous waste to a level such that the actual organic mass removal rate (MR) for the process is equal to or greater than the required organic mass removal rate (RMR) established for the process. The required organic mass removal rate and the actual organic mass removal rate for the process shall be determined using the procedures specified in § 264.1083(b) of this subpart.

(iv) A biological process that destroys or degrades the organics contained in the hazardous waste, such that either of the following conditions is met:

(A) The organic reduction efficiency (R) for the process is equal to or greater than 95 percent, and the organic biodegradation efficiency (R_{bio}) for the process is equal to or greater than 95 percent. The organic reduction efficiency and the organic biodegradation efficiency for the process shall be determined using the procedures specified in § 264.1083(b) of this subpart.

(B) The total actual organic mass biodegradation rate (MR_{bio}) for all hazardous waste treated by the process is equal to or greater than the required organic mass removal rate (RMR). The required organic mass removal rate and the actual organic mass biodegradation rate for the process shall be determined using the procedures specified in § 264.1083(b) of this subpart.

(v) A process that removes or destroys the organics contained in the hazardous waste and meets all of the following conditions:

(A) From the point of waste origination through the point where the hazardous waste enters the treatment process, the hazardous waste is managed continuously in waste management units which use air emission controls in accordance with the standards specified in § 264.1084 through § 264.1087 of this subpart, as applicable to the waste management unit.

(B) From the point of waste origination through the point where the hazardous waste enters the treatment process, any transfer of the hazardous waste is accomplished through continuous hard-piping or other closed system transfer that does not allow exposure of the waste to the atmosphere. The EPA considers a drain system that meets the requirements of 40 CFR part 63, subpart RR—National Emission Standards for Individual Drain Systems to be a closed system.

(C) The average VO concentration of the hazardous waste at the point of waste treatment is less than the lowest average VO concentration at the point of waste origination determined for each of the individual waste streams entering the process or 500 ppmw, whichever value is lower. The average VO concentration of each individual waste stream at the point of waste origination shall be determined using the procedures specified in § 264.1083(a) of this subpart. The average VO concentration of the hazardous waste at the point of waste treatment shall be determined using the procedures specified in § 264.1083(b) of this subpart.

(vi) A process that removes or destroys the organics contained in the hazardous waste to a level such that the organic reduction efficiency (R) for the process is equal to or greater than 95 percent and the owner or operator certifies that the average VO concentration at the point of waste origination for each of the individual waste streams entering the process is less than 10,000 ppmw. The organic reduction efficiency for the process and the average VO concentration of the hazardous waste at the point of waste origination shall be determined using the procedures specified in § 264.1083(b) and § 264.1083(a) of this subpart, respectively.

(vii) A hazardous waste incinerator for which the owner or operator has either:

(A) Been issued a final permit under 40 CFR part 270 which implements the requirements of subpart O of this part; or

(B) Has designed and operates the incinerator in accordance with the interim status requirements of 40 CFR part 265, subpart O.

(viii) A boiler or industrial furnace for which the owner or operator has either:

(A) Been issued a final permit under 40 CFR part 270 which implements the requirements of 40 CFR part 266, subpart H, or

(B) Has designed and operates the boiler or industrial furnace in accordance with the interim status requirements of 40 CFR part 266, subpart H.

(ix) For the purpose of determining the performance of an organic destruction or removal process in accordance with the conditions in each of paragraphs (c)(2)(i) through (c)(2)(vi) of this section, the owner or operator shall account for VO concentrations

determined to be below the limit of detection of the analytical method by using the following VO concentration:

(A) If Method 25D in 40 CFR part 60, appendix A is used for the analysis, one-half the blank value determined in the method.

(B) If any other analytical method is used, one-half the limit of detection established for the method.

(3) A tank used for biological treatment of hazardous waste in accordance with the requirements of paragraph (c)(2)(iv) of this section.

(4) A tank, surface impoundment, or container for which all hazardous waste placed in the unit either:

(i) Meets the numerical concentration limits for organic hazardous constituents, applicable to the hazardous waste, as specified in 40 CFR part 268—Land Disposal Restrictions under Table ''Treatment Standards for Hazardous Waste'' in 40 CFR 268.40; or

(ii) Has been treated by the treatment technology established by EPA for the waste in 40 CFR 268.42(a), or treated by an equivalent method of treatment approved by EPA pursuant to 40 CFR 268.42(b).

(5) A tank used for bulk feed of hazardous waste to a waste incinerator and all of the following conditions are met:

(i) The tank is located inside an enclosure vented to a control device that is designed and operated in accordance with all applicable requirements specified under 40 CFR part 61, subpart FF—National Emission Standards for Benzene Waste Operations for a facility at which the total annual benzene quantity from the facility waste is equal to or greater than 10 megagrams per year;

(ii) The enclosure and control device serving the tank were installed and began operation prior to November 25, 1996 and

(iii) The enclosure is designed and operated in accordance with the criteria for a permanent total enclosure as specified in ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical or electrical equipment; or to direct air flow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' annually.

(d) The Regional Administrator may at any time perform or request that the owner or operator perform a waste determination for a hazardous waste managed in a tank, surface impoundment, or container exempted from using air emission controls under the provisions of this section as follows:

(1) The waste determination for average VO concentration of a hazardous waste at the point of waste origination shall be performed using direct measurement in accordance with the applicable requirements of § 264.1083(a) of this subpart. The waste determination for a hazardous waste at the point of waste treatment shall be performed in accordance with the applicable requirements of § 264.1083(b) of this subpart.

(2) In performing a waste determination pursuant to paragraph (d)(1) of this section, the sample preparation and analysis shall be conducted as follows:

(i) In accordance with the method used by the owner or operator to perform the waste analysis, except in the case specified in paragraph (d)(2)(ii) of this section.

(ii) If the Regional Administrator determines that the method used by the owner or operator was not appropriate for the hazardous waste managed in the tank, surface impoundment, or container, then the Regional Administrator may choose an appropriate method.

(3) In a case when the owner or operator is requested to perform the waste determination, the Regional Administrator may elect to have an authorized representative observe the collection of the hazardous waste samples used for the analysis.

(4) In a case when the results of the waste determination performed or requested by the Regional Administrator do not agree with the results of a waste determination performed by the owner or operator using knowledge of the waste, then the results of the waste determination performed in accordance with the requirements of paragraph (d)(1) of this section shall be used to establish compliance with the requirements of this subpart.

(5) In a case when the owner or operator has used an averaging period greater than 1 hour for determining the average VO concentration of a hazardous waste at the point of waste origination, the Regional Administrator may elect to establish compliance with this subpart by performing or requesting that the owner or operator perform a waste determination using direct measurement based on waste samples collected within a 1-hour period as follows:

(i) The average VO concentration of the hazardous waste at the point of waste origination shall be determined by direct measurement in accordance with the requirements of § 264.1083(a) of this subpart.

(ii) Results of the waste determination performed or requested by the Regional Administrator showing that the average VO concentration of the hazardous waste at the point of waste origination is equal to or greater than 500 ppmw shall constitute noncompliance with this subpart except in a case as provided for in paragraph (d)(5)(iii) of this section.

(iii) For the case when the average VO concentration of the hazardous waste at the point of waste origination previously has been determined by the owner or operator using an averaging period greater than 1 hour to be less than 500 ppmw but because of normal operating process variations the VO concentration of the hazardous waste determined by direct measurement for any given 1-hour period may be equal to or greater than 500 ppmw, information that was used by the owner or operator to determine the average VO concentration of the hazardous waste (e.g., test results, measurements, calculations, and other documentation) and recorded in the facility records in accordance with the requirements of § 264.1083(a) and § 264.1089 of this subpart shall be considered by the Regional Administrator together with the results of the waste determination performed or requested by the Regional Administrator in establishing compliance with this subpart.

17. Section 264.1083 is revised to read as follows:

§ 264.1083 Waste determination procedures.

(a) Waste determination procedure to determine average volatile organic (VO) concentration of a hazardous waste at the point of waste origination.

(1) An owner or operator shall determine the average VO concentration at the point of waste origination for each hazardous waste placed in a waste management unit exempted under the provisions of § 264.1082(c)(1) of this subpart from using air emission controls in accordance with standards specified in § 264.1084 through § 264.1087 of this subpart, as applicable to the waste management unit.

(2) The average VO concentration of a hazardous waste at the point of waste origination may be determined in accordance with the procedures

specified in 40 CFR 265.1084 (a)(2) through (a)(4).

(b) Waste determination procedures for treated hazardous waste.

(1) An owner or operator shall perform the applicable waste determination for each treated hazardous waste placed in a waste management unit exempted under the provisions of § 264.1082(c)(2) of this subpart from using air emission controls in accordance with standards specified in § 264.1084 through § 264.1087 of this subpart, as applicable to the waste management unit.

(2) The waste determination for a treated hazardous waste shall be performed in accordance with the procedures specified in 40 CFR 265.1084 (b)(2) through (b)(9), as applicable to the treated hazardous waste.

(c) Procedure to determine the maximum organic vapor pressure of a hazardous waste in a tank.

(1) An owner or operator shall determine the maximum organic vapor pressure for each hazardous waste placed in a tank using Tank Level 1 controls in accordance with standards specified in § 264.1084(c) of this subpart.

(2) The maximum organic vapor pressure of the hazardous waste may be determined in accordance with the procedures specified in 40 CFR 265.1084 (c)(2) through (c)(4).

(d) The procedure for determining no detectable organic emissions for the purpose of complying with this subpart shall be conducted in accordance with the procedures specified in 40 CFR 265.1084(d).

18. Section 264.1084 is revised to read as follows:

§ 264.1084 Standards: Tanks.

(a) The provisions of this section apply to the control of air pollutant emissions from tanks for which § 264.1082(b) of this subpart references the use of this section for such air emission control.

(b) The owner or operator shall control air pollutant emissions from each tank subject to this section in accordance with the following requirements as applicable:

(1) For a tank that manages hazardous waste that meets all of the conditions specified in paragraphs (b)(1)(i) through (b)(1)(iii) of this section, the owner or operator shall control air pollutant emissions from the tank in accordance with the Tank Level 1 controls specified in paragraph (c) of this section or the Tank Level 2 controls specified in paragraph (d) of this section.

(i) The hazardous waste in the tank has a maximum organic vapor pressure which is less than the maximum organic vapor pressure limit for the tank's design capacity category as follows:

(A) For a tank design capacity equal to or greater than 151 m^3, the maximum organic vapor pressure limit for the tank is 5.2 kPa.

(B) For a tank design capacity equal to or greater than 75 m^3 but less than 151 m^3, the maximum organic vapor pressure limit for the tank is 27.6 kPa.

(C) For a tank design capacity less than 75 m^3, the maximum organic vapor pressure limit for the tank is 76.6 kPa.

(ii) The hazardous waste in the tank is not heated by the owner or operator to a temperature that is greater than the temperature at which the maximum organic vapor pressure of the hazardous waste is determined for the purpose of complying with paragraph (b)(1)(i) of this section.

(iii) The hazardous waste in the tank is not treated by the owner or operator using a waste stabilization process, as defined in 40 CFR 265.1081.

(2) For a tank that manages hazardous waste that does not meet all of the conditions specified in paragraphs (b)(1)(i) through (b)(1)(iii) of this section, the owner or operator shall control air pollutant emissions from the tank by using Tank Level 2 controls in accordance with the requirements of paragraph (d) of this section. Examples of tanks required to use Tank Level 2 controls include: A tank used for a waste stabilization process; and a tank for which the hazardous waste in the tank has a maximum organic vapor pressure that is equal to or greater than the maximum organic vapor pressure limit for the tank's design capacity category as specified in paragraph (b)(1)(i) of this section.

(c) Owners and operators controlling air pollutant emissions from a tank using Tank Level 1 controls shall meet the requirements specified in paragraphs (c)(1) through (c)(4) of this section:

(1) The owner or operator shall determine the maximum organic vapor pressure for a hazardous waste to be managed in the tank using Tank Level 1 controls before the first time the hazardous waste is placed in the tank. The maximum organic vapor pressure shall be determined using the procedures specified in § 264.1083(c) of this subpart. Thereafter, the owner or operator shall perform a new determination whenever changes to the hazardous waste managed in the tank could potentially cause the maximum organic vapor pressure to increase to a level that is equal to or greater than the maximum organic vapor pressure limit for the tank design capacity category specified in paragraph (b)(1)(i) of this section, as applicable to the tank.

(2) The tank shall be equipped with a fixed roof designed to meet the following specifications:

(i) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the hazardous waste in the tank. The fixed roof may be a separate cover installed on the tank (e.g., a removable cover mounted on an open-top tank) or may be an integral part of the tank structural design (e.g., a horizontal cylindrical tank equipped with a hatch).

(ii) The fixed roof shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between roof section joints or between the interface of the roof edge and the tank wall.

(iii) Each opening in the fixed roof shall be either:

(A) Equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the opening and the closure device; or

(B) Connected by a closed-vent system that is vented to a control device. The control device shall remove or destroy organics in the vent stream, and it shall be operating whenever hazardous waste is managed in the tank.

(iv) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: Organic vapor permeability, the effects of any contact with the hazardous waste or its vapors managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(3) Whenever a hazardous waste is in the tank, the fixed roof shall be installed with each closure device secured in the closed position except as follows:

(i) Opening of closure devices or removal of the fixed roof is allowed at the following times:

(A) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such

activities include those times when a worker needs to open a port to sample the liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

(B) To remove accumulated sludge or other residues from the bottom of tank.

(ii) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the tank internal pressure in accordance with the tank design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the tank internal pressure is within the internal pressure operating range determined by the owner or operator based on the tank manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the tank internal pressure exceeds the internal pressure operating range for the tank as a result of loading operations or diurnal ambient temperature fluctuations.

(iii) Opening of a safety device, as defined in 40 CFR 265.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator shall inspect the air emission control equipment in accordance with the following requirements.

(i) The fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The owner or operator shall perform an initial inspection of the fixed roof and its closure devices on or before the date that the tank becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except under the special conditions provided for in paragraph (l) of this section.

(iii) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(iv) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 264.1089(b) of this subpart.

(d) Owners and operators controlling air pollutant emissions from a tank using Tank Level 2 controls shall use one of the following tanks:

(1) A fixed-roof tank equipped with an internal floating roof in accordance with the requirements specified in paragraph (e) of this section;

(2) A tank equipped with an external floating roof in accordance with the requirements specified in paragraph (f) of this section;

(3) A tank vented through a closed-vent system to a control device in accordance with the requirements specified in paragraph (g) of this section;

(4) A pressure tank designed and operated in accordance with the requirements specified in paragraph (h) of this section; or

(5) A tank located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control device in accordance with the requirements specified in paragraph (i) of this section.

(e) The owner or operator who controls air pollutant emissions from a tank using a fixed roof with an internal floating roof shall meet the requirements specified in paragraphs (e)(1) through (e)(3) of this section.

(1) The tank shall be equipped with a fixed roof and an internal floating roof in accordance with the following requirements:

(i) The internal floating roof shall be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.

(ii) The internal floating roof shall be equipped with a continuous seal between the wall of the tank and the floating roof edge that meets either of the following requirements:

(A) A single continuous seal that is either a liquid-mounted seal or a metallic shoe seal, as defined in 40 CFR 265.1081; or

(B) Two continuous seals mounted one above the other. The lower seal may be a vapor-mounted seal.

(iii) The internal floating roof shall meet the following specifications:

(A) Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and the rim space vents is to provide a projection below the liquid surface.

(B) Each opening in the internal floating roof shall be equipped with a gasketed cover or a gasketed lid except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains.

(C) Each penetration of the internal floating roof for the purpose of sampling shall have a slit fabric cover that covers at least 90 percent of the opening.

(D) Each automatic bleeder vent and rim space vent shall be gasketed.

(E) Each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover.

(F) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.

(2) The owner or operator shall operate the tank in accordance with the following requirements:

(i) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be completed as soon as practical.

(ii) Automatic bleeder vents are to be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(iii) Prior to filling the tank, each cover, access hatch, gauge float well or lid on any opening in the internal floating roof shall be bolted or fastened closed (i.e., no visible gaps). Rim space vents are to be set to open only when the internal floating roof is not floating or when the pressure beneath the rim exceeds the manufacturer's recommended setting.

(3) The owner or operator shall inspect the internal floating roof in accordance with the procedures specified as follows:

(i) The floating roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: The internal floating roof is not floating on the surface of the liquid inside the tank; liquid has accumulated on top of the internal floating roof; any portion of the roof seals have detached from the roof rim; holes, tears, or other openings are visible in the seal fabric; the gaskets no longer close off the

hazardous waste surface from the atmosphere; or the slotted membrane has more than 10 percent open area.

(ii) The owner or operator shall inspect the internal floating roof components as follows except as provided in paragraph (e)(3)(iii) of this section:

(A) Visually inspect the internal floating roof components through openings on the fixed-roof (e.g., manholes and roof hatches) at least once every 12 months after initial fill, and

(B) Visually inspect the internal floating roof, primary seal, secondary seal (if one is in service), gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every 10 years.

(iii) As an alternative to performing the inspections specified in paragraph (e)(3)(ii) of this section for an internal floating roof equipped with two continuous seals mounted one above the other, the owner or operator may visually inspect the internal floating roof, primary and secondary seals, gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every 5 years.

(iv) Prior to each inspection required by paragraph (e)(3)(ii) or (e)(3)(iii) of this section, the owner or operator shall notify the Regional Administrator in advance of each inspection to provide the Regional Administrator with the opportunity to have an observer present during the inspection. The owner or operator shall notify the Regional Administrator of the date and location of the inspection as follows:

(A) Prior to each visual inspection of an internal floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the owner or operator so that it is received by the Regional Administrator at least 30 calendar days before refilling the tank except when an inspection is not planned as provided for in paragraph (e)(3)(iv)(B) of this section.

(B) When a visual inspection is not planned and the owner or operator could not have known about the inspection 30 calendar days before refilling the tank, the owner or operator shall notify the Regional Administrator as soon as possible, but no later than 7 calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Regional Administrator at least 7 calendar days before refilling the tank.

(v) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(vi) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 264.1089(b) of this subpart.

(f) The owner or operator who controls air pollutant emissions from a tank using an external floating roof shall meet the requirements specified in paragraphs (f)(1) through (f)(3) of this section.

(1) The owner or operator shall design the external floating roof in accordance with the following requirements:

(i) The external floating roof shall be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.

(ii) The floating roof shall be equipped with two continuous seals, one above the other, between the wall of the tank and the roof edge. The lower seal is referred to as the primary seal, and the upper seal is referred to as the secondary seal.

(A) The primary seal shall be a liquid-mounted seal or a metallic shoe seal, as defined in 40 CFR 265.1081. The total area of the gaps between the tank wall and the primary seal shall not exceed 212 square centimeters (cm^2) per meter of tank diameter, and the width of any portion of these gaps shall not exceed 3.8 centimeters (cm). If a metallic shoe seal is used for the primary seal, the metallic shoe seal shall be designed so that one end extends into the liquid in the tank and the other end extends a vertical distance of at least 61 centimeters above the liquid surface.

(B) The secondary seal shall be mounted above the primary seal and cover the annular space between the floating roof and the wall of the tank. The total area of the gaps between the tank wall and the secondary seal shall not exceed 21.2 square centimeters (cm^2) per meter of tank diameter, and the width of any portion of these gaps shall not exceed 1.3 centimeters (cm).

(iii) The external floating roof shall meet the following specifications:

(A) Except for automatic bleeder vents (vacuum breaker vents) and rim space vents, each opening in a noncontact external floating roof shall provide a projection below the liquid surface.

(B) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be equipped with a gasketed cover, seal, or lid.

(C) Each access hatch and each gauge float well shall be equipped with a cover designed to be bolted or fastened when the cover is secured in the closed position.

(D) Each automatic bleeder vent and each rim space vent shall be equipped with a gasket.

(E) Each roof drain that empties into the liquid managed in the tank shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

(F) Each unslotted and slotted guide pole well shall be equipped with a gasketed sliding cover or a flexible fabric sleeve seal.

(G) Each unslotted guide pole shall be equipped with a gasketed cap on the end of the pole.

(H) Each slotted guide pole shall be equipped with a gasketed float or other device which closes off the liquid surface from the atmosphere.

(I) Each gauge hatch and each sample well shall be equipped with a gasketed cover.

(2) The owner or operator shall operate the tank in accordance with the following requirements:

(i) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be completed as soon as practical.

(ii) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be secured and maintained in a closed position at all times except when the closure device must be open for access.

(iii) Covers on each access hatch and each gauge float well shall be bolted or fastened when secured in the closed position.

(iv) Automatic bleeder vents shall be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(v) Rim space vents shall be set to open only at those times that the roof is being floated off the roof leg supports or when the pressure beneath the rim seal exceeds the manufacturer's recommended setting.

(vi) The cap on the end of each unslotted guide pole shall be secured in the closed position at all times except when measuring the level or collecting samples of the liquid in the tank.

(vii) The cover on each gauge hatch or sample well shall be secured in the closed position at all times except when the hatch or well must be opened for access.

(viii) Both the primary seal and the secondary seal shall completely cover

the annular space between the external floating roof and the wall of the tank in a continuous fashion except during inspections.

(3) The owner or operator shall inspect the external floating roof in accordance with the procedures specified as follows:

(i) The owner or operator shall measure the external floating roof seal gaps in accordance with the following requirements:

(A) The owner or operator shall perform measurements of gaps between the tank wall and the primary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every 5 years.

(B) The owner or operator shall perform measurements of gaps between the tank wall and the secondary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every year.

(C) If a tank ceases to hold hazardous waste for a period of 1 year or more, subsequent introduction of hazardous waste into the tank shall be considered an initial operation for the purposes of paragraphs (f)(3)(i)(A) and (f)(3)(i)(B) of this section.

(D) The owner or operator shall determine the total surface area of gaps in the primary seal and in the secondary seal individually using the following procedure:

(*1*) The seal gap measurements shall be performed at one or more floating roof levels when the roof is floating off the roof supports.

(*2*) Seal gaps, if any, shall be measured around the entire perimeter of the floating roof in each place where a 0.32-centimeter (cm) diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the tank and measure the circumferential distance of each such location.

(*3*) For a seal gap measured under paragraph (f)(3) of this section, the gap surface area shall be determined by using probes of various widths to measure accurately the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.

(*4*) The total gap area shall be calculated by adding the gap surface areas determined for each identified gap location for the primary seal and the secondary seal individually, and then dividing the sum for each seal type by the nominal perimeter of the tank. These total gap areas for the primary seal and secondary seal are then compared to the respective standards for the seal type as specified in paragraph (f)(1)(ii) of this section.

(E) In the event that the seal gap measurements do not conform to the specifications in paragraph (f)(1)(ii) of this section, the owner or operator shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(F) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 264.1089(b) of this subpart.

(ii) The owner or operator shall visually inspect the external floating roof in accordance with the following requirements:

(A) The floating roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: Holes, tears, or other openings in the rim seal or seal fabric of the floating roof; a rim seal detached from the floating roof; all or a portion of the floating roof deck being submerged below the surface of the liquid in the tank; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(B) The owner or operator shall perform an initial inspection of the external floating roof and its closure devices on or before the date that the tank becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in paragraph (l) of this section.

(C) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(D) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 264.1089(b) of this subpart.

(iii) Prior to each inspection required by paragraph (f)(3)(i) or (f)(3)(ii) of this subpart, the owner or operator shall notify the Regional Administrator in advance of each inspection to provide the Regional Administrator with the opportunity to have an observer present during the inspection. The owner or operator shall notify the Regional Administrator of the date and location of the inspection as follows:

(A) Prior to each inspection to measure external floating roof seal gaps as required under paragraph (f)(3)(i) of this section, written notification shall be prepared and sent by the owner or operator so that it is received by the Regional Administrator at least 30 calendar days before the date the measurements are scheduled to be performed.

(B) Prior to each visual inspection of an external floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the owner or operator so that it is received by the Regional Administrator at least 30 calendar days before refilling the tank except when an inspection is not planned as provided for in paragraph (f)(3)(iii)(C) of this section.

(C) When a visual inspection is not planned and the owner or operator could not have known about the inspection 30 calendar days before refilling the tank, the owner or operator shall notify the Regional Administrator as soon as possible, but no later than 7 calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Regional Administrator at least 7 calendar days before refilling the tank.

(g) The owner or operator who controls air pollutant emissions from a tank by venting the tank to a control device shall meet the requirements specified in paragraphs (g)(1) through (g)(3) of this section.

(1) The tank shall be covered by a fixed roof and vented directly through a closed-vent system to a control device in accordance with the following requirements:

(i) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the tank.

(ii) Each opening in the fixed roof not vented to the control device shall be equipped with a closure device. If the pressure in the vapor headspace underneath the fixed roof is less than atmospheric pressure when the control device is operating, the closure devices shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the fixed roof is equal to or greater than atmospheric pressure when the control device is operating, the closure device shall be designed to operate with no detectable organic emissions.

(iii) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: Organic vapor permeability, the effects of any contact with the liquid and its vapor managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(iv) The closed-vent system and control device shall be designed and operated in accordance with the requirements of § 264.1087 of this subpart.

(2) Whenever a hazardous waste is in the tank, the fixed roof shall be installed with each closure device secured in the closed position and the vapor headspace underneath the fixed roof vented to the control device except as follows:

(i) Venting to the control device is not required, and opening of closure devices or removal of the fixed roof is allowed at the following times:

(A) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

(B) To remove accumulated sludge or other residues from the bottom of a tank.

(ii) Opening of a safety device, as defined in 40 CFR 265.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The owner or operator shall inspect and monitor the air emission control equipment in accordance with the following procedures:

(i) The fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The closed-vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in § 264.1087 of this subpart.

(iii) The owner or operator shall perform an initial inspection of the air emission control equipment on or before the date that the tank becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in paragraph (l) of this section.

(iv) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(v) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 264.1089(b) of this subpart.

(h) The owner or operator who controls air pollutant emissions by using a pressure tank shall meet the following requirements.

(1) The tank shall be designed not to vent to the atmosphere as a result of compression of the vapor headspace in the tank during filling of the tank to its design capacity.

(2) All tank openings shall be equipped with closure devices designed to operate with no detectable organic emissions as determined using the procedure specified in § 264.1083(d) of this subpart.

(3) Whenever a hazardous waste is in the tank, the tank shall be operated as a closed system that does not vent to the atmosphere except in the event that a safety device, as defined in 40 CFR 265.1081, is required to open to avoid an unsafe condition.

(i) The owner or operator who controls air pollutant emissions by using an enclosure vented through a closed-vent system to an enclosed combustion control device shall meet the requirements specified in paragraphs (i)(1) through (i)(4) of this section.

(1) The tank shall be located inside an enclosure. The enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' initially when the enclosure is first installed and, thereafter, annually.

(2) The enclosure shall be vented through a closed-vent system to an enclosed combustion control device that is designed and operated in accordance with the standards for either a vapor incinerator, boiler, or process heater specified in § 264.1087 of this subpart.

(3) Safety devices, as defined in 40 CFR 265.1081, may be installed and operated as necessary on any enclosure, closed-vent system, or control device used to comply with the requirements of paragraphs (i)(1) and (i)(2) of this section.

(4) The owner or operator shall inspect and monitor the closed-vent system and control device as specified in § 264.1087 of this subpart.

(j) The owner or operator shall transfer hazardous waste to a tank subject to this section in accordance with the following requirements:

(1) Transfer of hazardous waste, except as provided in paragraph (j)(2) of this section, to the tank from another tank subject to this section or from a surface impoundment subject to § 264.1085 of this subpart shall be conducted using continuous hard-piping or another closed system that does not allow exposure of the hazardous waste to the atmosphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system when it meets the requirements of 40 CFR part 63, subpart RR—National Emission Standards for Individual Drain Systems.

(2) The requirements of paragraph (j)(1) of this section do not apply when transferring a hazardous waste to the tank under any of the following conditions:

(i) The hazardous waste meets the average VO concentration conditions specified in § 264.1082(c)(1) of this subpart at the point of waste origination.

(ii) The hazardous waste has been treated by an organic destruction or removal process to meet the requirements in § 264.1082(c)(2) of this subpart.

(k) The owner or operator shall repair each defect detected during an inspection performed in accordance with the requirements of paragraph (c)(4), (e)(3), (f)(3), or (g)(3) of this section as follows:

(1) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after

detection, and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in paragraph (k)(2) of this section.

(2) Repair of a defect may be delayed beyond 45 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the tank and no alternative tank capacity is available at the site to accept the hazardous waste normally managed in the tank. In this case, the owner or operator shall repair the defect the next time the process or unit that is generating the hazardous waste managed in the tank stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

(l) Following the initial inspection and monitoring of the cover as required by the applicable provisions of this subpart, subsequent inspection and monitoring may be performed at intervals longer than 1 year under the following special conditions:

(1) In the case when inspecting or monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions, then the owner or operator may designate a cover as an ''unsafe to inspect and monitor cover'' and comply with all of the following requirements:

(i) Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required.

(ii) Develop and implement a written plan and schedule to inspect and monitor the cover, using the procedures specified in the applicable section of this subpart, as frequently as practicable during those times when a worker can safely access the cover.

(2) In the case when a tank is buried partially or entirely underground, an owner or operator is required to inspect and monitor, as required by the applicable provisions of this section, only those portions of the tank cover and those connections to the tank (e.g., fill ports, access hatches, gauge wells, etc.) that are located on or above the ground surface.

19. Section 264.1085 is revised to read as follows:

§ 264.1085 Standards: Surface impoundments.

(a) The provisions of this section apply to the control of air pollutant emissions from surface impoundments for which § 264.1082(b) of this subpart references the use of this section for such air emission control.

(b) The owner or operator shall control air pollutant emissions from the surface impoundment by installing and operating either of the following:

(1) A floating membrane cover in accordance with the provisions specified in paragraph (c) of this section; or

(2) A cover that is vented through a closed-vent system to a control device in accordance with the provisions specified in paragraph (d) of this sections.

(c) The owner or operator who controls air pollutant emissions from a surface impoundment using a floating membrane cover shall meet the requirements specified in paragraphs (c)(1) through (c)(3) of this section.

(1) The surface impoundment shall be equipped with a floating membrane cover designed to meet the following specifications:

(i) The floating membrane cover shall be designed to float on the liquid surface during normal operations and form a continuous barrier over the entire surface area of the liquid.

(ii) The cover shall be fabricated from a synthetic membrane material that is either:

(A) High density polyethylene (HDPE) with a thickness no less than 2.5 millimeters (mm); or

(B) A material or a composite of different materials determined to have both organic permeability properties that are equivalent to those of the material listed in paragraph (c)(1)(ii)(A) of this section and chemical and physical properties that maintain the material integrity for the intended service life of the material.

(iii) The cover shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between cover section seams or between the interface of the cover edge and its foundation mountings.

(iv) Except as provided for in paragraph (c)(1)(v) of this section, each opening in the floating membrane cover shall be equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device.

(v) The floating membrane cover may be equipped with one or more emergency cover drains for removal of stormwater. Each emergency cover drain shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening or a flexible fabric sleeve seal.

(vi) The closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the closure devices throughout their intended service life. Factors to be considered when selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability; the effects of any contact with the liquid and its vapor managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the floating membrane cover is installed.

(2) Whenever a hazardous waste is in the surface impoundment, the floating membrane cover shall float on the liquid and each closure device shall be secured in the closed position except as follows:

(i) Opening of closure devices or removal of the cover is allowed at the following times:

(A) To provide access to the surface impoundment for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the surface impoundment, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly replace the cover and secure the closure device in the closed position, as applicable.

(B) To remove accumulated sludge or other residues from the bottom of surface impoundment.

(ii) Opening of a safety device, as defined in 40 CFR 265.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The owner or operator shall inspect the floating membrane cover in accordance with the following procedures:

(i) The floating membrane cover and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover section seams or between the interface of the cover edge and its foundation mountings; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The owner or operator shall perform an initial inspection of the floating membrane cover and its closure devices on or before the date that the surface impoundment becomes subject to this section. Thereafter, the owner or

operator shall perform the inspections at least once every year except for the special conditions provided for in paragraph (g) of this section.

(iii) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (f) of this section.

(iv) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 264.1089(c) of this subpart.

(d) The owner or operator who controls air pollutant emissions from a surface impoundment using a cover vented to a control device shall meet the requirements specified in paragraphs (d)(1) through (d)(3) of this section.

(1) The surface impoundment shall be covered by a cover and vented directly through a closed-vent system to a control device in accordance with the following requirements:

(i) The cover and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the surface impoundment.

(ii) Each opening in the cover not vented to the control device shall be equipped with a closure device. If the pressure in the vapor headspace underneath the cover is less than atmospheric pressure when the control device is operating, the closure devices shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the cover is equal to or greater than atmospheric pressure when the control device is operating, the closure device shall be designed to operate with no detectable organic emissions using the procedure specified in § 264.1083(d) of this subpart.

(iii) The cover and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the cover and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the cover and closure devices shall include: Organic vapor permeability; the effects of any contact with the liquid or its vapors managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the cover is installed.

(iv) The closed-vent system and control device shall be designed and operated in accordance with the requirements of § 264.1087 of this subpart.

(2) Whenever a hazardous waste is in the surface impoundment, the cover shall be installed with each closure device secured in the closed position and the vapor headspace underneath the cover vented to the control device except as follows:

(i) Venting to the control device is not required, and opening of closure devices or removal of the cover is allowed at the following times:

(A) To provide access to the surface impoundment for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the surface impoundment, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the surface impoundment.

(B) To remove accumulated sludge or other residues from the bottom of surface impoundment.

(ii) Opening of a safety device, as defined in 40 CFR 265.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The owner or operator shall inspect and monitor the air emission control equipment in accordance with the following procedures:

(i) The surface impoundment cover and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover section seams or between the interface of the cover edge and its foundation mountings; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The closed-vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in § 264.1087 of this subpart.

(iii) The owner or operator shall perform an initial inspection of the air emission control equipment on or before the date that the surface impoundment becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in paragraph (g) of this section.

(iv) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (f) of this section.

(v) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 264.1089(c) of this subpart.

(e) The owner or operator shall transfer hazardous waste to a surface impoundment subject to this section in accordance with the following requirements:

(1) Transfer of hazardous waste, except as provided in paragraph (e)(2) of this section, to the surface impoundment from another surface impoundment subject to this section or from a tank subject to § 264.1084 of this subpart shall be conducted using continuous hard-piping or another closed system that does not allow exposure of the waste to the atmosphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system when it meets the requirements of 40 CFR part 63, subpart RR—National Emission Standards for Individual Drain Systems.

(2) The requirements of paragraph (e)(1) of this section do not apply when transferring a hazardous waste to the surface impoundment under either of the following conditions:

(i) The hazardous waste meets the average VO concentration conditions specified in § 264.1082(c)(1) of this subpart at the point of waste origination.

(ii) The hazardous waste has been treated by an organic destruction or removal process to meet the requirements in § 264.1082(c)(2) of this subpart.

(f) The owner or operator shall repair each defect detected during an inspection performed in accordance with the requirements of paragraph (c)(3) or (d)(3) of this section as follows:

(1) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after detection and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in paragraph (f)(2) of this section.

(2) Repair of a defect may be delayed beyond 45 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the surface impoundment and no alternative capacity is available at the site to accept

the hazardous waste normally managed in the surface impoundment. In this case, the owner or operator shall repair the defect the next time the process or unit that is generating the hazardous waste managed in the surface impoundment stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

(g) Following the initial inspection and monitoring of the cover as required by the applicable provisions of this subpart, subsequent inspection and monitoring may be performed at intervals longer than 1 year in the case when inspecting or monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions. In this case, the owner or operator may designate the cover as an ''unsafe to inspect and monitor cover'' and comply with all of the following requirements:

(1) Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required.

(2) Develop and implement a written plan and schedule to inspect and monitor the cover using the procedures specified in the applicable section of this subpart as frequently as practicable during those times when a worker can safely access the cover.

20. Section 264.1086 is revised to read as follows:

§ 264.1086 Standards: Containers.

(a) The provisions of this section apply to the control of air pollutant emissions from containers for which § 264.1082(b) of this subpart references the use of this section for such air emission control.

(b) General requirements.

(1) The owner or operator shall control air pollutant emissions from each container subject to this section in accordance with the following requirements, as applicable to the container, except when the special provisions for waste stabilization processes specified in paragraph (b)(2) of this section apply to the container.

(i) For a container having a design capacity greater than 0.1 m^3 and less than or equal to 0.46 m^3, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in paragraph (c) of this section.

(ii) For a container having a design capacity greater than 0.46 m^3 that is not in light material service, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in paragraph (c) of this section.

(iii) For a container having a design capacity greater than 0.46 m^3 that is in light material service, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 2 standards specified in paragraph (d) of this section.

(2) When a container having a design capacity greater than 0.1 m^3 is used for treatment of a hazardous waste by a waste stabilization process, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 3 standards specified in paragraph (e) of this section at those times during the waste stabilization process when the hazardous waste in the container is exposed to the atmosphere.

(c) Container Level 1 standards.

(1) A container using Container Level 1 controls is one of the following:

(i) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in paragraph (f) of this section.

(ii) A container equipped with a cover and closure devices that form a continuous barrier over the container openings such that when the cover and closure devices are secured in the closed position there are no visible holes, gaps, or other open spaces into the interior of the container. The cover may be a separate cover installed on the container (e.g., a lid on a drum or a suitably secured tarp on a roll-off box) or may be an integral part of the container structural design (e.g., a ''portable tank'' or bulk cargo container equipped with a screw-type cap).

(iii) An open-top container in which an organic-vapor suppressing barrier is placed on or over the hazardous waste in the container such that no hazardous waste is exposed to the atmosphere. One example of such a barrier is application of a suitable organic-vapor suppressing foam.

(2) A container used to meet the requirements of paragraph (c)(1)(ii) or (c)(1)(iii) of this section shall be equipped with covers and closure devices, as applicable to the container, that are composed of suitable materials to minimize exposure of the hazardous waste to the atmosphere and to maintain the equipment integrity for as long as it is in service. Factors to be considered in selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability, the effects of contact with the hazardous waste or its vapor managed in the container; the effects of outdoor exposure of the closure device or cover material to wind, moisture, and sunlight; and the operating practices for which the container is intended to be used.

(3) Whenever a hazardous waste is in a container using Container Level 1 controls, the owner or operator shall install all covers and closure devices for the container, as applicable to the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous waste or other material to the container as follows:

(A) In the case when the container is filled to the intended final level in one continuous operation, the owner or operator shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the purpose of removing hazardous waste from the container as follows:

(A) For the purpose of meeting the requirements of this section, an empty container as defined in 40 CFR 261.7(b) may be open to the atmosphere at any time (i.e., covers and closure devices are not required to be secured in the closed position on an empty container).

(B) In the case when discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container as defined in 40 CFR 261.7(b), the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading

operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous waste. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(iv) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(v) Opening of a safety device, as defined in 40 CFR 265.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator of containers using Container Level 1 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied (i.e., does not meet the conditions for an empty container as specified in 40 CFR 261.7(b)) within 24 hours after the container is accepted at the facility, the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c)(4)(iii) of this section.

(ii) In the case when a container used for managing hazardous waste remains at the facility for a period of 1 year or more, the owner or operator shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c)(4)(iii) of this section.

(iii) When a defect is detected for the container, cover, or closure devices, the owner or operator shall make first efforts at repair of the defect no later than 24 hours after detection and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous waste shall be removed from the container and the container shall not be used to manage hazardous waste until the defect is repaired.

(5) The owner or operator shall maintain at the facility a copy of the procedure used to determine that containers with capacity of 0.46 m^3 or greater, which do not meet applicable DOT regulations as specified in paragraph (f) of this section, are not managing hazardous waste in light material service.

(d) Container Level 2 standards.

(1) A container using Container Level 2 controls is one of the following:

(i) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in paragraph (f) of this section.

(ii) A container that operates with no detectable organic emissions as defined in 40 CFR 265.1081 and determined in accordance with the procedure specified in paragraph (g) of this section.

(iii) A container that has been demonstrated within the preceding 12 months to be vapor-tight by using 40 CFR part 60, appendix A, Method 27 in accordance with the procedure specified in paragraph (h) of this section.

(2) Transfer of hazardous waste in or out of a container using Container Level 2 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the EPA considers to meet the requirements of this paragraph include using any one of the following: a submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

(3) Whenever a hazardous waste is in a container using Container Level 2 controls, the owner or operator shall install all covers and closure devices for the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous waste or other material to the container as follows:

(A) In the case when the container is filled to the intended final level in one continuous operation, the owner or operator shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the purpose of

removing hazardous waste from the container as follows:

(A) For the purpose of meeting the requirements of this section, an empty container as defined in 40 CFR 261.7(b) may be open to the atmosphere at any time (i.e., covers and closure devices are not required to be secured in the closed position on an empty container).

(B) In the case when discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container as defined in 40 CFR 261.7(b), the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous waste.

Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(iv) Opening of a spring-loaded, pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emission when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(v) Opening of a safety device, as defined in 40 CFR 265.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator of containers using Container Level 2 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied (i.e., does not meet the conditions for an empty container as specified in 40 CFR 261.7(b)) within 24 hours after the container arrives at the facility, the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d)(4)(iii) of this section.

(ii) In the case when a container used for managing hazardous waste remains at the facility for a period of 1 year or more, the owner or operator shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d)(4)(iii) of this section.

(iii) When a defect is detected for the container, cover, or closure devices, the owner or operator shall make first efforts at repair of the defect no later than 24 hours after detection, and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous waste shall be removed from the container and the container shall not be used to manage hazardous waste until the defect is repaired.

(e) Container Level 3 standards.

(1) A container using Container Level 3 controls is one of the following:

(i) A container that is vented directly through a closed-vent system to a control device in accordance with the requirements of paragraph (e)(2)(ii) of this section.

(ii) A container that is vented inside an enclosure which is exhausted through a closed-vent system to a control device in accordance with the requirements of paragraphs (e)(2)(i) and (e)(2)(ii) of this section.

(2) The owner or operator shall meet the following requirements, as applicable to the type of air emission control equipment selected by the owner or operator:

(i) The container enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' initially when the enclosure is first installed and, thereafter, annually.

(ii) The closed-vent system and control device shall be designed and operated in accordance with the requirements of § 264.1087 of this subpart.

(3) Safety devices, as defined in 40 CFR 265.1081, may be installed and operated as necessary on any container, enclosure, closed-vent system, or control device used to comply with the requirements of paragraph (e)(1) of this section.

(4) Owners and operators using Container Level 3 controls in accordance with the provisions of this subpart shall inspect and monitor the closed-vent systems and control devices as specified in § 264.1087 of this subpart.

(5) Owners and operators that use Container Level 3 controls in accordance with the provisions of this subpart shall prepare and maintain the records specified in § 264.1089(d) of this subpart.

(f) For the purpose of compliance with paragraph (c)(1)(i) or (d)(1)(i) of this section, containers shall be used that meet the applicable U.S. Department of Transportation (DOT)

regulations on packaging hazardous materials for transportation as follows:

(1) The container meets the applicable requirements specified in 49 CFR part 178—Specifications for Packaging or 49 CFR part 179—Specifications for Tank Cars.

(2) Hazardous waste is managed in the container in accordance with the applicable requirements specified in 49 CFR part 107, subpart B—Exemptions; 49 CFR part 172—Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements; 49 CFR part 173—Shippers—General Requirements for Shipments and Packages; and 49 CFR part 180—Continuing Qualification and Maintenance of Packagings.

(3) For the purpose of complying with this subpart, no exceptions to the 49 CFR part 178 or part 179 regulations are allowed except as provided for in paragraph (f)(4) of this section.

(4) For a lab pack that is managed in accordance with the requirements of 49 CFR part 178 for the purpose of complying with this subpart, an owner or operator may comply with the exceptions for combination packagings specified in 49 CFR 173.12(b).

(g) The owner or operator shall use the procedure specified in § 264.1083(d) of this subpart for determining a container operates with no detectable organic emissions for the purpose of complying with paragraph (d)(1)(ii) of this section.

(1) Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the container, its cover, and associated closure devices, as applicable to the container, shall be checked. Potential leak interfaces that are associated with containers include, but are not limited to: The interface of the cover rim and the container wall; the periphery of any opening on the container or container cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed when the container is filled with a material having a volatile organic concentration representative of the range of volatile organic concentrations for the hazardous wastes expected to be managed in this type of container. During the test, the container cover and closure devices shall be secured in the closed position.

(h) Procedure for determining a container to be vapor-tight using Method 27 of 40 CFR part 60, appendix A for the purpose of complying with paragraph (d)(1)(iii) of this section.

(1) The test shall be performed in accordance with Method 27 of 40 CFR part 60, appendix A of this chapter.

(2) A pressure measurement device shall be used that has a precision of ± 2.5 mm water and that is capable of measuring above the pressure at which the container is to be tested for vapor tightness.

(3) If the test results determined by Method 27 indicate that the container sustains a pressure change less than or equal to 750 Pascals within 5 minutes after it is pressurized to a minimum of 4,500 Pascals, then the container is determined to be vapor-tight.

21. Section 264.1087 is amended by revising paragraph (b)(3), adding paragraph (b)(4), revising paragraphs (c)(2), (c)(3)(ii), and (c)(5)(i) (D)–(E), and adding paragraph (c)(7) to read as follows:

§ 264.1087 Standards: Closed-vent systems and control devices.

* * * * *

(b) * * *

(3) In the case when the closed-vent system includes bypass devices that could be used to divert the gas or vapor stream to the atmosphere before entering the control device, each bypass device shall be equipped with either a flow indicator as specified in paragraph (b)(3)(i) of this section or a seal or locking device as specified in paragraph (b)(3)(ii) of this section. For the purpose of complying with this paragraph, low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, spring loaded pressure relief valves, and other fittings used for safety purposes are not considered to be bypass devices.

(i) If a flow indicator is used to comply with paragraph (b)(3) of this section, the indicator shall be installed at the inlet to the bypass line used to divert gases and vapors from the closed-vent system to the atmosphere at a point upstream of the control device inlet. For this paragraph, a flow indicator means a device which indicates the presence of either gas or vapor flow in the bypass line.

(ii) If a seal or locking device is used to comply with paragraph (b)(3) of this section, the device shall be placed on the mechanism by which the bypass device position is controlled (e.g., valve handle, damper lever) when the bypass device is in the closed position such that the bypass device cannot be opened without breaking the seal or removing the lock. Examples of such devices include, but are not limited to, a car-seal or a lock-and-key configuration valve. The owner or operator shall visually inspect the seal or closure mechanism at least once every month to verify that the bypass mechanism is maintained in the closed position.

(4) The closed-vent system shall be inspected and monitored by the owner or operator in accordance with the procedure specified in § 264.1033(l).

(c) * * *

(2) The owner or operator who elects to use a closed-vent system and control device to comply with the requirements of this section shall comply with the requirements specified in paragraphs (c)(2)(i) through (c)(2)(vi) of this section.

(i) Periods of planned routine maintenance of the control device, during which the control device does not meet the specifications of paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this section, as applicable, shall not exceed 240 hours per year.

(ii) The specifications and requirements in paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(iii) of this section for control devices do not apply during periods of planned routine maintenance.

(iii) The specifications and requirements in paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(iii) of this section for control devices do not apply during a control device system malfunction.

(iv) The owner or operator shall demonstrate compliance with the requirements of paragraph (c)(2)(i) of this section (i.e., planned routine maintenance of a control device, during which the control device does not meet the specifications of paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this section, as applicable, shall not exceed 240 hours per year) by recording the information specified in § 264.1089(e)(1)(v) of this subpart.

(v) The owner or operator shall correct control device system malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of air pollutants.

(vi) The owner or operator shall operate the closed-vent system such that gases, vapors, or fumes are not actively vented to the control device during periods of planned maintenance or control device system malfunction (i.e., periods when the control device is not operating or not operating normally) except in cases when it is necessary to vent the gases, vapors, and/or fumes to avoid an unsafe condition or to implement malfunction corrective actions or planned maintenance actions.

(3) * * *

(i) * * *

(ii) All carbon removed from the control device shall be managed in accordance with the requirements of 40 CFR 264.1033(n).

* * * * *

(5) * * *

(i) * * *

(D) A boiler or industrial furnace burning hazardous waste for which the owner or operator has been issued a final permit under 40 CFR part 270 and has designed and operates the unit in accordance with the requirements of 40 CFR part 266, subpart H; or

(E) A boiler or industrial furnace burning hazardous waste for which the owner or operator has designed and operates in accordance with the interim status requirements of 40 CFR part 266, subpart H.

* * * * *

(7) The control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in 40 CFR 264.1033(f)(2) and 40 CFR 264.1033(l). The readings from each monitoring device required by 40 CFR 264.1033(f)(2) shall be inspected at least once each operating day to check control device operation. Any necessary corrective measures shall be immediately implemented to ensure the control device is operated in compliance with the requirements of this section.

22. Section 264.1088 is revised to read as follows:

§ 264.1088 Inspection and monitoring requirements.

(a) The owner or operator shall inspect and monitor air emission control equipment used to comply with this subpart in accordance with the applicable requirements specified in § 264.1084 through § 264.1087 of this subpart.

(b) The owner or operator shall develop and implement a written plan and schedule to perform the inspections and monitoring required by paragraph (a) of this section. The owner or operator shall incorporate this plan and schedule into the facility inspection plan required under 40 CFR 264.15.

23. Section 264.1089 is revised to read as follows:

§ 264.1089 Recordkeeping requirements.

(a) Each owner or operator of a facility subject to requirements in this subpart shall record and maintain the information specified in paragraphs (b) through (i) of this section, as applicable to the facility. Except for air emission control equipment design documentation and information required by paragraph (i) of this section, records required by this section shall be maintained in the operating record for a minimum of 3 years. Air emission control equipment design documentation shall be maintained in the operating record until the air emission control equipment is replaced or otherwise no longer in service. Information required by paragraph (i) of this section shall be maintained in the operating record for as long as the tank or container is not using air emission controls specified in §§ 264.1084 through 264.1087 of this subpart in accordance with the conditions specified in § 264.1084(d) of this subpart.

(b) The owner or operator of a tank using air emission controls in accordance with the requirements of § 264.1084 of this subpart shall prepare and maintain records for the tank that include the following information:

(1) For each tank using air emission controls in accordance with the requirements of § 264.1084 of this subpart, the owner or operator shall record:

(i) A tank identification number (or other unique identification description as selected by the owner or operator).

(ii) A record for each inspection required by § 264.1084 of this subpart that includes the following information:

(A) Date inspection was conducted.

(B) For each defect detected during the inspection, the following information: The location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the provisions of § 264.1084 of this subpart, the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(2) In addition to the information required by paragraph (b)(1) of this section, the owner or operator shall record the following information, as applicable to the tank:

(i) The owner or operator using a fixed roof to comply with the Tank Level 1 control requirements specified in § 264.1084(c) of this subpart shall prepare and maintain records for each determination for the maximum organic vapor pressure of the hazardous waste in the tank performed in accordance with the requirements of § 264.1084(c) of this subpart. The records shall include the date and time the samples were collected, the analysis method used, and the analysis results.

(ii) The owner or operator using an internal floating roof to comply with the Tank Level 2 control requirements specified in § 264.1084(e) of this subpart shall prepare and maintain documentation describing the floating roof design.

(iii) Owners and operators using an external floating roof to comply with the Tank Level 2 control requirements specified in § 264.1084(f) of this subpart shall prepare and maintain the following records:

(A) Documentation describing the floating roof design and the dimensions of the tank.

(B) Records for each seal gap inspection required by § 264.1084(f)(3) of this subpart describing the results of the seal gap measurements. The records shall include the date that the measurements were performed, the raw data obtained for the measurements, and the calculations of the total gap surface area. In the event that the seal gap measurements do not conform to the specifications in § 264.1084(f)(1) of this subpart, the records shall include a description of the repairs that were made, the date the repairs were made, and the date the tank was emptied, if necessary.

(iv) Each owner or operator using an enclosure to comply with the Tank Level 2 control requirements specified in § 264.1084(i) of this subpart shall prepare and maintain the following records:

(A) Records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' under 40 CFR 52.741, appendix B.

(B) Records required for the closed-vent system and control device in accordance with the requirements of paragraph (e) of this section.

(c) The owner or operator of a surface impoundment using air emission controls in accordance with the requirements of § 264.1085 of this subpart shall prepare and maintain records for the surface impoundment that include the following information:

(1) A surface impoundment identification number (or other unique identification description as selected by the owner or operator).

(2) Documentation describing the floating membrane cover or cover design, as applicable to the surface impoundment, that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the specifications listed in § 264.1085(c) of this subpart.

(3) A record for each inspection required by § 264.1085 of this subpart that includes the following information:

(i) Date inspection was conducted.

(ii) For each defect detected during the inspection the following information: The location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the provisions of § 264.1085(f) of this subpart, the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(4) For a surface impoundment equipped with a cover and vented through a closed-vent system to a control device, the owner or operator shall prepare and maintain the records specified in paragraph (e) of this section.

(d) The owner or operator of containers using Container Level 3 air emission controls in accordance with the requirements of § 264.1086 of this subpart shall prepare and maintain records that include the following information:

(1) Records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' under 40 CFR 52.741, appendix B.

(2) Records required for the closed-vent system and control device in accordance with the requirements of paragraph (e) of this section.

(e) The owner or operator using a closed-vent system and control device in accordance with the requirements of § 264.1087 of this subpart shall prepare and maintain records that include the following information:

(1) Documentation for the closed-vent system and control device that includes:

(i) Certification that is signed and dated by the owner or operator stating that the control device is designed to operate at the performance level documented by a design analysis as specified in paragraph (e)(1)(ii) of this section or by performance tests as specified in paragraph (e)(1)(iii) of this section when the tank, surface impoundment, or container is or would be operating at capacity or the highest level reasonably expected to occur.

(ii) If a design analysis is used, then design documentation as specified in 40 CFR 264.1035(b)(4). The documentation shall include information prepared by the owner or operator or provided by the control device manufacturer or vendor that describes the control device design in accordance with 40 CFR 264.1035(b)(4)(iii) and certification by the owner or operator that the control equipment meets the applicable specifications.

(iii) If performance tests are used, then a performance test plan as specified in 40 CFR 264.1035(b)(3) and all test results.

(iv) Information as required by 40 CFR 264.1035(c)(1) and 40 CFR 264.1035(c)(2), as applicable.

(v) An owner or operator shall record, on a semiannual basis, the information specified in paragraphs (e)(1)(v)(A) and (e)(1)(v)(B) of this section for those planned routine maintenance operations that would require the control device not to meet the requirements of § 264.1087(c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this subpart, as applicable.

(A) A description of the planned routine maintenance that is anticipated to be performed for the control device during the next 6-month period. This description shall include the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods.

(B) A description of the planned routine maintenance that was performed for the control device during the previous 6-month period. This description shall include the type of maintenance performed and the total number of hours during those 6 months that the control device did not meet the requirements of § 264.1087 (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this subpart, as applicable, due to planned routine maintenance.

(vi) An owner or operator shall record the information specified in paragraphs (e)(1)(vi)(A) through (e)(1)(vi)(C) of this section for those unexpected control device system malfunctions that would require the control device not to meet the requirements of § 264.1087 (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this subpart, as applicable.

(A) The occurrence and duration of each malfunction of the control device system.

(B) The duration of each period during a malfunction when gases, vapors, or fumes are vented from the waste management unit through the closed-vent system to the control device while the control device is not properly functioning.

(C) Actions taken during periods of malfunction to restore a malfunctioning control device to its normal or usual manner of operation.

(vii) Records of the management of carbon removed from a carbon adsorption system conducted in accordance with § 264.1087(c)(3)(ii) of this subpart.

(f) The owner or operator of a tank, surface impoundment, or container exempted from standards in accordance with the provisions of § 264.1082(c) of this subpart shall prepare and maintain the following records, as applicable:

(1) For tanks, surface impoundments, or containers exempted under the hazardous waste organic concentration conditions specified in § 264.1082 (c)(1) or (c)(2) of this subpart, the owner or operator shall record the information used for each waste determination (e.g., test results, measurements, calculations, and other documentation) in the facility operating log. If analysis results for waste samples are used for the waste determination, then the owner or operator shall record the date, time, and location that each waste sample is collected in accordance with applicable requirements of § 264.1083 of this subpart.

(2) For tanks, surface impoundments, or containers exempted under the provisions of § 264.1082(c)(2)(vii) or § 264.1082(c)(2)(viii) of this subpart, the owner or operator shall record the identification number for the incinerator, boiler, or industrial furnace in which the hazardous waste is treated.

(g) An owner or operator designating a cover as ''unsafe to inspect and monitor'' pursuant to § 264.1084(l) or § 264.1085(g) of this subpart shall record in a log that is kept in the facility operating record the following information: The identification numbers for waste management units with covers that are designated as ''unsafe to inspect and monitor,'' the explanation for each cover stating why the cover is unsafe to inspect and monitor, and the plan and schedule for inspecting and monitoring each cover.

(h) The owner or operator of a facility that is subject to this subpart and to the control device standards in 40 CFR part 60, subpart VV, or 40 CFR part 61, subpart V, may elect to demonstrate compliance with the applicable sections of this subpart by documentation either pursuant to this subpart, or pursuant to the provisions of 40 CFR part 60, subpart VV or 40 CFR part 61, subpart V, to the extent that the documentation required by 40 CFR parts 60 or 61 duplicates the documentation required by this section.

(i) For each tank or container not using air emission controls specified in §§ 264.1084 through 264.1087 of this subpart in accordance with the conditions specified in § 264.1080(d) of this subpart, the owner or operator shall record and maintain the following information:

(1) A list of the individual organic peroxide compounds manufactured at the facility that meet the conditions specified in § 264.1080(d)(1).

(2) A description of how the hazardous waste containing the organic peroxide compounds identified in paragraph (i)(1) of this section are managed at the facility in tanks and containers. This description shall include:

(i) For the tanks used at the facility to manage this hazardous waste, sufficient information shall be provided to describe for each tank: A facility identification number for the tank; the purpose and placement of this tank in the management train of this hazardous waste; and the procedures used to ultimately dispose of the hazardous waste managed in the tanks.

(ii) For containers used at the facility to manage these hazardous wastes, sufficient information shall be provided to describe: A facility identification number for the container or group of containers; the purpose and placement of this container, or group of containers, in the management train of this hazardous waste; and the procedures used to ultimately dispose of the hazardous waste handled in the containers.

(3) An explanation of why managing the hazardous waste containing the organic peroxide compounds identified in paragraph (i)(1) of this section in the tanks and containers as described in paragraph (i)(2) of this section would create an undue safety hazard if the air emission controls, as required under §§ 264.1084 through 264.1087 of this subpart, are installed and operated on these waste management units. This explanation shall include the following information:

(i) For tanks used at the facility to manage these hazardous wastes, sufficient information shall be provided to explain: How use of the required air emission controls on the tanks would affect the tank design features and facility operating procedures currently used to prevent an undue safety hazard during the management of this hazardous waste in the tanks; and why installation of safety devices on the required air emission controls, as allowed under this subpart, will not address those situations in which evacuation of tanks equipped with these air emission controls is necessary and consistent with good engineering and safety practices for handling organic peroxides.

(ii) For containers used at the facility to manage these hazardous wastes, sufficient information shall be provided to explain: How use of the required air emission controls on the containers would affect the container design features and handling procedures currently used to prevent an undue safety hazard during the management of this hazardous waste in the containers; and why installation of safety devices on the required air emission controls, as allowed under this subpart, will not address those situations in which evacuation of containers equipped with these air emission controls is necessary and consistent with good engineering and safety practices for handling organic peroxides.

24. Section 264.1090 is amended by revising paragraphs (a) and (b) to read as follows:

§ 264.1090 Reporting requirements.

(a) Each owner or operator managing hazardous waste in a tank, surface impoundment, or container exempted from using air emission controls under the provisions of § 264.1082(c) of this subpart shall report to the Regional Administrator each occurrence when hazardous waste is placed in the waste management unit in noncompliance with the conditions specified in § 264.1082 (c)(1) or (c)(2) of this subpart, as applicable. Examples of such occurrences include placing in the waste management unit a hazardous waste having an average VO concentration equal to or greater than 500 ppmw at the point of waste origination; or placing in the waste management unit a treated hazardous waste of which the organic content has been reduced by an organic destruction or removal process that fails to achieve the applicable conditions specified in § 264.1082 (c)(2)(i) through (c)(2)(vi) of this subpart. The owner or operator shall submit a written report within 15 calendar days of the time that the owner or operator becomes aware of the occurrence. The written report shall contain the EPA identification number, facility name and address, a description of the noncompliance event and the cause, the dates of the noncompliance, and the actions taken to correct the noncompliance and prevent recurrence of the noncompliance. The report shall be signed and dated by an authorized representative of the owner or operator.

(b) Each owner or operator using air emission controls on a tank in accordance with the requirements § 264.1084(c) of this subpart shall report to the Regional Administrator each occurrence when hazardous waste is managed in the tank in noncompliance with the conditions specified in § 264.1084(b) of this subpart. The owner or operator shall submit a written report within 15 calendar days of the time that the owner or operator becomes aware of the occurrence. The written report shall contain the EPA identification number, facility name and address, a description of the noncompliance event and the cause, the dates of the noncompliance, and the actions taken to correct the noncompliance and prevent recurrence of the noncompliance. The report shall be signed and dated by an authorized representative of the owner or operator.

* * * * *

§ 264.1091 [Removed and reserved]

25. Part 264 is amended by removing and reserving § 264.1091.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

26. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

Subpart I—Use and Management of Containers

27. Section 265.178 is revised to read as follows:

§ 265.178 Air emission standards.

The owner or operator shall manage all hazardous waste placed in a container in accordance with the applicable requirements of subparts AA, BB, and CC of this part.

Subpart J—Tank Systems

28. Section 265.202 is revised to read as follows:

§ 265.202 Air emission standards.

The owner or operator shall manage all hazardous waste placed in a tank in accordance with the applicable requirements of subparts AA, BB, and CC of this part.

Subpart K—Surface Impoundments

29. Section 265.231 is revised to read as follows:

§ 265.231 Air emission standards.

The owner or operator shall manage all hazardous waste placed in a surface impoundment in accordance with the applicable requirements of subparts BB and CC of this part.

Subpart AA—Air Emission Standards for Process Vents

30. Section 265.1030 is amended by revising paragraph (b); and by removing the reference ''262.34'' from the note at the end of the section to read as follows:

§ 265.1030 Applicability.

* * * * *

(b) Except for §§ 265.1034, paragraphs (d) and (e), this subpart applies to

process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations that manage hazardous wastes with organic concentrations of at least 10 ppmw, if these operations are conducted in one of the following:

(1) A unit that is subject to the permitting requirements of 40 CFR part 270, or

(2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a hazardous waste recycling unit that is not a 90-day tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of 40 CFR part 270, or

(3) A unit that is exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a 90-day tank or container).

* * * * *

31. Section 265.1033 is amended by revising paragraph (f)(2)(vi)(B); redesignating paragraphs (k) and (l) as paragraphs (l) and (m) and revising the newly designated paragraph (m); by revising paragraph (j); and by adding paragraphs (k) and (n) to read as follows:

§ 265.1033 Standards: Closed-vent systems and control devices.

* * * * *

(f) * * *

(2) * * *

(vi) * * *

(B) A temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature with an accuracy of ± 1 percent of the temperature being monitored in degrees Celsius (oC) or ± 0.5 oC, whichever is greater. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser exit (i.e., product side).

* * * * *

(j) A closed-vent system shall meet either of the following design requirements:

(1) A closed-vent system shall be designed to operate with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background as determined by the procedure in § 265.1034(b) of this subpart, and by visual inspections; or

(2) A closed-vent system shall be designed to operate at a pressure below atmospheric pressure. The system shall be equipped with at least one pressure gauge or other pressure measurement device that can be read from a readily accessible location to verify that negative pressure is being maintained in the closed-vent system when the control device is operating.

(k) The owner or operator shall monitor and inspect each closed-vent system required to comply with this section to ensure proper operation and maintenance of the closed-vent system by implementing the following requirements:

(1) Each closed-vent system that is used to comply with paragraph (j)(1) of this section shall be inspected and monitored in accordance with the following requirements:

(i) An initial leak detection monitoring of the closed-vent system shall be conducted by the owner or operator on or before the date that the system becomes subject to this section. The owner or operator shall monitor the closed-vent system components and connections using the procedures specified in § 265.1034(b) of this subpart to demonstrate that the closed-vent system operates with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background.

(ii) After initial leak detection monitoring required in paragraph (k)(1)(i) of this section, the owner or operator shall inspect and monitor the closed-vent system as follows:

(A) Closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed (e.g., a welded joint between two sections of hard piping or a bolted and gasketed ducting flange) shall be visually inspected at least once per year to check for defects that could result in air pollutant emissions. The owner or operator shall monitor a component or connection using the procedures specified in § 265.1034(b) of this subpart to demonstrate that it operates with no detectable emissions following any time the component is repaired or replaced (e.g., a section of damaged hard piping is replaced with new hard piping) or the connection is unsealed (e.g., a flange is unbolted).

(B) Closed-vent system components or connections other than those specified in paragraph (k)(1)(ii)(A) of this section shall be monitored annually and at other times as requested by the Regional Administrator, except as provided for in paragraph (n) of this section, using the procedures specified in § 265.1034(b) of this subpart to demonstrate that the components or connections operate with no detectable emissions.

(iii) In the event that a defect or leak is detected, the owner or operator shall repair the defect or leak in accordance with the requirements of paragraph (k)(3) of this section.

(iv) The owner or operator shall maintain a record of the inspection and monitoring in accordance with the requirements specified in § 265.1035 of this subpart.

(2) Each closed-vent system that is used to comply with paragraph (j)(2) of this section shall be inspected and monitored in accordance with the following requirements:

(i) The closed-vent system shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in ductwork or piping or loose connections.

(ii) The owner or operator shall perform an initial inspection of the closed-vent system on or before the date that the system becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year.

(iii) In the event that a defect or leak is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (k)(3) of this section.

(iv) The owner or operator shall maintain a record of the inspection and monitoring in accordance with the requirements specified in § 265.1035 of this subpart.

(3) The owner or operator shall repair all detected defects as follows:

(i) Detectable emissions, as indicated by visual inspection, or by an instrument reading greater than 500 ppmv above background, shall be controlled as soon as practicable, but not later than 15 calendar days after the emission is detected, except as provided for in paragraph (k)(3)(iii) of this section.

(ii) A first attempt at repair shall be made no later than 5 calendar days after the emission is detected.

(iii) Delay of repair of a closed-vent system for which leaks have been detected is allowed if the repair is technically infeasible without a process unit shutdown, or if the owner or operator determines that emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. Repair of such equipment shall be completed by the end of the next process unit shutdown.

(iv) The owner or operator shall maintain a record of the defect repair in accordance with the requirements specified in § 265.1035 of this subpart.

(l) Closed-vent systems and control devices used to comply with provisions of this subpart shall be operated at all times when emissions may be vented to them.

(m) The owner or operator using a carbon adsorption system to control air pollutant emissions shall document that all carbon that is a hazardous waste and that is removed from the control device is managed in one of the following manners, regardless of the average volatile organic concentration of the carbon:

(1) Regenerated or reactivated in a thermal treatment unit that meets one of the following:

(i) The owner or operator of the unit has been issued a final permit under 40 CFR part 270 which implements the requirements of 40 CFR part 264 subpart X; or

(ii) The unit is equipped with and operating air emission controls in accordance with the applicable requirements of subparts AA and CC of either this part or of 40 CFR part 264; or

(iii) The unit is equipped with and operating air emission controls in accordance with a national emission standard for hazardous air pollutants under 40 CFR part 61 or 40 CFR part 63.

(2) Incinerated in a hazardous waste incinerator for which the owner or operator either:

(i) Has been issued a final permit under 40 CFR part 270 which implements the requirements of 40 CFR part 264, subpart O; or

(ii) Has designed and operates the incinerator in accordance with the interim status requirements of subpart O of this part.

(3) Burned in a boiler or industrial furnace for which the owner or operator either:

(i) Has been issued a final permit under 40 CFR part 270 which implements the requirements of 40 CFR part 266, subpart H; or

(ii) Has designed and operates the boiler or industrial furnace in accordance with the interim status requirements of 40 CFR part 266, subpart H.

(n) Any components of a closed-vent system that are designated, as described in § 265.1035(c)(9) of this subpart, as unsafe to monitor are exempt from the requirements of paragraph (k)(1)(ii)(B) of this section if:

(1) The owner or operator of the closed-vent system determines that the components of the closed-vent system are unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (k)(1)(ii)(B) of this section; and

(2) The owner or operator of the closed-vent system adheres to a written plan that requires monitoring the closed-vent system components using the procedure specified in paragraph (k)(1)(ii)(B) of this section as frequently as practicable during safe-to-monitor times.

32. Section 265.1034 is amended by revising paragraph (b) introductory text to read as follows:

§ 265.1034 Test methods and procedures.

* * * * *

(b) When a closed-vent system is tested for compliance with no detectable emissions, as required in § 265.1033(k) of this subpart, the test shall comply with the following requirements:

* * * * *

33. Section 265.1035 is amended by revising paragraph (c)(3), adding paragraphs (c)(9) and (c)(10) and revising paragraph (d) to read as follows:

§ 265.1035 Recordkeeping requirements.

* * * * *

(c) * * *

(3) Monitoring, operating and inspection information required by paragraphs (f) through (k) of § 265.1033 of this subpart.

* * * * *

(9) An owner or operator designating any components of a closed-vent system as unsafe to monitor pursuant to § 265.1033(n) of this subpart shall record in a log that is kept in the facility operating record the identification of closed-vent system components that are designated as unsafe to monitor in accordance with the requirements of § 265.1033(n) of this subpart, an explanation for each closed-vent system component stating why the closed-vent system component is unsafe to monitor, and the plan for monitoring each closed-vent system component.

(10) When each leak is detected as specified in § 265.1033(k) of this subpart, the following information shall be recorded:

(i) The instrument identification number, the closed-vent system component identification number, and the operator name, initials, or identification number.

(ii) The date the leak was detected and the date of first attempt to repair the leak.

(iii) The date of successful repair of the leak.

(iv) Maximum instrument reading measured by Method 21 of 40 CFR part 60, appendix A after it is successfully repaired or determined to be nonrepairable.

(v) ''Repair delayed'' and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(A) The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(B) If delay of repair was caused by depletion of stocked parts, there must be documentation that the spare parts were sufficiently stocked on-site before depletion and the reason for depletion.

(d) Records of the monitoring, operating, and inspection information required by paragraphs (c)(3) through (c)(10) of this section shall be maintained by the owner or operator for at least 3 years following the date of each occurrence, measurement, maintenance, corrective action, or record.

* * * * *

Subpart BB—Air Emission Standards for Equipment Leaks

34. Section 265.1050 is amended by revising paragraph (b), adding paragraph (e) and removing the reference ''262.34'' from the note at the end of the section to read as follows:

§ 265.1050 Applicability.

* * * * *

(b) Except as provided in § 265.1064(k), this subpart applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in one of the following:

(1) A unit that is subject to the permitting requirements of 40 CFR part 270, or

(2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a hazardous waste recycling unit that is not a 90-day tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of 40 CFR part 270, or

(3) A unit that is exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a 90-day tank or container).

* * * * *

(e) Equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for a period of less than 300 hours per calendar year is excluded from the requirements of § 265.1052 through § 265.1060 of this subpart if it is identified as required in § 265.1064(g)(6) of this subpart.

35. Section 265.1055 is revised to read as follows:

§ 265.1055 Standards: Sampling connection systems.

(a) Each sampling connection system shall be equipped with a closed-purge, closed-loop, or closed-vent system. This system shall collect the sample purge for return to the process or for routing to the appropriate treatment system. Gases displaced during filling of the sample container are not required to be collected or captured.

(b) Each closed-purge, closed-loop, or closed-vent system as required in paragraph (a) of this section shall:

(1) Return the purged process fluid directly to the process line; or

(2) Collect and recycle the purged process fluid; or

(3) Be designed and operated to capture and transport all the purged process fluid to a waste management unit that complies with the applicable requirements of § 265.1085 through § 265.1087 of this subpart or a control device that complies with the requirements of § 265.1060 of this subpart.

(c) *In-situ* sampling systems and sampling systems without purges are exempt from the requirements of paragraphs (a) and (b) of this section.

36. Section 265.1058 is amended by adding paragraph (e) to read as follows:

§ 265.1058 Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors.

* * * * *

(e) Any connector that is inaccessible or is ceramic or ceramic-lined (e.g., porcelain, glass, or glass-lined) is exempt from the monitoring requirements of paragraph (a) of this section and from the recordkeeping requirements of § 265.1064 of this subpart.

37. Section 265.1064 is amended by adding paragraph (g)(6) to read as follows:

§ 265.1064 Recordkeeping requirements.

* * * * *

(g) * * *

(6) Identification, either by list or location (area or group) of equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for a period of less than 300 hours per year.

* * * * *

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

38. Section 265.1080 is amended by adding paragraphs (b)(7) and (b)(8) to read as follows:

§ 265.1080 Applicability.

* * * * *

(b) * * *

(7) A hazardous waste management unit that the owner or operator certifies is equipped with and operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63. For the purpose of complying with this paragraph, a tank for which the air emission control includes an enclosure, as opposed to a cover, must be in compliance with the enclosure and control device requirements of § 265.1085(i), except as provided in § 265.1083(c)(5).

(8) A tank that has a process vent as defined in 40 CFR 264.1031.

* * * * *

39. Section 265.1081 is amended by revising the definitions of cover, external floating roof, fixed roof, floating roof, internal floating roof, maximum organic vapor pressure, point of waste treatment, vapor-mounted seal and volatile organic concentration and by adding definitions in alphabetical order to read as follows:

§ 265.1081 Definitions.

* * * * *

Closure device means a cap, hatch, lid, plug, seal, valve, or other type of fitting that blocks an opening in a cover such that when the device is secured in the closed position it prevents or reduces air pollutant emissions to the atmosphere. Closure devices include devices that are detachable from the cover (e.g., a sampling port cap), manually operated (e.g., a hinged access lid or hatch), or automatically operated (e.g., a spring-loaded pressure relief valve).

* * * * *

Continuous seal means a seal that forms a continuous closure that completely covers the space between the edge of the floating roof and the wall of a tank. A continuous seal may be a vapor-mounted seal, liquid-mounted seal, or metallic shoe seal. A continuous seal may be constructed of fastened segments so as to form a continuous seal.

* * * * *

Cover means a device that provides a continuous barrier over the hazardous waste managed in a unit to prevent or reduce air pollutant emissions to the atmosphere. A cover may have openings (such as access hatches, sampling ports, gauge wells) that are necessary for operation, inspection, maintenance, and repair of the unit on which the cover is used. A cover may be a separate piece of equipment which can be detached and removed from the unit or a cover may be formed by structural features permanently integrated into the design of the unit.

* * * * *

Enclosure means a structure that surrounds a tank or container, captures organic vapors emitted from the tank or container, and vents the captured vapors through a closed-vent system to a control device.

* * * * *

External floating roof means a pontoon-type or double-deck type cover that rests on the surface of the material managed in a tank with no fixed roof.

* * * * *

Fixed roof means a cover that is mounted on a unit in a stationary position and does not move with fluctuations in the level of the material managed in the unit.

* * * * *

Floating roof means a cover consisting of a double deck, pontoon single deck, or internal floating cover which rests upon and is supported by the material being contained, and is equipped with a continuous seal.

* * * * *

Hard-piping means pipe or tubing that is manufactured and properly installed in accordance with relevant standards and good engineering practices.

* * * * *

In light material service means the container is used to manage a material for which both of the following conditions apply: the vapor pressure of one or more of the organic constituents in the material is greater than 0.3 kilopascals (kPa) at 20 °C; and the total concentration of the pure organic constituents having a vapor pressure greater than 0.3 kPa at 20 °C is equal to or greater than 20 percent by weight.

* * * * *

Internal floating roof means a cover that rests or floats on the material surface (but not necessarily in complete contact with it) inside a tank that has a fixed roof.

* * * * *

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

* * * * *

Maximum organic vapor pressure means the sum of the individual organic constituent partial pressures exerted by the material contained in a tank, at the

maximum vapor pressure-causing conditions (i.e., temperature, agitation, pH effects of combining wastes, etc.) reasonably expected to occur in the tank. For the purpose of this subpart, maximum organic vapor pressure is determined using the procedures specified in § 265.1084(c) of this subpart.

* * * * *

Metallic shoe seal means a continuous seal that is constructed of metal sheets which are held vertically against the wall of the tank by springs, weighted levers, or other mechanisms and is connected to the floating roof by braces or other means. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

* * * * *

No detectable organic emissions means no escape of organics to the atmosphere as determined using the procedure specified in § 265.1084(d) of this subpart.

* * * * *

Point of waste treatment means the point where a hazardous waste to be treated in accordance with § 265.1083(c)(2) of this subpart exits the treatment process. Any waste determination shall be made before the waste is conveyed, handled, or otherwise managed in a manner that allows the waste to volatilize to the atmosphere.

* * * * *

Safety device means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to a unit or its air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of this subpart, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials.

* * * * *

Single-seal system means a floating roof having one continuous seal. This seal may be vapor-mounted, liquid-mounted, or a metallic shoe seal.

* * * * *

Vapor-mounted seal means a continuous seal that is mounted such that there is a vapor space between the hazardous waste in the unit and the bottom of the seal.

* * * * *

Volatile organic concentration or *VO concentration* means the fraction by weight of the volatile organic compounds contained in a hazardous waste expressed in terms of parts per million (ppmw) as determined by direct measurement or by knowledge of the waste in accordance with the requirements of § 265.1084 of this subpart. For the purpose of determining the VO concentration of a hazardous waste, organic compounds with a Henry's law constant value of at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in the liquid-phase (0.1 Y/X) (which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3) at 25 degrees Celsius must be included. Appendix VI of this subpart presents a list of compounds known to have a Henry's law constant value less than the cutoff level.

* * * * *

40. Section 265.1083 is revised to read as follows:

§ 265.1083 Standards: General.

(a) This section applies to the management of hazardous waste in tanks, surface impoundments, and containers subject to this subpart.

(b) The owner or operator shall control air pollutant emissions from each waste management unit in accordance with standards specified in § 265.1085 through § 265.1088 of this subpart, as applicable to the waste management unit, except as provided for in paragraph (c) of this section.

(c) A tank, surface impoundment, or container is exempt from standards specified in § 265.1085 through § 265.1088 of this subpart, as applicable, provided that the waste management unit is one of the following:

(1) A tank, surface impoundment, or container for which all hazardous waste entering the unit has an average VO concentration at the point of waste origination of less than 500 parts per million by weight (ppmw). The average VO concentration shall be determined using the procedures specified in § 265.1084(a) of this subpart. The owner or operator shall review and update, as necessary, this determination at least once every 12 months following the date of the initial determination for the hazardous waste streams entering the unit.

(2) A tank, surface impoundment, or container for which the organic content of all the hazardous waste entering the waste management unit has been reduced by an organic destruction or removal process that achieves any one of the following conditions:

(i) A process that removes or destroys the organics contained in the hazardous waste to a level such that the average VO concentration of the hazardous waste at the point of waste treatment is less than the exit concentration limit (C^t) established for the process. The average VO concentration of the hazardous waste at the point of waste treatment and the exit concentration limit for the process shall be determined using the procedures specified in § 265.1084(b) of this subpart.

(ii) A process that removes or destroys the organics contained in the hazardous waste to a level such that the organic reduction efficiency (R) for the process is equal to or greater than 95 percent, and the average VO concentration of the hazardous waste at the point of waste treatment is less than 100 ppmw. The organic reduction efficiency for the process and the average VO concentration of the hazardous waste at the point of waste treatment shall be determined using the procedures specified in § 265.1084(b) of this subpart.

(iii) A process that removes or destroys the organics contained in the hazardous waste to a level such that the actual organic mass removal rate (MR) for the process is equal to or greater than the required organic mass removal rate (RMR) established for the process. The required organic mass removal rate and the actual organic mass removal rate for the process shall be determined using the procedures specified in § 265.1084(b) of this subpart.

(iv) A biological process that destroys or degrades the organics contained in the hazardous waste, such that either of the following conditions is met:

(A) The organic reduction efficiency (R) for the process is equal to or greater than 95 percent, and the organic biodegradation efficiency (R_{bio}) for the process is equal to or greater than 95 percent. The organic reduction efficiency and the organic biodegradation efficiency for the process shall be determined using the

procedures specified in § 265.1084(b) of this subpart.

(B) The total actual organic mass biodegradation rate (MR_{bio}) for all hazardous waste treated by the process is equal to or greater than the required organic mass removal rate (RMR). The required organic mass removal rate and the actual organic mass biodegradation rate for the process shall be determined using the procedures specified in § 265.1084(b) of this subpart.

(v) A process that removes or destroys the organics contained in the hazardous waste and meets all of the following conditions:

(A) From the point of waste origination through the point where the hazardous waste enters the treatment process, the hazardous waste is managed continuously in waste management units which use air emission controls in accordance with the standards specified in § 265.1085 through § 265.1088 of this subpart, as applicable to the waste management unit.

(B) From the point of waste origination through the point where the hazardous waste enters the treatment process, any transfer of the hazardous waste is accomplished through continuous hard-piping or other closed system transfer that does not allow exposure of the waste to the atmosphere. The EPA considers a drain system that meets the requirements of 40 CFR part 63, subpart RR—National Emission Standards for Individual Drain Systems to be a closed system.

(C) The average VO concentration of the hazardous waste at the point of waste treatment is less than the lowest average VO concentration at the point of waste origination determined for each of the individual waste streams entering the process or 500 ppmw, whichever value is lower. The average VO concentration of each individual waste stream at the point of waste origination shall be determined using the procedures specified in § 265.1084(a) of this subpart. The average VO concentration of the hazardous waste at the point of waste treatment shall be determined using the procedures specified in § 265.1084(b) of this subpart.

(vi) A process that removes or destroys the organics contained in the hazardous waste to a level such that the organic reduction efficiency (R) for the process is equal to or greater than 95 percent and the owner or operator certifies that the average VO concentration at the point of waste origination for each of the individual waste streams entering the process is less than 10,000 ppmw. The organic reduction efficiency for the process and the average VO concentration of the hazardous waste at the point of waste origination shall be determined using the procedures specified in § 265.1084(b) and § 265.1084(a) of this subpart, respectively.

(vii) A hazardous waste incinerator for which the owner or operator has either:

(A) Been issued a final permit under 40 CFR part 270 which implements the requirements of 40 CFR part 264, subpart O; or

(B) Has designed and operates the incinerator in accordance with the interim status requirements of subpart O of this part.

(viii) A boiler or industrial furnace for which the owner or operator has either:

(A) Been issued a final permit under 40 CFR part 270 which implements the requirements of 40 CFR part 266, subpart H, or

(B) Has designed and operates the boiler or industrial furnace in accordance with the interim status requirements of 40 CFR part 266, subpart H.

(ix) For the purpose of determining the performance of an organic destruction or removal process in accordance with the conditions in each of paragraphs (c)(2)(i) through (c)(2)(vi) of this section, the owner or operator shall account for VO concentrations determined to be below the limit of detection of the analytical method by using the following VO concentration:

(A) If Method 25D in 40 CFR part 60, appendix A is used for the analysis, one-half the blank value determined in the method.

(B) If any other analytical method is used, one-half the limit of detection established for the method.

(3) A tank used for biological treatment of hazardous waste in accordance with the requirements of paragraph (c)(2)(iv) of this section.

(4) A tank, surface impoundment, or container for which all hazardous waste placed in the unit either:

(i) Meets the numerical concentration limits for organic hazardous constituents, applicable to the hazardous waste, as specified in 40 CFR part 268—Land Disposal Restrictions under Table ''Treatment Standards for Hazardous Waste'' in 40 CFR 268.40; or

(ii) Has been treated by the treatment technology established by EPA for the waste in 40 CFR 268.42(a), or treated by an equivalent method of treatment approved by EPA pursuant to 40 CFR 268.42(b).

(5) A tank used for bulk feed of hazardous waste to a waste incinerator and all of the following conditions are met:

(i) The tank is located inside an enclosure vented to a control device that is designed and operated in accordance with all applicable requirements specified under 40 CFR part 61, subpart FF—National Emission Standards for Benzene Waste Operations for a facility at which the total annual benzene quantity from the facility waste is equal to or greater than 10 megagrams per year;

(ii) The enclosure and control device serving the tank were installed and began operation prior to November 25, 1996; and

(iii) The enclosure is designed and operated in accordance with the criteria for a permanent total enclosure as specified in ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' under 40 CFR 52.741, Appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical or electrical equipment; or to direct air flow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' annually.

(d) The Regional Administrator may at any time perform or request that the owner or operator perform a waste determination for a hazardous waste managed in a tank, surface impoundment, or container exempted from using air emission controls under the provisions of this section as follows:

(1) The waste determination for average VO concentration of a hazardous waste at the point of waste origination shall be performed using direct measurement in accordance with the applicable requirements of § 265.1084(a) of this subpart. The waste determination for a hazardous waste at the point of waste treatment shall be performed in accordance with the applicable requirements of § 265.1084(b) of this subpart.

(2) In performing a waste determination pursuant to paragraph (d)(1) of this section, the sample preparation and analysis shall be conducted as follows:

(i) In accordance with the method used by the owner or operator to perform the waste analysis, except in the case specified in paragraph (d)(2)(ii) of this section.

(ii) If the Regional Administrator determines that the method used by the owner or operator was not appropriate

for the hazardous waste managed in the tank, surface impoundment, or container, then the Regional Administrator may choose an appropriate method.

(3) In a case when the owner or operator is requested to perform the waste determination, the Regional Administrator may elect to have an authorized representative observe the collection of the hazardous waste samples used for the analysis.

(4) In a case when the results of the waste determination performed or requested by the Regional Administrator do not agree with the results of a waste determination performed by the owner or operator using knowledge of the waste, then the results of the waste determination performed in accordance with the requirements of paragraph (d)(1) of this section shall be used to establish compliance with the requirements of this subpart.

(5) In a case when the owner or operator has used an averaging period greater than 1 hour for determining the average VO concentration of a hazardous waste at the point of waste origination, the Regional Administrator may elect to establish compliance with this subpart by performing or requesting that the owner or operator perform a waste determination using direct measurement based on waste samples collected within a 1-hour period as follows:

(i) The average VO concentration of the hazardous waste at the point of waste origination shall be determined by direct measurement in accordance with the requirements of § 265.1084(a) of this subpart.

(ii) Results of the waste determination performed or requested by the Regional Administrator showing that the average VO concentration of the hazardous waste at the point of waste origination is equal to or greater than 500 ppmw shall constitute noncompliance with this subpart except in a case as provided for in paragraph (d)(5)(iii) of this section.

(iii) For the case when the average VO concentration of the hazardous waste at the point of waste origination previously has been determined by the owner or operator using an averaging period greater than 1 hour to be less than 500 ppmw but because of normal operating process variations the VO concentration of the hazardous waste determined by direct measurement for any given 1-hour period may be equal to or greater than 500 ppmw, information that was used by the owner or operator to determine the average VO concentration of the hazardous waste (e.g., test results, measurements, calculations, and other documentation) and recorded in the facility records in accordance with the requirements of § 265.1084(a) and § 265.1090 of this subpart shall be considered by the Regional Administrator together with the results of the waste determination performed or requested by the Regional Administrator in establishing compliance with this subpart.

41. Section 265.1084 is revised to read as follows:

§ 265.1084 Waste determination procedures.

(a) Waste determination procedure to determine average volatile organic (VO) concentration of a hazardous waste at the point of waste origination.

(1) An owner or operator shall determine the average VO concentration at the point of waste origination for each hazardous waste placed in a waste management unit exempted under the provisions of § 265.1083(c)(1) of this subpart from using air emission controls in accordance with standards specified in § 265.1085 through § 265.1088 of this subpart, as applicable to the waste management unit.

(2) The average VO concentration of a hazardous waste at the point of waste origination shall be determined using either direct measurement as specified in paragraph (a)(3) of this section or by knowledge as specified in paragraph (a)(4) of this section.

(3) Direct measurement to determine average VO concentration of a hazardous waste at the point of waste origination.

(i) Identification. The owner or operator shall identify and record the point of waste origination for the hazardous waste.

(ii) Sampling. Samples of the hazardous waste stream shall be collected at the point of waste origination in a manner such that volatilization of organics contained in the waste and in the subsequent sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

(A) The averaging period to be used for determining the average VO concentration for the hazardous waste stream on a mass-weighted average basis shall be designated and recorded. The averaging period can represent any time interval that the owner or operator determines is appropriate for the hazardous waste stream but shall not exceed 1 year.

(B) A sufficient number of samples, but no less than four samples, shall be collected for the hazardous waste stream to represent the complete range of compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the source or process generating the hazardous waste stream. Examples of such normal variations are seasonal variations in waste quantity or fluctuations in ambient temperature.

(C) All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous waste stream are collected such that a minimum loss of organics occurs throughout the sample collection and handling process, and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on-site in the facility operating records. An example of an acceptable sampling plan includes a plan incorporating sample collection and handling procedures in accordance with the requirements specified in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, (incorporated by reference—refer to § 260.11(a) of this chapter), or in Method 25D in 40 CFR part 60, appendix A.

(iii) Analysis. Each collected sample shall be prepared and analyzed in accordance with one or more of the methods listed in paragraphs (a)(3)(iii)(A) through (a)(3)(iii)(I) of this section, including appropriate quality assurance and quality control (QA/QC) checks and use of target compounds for calibration. If Method 25D in 40 CFR part 60, appendix A is not used, then one or more methods should be chosen that are appropriate to ensure that the waste determination accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3] at 25 degrees Celsius. Each of the analytical methods listed in paragraphs (a)(3)(iii)(B) through (a)(3)(iii)(G) of this section has an associated list of approved chemical compounds, for which EPA considers the method appropriate for measurement. If an owner or operator uses EPA Method 624, 625, 1624, or 1625 in 40 CFR part 136, appendix A to analyze one or more compounds that are not on that method's published list, the Alternative Test Procedure contained in 40 CFR 136.4 and 136.5 must be followed. If an owner or operator uses EPA Method 8260(B) or 8270(C) in ''Test Methods for Evaluating Solid Waste, Physical/

Chemical Methods'', EPA Publication SW–846, (incorporated by reference—refer to § 260.11(a) of this chapter) to analyze one or more compounds that are not on that method's published list, the procedures in paragraph (a)(3)(iii)(H) of this section must be followed. At the owner's or operator's discretion, the concentration of each individual chemical constituent measured in the waste by a method other than Method 25D may be corrected to the concentration had it been measured using Method 25D by multiplying the measured concentration by the constituent-specific adjustment factor (f_{m25D}) as specified in paragraph (a)(4)(iii) of this section. Constituent-specific adjustment factors (f_{m25D}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711. (A) Method 25D in 40 CFR part 60, appendix A.

(B) Method 624 in 40 CFR part 136, appendix A.

(C) Method 625 in 40 CFR part 136, appendix A. Perform corrections to the compounds for which the analysis is being conducted based on the ''accuracy as recovery'' using the factors in Table 7 of the method.

(D) Method 1624 in 40 CFR part 136, appendix A.

(E) Method 1625 in 40 CFR part 136, appendix A.

(F) Method 8260(B) in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'', EPA Publication SW–846, (incorporated by reference—refer to § 260.11(a) of this chapter). Maintain a formal quality assurance program consistent with the requirements of Method 8260(B). The quality assurance program shall include the following elements:

(*1*) Documentation of site-specific procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, preparation, introduction, and analysis steps.

(*2*) Measurement of the overall accuracy and precision of the specific procedures.

(G) Method 8270(C) in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'', EPA Publication SW–846, (incorporated by reference—refer to § 260.11(a) of this chapter). Maintain a formal quality assurance program consistent with the requirements of Method 8270(C). The quality assurance program shall include the following elements:

(*1*) Documentation of site-specific procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, and preparation steps.

(*2*) Measurement of the overall accuracy and precision of the specific procedures.

(H) Any other EPA standard method that has been validated in accordance with ''Alternative Validation Procedure for EPA Waste and Wastewater Methods'', 40 CFR part 63, appendix D. As an alternative, other EPA standard methods may be validated by the procedure specified in paragraph (a)(3)(iii)(I) of this section.

(I) Any other analysis method that has been validated in accordance with the procedures specified in Section 5.1 or Section 5.3, and the corresponding calculations in Section 6.1 or Section 6.3, of Method 301 in 40 CFR part 63, appendix A. The data are acceptable if they meet the criteria specified in Section 6.1.5 or Section 6.3.3 of Method 301. If correction is required under section 6.3.3 of Method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 are not required.

(iv) Calculations. The average VO concentration ($\overline{C}$) on a mass-weighted basis shall be calculated by using the results for all samples analyzed in accordance with paragraph (a)(3)(iii) of this section and the following equation:

$$\overline{C} = \frac{1}{Q_T} \times \sum_{i=1}^{n} \left(Q_i \times C_i \right)$$

Where:

$\overline{C}$ = Average VO concentration of the hazardous waste at the point of waste origination on a mass-weighted basis, ppmw.

i = Individual sample ''i'' of the hazardous waste.

n = Total number of samples of the hazardous waste collected (at least 4) for the averaging period (not to exceed 1 year).

Q_i = Mass quantity of hazardous waste stream represented by C_i, kg/hr.

Q_T = Total mass quantity of hazardous waste during the averaging period, kg/hr.

C_i = Measured VO concentration of sample ''i'' as determined in accordance with the requirements of § 265.1084(a)(3)(iii) of this subpart, ppmw.

(4) Use of owner or operator knowledge to determine average VO concentration of a hazardous waste at the point of waste origination.

(i) Documentation shall be prepared that presents the information used as the basis for the owner's or operator's knowledge of the hazardous waste stream's average VO concentration. Examples of information that may be used as the basis for knowledge include: Material balances for the source or process generating the hazardous waste stream; constituent-specific chemical test data for the hazardous waste stream from previous testing that are still applicable to the current waste stream; previous test data for other locations managing the same type of waste stream; or other knowledge based on information included in manifests, shipping papers, or waste certification notices.

(ii) If test data are used as the basis for knowledge, then the owner or operator shall document the test method, sampling protocol, and the means by which sampling variability and analytical variability are accounted for in the determination of the average VO concentration. For example, an owner or operator may use organic concentration test data for the hazardous waste stream that are validated in accordance with Method 301 in 40 CFR part 63, appendix A as the basis for knowledge of the waste.

(iii) An owner or operator using chemical constituent-specific concentration test data as the basis for knowledge of the hazardous waste may adjust the test data to the corresponding average VO concentration value which would have been obtained had the waste samples been analyzed using Method 25D in 40 CFR part 60, appendix A. To adjust these data, the measured concentration for each individual chemical constituent contained in the waste is multiplied by the appropriate constituent-specific adjustment factor (f_{m25D}).

(iv) In the event that the Regional Administrator and the owner or operator disagree on a determination of the average VO concentration for a hazardous waste stream using knowledge, then the results from a determination of average VO concentration using direct measurement as specified in paragraph (a)(3) of this section shall be used to establish compliance with the applicable requirements of this subpart. The Regional Administrator may perform or request that the owner or operator perform this determination using direct measurement.

(b) Waste determination procedures for treated hazardous waste.

(1) An owner or operator shall perform the applicable waste determination for each treated hazardous waste placed in a waste management unit exempted under the provisions of § 265.1083(c)(2) of this

subpart from using air emission controls in accordance with standards specified in § 265.1085 through § 265.1088 of this subpart, as applicable to the waste management unit.

(2) The owner or operator shall designate and record the specific provision in § 265.1083(c)(2) of this subpart under which the waste determination is being performed. The waste determination for the treated hazardous waste shall be performed using the applicable procedures specified in paragraphs (b)(3) through (b)(9) of this section.

(3) Procedure to determine the average VO concentration of a hazardous waste at the point of waste treatment.

(i) Identification. The owner or operator shall identify and record the point of waste treatment for the hazardous waste.

(ii) Sampling. Samples of the hazardous waste stream shall be collected at the point of waste treatment in a manner such that volatilization of organics contained in the waste and in the subsequent sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

(A) The averaging period to be used for determining the average VO concentration for the hazardous waste stream on a mass-weighted average basis shall be designated and recorded. The averaging period can represent any time interval that the owner or operator determines is appropriate for the hazardous waste stream but shall not exceed 1 year.

(B) A sufficient number of samples, but no less than four samples, shall be collected for the hazardous waste stream to represent the complete range of compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the process treating the hazardous waste stream. Examples of such normal variations are seasonal variations in waste quantity or fluctuations in ambient temperature.

(C) All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous waste stream are collected such that a minimum loss of organics occurs throughout the sample collection and handling process, and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on-site in the facility operating records. An example of an acceptable sampling plan includes a plan incorporating sample collection and handling procedures in accordance with the requirements specified in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication No. SW–846 (incorporated by reference—refer to § 260.11(a) of this chapter), or in Method 25D in 40 CFR part 60, appendix A.

(iii) Analysis. Each collected sample shall be prepared and analyzed in accordance with one or more of the methods listed in paragraphs (b)(3)(iii)(A) through (b)(3)(iii)(I) of this section, including appropriate quality assurance and quality control (QA/QC) checks and use of target compounds for calibration. If Method 25D in 40 CFR part 60, appendix A is not used, then one or more methods should be chosen that are appropriate to ensure that the waste determination accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3] at 25 degrees Celsius. Each of the analytical methods listed in paragraphs (b)(3)(iii)(B) through (b)(3)(iii)(G) of this section has an associated list of approved chemical compounds, for which EPA considers the method appropriate for measurement. If an owner or operator uses EPA Method 624, 625, 1624, or 1625 in 40 CFR part 136, appendix A to analyze one or more compounds that are not on that method's published list, the Alternative Test Procedure contained in 40 CFR 136.4 and 136.5 must be followed. If an owner or operator uses EPA Method 8260(B) or 8270(C) in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'', EPA Publication SW–846 (incorporated by reference—refer to § 260.11(a) of this chapter) to analyze one or more compounds that are not on that method's published list, the procedures in paragraph (b)(3)(iii)(H) of this section must be followed. At the owner's or operator's discretion, the concentration of each individual chemical constituent measured in the waste by a method other than Method 25D may be corrected to the concentration had it been measured using Method 25D by multiplying the measured concentration by the constituent-specific adjustment factor (f_{m25D}) as specified in paragraph (a)(4)(iii) of this section. Constituent-specific adjustment factors (f_{m25D}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

(A) Method 25D in 40 CFR part 60, appendix A.

(B) Method 624 in 40 CFR part 136, appendix A.

(C) Method 625 in 40 CFR part 136, appendix A. Perform corrections to the compounds for which the analysis is being conducted based on the ''accuracy as recovery'' using the factors in Table 7 of the method.

(D) Method 1624 in 40 CFR part 136, appendix A.

(E) Method 1625 in 40 CFR part 136, appendix A.

(F) Method 8260(B) in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'', EPA Publication SW–846, (incorporated by reference—refer to § 260.11(a) of this chapter). Maintain a formal quality assurance program consistent with the requirements of Method 8260(B). The quality assurance program shall include the following elements:

(*1*) Documentation of site-specific procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, preparation, introduction, and analysis steps.

(*2*) Measurement of the overall accuracy and precision of the specific procedures.

(G) Method 8270(C) in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'', EPA Publication SW–846, (incorporated by reference—refer to § 260.11(a) of this chapter). Maintain a formal quality assurance program consistent with the requirements of Method 8270(C). The quality assurance program shall include the following elements:

(*1*) Documentation of site-specific procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, preparation, introduction, and analysis steps.

(*2*) Measurement of the overall accuracy and precision of the specific procedures.

(H) Any other EPA standard method that has been validated in accordance with ''Alternative Validation Procedure for EPA Waste and Wastewater Methods'', 40 CFR part 63, appendix D. As an alternative, other EPA standard methods may be validated by the procedure specified in paragraph (b)(3)(iii)(I) of this section.

(I) Any other analysis method that has been validated in accordance with the procedures specified in Section 5.1 or Section 5.3, and the corresponding

calculations in Section 6.1 or Section 6.3, of Method 301 in 40 CFR part 63, appendix A. The data are acceptable if they meet the criteria specified in Section 6.1.5 or Section 6.3.3 of Method 301. If correction is required under section 6.3.3 of Method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 are not required.

(iv) Calculations. The average VO concentration ($\overline{C}$) on a mass-weighted basis shall be calculated by using the results for all samples analyzed in accordance with paragraph (b)(3)(iii) of this section and the following equation:

$$\overline{C} = \frac{1}{Q_T} \times \sum_{i=1}^{n} \left(Q_i \times C_i \right)$$

Where:

$\overline{C}$= Average VO concentration of the hazardous waste at the point of waste treatment on a mass-weighted basis, ppmw.

i = Individual sample ''i'' of the hazardous waste.

n = Total number of samples of the hazardous waste collected (at least 4) for the averaging period (not to exceed 1 year).

Q_i = Mass quantity of hazardous waste stream represented by C_i, kg/hr.

Q_T = Total mass quantity of hazardous waste during the averaging period, kg/hr.

C_i = Measured VO concentration of sample ''i'' as determined in accordance with the requirements of § 265.1084(b)(3)(iii) of this subpart, ppmw.

(4) Procedure to determine the exit concentration limit (C_t) for a treated hazardous waste.

(i) The point of waste origination for each hazardous waste treated by the process at the same time shall be identified.

(ii) If a single hazardous waste stream is identified in paragraph (b)(4)(i) of this section, then the exit concentration limit (C_t) shall be 500 ppmw.

(iii) If more than one hazardous waste stream is identified in paragraph (b)(4)(i) of this section, then the average VO concentration of each hazardous waste stream at the point of waste origination shall be determined in accordance with the requirements of paragraph (a) of this section. The exit concentration limit (C_t) shall be calculated by using the results determined for each individual hazardous waste stream and the following equation:

$$C_t = \frac{\sum_{x=1}^{m} \left(Q_x \times \overline{C_x} \right) + \sum_{y=1}^{n} \left(Q_y \times 500 \text{ ppmw} \right)}{\sum_{x=1}^{m} Q_x + \sum_{y=1}^{n} Q_y}$$

Where:

C_t = Exit concentration limit for treated hazardous waste, ppmw.

x = Individual hazardous waste stream ''x'' that has an average VO concentration less than 500 ppmw at the point of waste origination as determined in accordance with the requirements of § 265.1084(a) of this subpart.

y = Individual hazardous waste stream ''y'' that has an average VO concentration equal to or greater than 500 ppmw at the point of waste origination as determined in accordance with the requirements of § 265.1084(a) of this subpart.

m = Total number of ''x'' hazardous waste streams treated by process.

n = Total number of ''y'' hazardous waste streams treated by process.

Q_x = Annual mass quantity of hazardous waste stream ''x,'' kg/yr.

Q_y = Annual mass quantity of hazardous waste stream ''y,'' kg/yr.

$\overline{C}_x$ = Average VO concentration of hazardous waste stream ''x'' at the point of waste origination as determined in accordance with the requirements of § 265.1084(a) of this subpart, ppmw.

(5) Procedure to determine the organic reduction efficiency (R) for a treated hazardous waste.

(i) The organic reduction efficiency (R) for a treatment process shall be determined based on results for a minimum of three consecutive runs.

(ii) All hazardous waste streams entering the treatment process and all hazardous waste streams exiting the treatment process shall be identified. The owner or operator shall prepare a sampling plan for measuring these streams that accurately reflects the retention time of the hazardous waste in the process.

(iii) For each run, information shall be determined for each hazardous waste stream identified in paragraph (b)(5)(ii) of this section using the following procedures:

(A) The mass quantity of each hazardous waste stream entering the process (Q_b) and the mass quantity of each hazardous waste stream exiting the process (Q_a) shall be determined.

(B) The average VO concentration at the point of waste origination of each hazardous waste stream entering the process ($\overline{C}_b$) during the run shall be determined in accordance with the requirements of paragraph (a)(3) of this section. The average VO concentration at the point of waste treatment of each waste stream exiting the process ($\overline{C}_a$) during the run shall be determined in accordance with the requirements of paragraph (b)(3) of this section.

(iv) The waste volatile organic mass flow entering the process (E_b) and the waste volatile organic mass flow exiting the process (E_a) shall be calculated by using the results determined in accordance with paragraph (b)(5)(iii) of this section and the following equations:

$$E_b = \frac{1}{10^6} \sum_{j=1}^{m} \left(Q_{bj} \times \overline{C_{bj}} \right)$$

$$E_a = \frac{1}{10^6} \sum_{j=1}^{m} \left(Q_{aj} \times \overline{C_{aj}} \right)$$

Where:

E_a = Waste volatile organic mass flow exiting process, kg/hr.

E_b = Waste volatile organic mass flow entering process, kg/hr.

m = Total number of runs (at least 3)

j = Individual run ''j''

Q_b = Mass quantity of hazardous waste entering process during run ''j,'' kg/hr.

Q_a = Average mass quantity of hazardous waste exiting process during run ''j,'' kg/hr.

$\overline{C}_a$ = Average VO concentration of hazardous waste exiting process during run ''j'' as determined in accordance with the requirements of § 265.1084(b)(3) of this subpart, ppmw.

$\overline{C}_b$ = Average VO concentration of hazardous waste entering process during run ''j'' as determined in accordance with the requirements of § 265.1084(a)(3) of this subpart, ppmw.

(v) The organic reduction efficiency of the process shall be calculated by using the results determined in accordance with paragraph (b)(5)(iv) of this section and the following equation:

$$R = \frac{E_b - E_a}{E_b} \times 100\%$$

Where:

R = Organic reduction efficiency, percent.

E_b = Waste volatile organic mass flow entering process as determined in accordance with the requirements of paragraph (b)(5)(iv) of this section, kg/hr.

E_a = Waste volatile organic mass flow exiting process as determined in accordance with the requirements of paragraph (b)(5)(iv) of this section, kg/hr.

(6) Procedure to determine the organic biodegradation efficiency (R_{bio}) for a treated hazardous waste.

(i) The fraction of organics biodegraded (F_{bio}) shall be determined using the procedure specified in 40 CFR part 63, appendix C of this chapter.

(ii) The R_{bio} shall be calculated by using the following equation:

$$R_{bio} = F_{bio} \times 100\%$$

Where:

R_{bio} = Organic biodegradation efficiency, percent.

F_{bio} = Fraction of organic biodegraded as determined in accordance with the requirements of paragraph (b)(6)(i) of this section.

(7) Procedure to determine the required organic mass removal rate (RMR) for a treated hazardous waste.

(i) All of the hazardous waste streams entering the treatment process shall be identified.

(ii) The average VO concentration of each hazardous waste stream at the point of waste origination shall be determined in accordance with the requirements of paragraph (a) of this section.

(iii) For each individual hazardous waste stream that has an average VO concentration equal to or greater than 500 ppmw at the point of waste origination, the average volumetric flow rate and the density of the hazardous waste stream at the point of waste origination shall be determined.

(iv) The RMR shall be calculated by using the average VO concentration, average volumetric flow rate, and density determined for each individual hazardous waste stream, and the following equation:

$$RMR = \sum_{y=1}^{n} \left[V_y \times k_y \times \frac{\left(\overline{C_y} - 500 \text{ ppmw}\right)}{10^6} \right]$$

Where:

RMR = Required organic mass removal rate, kg/hr.

y = Individual hazardous waste stream ''y'' that has an average VO concentration equal to or greater than 500 ppmw at the point of waste origination as determined in accordance with the requirements of § 265.1084(a) of this subpart.

n = Total number of ''y'' hazardous waste streams treated by process.

V_y = Average volumetric flow rate of hazardous waste stream ''y'' at the point of waste origination, m^3/hr.

k_y = Density of hazardous waste stream ''y,'' kg/m^3

$\overline{C_y}$ = Average VO concentration of hazardous waste stream ''y'' at the point of waste origination as determined in accordance with the requirements of § 265.1084(a) of this subpart, ppmw.

(8) Procedure to determine the actual organic mass removal rate (MR) for a treated hazardous waste.

(i) The MR shall be determined based on results for a minimum of three consecutive runs. The sampling time for each run shall be 1 hour.

(ii) The waste volatile organic mass flow entering the process (E_b) and the waste volatile organic mass flow exiting the process (E_a) shall be determined in accordance with the requirements of paragraph (b)(5)(iv) of this section.

(iii) The MR shall be calculated by using the mass flow rate determined in accordance with the requirements of paragraph (b)(8)(ii) of this section and the following equation:

Where:

$MR = E_b - E_a$

MR = Actual organic mass removal rate, kg/hr.

E_b = Waste volatile organic mass flow entering process as determined in accordance with the requirements of paragraph (b)(5)(iv) of this section, kg/hr.

E_a = Waste volatile organic mass flow exiting process as determined in accordance with the requirements of paragraph (b)(5)(iv) of this section, kg/hr.

(9) Procedure to determine the actual organic mass biodegradation rate (MR_{bio}) for a treated hazardous waste.

(i) The MR_{bio} shall be determined based on results for a minimum of three consecutive runs. The sampling time for each run shall be 1 hour.

(ii) The waste organic mass flow entering the process (E_b) shall be determined in accordance with the requirements of paragraph (b)(5)(iv) of this section.

(iii) The fraction of organic biodegraded (F_{bio}) shall be determined using the procedure specified in 40 CFR part 63, appendix C of this chapter.

(iv) The MR_{bio} shall be calculated by using the mass flow rates and fraction of organic biodegraded determined in accordance with the requirements of paragraphs (b)(9)(ii) and (b)(9)(iii), respectively, of this section and the following equation:

Where:

$MR_{bio} = E_b \times F_{bio}$

MR_{bio} = Actual organic mass biodegradation rate, kg/hr.

E_b = Waste organic mass flow entering process as determined in accordance with the requirements of paragraph (b)(5)(iv) of this section, kg/hr.

F_{bio} = Fraction of organic biodegraded as determined in accordance with the requirements of paragraph (b)(9)(iii) of this section.

(c) Procedure to determine the maximum organic vapor pressure of a hazardous waste in a tank.

(1) An owner or operator shall determine the maximum organic vapor pressure for each hazardous waste placed in a tank using Tank Level 1 controls in accordance with the standards specified in § 265.1085(c) of this subpart.

(2) An owner or operator shall use either direct measurement as specified in paragraph (c)(3) of this section or knowledge of the waste as specified by paragraph (c)(4) of this section to determine the maximum organic vapor pressure which is representative of the hazardous waste composition stored or treated in the tank.

(3) Direct measurement to determine the maximum organic vapor pressure of a hazardous waste.

(i) Sampling. A sufficient number of samples shall be collected to be representative of the waste contained in the tank. All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous waste are collected such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on-site in the facility operating records. An example of an acceptable sampling plan includes a plan incorporating sample collection and handling procedures in accordance with the requirements specified in ''Test

Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication No. SW–846, (incorporated by reference—refer to § 260.11(a) of this chapter), or in Method 25D in 40 CFR part 60, appendix A.

(ii) Analysis. Any appropriate one of the following methods may be used to analyze the samples and compute the maximum organic vapor pressure of the hazardous waste:

(A) Method 25E in 40 CFR part 60 appendix A;

(B) Methods described in American Petroleum Institute Publication 2517, Third Edition, February 1989, ''Evaporative Loss from External Floating-Roof Tanks,'' (incorporated by reference—refer to § 260.11 of this chapter);

(C) Methods obtained from standard reference texts;

(D) ASTM Method 2879–92 (incorporated by reference—refer to § 260.11 of this chapter); and

(E) Any other method approved by the Regional Administrator.

(4) Use of knowledge to determine the maximum organic vapor pressure of the hazardous waste. Documentation shall be prepared and recorded that presents the information used as the basis for the owner's or operator's knowledge that the maximum organic vapor pressure of the hazardous waste is less than the maximum vapor pressure limit listed in § 265.1085(b)(1)(i) of this subpart for the applicable tank design capacity category. An example of information that may be used is documentation that the hazardous waste is generated by a process for which at other locations it previously has been determined by direct measurement that the waste maximum organic vapor pressure is less than the maximum vapor pressure limit for the appropriate tank design capacity category.

(d) Procedure for determining no detectable organic emissions for the purpose of complying with this subpart:

(1) The test shall be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A. Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the cover and associated closure devices shall be checked. Potential leak interfaces that are associated with covers and closure devices include, but are not limited to: The interface of the cover and its foundation mounting; the periphery of any opening on the cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure relief valve.

(2) The test shall be performed when the unit contains a hazardous waste having an organic concentration representative of the range of concentrations for the hazardous waste expected to be managed in the unit. During the test, the cover and closure devices shall be secured in the closed position.

(3) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the organic constituents in the hazardous waste placed in the waste management unit, not for each individual organic constituent.

(4) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(5) Calibration gases shall be as follows:

(i) Zero air (less than 10 ppmv hydrocarbon in air), and

(ii) A mixture of methane in air at a concentration of approximately, but less than 10,000 ppmv.

(6) The background level shall be determined according to the procedures in Method 21 of 40 CFR part 60, appendix A.

(7) Each potential leak interface shall be checked by traversing the instrument probe around the potential leak interface as close to the interface as possible, as described in Method 21 of 40 CFR part 60, appendix A. In the case when the configuration of the cover or closure device prevents a complete traverse of the interface, all accessible portions of the interface shall be sampled. In the case when the configuration of the closure device prevents any sampling at the interface and the device is equipped with an enclosed extension or horn (e.g., some pressure relief devices), the instrument probe inlet shall be placed at approximately the center of the exhaust area to the atmosphere.

(8) The arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 500 ppmv except when monitoring a seal around a rotating shaft that passes through a cover opening, in which case the comparison shall be as specified in paragraph (d)(9) of this section. If the difference is less than 500 ppmv, then the potential leak interface is determined to operate with no detectable organic emissions.

(9) For the seals around a rotating shaft that passes through a cover opening, the arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 10,000 ppmw. If the difference is less than 10,000 ppmw, then the potential leak interface is determined to operate with no detectable organic emissions.

42. Section 265.1085 is revised to read as follows:

§ 265.1085 Standards: Tanks.

(a) The provisions of this section apply to the control of air pollutant emissions from tanks for which § 265.1083(b) of this subpart references the use of this section for such air emission control.

(b) The owner or operator shall control air pollutant emissions from each tank subject to this section in accordance with the following requirements, as applicable:

(1) For a tank that manages hazardous waste that meets all of the conditions specified in paragraphs (b)(1)(i) through (b)(1)(iii) of this section, the owner or operator shall control air pollutant emissions from the tank in accordance with the Tank Level 1 controls specified in paragraph (c) of this section or the Tank Level 2 controls specified in paragraph (d) of this section.

(i) The hazardous waste in the tank has a maximum organic vapor pressure which is less than the maximum organic vapor pressure limit for the tank's design capacity category as follows:

(A) For a tank design capacity equal to or greater than 151 m^3, the maximum organic vapor pressure limit for the tank is 5.2 kPa.

(B) For a tank design capacity equal to or greater than 75 m^3 but less than 151 m^3, the maximum organic vapor pressure limit for the tank is 27.6 kPa.

(C) For a tank design capacity less than 75 m^3, the maximum organic vapor pressure limit for the tank is 76.6 kPa.

(ii) The hazardous waste in the tank is not heated by the owner or operator to a temperature that is greater than the temperature at which the maximum organic vapor pressure of the hazardous waste is determined for the purpose of complying with paragraph (b)(1)(i) of this section.

(iii) The hazardous waste in the tank is not treated by the owner or operator using a waste stabilization process, as defined in § 265.1081 of this subpart.

(2) For a tank that manages hazardous waste that does not meet all of the conditions specified in paragraphs (b)(1)(i) through (b)(1)(iii) of this section, the owner or operator shall control air pollutant emissions from the tank by using Tank Level 2 controls in accordance with the requirements of

paragraph (d) of this section. Examples of tanks required to use Tank Level 2 controls include: A tank used for a waste stabilization process; and a tank for which the hazardous waste in the tank has a maximum organic vapor pressure that is equal to or greater than the maximum organic vapor pressure limit for the tank's design capacity category as specified in paragraph (b)(1)(i) of this section.

(c) Owners and operators controlling air pollutant emissions from a tank using Tank Level 1 controls shall meet the requirements specified in paragraphs (c)(1) through (c)(4) of this section:

(1) The owner or operator shall determine the maximum organic vapor pressure for a hazardous waste to be managed in the tank using Tank Level 1 controls before the first time the hazardous waste is placed in the tank. The maximum organic vapor pressure shall be determined using the procedures specified in § 265.1084(c) of this subpart. Thereafter, the owner or operator shall perform a new determination whenever changes to the hazardous waste managed in the tank could potentially cause the maximum organic vapor pressure to increase to a level that is equal to or greater than the maximum organic vapor pressure limit for the tank design capacity category specified in paragraph (b)(1)(i) of this section, as applicable to the tank.

(2) The tank shall be equipped with a fixed roof designed to meet the following specifications:

(i) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the hazardous waste in the tank. The fixed roof may be a separate cover installed on the tank (e.g., a removable cover mounted on an open-top tank) or may be an integral part of the tank structural design (e.g., a horizontal cylindrical tank equipped with a hatch).

(ii) The fixed roof shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between roof section joints or between the interface of the roof edge and the tank wall.

(iii) Each opening in the fixed roof shall be either:

(A) Equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the opening and the closure device; or

(B) Connected by a closed-vent system that is vented to a control device. The control device shall remove or destroy organics in the vent stream, and it shall be operating whenever hazardous waste is managed in the tank.

(iv) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: Organic vapor permeability, the effects of any contact with the hazardous waste or its vapors managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(3) Whenever a hazardous waste is in the tank, the fixed roof shall be installed with each closure device secured in the closed position except as follows:

(i) Opening of closure devices or removal of the fixed roof is allowed at the following times:

(A) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

(B) To remove accumulated sludge or other residues from the bottom of tank.

(ii) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the tank internal pressure in accordance with the tank design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the tank internal pressure is within the internal pressure operating range determined by the owner or operator based on the tank manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the tank internal pressure exceeds the internal pressure operating range for the tank as a result of loading operations or diurnal ambient temperature fluctuations.

(iii) Opening of a safety device, as defined in § 265.1081 of this subpart, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator shall inspect the air emission control equipment in accordance with the following requirements.

(i) The fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The owner or operator shall perform an initial inspection of the fixed roof and its closure devices on or before the date that the tank becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except under the special conditions provided for in paragraph (l) of this section.

(iii) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(iv) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 265.1090(b) of this subpart.

(d) Owners and operators controlling air pollutant emissions from a tank using Tank Level 2 controls shall use one of the following tanks:

(1) A fixed-roof tank equipped with an internal floating roof in accordance with the requirements specified in paragraph (e) of this section;

(2) A tank equipped with an external floating roof in accordance with the requirements specified in paragraph (f) of this section;

(3) A tank vented through a closed-vent system to a control device in accordance with the requirements specified in paragraph (g) of this section;

(4) A pressure tank designed and operated in accordance with the

requirements specified in paragraph (h) of this section; or

(5) A tank located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control device in accordance with the requirements specified in paragraph (i) of this section.

(e) The owner or operator who controls air pollutant emissions from a tank using a fixed-roof with an internal floating roof shall meet the requirements specified in paragraphs (e)(1) through (e)(3) of this section.

(1) The tank shall be equipped with a fixed roof and an internal floating roof in accordance with the following requirements:

(i) The internal floating roof shall be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.

(ii) The internal floating roof shall be equipped with a continuous seal between the wall of the tank and the floating roof edge that meets either of the following requirements:

(A) A single continuous seal that is either a liquid-mounted seal or a metallic shoe seal, as defined in § 265.1081 of this subpart; or

(B) Two continuous seals mounted one above the other. The lower seal may be a vapor-mounted seal.

(iii) The internal floating roof shall meet the following specifications:

(A) Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and the rim space vents is to provide a projection below the liquid surface.

(B) Each opening in the internal floating roof shall be equipped with a gasketed cover or a gasketed lid except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains.

(C) Each penetration of the internal floating roof for the purpose of sampling shall have a slit fabric cover that covers at least 90 percent of the opening.

(D) Each automatic bleeder vent and rim space vent shall be gasketed.

(E) Each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover.

(F) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.

(2) The owner or operator shall operate the tank in accordance with the following requirements:

(i) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be completed as soon as practical.

(ii) Automatic bleeder vents are to be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(iii) Prior to filling the tank, each cover, access hatch, gauge float well or lid on any opening in the internal floating roof shall be bolted or fastened closed (i.e., no visible gaps). Rim space vents are to be set to open only when the internal floating roof is not floating or when the pressure beneath the rim exceeds the manufacturer's recommended setting.

(3) The owner or operator shall inspect the internal floating roof in accordance with the procedures specified as follows:

(i) The floating roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: The internal floating roof is not floating on the surface of the liquid inside the tank; liquid has accumulated on top of the internal floating roof; any portion of the roof seals have detached from the roof rim; holes, tears, or other openings are visible in the seal fabric; the gaskets no longer close off the hazardous waste surface from the atmosphere; or the slotted membrane has more than 10 percent open area.

(ii) The owner or operator shall inspect the internal floating roof components as follows except as provided in paragraph (e)(3)(iii) of this section:

(A) Visually inspect the internal floating roof components through openings on the fixed-roof (e.g., manholes and roof hatches) at least once every 12 months after initial fill, and

(B) Visually inspect the internal floating roof, primary seal, secondary seal (if one is in service), gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every 10 years.

(iii) As an alternative to performing the inspections specified in paragraph (e)(3)(ii) of this section for an internal floating roof equipped with two continuous seals mounted one above the other, the owner or operator may visually inspect the internal floating roof, primary and secondary seals, gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every 5 years.

(iv) Prior to each inspection required by paragraph (e)(3)(ii) or (e)(3)(iii) of this section, the owner or operator shall notify the Regional Administrator in advance of each inspection to provide the Regional Administrator with the opportunity to have an observer present during the inspection. The owner or operator shall notify the Regional Administrator of the date and location of the inspection as follows:

(A) Prior to each visual inspection of an internal floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the owner or operator so that it is received by the Regional Administrator at least 30 calendar days before refilling the tank except when an inspection is not planned as provided for in paragraph (e)(3)(iv)(B) of this section.

(B) When a visual inspection is not planned and the owner or operator could not have known about the inspection 30 calendar days before refilling the tank, the owner or operator shall notify the Regional Administrator as soon as possible, but no later than 7 calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Regional Administrator at least 7 calendar days before refilling the tank.

(v) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(vi) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 265.1090(b) of this subpart.

(f) The owner or operator who controls air pollutant emissions from a tank using an external floating roof shall meet the requirements specified in paragraphs (f)(1) through (f)(3) of this section.

(1) The owner or operator shall design the external floating roof in accordance with the following requirements:

(i) The external floating roof shall be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.

(ii) The floating roof shall be equipped with two continuous seals, one above the other, between the wall of the tank and the roof edge. The lower seal is referred to as the primary seal, and the upper seal is referred to as the secondary seal.

(A) The primary seal shall be a liquid-mounted seal or a metallic shoe seal, as defined in § 265.1081 of this subpart. The total area of the gaps between the

tank wall and the primary seal shall not exceed 212 square centimeters (cm^2) per meter of tank diameter, and the width of any portion of these gaps shall not exceed 3.8 centimeters (cm). If a metallic shoe seal is used for the primary seal, the metallic shoe seal shall be designed so that one end extends into the liquid in the tank and the other end extends a vertical distance of at least 61 centimeters above the liquid surface.

(B) The secondary seal shall be mounted above the primary seal and cover the annular space between the floating roof and the wall of the tank. The total area of the gaps between the tank wall and the secondary seal shall not exceed 21.2 square centimeters (cm^2) per meter of tank diameter, and the width of any portion of these gaps shall not exceed 1.3 centimeters (cm).

(iii) The external floating roof shall meet the following specifications:

(A) Except for automatic bleeder vents (vacuum breaker vents) and rim space vents, each opening in a noncontact external floating roof shall provide a projection below the liquid surface.

(B) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be equipped with a gasketed cover, seal, or lid.

(C) Each access hatch and each gauge float well shall be equipped with a cover designed to be bolted or fastened when the cover is secured in the closed position.

(D) Each automatic bleeder vent and each rim space vent shall be equipped with a gasket.

(E) Each roof drain that empties into the liquid managed in the tank shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

(F) Each unslotted and slotted guide pole well shall be equipped with a gasketed sliding cover or a flexible fabric sleeve seal.

(G) Each unslotted guide pole shall be equipped with a gasketed cap on the end of the pole.

(H) Each slotted guide pole shall be equipped with a gasketed float or other device which closes off the liquid surface from the atmosphere.

(I) Each gauge hatch and each sample well shall be equipped with a gasketed cover.

(2) The owner or operator shall operate the tank in accordance with the following requirements:

(i) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be completed as soon as practical.

(ii) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be secured and maintained in a closed position at all times except when the closure device must be open for access.

(iii) Covers on each access hatch and each gauge float well shall be bolted or fastened when secured in the closed position.

(iv) Automatic bleeder vents shall be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(v) Rim space vents shall be set to open only at those times that the roof is being floated off the roof leg supports or when the pressure beneath the rim seal exceeds the manufacturer's recommended setting.

(vi) The cap on the end of each unslotted guide pole shall be secured in the closed position at all times except when measuring the level or collecting samples of the liquid in the tank.

(vii) The cover on each gauge hatch or sample well shall be secured in the closed position at all times except when the hatch or well must be opened for access.

(viii) Both the primary seal and the secondary seal shall completely cover the annular space between the external floating roof and the wall of the tank in a continuous fashion except during inspections.

(3) The owner or operator shall inspect the external floating roof in accordance with the procedures specified as follows:

(i) The owner or operator shall measure the external floating roof seal gaps in accordance with the following requirements:

(A) The owner or operator shall perform measurements of gaps between the tank wall and the primary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every 5 years.

(B) The owner or operator shall perform measurements of gaps between the tank wall and the secondary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every year.

(C) If a tank ceases to hold hazardous waste for a period of 1 year or more, subsequent introduction of hazardous waste into the tank shall be considered an initial operation for the purposes of paragraphs (f)(3)(i)(A) and (f)(3)(i)(B) of this section.

(D) The owner or operator shall determine the total surface area of gaps in the primary seal and in the secondary seal individually using the following procedure:

(*1*) The seal gap measurements shall be performed at one or more floating roof levels when the roof is floating off the roof supports.

(*2*) Seal gaps, if any, shall be measured around the entire perimeter of the floating roof in each place where a 0.32-centimeter (cm) diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the tank and measure the circumferential distance of each such location.

(*3*) For a seal gap measured under paragraph (f)(3) of this section, the gap surface area shall be determined by using probes of various widths to measure accurately the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.

(*4*) The total gap area shall be calculated by adding the gap surface areas determined for each identified gap location for the primary seal and the secondary seal individually, and then dividing the sum for each seal type by the nominal perimeter of the tank. These total gap areas for the primary seal and secondary seal are then are compared to the respective standards for the seal type as specified in paragraph (f)(1)(ii) of this section.

(E) In the event that the seal gap measurements do not conform to the specifications in paragraph (f)(1)(ii) of this section, the owner or operator shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(F) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 265.1090(b) of this subpart.

(ii) The owner or operator shall visually inspect the external floating roof in accordance with the following requirements:

(A) The floating roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: Holes, tears, or other openings in the rim seal or seal fabric of the floating roof; a rim seal detached from the floating roof; all or a portion of the floating roof deck being submerged below the surface of the liquid in the tank; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(B) The owner or operator shall perform an initial inspection of the external floating roof and its closure devices on or before the date that the tank becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in paragraph (l) of this section.

(C) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(D) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 265.1090(b) of this subpart.

(iii) Prior to each inspection required by paragraph (f)(3)(i) or (f)(3)(ii) of this section, the owner or operator shall notify the Regional Administrator in advance of each inspection to provide the Regional Administrator with the opportunity to have an observer present during the inspection. The owner or operator shall notify the Regional Administrator of the date and location of the inspection as follows:

(A) Prior to each inspection to measure external floating roof seal gaps as required under paragraph (f)(3)(i) of this section, written notification shall be prepared and sent by the owner or operator so that it is received by the Regional Administrator at least 30 calendar days before the date the measurements are scheduled to be performed.

(B) Prior to each visual inspection of an external floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the owner or operator so that it is received by the Regional Administrator at least 30 calendar days before refilling the tank except when an inspection is not planned as provided for in paragraph (f)(3)(iii)(C) of this section.

(C) When a visual inspection is not planned and the owner or operator could not have known about the inspection 30 calendar days before refilling the tank, the owner or operator shall notify the Regional Administrator as soon as possible, but no later than 7 calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Regional Administrator at least 7 calendar days before refilling the tank.

(g) The owner or operator who controls air pollutant emissions from a tank by venting the tank to a control device shall meet the requirements specified in paragraphs (g)(1) through (g)(3) of this section.

(1) The tank shall be covered by a fixed roof and vented directly through a closed-vent system to a control device in accordance with the following requirements:

(i) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the tank.

(ii) Each opening in the fixed roof not vented to the control device shall be equipped with a closure device. If the pressure in the vapor headspace underneath the fixed roof is less than atmospheric pressure when the control device is operating, the closure devices shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the fixed roof is equal to or greater than atmospheric pressure when the control device is operating, the closure device shall be designed to operate with no detectable organic emissions.

(iii) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: Organic vapor permeability, the effects of any contact with the liquid and its vapor managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(iv) The closed-vent system and control device shall be designed and operated in accordance with the requirements of § 265.1088 of this subpart.

(2) Whenever a hazardous waste is in the tank, the fixed roof shall be installed with each closure device secured in the closed position and the vapor headspace underneath the fixed roof vented to the control device except as follows:

(i) Venting to the control device is not required, and opening of closure devices or removal of the fixed roof is allowed at the following times:

(A) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

(B) To remove accumulated sludge or other residues from the bottom of a tank.

(ii) Opening of a safety device, as defined in § 265.1081 of this subpart, is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The owner or operator shall inspect and monitor the air emission control equipment in accordance with the following procedures:

(i) The fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The closed-vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in § 265.1088 of this subpart.

(iii) The owner or operator shall perform an initial inspection of the air emission control equipment on or before the date that the tank becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in paragraph (l) of this section.

(iv) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(v) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 265.1090(b) of this subpart.

(h) The owner or operator who controls air pollutant emissions by using a pressure tank shall meet the following requirements.

(1) The tank shall be designed not to vent to the atmosphere as a result of compression of the vapor headspace in the tank during filling of the tank to its design capacity.

(2) All tank openings shall be equipped with closure devices designed to operate with no detectable organic emissions as determined using the procedure specified in § 265.1084(d) of this subpart.

(3) Whenever a hazardous waste is in the tank, the tank shall be operated as a closed system that does not vent to the atmosphere except in the event that a safety device, as defined in § 265.1081 of this subpart, is required to open to avoid an unsafe condition.

(i) The owner or operator who controls air pollutant emissions by using an enclosure vented through a closed-vent system to an enclosed combustion control device shall meet the requirements specified in paragraphs (i)(1) through (i)(4) of this section.

(1) The tank shall be located inside an enclosure. The enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' under 40 CFR 52.741, Appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' initially when the enclosure is first installed and, thereafter, annually.

(2) The enclosure shall be vented through a closed-vent system to an enclosed combustion control device that is designed and operated in accordance with the standards for either a vapor incinerator, boiler, or process heater specified in § 265.1088 of this subpart.

(3) Safety devices, as defined in § 265.1081 of this subpart, may be installed and operated as necessary on any enclosure, closed-vent system, or control device used to comply with the requirements of paragraphs (i)(1) and (i)(2) of this section.

(4) The owner or operator shall inspect and monitor the closed-vent system and control device as specified in § 265.1088 of this subpart.

(j) The owner or operator shall transfer hazardous waste to a tank subject to this section in accordance with the following requirements:

(1) Transfer of hazardous waste, except as provided in paragraph (j)(2) of this section, to the tank from another tank subject to this section or from a surface impoundment subject to § 265.1086 of this subpart shall be conducted using continuous hard-piping or another closed system that does not allow exposure of the hazardous waste to the atmosphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system when it meets the requirements of 40 CFR part 63, subpart RR—National Emission Standards for Individual Drain Systems.

(2) The requirements of paragraph (j)(1) of this section do not apply when transferring a hazardous waste to the tank under any of the following conditions:

(i) The hazardous waste meets the average VO concentration conditions specified in § 265.1083(c)(1) of this subpart at the point of waste origination.

(ii) The hazardous waste has been treated by an organic destruction or removal process to meet the requirements in § 265.1083(c)(2) of this subpart.

(k) The owner or operator shall repair each defect detected during an inspection performed in accordance with the requirements of paragraphs (c)(4), (e)(3), (f)(3), or (g)(3) of this section as follows:

(1) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after detection, and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in paragraph (k)(2) of this section.

(2) Repair of a defect may be delayed beyond 45 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the tank and no alternative tank capacity is available at the site to accept the hazardous waste normally managed in the tank. In this case, the owner or operator shall repair the defect the next time the process or unit that is generating the hazardous waste managed in the tank stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

(l) Following the initial inspection and monitoring of the cover as required by the applicable provisions of this subpart, subsequent inspection and monitoring may be performed at intervals longer than 1 year under the following special conditions:

(1) In the case when inspecting or monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions, then the owner or operator may designate a cover as an ''unsafe to inspect and monitor cover'' and comply with all of the following requirements:

(i) Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required.

(ii) Develop and implement a written plan and schedule to inspect and monitor the cover, using the procedures specified in the applicable section of this subpart, as frequently as practicable during those times when a worker can safely access the cover.

(2) In the case when a tank is buried partially or entirely underground, an owner or operator is required to inspect and monitor, as required by the applicable provisions of this section, only those portions of the tank cover and those connections to the tank (e.g., fill ports, access hatches, gauge wells, etc.) that are located on or above the ground surface.

43. Section 265.1086 is revised to read as follows:

§ 265.1086 Standards: surface impoundments.

(a) The provisions of this section apply to the control of air pollutant emissions from surface impoundments for which § 265.1083(b) of this subpart references the use of this section for such air emission control.

(b) The owner or operator shall control air pollutant emissions from the surface impoundment by installing and operating either of the following:

(1) A floating membrane cover in accordance with the provisions specified in paragraph (c) of this section; or

(2) A cover that is vented through a closed-vent system to a control device in accordance with the provisions specified in paragraph (d) of this sections.

(c) The owner or operator who controls air pollutant emissions from a surface impoundment using a floating membrane cover shall meet the requirements specified in paragraphs (c)(1) through (c)(3) of this section.

(1) The surface impoundment shall be equipped with a floating membrane cover designed to meet the following specifications:

(i) The floating membrane cover shall be designed to float on the liquid surface during normal operations and form a continuous barrier over the entire surface area of the liquid.

(ii) The cover shall be fabricated from a synthetic membrane material that is either:

(A) High density polyethylene (HDPE) with a thickness no less than 2.5 millimeters (mm); or

(B) A material or a composite of different materials determined to have

both organic permeability properties that are equivalent to those of the material listed in paragraph (c)(1)(ii)(A) of this section and chemical and physical properties that maintain the material integrity for the intended service life of the material.

(iii) The cover shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between cover section seams or between the interface of the cover edge and its foundation mountings.

(iv) Except as provided for in paragraph (c)(1)(v) of this section, each opening in the floating membrane cover shall be equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device.

(v) The floating membrane cover may be equipped with one or more emergency cover drains for removal of stormwater. Each emergency cover drain shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening or a flexible fabric sleeve seal.

(vi) The closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the closure devices throughout their intended service life. Factors to be considered when selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability; the effects of any contact with the liquid and its vapor managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the floating membrane cover is installed.

(2) Whenever a hazardous waste is in the surface impoundment, the floating membrane cover shall float on the liquid and each closure device shall be secured in the closed position except as follows:

(i) Opening of closure devices or removal of the cover is allowed at the following times:

(A) To provide access to the surface impoundment for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the surface impoundment, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly replace the cover and secure the closure device in the closed position, as applicable.

(B) To remove accumulated sludge or other residues from the bottom of surface impoundment.

(ii) Opening of a safety device, as defined in § 265.1081 of this subpart, is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The owner or operator shall inspect the floating membrane cover in accordance with the following procedures:

(i) The floating membrane cover and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover section seams or between the interface of the cover edge and its foundation mountings; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The owner or operator shall perform an initial inspection of the floating membrane cover and its closure devices on or before the date that the surface impoundment becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in paragraph (g) of this section.

(iii) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (f) of this section.

(iv) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 265.1090(c) of this subpart.

(d) The owner or operator who controls air pollutant emissions from a surface impoundment using a cover vented to a control device shall meet the requirements specified in paragraphs (d)(1) through (d)(3) of this section.

(1) The surface impoundment shall be covered by a cover and vented directly through a closed-vent system to a control device in accordance with the following requirements:

(i) The cover and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the surface impoundment.

(ii) Each opening in the cover not vented to the control device shall be equipped with a closure device. If the pressure in the vapor headspace underneath the cover is less than atmospheric pressure when the control device is operating, the closure devices shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the cover is equal to or greater than atmospheric pressure when the control device is operating, the closure device shall be designed to operate with no detectable organic emissions using the procedure specified in § 265.1084(d) of this subpart.

(iii) The cover and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the cover and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the cover and closure devices shall include: Organic vapor permeability; the effects of any contact with the liquid or its vapors managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the cover is installed.

(iv) The closed-vent system and control device shall be designed and operated in accordance with the requirements of § 265.1088 of this subpart.

(2) Whenever a hazardous waste is in the surface impoundment, the cover shall be installed with each closure device secured in the closed position and the vapor headspace underneath the cover vented to the control device except as follows:

(i) Venting to the control device is not required, and opening of closure devices or removal of the cover is allowed at the following times:

(A) To provide access to the surface impoundment for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the surface impoundment, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the surface impoundment.

(B) To remove accumulated sludge or other residues from the bottom of surface impoundment.

(ii) Opening of a safety device, as defined in § 265.1081 of this subpart, is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The owner or operator shall inspect and monitor the air emission control equipment in accordance with the following procedures:

(i) The surface impoundment cover and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover section seams or between the interface of the cover edge and its foundation mountings; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The closed-vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in § 265.1088 of this subpart.

(iii) The owner or operator shall perform an initial inspection of the air emission control equipment on or before the date that the surface impoundment becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in paragraph (g) of this section.

(iv) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (f) of this section.

(v) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 265.1090(c) of this subpart.

(e) The owner or operator shall transfer hazardous waste to a surface impoundment subject to this section in accordance with the following requirements:

(1) Transfer of hazardous waste, except as provided in paragraph (e)(2) of this section, to the surface impoundment from another surface impoundment subject to this section or from a tank subject to § 265.1085 of this subpart shall be conducted using continuous hard-piping or another closed system that does not allow exposure of the waste to the atmosphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system when it meets the requirements of 40 CFR part 63, subpart RR—National Emission Standards for Individual Drain Systems.

(2) The requirements of paragraph (e)(1) of this section do not apply when transferring a hazardous waste to the surface impoundment under either of the following conditions:

(i) The hazardous waste meets the average VO concentration conditions specified in § 265.1083(c)(1) of this subpart at the point of waste origination.

(ii) The hazardous waste has been treated by an organic destruction or removal process to meet the requirements in § 265.1083(c)(2) of this subpart.

(f) The owner or operator shall repair each defect detected during an inspection performed in accordance with the requirements of paragraph (c)(3) or (d)(3) of this section as follows:

(1) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after detection, and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in paragraph (f)(2) of this section.

(2) Repair of a defect may be delayed beyond 45 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the surface impoundment and no alternative capacity is available at the site to accept the hazardous waste normally managed in the surface impoundment. In this case, the owner or operator shall repair the defect the next time the process or unit that is generating the hazardous waste managed in the tank stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

(g) Following the initial inspection and monitoring of the cover as required by the applicable provisions of this subpart, subsequent inspection and monitoring may be performed at intervals longer than 1 year in the case when inspecting or monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions. In this case, the owner or operator may designate the cover as an ''unsafe to inspect and monitor cover'' and comply with all of the following requirements:

(1) Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required.

(2) Develop and implement a written plan and schedule to inspect and monitor the cover using the procedures specified in the applicable section of this subpart as frequently as practicable during those times when a worker can safely access the cover.

44. Section 265.1087 is revised to read as follows:

§ 265.1087 Standards: Containers.

(a) The provisions of this section apply to the control of air pollutant emissions from containers for which § 265.1083(b) of this subpart references the use of this section for such air emission control.

(b) General requirements.

(1) The owner or operator shall control air pollutant emissions from each container subject to this section in accordance with the following requirements, as applicable to the container, except when the special provisions for waste stabilization processes specified in paragraph (b)(2) of this section apply to the container.

(i) For a container having a design capacity greater than 0.1 m^3 and less than or equal to 0.46 m^3, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in paragraph (c) of this section.

(ii) For a container having a design capacity greater than 0.46 m^3 that is not in light material service, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in paragraph (c) of this section.

(iii) For a container having a design capacity greater than 0.46 m^3 that is in light material service, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 2 standards specified in paragraph (d) of this section.

(2) When a container having a design capacity greater than 0.1 m^3 is used for treatment of a hazardous waste by a waste stabilization process, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 3 standards specified in paragraph (e) of this section at those times during the waste stabilization process when the hazardous waste in the container is exposed to the atmosphere.

(c) Container Level 1 standards.

(1) A container using Container Level 1 controls is one of the following:

(i) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in paragraph (f) of this section.

(ii) A container equipped with a cover and closure devices that form a

continuous barrier over the container openings such that when the cover and closure devices are secured in the closed position there are no visible holes, gaps, or other open spaces into the interior of the container. The cover may be a separate cover installed on the container (e.g., a lid on a drum or a suitably secured tarp on a roll-off box) or may be an integral part of the container structural design (e.g., a ''portable tank'' or bulk cargo container equipped with a screw-type cap).

(iii) An open-top container in which an organic-vapor suppressing barrier is placed on or over the hazardous waste in the container such that no hazardous waste is exposed to the atmosphere. One example of such a barrier is application of a suitable organic-vapor suppressing foam.

(2) A container used to meet the requirements of paragraph (c)(1)(ii) or (c)(1)(iii) of this section shall be equipped with covers and closure devices, as applicable to the container, that are composed of suitable materials to minimize exposure of the hazardous waste to the atmosphere and to maintain the equipment integrity for as long as it is in service. Factors to be considered in selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability, the effects of contact with the hazardous waste or its vapor managed in the container; the effects of outdoor exposure of the closure device or cover material to wind, moisture, and sunlight; and the operating practices for which the container is intended to be used.

(3) Whenever a hazardous waste is in a container using Container Level 1 controls, the owner or operator shall install all covers and closure devices for the container, as applicable to the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous waste or other material to the container as follows:

(A) In the case when the container is filled to the intended final level in one continuous operation, the owner or operator shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the purpose of removing hazardous waste from the container as follows:

(A) For the purpose of meeting the requirements of this section, an empty container as defined in 40 CFR 261.7(b) may be open to the atmosphere at any time (i.e., covers and closure devices are not required to be secured in the closed position on an empty container).

(B) In the case when discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container as defined in 40 CFR 261.7(b), the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous waste. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(iv) Opening of a spring-loaded, pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the container internal pressure in accordance with the design specifications of the container. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(v) Opening of a safety device, as defined in § 265.1081 of this subpart, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator of containers using Container Level 1 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied (i.e., does not meet the conditions for an empty container as specified in 40 CFR 261.7(b)) within 24 hours after the container is accepted at the facility, the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c)(4)(iii) of this section.

(ii) In the case when a container used for managing hazardous waste remains at the facility for a period of 1 year or more, the owner or operator shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c)(4)(iii) of this section.

(iii) When a defect is detected for the container, cover, or closure devices, the owner or operator shall make first

efforts at repair of the defect no later than 24 hours after detection, and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous waste shall be removed from the container and the container shall not be used to manage hazardous waste until the defect is repaired.

(5) The owner or operator shall maintain at the facility a copy of the procedure used to determine that containers with capacity of 0.46 m^3 or greater, which do not meet applicable DOT regulations as specified in paragraph (f) of this section, are not managing hazardous waste in light material service.

(d) Container Level 2 standards.

(1) A container using Container Level 2 controls is one of the following:

(i) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in paragraph (f) of this section.

(ii) A container that operates with no detectable organic emissions as defined in § 265.1081 of this subpart and determined in accordance with the procedure specified in paragraph (g) of this section.

(iii) A container that has been demonstrated within the preceding 12 months to be vapor-tight by using 40 CFR part 60, appendix A, Method 27 in accordance with the procedure specified in paragraph (h) of this section.

(2) Transfer of hazardous waste in or out of a container using Container Level 2 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive or other hazardous materials. Examples of container loading procedures that the EPA considers to meet the requirements of this paragraph include using any one of the following: A submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

(3) Whenever a hazardous waste is in a container using Container Level 2 controls, the owner or operator shall install all covers and closure devices for the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous waste or other material to the container as follows:

(A) In the case when the container is filled to the intended final level in one continuous operation, the owner or operator shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the purpose of removing hazardous waste from the container as follows:

(A) For the purpose of meeting the requirements of this section, an empty container as defined in 40 CFR 261.7(b) may be open to the atmosphere at any time (i.e., covers and closure devices are not required to be secured in the closed position on an empty container).

(B) In the case when discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container as defined in 40 CFR 261.7(b), the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous waste. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(iv) Opening of a spring-loaded, pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emission when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(v) Opening of a safety device, as defined in § 265.1081 of this subpart, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator of containers using Container Level 2 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied (i.e., does not meet the conditions for an empty container as specified in 40 CFR 261.7(b)) within 24 hours after the container arrives at the facility, the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is

detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d)(4)(iii) of this section.

(ii) In the case when a container used for managing hazardous waste remains at the facility for a period of 1 year or more, the owner or operator shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d)(4)(iii) of this section.

(iii) When a defect is detected for the container, cover, or closure devices, the owner or operator shall make first efforts at repair of the defect no later than 24 hours after detection, and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous waste shall be removed from the container and the container shall not be used to manage hazardous waste until the defect is repaired.

(e) Container Level 3 standards.

(1) A container using Container Level 3 controls is one of the following:

(i) A container that is vented directly through a closed-vent system to a control device in accordance with the requirements of paragraph (e)(2)(ii) of this section.

(ii) A container that is vented inside an enclosure which is exhausted through a closed-vent system to a control device in accordance with the requirements of paragraphs (e)(2)(i) and (e)(2)(ii) of this section.

(2) The owner or operator shall meet the following requirements, as applicable to the type of air emission control equipment selected by the owner or operator:

(i) The container enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' initially when the enclosure is first installed and, thereafter, annually.

(ii) The closed-vent system and control device shall be designed and operated in accordance with the requirements of § 265.1088 of this subpart.

(3) Safety devices, as defined in § 265.1081 of this subpart, may be installed and operated as necessary on any container, enclosure, closed-vent system, or control device used to comply with the requirements of paragraph (e)(1) of this section.

(4) Owners and operators using Container Level 3 controls in accordance with the provisions of this subpart shall inspect and monitor the closed-vent systems and control devices as specified in § 265.1088 of this subpart.

(5) Owners and operators that use Container Level 3 controls in accordance with the provisions of this subpart shall prepare and maintain the records specified in § 265.1090(d) of this subpart.

(f) For the purpose of compliance with paragraph (c)(1)(i) or (d)(1)(i) of this section, containers shall be used that meet the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as follows:

(1) The container meets the applicable requirements specified in 49 CFR part 178—Specifications for Packaging or 49 CFR part 179—Specifications for Tank Cars.

(2) Hazardous waste is managed in the container in accordance with the applicable requirements specified in 49 CFR part 107, subpart B—Exemptions; 49 CFR part 172—Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements; 49 CFR part 173—Shippers—General Requirements for Shipments and Packages; and 49 CFR part 180—Continuing Qualification and Maintenance of Packagings.

(3) For the purpose of complying with this subpart, no exceptions to the 49 CFR part 178 or part 179 regulations are allowed except as provided for in paragraph (f)(4) of this section.

(4) For a lab pack that is managed in accordance with the requirements of 49 CFR part 178 for the purpose of complying with this subpart, an owner or operator may comply with the exceptions for combination packagings specified in 49 CFR 173.12(b).

(g) The owner or operator shall use the procedure specified in § 265.1084(d) of this subpart for determining a container operates with no detectable organic emissions for the purpose of complying with paragraph (d)(1)(ii) of this section.

(1) Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the container, its cover, and associated closure devices, as applicable to the container, shall be checked. Potential leak interfaces that are associated with containers include, but are not limited to: The interface of the cover rim and the container wall; the periphery of any opening on the container or container cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed when the container is filled with a material having a volatile organic concentration representative of the range of volatile organic concentrations for the hazardous wastes expected to be managed in this type of container. During the test, the container cover and closure devices shall be secured in the closed position.

(h) Procedure for determining a container to be vapor-tight using Method 27 of 40 CFR part 60, appendix A for the purpose of complying with paragraph (d)(1)(iii) of this section.

(1) The test shall be performed in accordance with Method 27 of 40 CFR part 60, appendix A of this chapter.

(2) A pressure measurement device shall be used that has a precision of ±2.5 mm water and that is capable of measuring above the pressure at which the container is to be tested for vapor tightness.

(3) If the test results determined by Method 27 indicate that the container sustains a pressure change less than or equal to 750 Pascals within 5 minutes after it is pressurized to a minimum of 4,500 Pascals, then the container is determined to be vapor-tight.

45. Section 265.1088 is amended by revising paragraph (b)(3), adding paragraph (b)(4), revising paragraphs (c)(2), (c)(3)(ii), and (c)(5)(i) (D)–(E), and adding paragraph (c)(7) to read as follows:

§ 265.1088 Standards: Closed-vent systems and control devices.

* * * * *

(b) * * *

(3) In the case when the closed-vent system includes bypass devices that could be used to divert the gas or vapor stream to the atmosphere before entering the control device, each bypass device shall be equipped with either a flow indicator as specified in paragraph (b)(3)(i) of this section or a seal or

locking device as specified in paragraph (b)(3)(ii) of this section. For the purpose of complying with this paragraph, low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, spring-loaded pressure relief valves, and other fittings used for safety purposes are not considered to be bypass devices.

(i) If a flow indicator is used to comply with paragraph (b)(3) of this section, the indicator shall be installed at the inlet to the bypass line used to divert gases and vapors from the closed-vent system to the atmosphere at a point upstream of the control device inlet. For this paragraph, a flow indicator means a device which indicates the presence of either gas or vapor flow in the bypass line.

(ii) If a seal or locking device is used to comply with paragraph (b)(3) of this section, the device shall be placed on the mechanism by which the bypass device position is controlled (e.g., valve handle, damper lever) when the bypass device is in the closed position such that the bypass device cannot be opened without breaking the seal or removing the lock. Examples of such devices include, but are not limited to, a car-seal or a lock-and-key configuration valve. The owner or operator shall visually inspect the seal or closure mechanism at least once every month to verify that the bypass mechanism is maintained in the closed position.

(4) The closed-vent system shall be inspected and monitored by the owner or operator in accordance with the procedure specified in 40 CFR 265.1033(k).

(c) * * *

(2) The owner or operator who elects to use a closed-vent system and control device to comply with the requirements of this section shall comply with the requirements specified in paragraphs (c)(2)(i) through (c)(2)(vi) of this section.

(i) Periods of planned routine maintenance of the control device, during which the control device does not meet the specifications of paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this section, as applicable, shall not exceed 240 hours per year.

(ii) The specifications and requirements in paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(iii) of this section for control devices do not apply during periods of planned routine maintenance.

(iii) The specifications and requirements in paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(iii) of this section for control devices do not apply during a control device system malfunction.

(iv) The owner or operator shall demonstrate compliance with the requirements of paragraph (c)(2)(i) of this section (i.e., planned routine maintenance of a control device, during which the control device does not meet the specifications of paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this section, as applicable, shall not exceed 240 hours per year) by recording the information specified in § 265.1090(e)(1)(v) of this subpart.

(v) The owner or operator shall correct control device system malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of air pollutants.

(vi) The owner or operator shall operate the closed-vent system such that gases, vapors, and/or fumes are not actively vented to the control device during periods of planned maintenance or control device system malfunction (i.e., periods when the control device is not operating or not operating normally) except in cases when it is necessary to vent the gases, vapors, or fumes to avoid an unsafe condition or to implement malfunction corrective actions or planned maintenance actions.

* * * * *

(3) * * *

(i) * * *

(ii) All carbon removed from the control device shall be managed in accordance with the requirements of 40 CFR 265.1033(m).

* * * * *

(5) * * *

(i) * * *

(D) A boiler or industrial furnace burning hazardous waste for which the owner or operator has been issued a final permit under 40 CFR part 270 and has designed and operates the unit in accordance with the requirements of 40 CFR part 266, subpart H; or

(E) A boiler or industrial furnace burning hazardous waste for which the owner or operator has designed and operates in accordance with the interim status requirements of 40 CFR part 266, subpart H.

* * * * *

(7) The control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in 40 CFR 265.1033(f)(2) and 40 CFR 265.1033(k). The readings from each monitoring device required by 40 CFR 265.1033(f)(2) shall be inspected at least once each operating day to check control device operation. Any necessary corrective measures shall be immediately implemented to ensure the control device is operated in compliance with the requirements of this section.

46. Section 265.1089 is revised to read as follows:

§ 265.1089 Inspection and monitoring requirements.

(a) The owner or operator shall inspect and monitor air emission control equipment used to comply with this subpart in accordance with the applicable requirements specified in § 265.1085 through § 265.1088 of this subpart.

(b) The owner or operator shall develop and implement a written plan and schedule to perform the inspections and monitoring required by paragraph (a) of this section. The owner or operator shall incorporate this plan and schedule into the facility inspection plan required under 40 CFR 265.15.

47. Section 265.1090 is revised to read as follows:

§ 265.1090 Recordkeeping requirements.

(a) Each owner or operator of a facility subject to requirements in this subpart shall record and maintain the information specified in paragraphs (b) through (i) of this section, as applicable to the facility. Except for air emission control equipment design documentation and information required by paragraph (i) of this section, records required by this section shall be maintained in the operating record for a minimum of 3 years. Air emission control equipment design documentation shall be maintained in the operating record until the air emission control equipment is replaced or otherwise no longer in service. Information required by paragraph (i) of this section shall be maintained in the operating record for as long as the tank or container is not using air emission controls specified in §§ 264.1084 through 264.1087 of this subpart in accordance with the conditions specified in § 264.1084(d) of this subpart.

(b) The owner or operator of a tank using air emission controls in accordance with the requirements of § 265.1085 of this subpart shall prepare and maintain records for the tank that include the following information:

(1) For each tank using air emission controls in accordance with the requirements of § 265.1085 of this subpart, the owner or operator shall record:

(i) A tank identification number (or other unique identification description as selected by the owner or operator).

(ii) A record for each inspection required by § 265.1085 of this subpart that includes the following information:

(A) Date inspection was conducted.

(B) For each defect detected during the inspection, the following information: the location of the defect, a description of the defect, the date of

detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the provisions of § 265.1085 of this subpart, the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(2) In addition to the information required by paragraph (b)(1) of this section, the owner or operator shall record the following information, as applicable to the tank:

(i) The owner or operator using a fixed roof to comply with the Tank Level 1 control requirements specified in § 265.1085(c) of this subpart shall prepare and maintain records for each determination for the maximum organic vapor pressure of the hazardous waste in the tank performed in accordance with the requirements of § 265.1085(c) of this subpart. The records shall include the date and time the samples were collected, the analysis method used, and the analysis results.

(ii) The owner or operator using an internal floating roof to comply with the Tank Level 2 control requirements specified in § 265.1085(e) of this subpart shall prepare and maintain documentation describing the floating roof design.

(iii) Owners and operators using an external floating roof to comply with the Tank Level 2 control requirements specified in § 265.1085(f) of this subpart shall prepare and maintain the following records:

(A) Documentation describing the floating roof design and the dimensions of the tank.

(B) Records for each seal gap inspection required by § 265.1085(f)(3) of this subpart describing the results of the seal gap measurements. The records shall include the date that the measurements were performed, the raw data obtained for the measurements, and the calculations of the total gap surface area. In the event that the seal gap measurements do not conform to the specifications in § 265.1085(f)(1) of this subpart, the records shall include a description of the repairs that were made, the date the repairs were made, and the date the tank was emptied, if necessary.

(iv) Each owner or operator using an enclosure to comply with the Tank Level 2 control requirements specified in § 265.1085(i) of this subpart shall prepare and maintain the following records:

(A) Records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' under 40 CFR 52.741, appendix B.

(B) Records required for the closed-vent system and control device in accordance with the requirements of paragraph (e) of this section.

(c) The owner or operator of a surface impoundment using air emission controls in accordance with the requirements of § 265.1086 of this subpart shall prepare and maintain records for the surface impoundment that include the following information:

(1) A surface impoundment identification number (or other unique identification description as selected by the owner or operator).

(2) Documentation describing the floating membrane cover or cover design, as applicable to the surface impoundment, that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the specifications listed in § 265.1086(c) of this subpart.

(3) A record for each inspection required by § 265.1086 of this subpart that includes the following information:

(i) Date inspection was conducted.

(ii) For each defect detected during the inspection the following information: The location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the provisions of § 265.1086(f) of this subpart, the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(4) For a surface impoundment equipped with a cover and vented through a closed-vent system to a control device, the owner or operator shall prepare and maintain the records specified in paragraph (e) of this section.

(d) The owner or operator of containers using Container Level 3 air emission controls in accordance with the requirements of § 265.1087 of this subpart shall prepare and maintain records that include the following information:

(1) Records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' under 40 CFR 52.741, appendix B.

(2) Records required for the closed-vent system and control device in accordance with the requirements of paragraph (e) of this section.

(e) The owner or operator using a closed-vent system and control device in accordance with the requirements of § 265.1088 of this subpart shall prepare and maintain records that include the following information:

(1) Documentation for the closed-vent system and control device that includes:

(i) Certification that is signed and dated by the owner or operator stating that the control device is designed to operate at the performance level documented by a design analysis as specified in paragraph (e)(1)(ii) of this section or by performance tests as specified in paragraph (e)(1)(iii) of this section when the tank, surface impoundment, or container is or would be operating at capacity or the highest level reasonably expected to occur.

(ii) If a design analysis is used, then design documentation as specified in 40 CFR 265.1035(b)(4). The documentation shall include information prepared by the owner or operator or provided by the control device manufacturer or vendor that describes the control device design in accordance with 40 CFR 265.1035(b)(4)(iii) and certification by the owner or operator that the control equipment meets the applicable specifications.

(iii) If performance tests are used, then a performance test plan as specified in 40 CFR 265.1035(b)(3) and all test results.

(iv) Information as required by 40 CFR 265.1035(c)(1) and 40 CFR 265.1035(c)(2), as applicable.

(v) An owner or operator shall record, on a semiannual basis, the information specified in paragraphs (e)(1)(v)(A) and (e)(1)(v)(B) of this section for those planned routine maintenance operations that would require the control device not to meet the requirements of § 265.1088 (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this subpart, as applicable.

(A) A description of the planned routine maintenance that is anticipated to be performed for the control device during the next 6-month period. This description shall include the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods.

(B) A description of the planned routine maintenance that was performed for the control device during the previous 6-month period. This description shall include the type of maintenance performed and the total number of hours during those 6 months

that the control device did not meet the requirements of § 265.1088 (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this subpart, as applicable, due to planned routine maintenance.

(vi) An owner or operator shall record the information specified in paragraphs (e)(1)(vi)(A) through (e)(1)(vi)(C) of this section for those unexpected control device system malfunctions that would require the control device not to meet the requirements of § 265.1088 (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this subpart, as applicable.

(A) The occurrence and duration of each malfunction of the control device system.

(B) The duration of each period during a malfunction when gases, vapors, or fumes are vented from the waste management unit through the closed-vent system to the control device while the control device is not properly functioning.

(C) Actions taken during periods of malfunction to restore a malfunctioning control device to its normal or usual manner of operation.

(vii) Records of the management of carbon removed from a carbon adsorption system conducted in accordance with § 265.1088(c)(3)(ii) of this subpart.

(f) The owner or operator of a tank, surface impoundment, or container exempted from standards in accordance with the provisions of § 265.1083(c) of this subpart shall prepare and maintain the following records, as applicable:

(1) For tanks, surface impoundments, or containers exempted under the hazardous waste organic concentration conditions specified in § 265.1083 (c)(1) or (c)(2) of this subpart, the owner or operator shall record the information used for each waste determination (e.g., test results, measurements, calculations, and other documentation) in the facility operating log. If analysis results for waste samples are used for the waste determination, then the owner or operator shall record the date, time, and location that each waste sample is collected in accordance with applicable requirements of § 265.1084 of this subpart.

(2) For tanks, surface impoundments, or containers exempted under the provisions of § 265.1083(c)(2)(vii) or § 265.1083(c)(2)(viii) of this subpart, the owner or operator shall record the identification number for the incinerator, boiler, or industrial furnace in which the hazardous waste is treated.

(g) An owner or operator designating a cover as ''unsafe to inspect and monitor'' pursuant to § 265.1085(l) or § 265.1086(g) of this subpart shall record in a log that is kept in the facility operating record the following information: The identification numbers for waste management units with covers that are designated as ''unsafe to inspect and monitor,'' the explanation for each cover stating why the cover is unsafe to inspect and monitor, and the plan and schedule for inspecting and monitoring each cover.

(h) The owner or operator of a facility that is subject to this subpart and to the control device standards in 40 CFR part 60, subpart VV, or 40 CFR part 61, subpart V, may elect to demonstrate compliance with the applicable sections of this subpart by documentation either pursuant to this subpart, or pursuant to the provisions of 40 CFR part 60, subpart VV or 40 CFR part 61, subpart V, to the extent that the documentation required by 40 CFR parts 60 or 61 duplicates the documentation required by this section.

(i) For each tank or container not using air emission controls specified in §§ 265.1085 through 265.1088 of this subpart in accordance with the conditions specified in § 265.1080(d) of this subpart, the owner or operator shall record and maintain the following information:

(1) A list of the individual organic peroxide compounds manufactured at the facility that meet the conditions specified in § 265.1080(d)(1).

(2) A description of how the hazardous waste containing the organic peroxide compounds identified in paragraph (i)(1) of this section are managed at the facility in tanks and containers. This description shall include the following information:

(i) For the tanks used at the facility to manage this hazardous waste, sufficient information shall be provided to describe for each tank: A facility identification number for the tank; the purpose and placement of this tank in the management train of this hazardous waste; and the procedures used to ultimately dispose of the hazardous waste managed in the tanks.

(ii) For containers used at the facility to manage these hazardous wastes, sufficient information shall be provided to describe: A facility identification number for the container or group of containers; the purpose and placement of this container, or group of containers, in the management train of this hazardous waste; and the procedures used to ultimately dispose of the hazardous waste handled in the containers.

(3) An explanation of why managing the hazardous waste containing the organic peroxide compounds identified in paragraph (i)(1) of this section in the tanks and containers as described in paragraph (i)(2) of this section would create an undue safety hazard if the air emission controls, as required under §§ 265.1085 through 265.1088 of this subpart, are installed and operated on these waste management units. This explanation shall include the following information:

(i) For tanks used at the facility to manage these hazardous wastes, sufficient information shall be provided to explain: How use of the required air emission controls on the tanks would affect the tank design features and facility operating procedures currently used to prevent an undue safety hazard during the management of this hazardous waste in the tanks; and why installation of safety devices on the required air emission controls, as allowed under this subpart, will not address those situations in which evacuation of tanks equipped with these air emission controls is necessary and consistent with good engineering and safety practices for handling organic peroxides.

(ii) For containers used at the facility to manage these hazardous wastes, sufficient information shall be provided to explain: How use of the required air emission controls on the containers would affect the container design features and handling procedures currently used to prevent an undue safety hazard during the management of this hazardous waste in the containers; and why installation of safety devices on the required air emission controls, as allowed under this subpart, will not address those situations in which evacuation of containers equipped with these air emission controls is necessary and consistent with good engineering and safety practices for handling organic peroxides.

§ 265.1091 [Removed and reserved]

48. Part 265 is amended by removing and reserving § 265.1091.

49. Part 265 is amended by adding Appendix VI to read as follows:

APPENDIX VI TO PART 265.—COMPOUNDS WITH HENRY'S LAW CONSTANT LESS THAN 0.1 Y/X

[At 25 degrees Celsius]

Compound name	CAS No.
TRICHLORO(1,1,2)TRIFLUORO	
FORMALDEHYDE	50–00–0
HYDROCYANIC ACID	74–90–8
FORMAMIDE	
QUINONE	
DIMETHYL HYDRAZINE(1,1)	57–14–7
METHYL ACRYLATE	96–33–3
ACETAMIDE	60–35–5
METHYL HYDRAZINE	60–34–4
DIETHYLHYDRAZINE N,N	
FORMIC ACID	64–18–6
DIMETHYL DISULFIDE	624–92–0
PHORATE	298–02–2
HYDRAZINE	302–01–2
LEAD SUBACETATE	1335–32–
LEAD ACETATE	301–04–2
NAPHTHOL,beta-	135–19–3
DIETHYLENE GLYCOL MONOMETHYL ETHER	
NITROSODIMETHYLAMINE N	62–75–9
DIETHYLENE GLYCOL MONOBUTYL ETHER	
ACETYL–2–THIOUREA, 1-	591–08–2
ACRYLIC ACID	79–10–7
ETHYLENE GLYCOL MONOPHENYL ETHER	
ETHYLENE GLYCOL MONOMETHYL ETHER	
DIMETHYL FORMAMIDE	68–12–2
DIETHYLENE GLYCOL DIMETHYL ETHER	
PROPIOLACTONE b	57–57–8
ETHYLENE GLYCOL MONOPROPYL ETHER	
METHYL SULFURIC ACID	
METHYL THIOPHENOL 4	106–45–6
ETHYLENE GLYCOL MONOETHYL ETHER Cellosol	
DIMETHYL CARBAMOYL CHLORIDE	
ETHYLENE GLYCOL MONOETHYL ETHER ACETATE	
BUTYL CELLOSOLVE	111–76–2
TOLUENE DIAMINE(2,4)	95–80–7
DIMETHYLSULFOXIDE	
ANILINE	62–53–3
DIETHYLENE GLYCOL	111–46–6
ETHYLPHENOL, 3-	620–17–7
GYLCIDOL	556–52–5
BUTYRIC ACID	107–92–6
NITROSO-N-METHYLUREA N	684–93–5
MONOMETHYL FORMANIDE	
ETHYL CARBAMATE	
ETHYL MORPHOLINE, ethyl diethylene oxime	
ETHANOLAMINE(mono-)	141–43–5
ETHYLENE THIOUREA	
PHENOL	108–95–2
ETHYLENE GLYCOL MONOBUTYL ETHER	
CRESOL	1319–77–
PROPYLENE GLYCOL	57–55–6
TRIETHYLENE GLYCOL DIMETHYL ETHER	
CRESOL(-o)	95–48–7
TOLUIDINE (m)	
CHLOROPHENOL-4	106–48–9
BENZYL ALCOHOL	100–51–6
ACETALDOL	
CHLOROACETIC ACID	79–11–8
GLYPHOSATE	
ETHYLENE GLYCOL	107–21–1
ADENINE	73–24–5
HEXAMETHYLPHOSPHORAMIDE	
DIETHYLENE GLYCOL MONOETHYL ETHER ACETAT	
DICHLOROPHENOL 2,5	
CRESOL(-p)	106–44–5
NITROSOMORPHOLINE	
QUINOLINE	91–22–5
DIMETHYLSULFONE	
CRESOL(-m)	108–39–4
TOLUENE DIISOCYANATE(2,4)	584–84–9
HYDROXY-(2)-PROPIONITRILE	109–78–4

APPENDIX VI TO PART 265.—COMPOUNDS WITH HENRY'S LAW CONSTANT LESS THAN 0.1 Y/X—Continued

[At 25 degrees Celsius]

Compound name	CAS No.
HEXANOIC ACID	142–62–1
FUMARIC ACID	110–17–8
METHANE SULFONIC ACID	75–75–2
MESITYL OXIDE	141–79–7
CHLORO-2,5-DIKETOPYRROLIDINE 3	
PYRIDINIUM BROMIDE	
METHYLIMINOACETIC ACID	
DIMETHOATE	60–51–5
GUANIDINE, NITROSO	674–81–7
PHENYLACETIC ACID	103–82–2
BENZENE SULFONIC ACID	
ACETYL-5-HYDROXYPIPERIDINE 3	
LEUCINE	61–90–5
alpha-PICOLINE	1333–41–
METHYL-2-METHOXYAZIRIDINE 1	
BROMOCHLOROMETHYL ACETATE	
DICHLOROTETRAHYDROFURAN 3,4	3511–19–
ACETYLPIPERIDINE 3	618–42–8
CHLORO-1,2-ETHANE DIOL	
CYANIDE	57–12–5
NIACINAMIDE	98–92–0
METHOXYPHENOL P	150–76–5
METHYLFURFURAL 5	620–02–0
GLYCINAMIDE	598–41–4
SUCCINIMIDE	123–56–8
SULFANILIC ACID	121–47–1
MALEIC ACID	110–16–7
AMETRYN	
DIMETHYLPHENOL(3,4)	
ANISIDINE,o-	90–04–0
TETRAETHYLENE PENTAMINE	
DIETHYLENE GLYCOL MONOETHYL ETHER	
CHLORACETOPHENONE,2-	93–76–5
DIPROPYLENE GLYCOL	
HEXAMETHYLENE 1,6 DIISOCYANATE	
NEOPENTYL GLYCOL	126–30–7
BHC,gamma-	58–89–9
PHENYLENE DIAMINE(-m)	108–45–2
CHLOROHYDRIN, a 3 CHLORO 1,2 PROPANEDIOL	
XYLENOL(3,4)	95–65–8
DINITRO-o-CRESOL(4,6)	534–52–1
PROPORUR (Baygon)	
DIBROMO-4-HYDROXYBENZONITRILE (3,5)	
CATECHOL	120–80–9
CHLOROANILINE,p-	106–47–8
DICHLORVOS	
ACRYLAMIDE	79–06–1
THIOSEMICARBAZIDE	79–19–6
TRIETHANOLAMINE	102–71–6
PENTAERYTHRITOL	115–77–5
PHENYLENE DIAMINE(-o)	95–54–5
CAPROLACTAM	
BENZOIC ACID	65–85–0
TOLUENEDIAMINE(3,4)	496–72–0
TRIPROPYLENE GLYCOL	
PHENYLENE DIAMINE(-p)	106–50–3
TEREPHTHALIC ACID	
NITROGLYCERIN	55–63–0
CHLORO(-p)CRESOL(-m)	59–50–7
DICHLOROANILINE 2,3-	
NITROANILINE(-o)	88–74–4
DIETHYL (N,N) ANILINE	91–66–7
NAPHTHOL,alpha-	90–15–3
AMINOPYRIDINE,4-	504–24–5
ADIPONITRILE	
BROMOXYNIL	
PHTHALIC ANHYDRIDE	85–44–9
MALEIC ANHYDRIDE	108–31–6
NITROPHENOL,2-	88–75–5
ACETYLAMINOFLUORENE,2	53–96–3
PROPANE SULTONE,1,3-	1120–71–

APPENDIX VI TO PART 265.—COMPOUNDS WITH HENRY'S LAW CONSTANT LESS THAN 0.1 Y/X—Continued

[At 25 degrees Celsius]

Compound name	CAS No.
CITRIC ACID	77–92–9
EPINEPHRINE	51–43–4
CHLOROPHENOL POLYMERS	
CREOSOTE	8001–58–
FLUOROACETIC ACID, SODIUM SALT	62–74–8
SODIUM ACETATE	
SUCCINIC ACID	110–15–6
SODIUM FORMATE	141–53–7
PHENACETIN	62–44–2
HYDROQUINONE	123–31–9
DIMETHYLAMINOAZOBENZENE,4-	60–11–7
METHYLENE DIPHENYL DIISOCYANATE	
OXALIC ACID	144–62–7
BENZO(A)PYRENE	50–32–8
DICHLOROBENZONITRILE,2,6-	1194–65–6
AMINOBIPHENYL,4-	92–67–1
NAPHTHYLAMINE,alpha-	134–32–7
DIETHANOLAMINE	
METHYLENEDIANILINE 4,4	
NAPHTHYLAMINE,beta-	91–59–8
METHYLENE DIPHENYLAMINE (MDA)	
GLUTARIC ACID	110–94–1
RESORCINOL	108–46–3
TOLUIC ACID (para-)	99–94–5
GUTHION	
DIMETHYL PHTHALATE	131–11–3
GLYCERIN (GLYCEROL)	56–81–5
THIOFANOX	39196–18
DIBUTYLPHTHALATE	84–74–2
ALDICARB	116–06–3
NITROPHENOL,4-	100–02–7
METHYLENE-BIS (2-CHLOROANILINE),4,4'-	101–14–4
DIPHENYLHYDRAZINE(1,2)	122–66–7
METHOMYL	16752–77
MALATHION	121–75–5
PARATHION	56–38–2
ADIPIC ACID	124–04–9
ALACHLOR	15972–60
STRYCHNIDIN-10-ONE,2,3-DIMETHOXY-	357–57–3
TOLUENEDIAMINE(2,6)	823–40–5
CUMYLPHENOL-4	27576–86
DIAZINON	
BENZENE ARSONIC ACID	98–05–5
WARFARIN	81–81–2
METHYL PARATHION	298–00–0
DIETHYLTHIOPHOSPHATEBENZO M ETHYL PETHER	
PHENYL MERCURIC ACETATE	62–38–4
DIETHYL PROPIONAMIDE,2aN	15299–99
CHLOROBENZOPHENONE (PARA)	134–85–0
THIOUREA,1-(o-CHLOROPHENYL)-	5344–82–
DIMETHYLBENZIDINE 3,3	
DICHLORO-(2,6)-NITROANILINE(4)	99–30–9
CELLULOSE	9000–11–
CELL WALL	
BENZIDINE	92–87–5
TETRAETHYLDITHIOPYROPHOSPHATE	3689–24–
NABAM	
ATRAZINE	1912–24–
ENDRIN	72–20–8
BIS(2-ETHYLHEXYL) PHTHALATE	117–81–7
BENZO(A)ANTHRACENE	56–55–3
CYANOMETHYL BENZOATE 4	
ANTHRAQUINONE	84–65–1
STRYCHNINE	57–24–9
SIMAZINE	122–34–9
PYRENE	129–00–0
CHLOROBENZYLATE	510–15–6
DIMETHYLBENZ(A) ANTHRACENE(7,12)	57–97–6
INDENO(1,2,3-cd)-PYRENE	193–39–5
CHRYSENE	218–01–9
BENZO(ghi)PERYLENE	191–24–2

APPENDIX VI TO PART 265.—COMPOUNDS WITH HENRY'S LAW CONSTANT LESS THAN 0.1 Y/X—Continued

[At 25 degrees Celsius]

Compound name	CAS No.
BENZO(k) FLUORANTHENE	207–08–9
DIBENZO(a,h)ANTHRACENE	53–70–3
DIETHYL PHOSPHOROTHIOATE	126–75–0

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE MANAGEMENT PROGRAM

50. The authority citation for Part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6925, 6927, 6939, and 6974.

Subpart B—Permit Application

51. Section 270.14 is amended by revising paragraph (b)(5) to read as follows:

§ 270.14 Contents of Part B: General requirements.

* * * * *

(b) * * *

(5) A copy of the general inspection schedule required by § 264.15(b). Include where applicable, as part of the inspection schedule, specific requirements in §§ 264.174, 245.193(i), 264.195, 264.226, 264.254, 264.273, 264.303, 264.602, 264.1033, 264.1052, 264.1053, 264.1058, 264.1084, 264.1085, 264.1086, and 264.1088.

* * * * *

52. Section 270.27 is revised to read as follows:

§ 270.27 Specific Part B information requirements for air emission controls for tanks, surface impoundments, and containers.

(a) Except as otherwise provided in 40 CFR 264.1, owners and operators of tanks, surface impoundments, or containers that use air emission controls in accordance with the requirements of 40 CFR part 264, subpart CC shall provide the following additional information:

(1) Documentation for each floating roof cover installed on a tank subject to 40 CFR 264.1084(d)(1) or 40 CFR 264.1084(d)(2) that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the applicable design specifications as listed in 40 CFR 264.1084(e)(1) or 40 CFR 264.1084(f)(1).

(2) Identification of each container area subject to the requirements of 40 CFR part 264, subpart CC and certification by the owner or operator that the requirements of this subpart are met.

(3) Documentation for each enclosure used to control air pollutant emissions from tanks or containers in accordance with the requirements of 40 CFR 264.1084(d)(5) or 40 CFR 264.1086(e)(1)(ii) that includes records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' under 40 CFR 52.741, appendix B.

(4) Documentation for each floating membrane cover installed on a surface impoundment in accordance with the requirements of 40 CFR 264.1085(c) that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the specifications listed in 40 CFR 264.1085(c)(1).

(5) Documentation for each closed-vent system and control device installed in accordance with the requirements of 40 CFR 264.1087 that includes design and performance information as specified in § 270.24 (c) and (d) of this part.

(6) An emission monitoring plan for both Method 21 in 40 CFR part 60, appendix A and control device monitoring methods. This plan shall include the following information: monitoring point(s), monitoring methods for control devices, monitoring frequency, procedures for documenting exceedances, and procedures for mitigating noncompliances.

(7) When an owner or operator of a facility subject to 40 CFR part 265, subpart CC cannot comply with 40 CFR part 264, subpart CC by the date of permit issuance, the schedule of implementation required under 40 CFR 265.1082.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

53. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

Subpart A—Requirements for Final Authorization

54. Section 271.1(j) is amended by revising the effective date of the following entry in Table 1 to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS WASTE AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
*	*	*	*
December 6, 1994	Air Emission Standards for Tanks, Surface Impoundments, and Containers.	59 FR 62896–62953	December 6, 1996.

§ 271.1 [Amended]

54. Section 271.1(j) is amended by revising the effective date of the following entry in Table 2 to read as follows:

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS WASTE AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
*	* * * * *	*	*
December 6, 1996	Air Emission Standards for Tanks, Surface Impoundments, and Containers.	3004(n)	December 6, 1994, 59 FR 62896–62953.

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Federal Register

Monday
November 25, 1996

Part III

Environmental Protection Agency

Alaska: Partial Program Adequacy Tentative Determination of State Municipal Solid Waste Landfill Permit Program; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5654–6]

Alaska: Partial Program Adequacy Tentative Determination of State Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative determination on the Alaska Department of Environmental Conservation Application for a Partial Program Adequacy Determination, Public Hearing and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR Part 258). RCRA Section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate ''permit'' programs for MSWLFs, but does not mandate issuance of a rule for such determinations. On January 26, 1996, EPA published in the Federal Register at 61 FR 2584 a proposed State/Tribal Implementation Rule (STIR) that provides procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The EPA has approved and will continue to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to the final promulgation of STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the proposed STIR as an aid in interpreting these requirements. The EPA believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by Part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

The Alaska Department of Environmental Conservation (ADEC), Division of Environmental Health (DEH) applied on February 12, 1996 for a partial determination of adequacy under section 4005 of RCRA. EPA reviewed Alaska's application and made a tentative determination of adequacy for those portions of ADEC's MSWLF permit program that are adequate to assure compliance with the federal MSWLF Criteria. The portions of the Alaska program in today's tentative approval are described later in this notice. ADEC plans to revise the remainder of its permit program all at one time. This will be done once EPA has finalized its proposed rule on financial assurance mechanisms for local government landfills, to assure complete compliance with the revised federal MSWLF Criteria and gain full program approval. Alaska's application for partial program adequacy determination is available for public review and comment.

All municipal solid waste in Alaska must be disposed in a landfill which meets these criteria. This includes ash from municipal solid waste incinerators that is determined to be non-hazardous.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, EPA Region 10 is offering the opportunity for a public hearing on this determination on the date given below in the **DATES** section.

DATES: All comments on Alaska's application for a partial determination of adequacy must be received by EPA Region 10 by the close of business on January 23, 1997. If, and only if, sufficient interest in having a public hearing is requested by Tuesday, December 31, 1996, a public hearing to receive oral and written testimony on EPA's tentative determination will be held on Thursday, January 23, 1997 from 7:00 p.m. until 9:00 p.m. The hearing, if held, will be at the Federal Building, 222 West 7th Avenue, Anchorage, Alaska, 99513, in Room 143. Members of ADEC will attend EPA's public hearing.

Requests for a public hearing must in writing and must be received by the EPA contact listed below before the close of business on Tuesday, December 31, 1996, and should include a statement on the writer's reason for wanting a public hearing. EPA will determine on Monday, January 6, 1997, if a public hearing is warranted. After that date, anyone may contact the EPA person listed in the **CONTACTS** section to find out whether a public hearing will be held.

ADDRESSES: Copies of Alaska's application for partial adequacy determination are available during normal working days at the following addresses for inspection and copying: three offices of the Alaska Department of Environmental Conservation from 8:00 a.m. to 4:30 p.m. at 410 Willoughby Avenue, Juneau, AK 99801, Attn: Ms. Susan Super, (907)–465–5350; at 555 Cordova Street, Anchorage, AK 99501, Attn: Ms. Laura Ogar (907)-269–7500; and at 610 University Avenue, Fairbanks, AK 99709, Attn: Ms. Kris McCumby, (907)–451–2360; and at the office of the Environmental Protection Agency from 9 a.m. to 4 p.m. at: U.S. EPA, Region 10 Library, 1200 Sixth Avenue, Seattle, WA 98101; library telephone 206–553–1259. All written comments on this tentative determination must be sent to U.S. EPA Region 10, 1200 Sixth Avenue, mail code (WCM–128), Seattle, WA 98101, Attn: Mr. Steven B. Sharp.

FOR FURTHER INFORMATION AND TO REQUEST A PUBLIC HEARING, CONTACT: U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA, 98101, Attn: Mr. Steven B. Sharp, mail code (WCM–128), fax (206)–553–8509, telephone (206)–553–6517.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR Part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under Part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the EPA has proposed in the Federal Register on January 26, 1996, the State/Tribal Implementation Rule (STIR). The rule specifies the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA proposed in the STIR to allow partial approvals if: (1) The Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring compliance with Part 258; (2) changes to a limited part(s) of the State/Tribal permit program are needed to meet these requirements; and, (3) provisions not

included in the partially approved portions of the State/Tribal permit program are a clearly identifiable and separable subset of Part 258. These requirements, as in the proposed STIR, will address the potential problems posed by the dual State/Tribal and Federal regulatory controls following the October 9, 1993 effective date of the Federal regulations. On that date, Federal rules covering any portion of a State/Tribe's program that had not received EPA approval became enforceable through the citizen suit provisions of RCRA 7002. Owners and operators of MSWLFs subject to such dual programs must understand the applicable requirements and comply with them. In addition, those portions of the Federal program that are in effect must mesh well enough with the approved portions of the State/Tribal program to leave no significant gaps in regulatory control of MSWLF's. Partial approval would allow the EPA to approve those provisions of the State/Tribal permit program that meet the requirements and provide the State/Tribe time to make necessary changes to the remaining portions of its program. As a result, owners/operators will be able to work with the State/Tribal permitting agency to take advantage of the Criteria's flexibility for those portions of the program which have been approved.

As provided in the October 9, 1991 municipal landfill rule, EPA's Subtitle D standards took effect nationwide in October 1993. Extensions to certain portions were subsequently postponed, with most all of the EPA standards becoming effective during or before 1997. Consequently, any portions of the Federal Criteria which are not included in an approved State/Tribal program by October 1993, or applicable later dates, would apply directly to the owner/operator without any approved State/Tribal flexibility. On April 7, 1995, EPA issued a Federal Register Notice extending the effective date of the 40 CFR Part 258 Subpart G requirements relating to Financial Assurance until April 9, 1997.

EPA intends to approve portions of State/Tribal MSWLF permit programs prior to the promulgation of the final STIR. EPA interprets the requirements for States or Tribes to develop ''adequate'' programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an ''adequate'' program based on the interpretation outlined above. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

EPA also is requesting States/Tribes seeking partial program approval to provide a schedule for the submittal of all remaining portions of their MSWLF permit programs. EPA cites in the proposed STIR rule that submission of a schedule is mandatory.

B. State of Alaska

Over the past several years and earlier, Alaska has developed an extensive and practicable approach to management of many types of non-hazardous solid waste including municipal waste—and to increased protection of human health and the environment. During 1993 through 1995 the state broadly revised its regulations. Concurrently, ADEC reorganized in a manner that is already showing results in terms of greater communication with small landfills. The Division of Environmental Health of ADEC has the lead role in solid waste management and oversees the entire program. It also receives assistance from the statewide Public Service Office of ADEC for improving waste management in small and remote communities. An element of the regulatory upgrades was extensive revision of the criteria for municipal solid waste disposal facilities and also addition of requirements that apply to conditionally exempt small quantity generator (CESQG) hazardous waste disposal. Alaska went public with its proposed regulations in September 1993 and, after the public comment period, issued a revised proposal in September 1994 with a second comment period. ADEC's new rule became effective on January 28, 1996. Today's tentative approval is an endorsement by EPA of the proficiency of Alaska's program.

On February 12, 1996, Region X received Alaska's application for a partial program adequacy determination. EPA responded within the required 30 days that Alaska's application for approval of its municipal solid waste landfill permit program was administratively complete. EPA subsequently began its in-depth review and has tentatively determined that most portions, as noted in the discussions which follow, of the State's municipal solid waste landfill (MSWLF) program will ensure compliance with the revised Federal Criteria. The MSWLF program is a component of the Solid Waste Management Program of ADEC that covers a wide range of non-hazardous solid wastes. Portions of the Alaska MSWLF program that do not currently meet the Federal requirements and can only be revised through their regulation revision process, which may require action by the State legislature, are not being requested for EPA approval at this time.

Alaska's Department of Environmental Conservation (ADEC) informed EPA in the cover letter of its application that its solid waste regulations presently do not include the financial assurance provisions of 40 CFR Part 258, Subpart G, for municipal solid waste landfills (MSWLFs) because EPA has not yet finalized its proposed financial assurance alternatives that will allow local government financial tests. Therefore, Alaska has requested partial approval (instead of full approval) of its solid waste program at this time so that it may benefit from the flexibility in the federal criteria that Part 258 allows only to approved States/Tribes.

In addition, during the review process, EPA and ADEC have concluded that a small number of portions of the ADEC program requirements do not mirror the federal solid waste program criteria of 40 CFR 258 or the STIR manual and rule. These portions are discussed in following paragraphs of this notice. The state's practices or policies on these portions meet the goals and standards of the STIR guidance and Part 258 on a performance basis. Therefore, they are not being excluded from today's tentative approval.

Federal law requires that all municipal solid waste (MSW), including non-hazardous MSW incinerator ash, must be disposed in a landfill which meets the 40 CFR Part 258 criteria. The portions of the Alaska Program in today's tentative approval are described later in this notice. Alaska's application for partial program adequacy determination is available for public review and comment.

Alaska's schedule is to achieve final full approval of its solid waste program within two years of EPA's promulgation of a final partial approval. In the covering letter of its application, ADEC cites that it will revise its regulations

and apply for full approval soon after EPA has promulgated the final version of its Local Government Financial Assurance rule. EPA expects to finalize this rule by the end of 1996, which Alaska believes would allow time for ADEC to change its 18 AAC 60 criteria to include financial assurance mechanisms as a requirement for MSW landfills—and meet this schedule. In addition, the planned minor regulatory changes that are discussed in this notice should also have been completed by ADEC before the state applies for full approval. EPA believes that the state's schedule is reasonable.

Sewage and Biosolids

In today's tentative partial approval of Alaska's Solid Waste Program, EPA is not proposing approval under the Clean Water Act, with respect to the treatment, storage, landspreading, or disposal of sewer solids, biosolids, sludge, and other wastes that are addressed in EPA's regulations under Part 503 and related parts, if any, of Title 40 of the Code of Regulations. The STIR process for State approval focuses on the municipal solid waste program of Alaska that are subject to Subtitle D of the Resource Conservation and Recovery Act (RCRA) without expressing any opinion on the other programs that are addressed in Alaska's waste management rule (18 AAC 60) that went into effect on January 28, 1996. With respect to sewage and biosolids wastes, the only criteria in Alaska's rule that are being approved today are those that correspond to EPA's 40 CFR Part 258 municipal landfill criteria.

Indian Country

In preparing and reviewing the Alaska application, ADEC and Region 10 have taken into consideration the needs and status of recognized Indian Tribes and Alaska Native Villages. Today's tentative partial approval of the State of Alaska's solid waste program does not extend to ''Indian Country'' located in Alaska, as defined in 18 U.S.C. 1151. Because the extent of Indian Country is currently unknown and in litigation, the exact boundaries of Indian Country have not been established. At present, the lands acknowledged to be Indian Country are the Annette Island Reserve, and trust lands identified as Indian Country by the United States in Klawock, Kake, and Angoon. By tentatively approving Alaska's solid waste program, EPA does not intend to affect the rights of Federally recognized Indian Tribes in Alaska, nor does it intend to limit the existing rights of the State of Alaska.

Small Landfills

Alaska defines Class II municipal landfills as those that receive twenty tons per day or less on an annual average and meet specifications that include the federal § 258.1(f)(1) arid or remote small-landfill qualifying criteria. Alaska defines its Class III landfills as those that receive five tons per day or less and meet the specifications in Alaska's 18 AAC 60.300(c)(3), which does not include all of the § 258.1(f)(1) qualifying criteria for small landfills. In addition, Alaska's 18 AAC 60 contains flexibility for Class III landfills that includes less stringent requirements than the Part 258 allows for small MSWLFs.

Over the recent past, two methods of addressing small landfills in Alaska have been developed. The first was a compromise between Region 10 and ADEC in 1993 and 1994, that agreed upon regulatory language in 18 AAC 60 that now says: ''After October 9, 2010, all MSWLFs must meet the standards applicable to either a Class I or Class II MSWLF or close in accordance with this chapter.'' The delay to 2010 for Class III landfills, versus the effective date in 40 CFR Part 258, was based on the practicable capabilities of the small communities affected and on conditions that are unique in Alaska versus the rest of the nation.

The second method was established when Congress passed a new statute after Alaska had finalized its solid waste rule and had submitted its application for program approval to EPA Region 10. Several elements of the new act address small landfills in Alaska. This statute, Public Law 104–119, entitled the ''Land Disposal Program Flexibility Act of 1996'' (LDP Flexibility Act), became effective on March 26, 1996, as an amendment to the Solid Waste Disposal Act.

Note: This act is different than the ''Regulatory Flexibility Act of 1996'' that addresses economic impacts of a wide range of federal programs, and which is referred to near the end of this notice.

Subsection (5) of Section 3(a) of the LDP Flexibility Act reads, verbatim, as follows: ''ALASKA NATIVE VILLAGES—Upon certification by the Governor of the State of Alaska that application of the requirements described in paragraph (1) to a solid waste landfill unit of a Native village (as defined in section 3 of the Alaska Native Claims Settlement Act (16 U.S.C. 1602)) or unit that is located in or near a small, remote Alaska village would be infeasible, or would not be cost-effective, or is otherwise inappropriate because of the remote location of the unit, the State may exempt the unit from some or all of those requirements. This paragraph shall apply only to solid waste landfill units that dispose of less than 20 tons of municipal solid waste daily on an annual average.''

Note: The reference to ''paragraph (1)'' in the above text is to paragraph (1) of section 4010(c) of SWDA.

Therefore, Class II and Class III landfills that receive an exemption by the Governor from some or all of the Part 258 criteria will not be subject to the citizens suit provision of Section 7002 of RCRA as to the Governor's exemptions.

Under this new Act, certain small landfills can be exempted from the need to upgrade to the federal Part 258 standards until an indefinite time in the future. ADEC cites in the narrative summary of its application for program approval, and has further clarified in subsequent conferences with Region 10, that the State's intention is to remove the 2010 deadline from its existing regulation if Alaska's Governor exempts Class III landfills from requirements that distinguish Class II facilities from Class III facilities. EPA expects that at the time when all Class III landfills have either upgraded to Class II standards, or have been exempted by Alaska's Governor from the elements of 40 CFR Part 258 that are more stringent for Class III landfills than the Alaska's 18 AAC 60, the 2010 deadline in Alaska's rule would become redundant and could be removed unilaterally by ADEC without affecting today's approval. The State of Alaska and EPA intend to continue to work cooperatively toward successive improvements at Class III landfills and to bringing them into compliance with the Part 258 criteria to the extent such compliance is economically and practicably achievable.

The exemption authority in subsection (5) of the LDP Flexibility Act is granted to the Governor of Alaska only. ADEC has initiated development of an approach for addressing small landfills with respect to exemptions under this new Act. This approach includes identification of important needs and goals, mapping landfills, consulting with Village Safe Water personnel and Public Service staff, providing technical assistance and educational materials, and establishing procedures to grant exemptions on a category basis. Furthermore the State is considering a broad short-term exemption to provide a bridge until a final plan is developed for ensuring environmental protection that is consistent with community resources and capabilities. EPA supports the

State's approach to use the exemption authority strategically to achieve continued improvement at landfills that require more time. Standard factors such as climate, hydrogeological conditions, and risk are important considerations in determining where and for how long exemptions are appropriate.

In addition, subsection (6) of the LDP Flexibility Act mandates that the EPA shall, within two years, promulgate revisions to Part 258 to provide additional flexibility to approved States with respect to qualifying landfills that receive an average of 20 tons per day or less. The areas of increased flexibility are limited to alternative frequencies of daily cover application, frequencies of methane gas monitoring, infiltration layers for final cover, and means for demonstrating financial assurance. This subsection includes a provision that such alternative requirements must take into account climatic and hydrogeologic conditions and be protective of human health and the environment. The Act intends that the additional flexibility mandated by this subsection (6) will become available in all approved States/Tribes.

On a nationwide basis, another section of the Flexibility Act reinstates the exemption on ground-water monitoring for all facilities that receive an average of 20 tons per day or less and meet the qualifying criteria in the LDP Flexibility Act for small dry or remote municipal solid waste landfills. The act does not modify the existing Part 258 exemption on liner requirements for qualifying small or remote MSWLFs. The liner exemption, promulgated in October 1991, is still in effect.

Unique Landfills and Special Criteria

Two special categories of landfills are included in ADEC's regulations: Ash monofills that accept MSW and permafrost MSW landfills. EPA finds that Alaska's regulatory flexibility with respect to methane monitoring and daily cover at MSWLF ash monofills is in keeping with either present Part 258 flexibility or the future flexibility that the LDP Flexibility Act requires EPA to develop. Alaska's MSW ash monofills are handled under 18 AAC 60 Article 3 that sets ADEC's standards for landfill disposal of municipal solid wastes. EPA believes that Alaska's program meets EPA standards for monofills that receive only MSW-ash provided that the ash is ''non-toxic'' based on RCRA requirements.

The Alaska solid waste regulations also include flexibility provisions for permafrost landfills that include flexibility that is different and less stringent than the federal Part 258 requirements. Almost all permafrost landfills in Alaska are small and receive less than an average of 20 tons per day of municipal solid waste. EPA believes use of flexibility that is specific to permafrost landfills exclusively is in keeping with practicable capability considerations of RCRA. EPA invites comments on the permafrost provisions in Alaska's municipal solid waste rule with respect to adequacy and tentative partial approval of Alaska's program.

With respect to the disposal of hazardous wastes from conditionally exempt small quantity generators (CESQG), EPA promulgated its final rule on disposal criteria for this category of solid waste after Alaska had submitted its application in February to EPA Region 10 for approval of its solid waste program. The final CESQG rule was published in the Federal Register on July 1, 1996. The rule modifies 40 CFR 261 of the hazardous waste regulations to establish an additional category of landfills under 40 CFR Sections 257.5 through 257.30 that allows certain nonmunicipal, nonhazardous waste landfills to receive CESQG wastes. In addition Section 261.5 is amended, per the same Federal Register of July 1996, such that CESQG wastes may be disposed of in a facility that is: ''permitted, licensed, or registered by a State to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to part 258'' of Title 40. (Text within the quotation marks is verbatim copy of the Federal Register text.) In anticipation of EPA's final CESQG rule, Alaska's 18 AAC 60 already requires that all CESQG wastes must go to Class I or Class II municipal landfills exclusively. Alaska's 18 AAC 60 requires, with respect to CESQG wastes, that: a conditionally exempt hazardous waste from a small quantity hazardous waste generator may be disposed of only at a facility that meets the requirements for a Class I or Class II MSWLF set out in 18 AAC 60.300 through 60.397 of Alaska's municipal landfill rule. Since both classes meet or exceed the Part 258 municipal landfill criteria, Alaska is already meeting EPA's new CESQG disposal standards. Therefore, EPA is including Alaska's 18 AAC 60 criteria for disposal of CESQG solid wastes in today's tentative approval of Alaska's program.

A corollary of the requirements of this amendment to 40 CFR 261, is that landfills which the State Governor has exempted from some or all of the Part 258 criteria would not be eligible to accept CESQG wastes—based on Region 10's interpretation that the meaning of the text in the July 1996 Federal Register is that the landfill must be subject to the entire Part 258.

In the wetlands section of Alaska's landfill rule, Alaska has a stability requirement that applies only for ''undisturbed'' native wetland soils and deposits used to support the MSW landfill. Part 258 applies this stability requirement to all types, not only undisturbed, wetlands support. ADEC has assured EPA Region 10 that it will remove the word ''undisturbed'' from its section 18 AAC 60.315(3) during its next revision of the rule, even though this may not be finalized before a final-partial approval is promulgated by EPA. During the interim, ADEC expects to achieve equivalent stringency via its permitting activities and authority.

Administrative Elements and Criteria

Part 258 requires notification of the State Director under numerous specified circumstances, including under § 258.1(f)(3) with respect to small landfills. This subsection requires that if the owner/operator of a small, arid or remote, landfill has knowledge of ground-water contamination resulting from the unit, the owner/operator must notify the State Director. Alaska's regulation does not include the exact wording of this sub-section, but ADEC believes that it is meeting the requirement in practice. ADEC and EPA believe that via ADEC's existing permitting and compliance-monitoring practices, and via the activities of other support agencies, ADEC will become aware of any ground-water contamination from a Class II landfill as rapidly as ADEC would by relying on the owner/operator to fulfill the notification requirement. In addition, Alaska's regulation requires that Class II landfills must perform groundwater monitoring unless a landfill demonstrates to the State Director that there is no practical potential for migration to an aquifer of resource value.

Note: Alaska's rule, like Part 258, requires compliance with Part 258's Subpart E ground-water monitoring and corrective action if contamination from the landfill becomes known.

With respect to public participation, Alaska cites in the narrative summary of its application that it has been and is ADEC's policy to provide additional public participation opportunities after a permit is issued, including for permit renewals and major modifications or variances, particularly if public interest was expressed at the time of the original permit or if there is any controversy surrounding the permit. The summary states that Alaska's current version of its

18 AAC 15.100(d) regulation does not require public notice or a public hearing on applications for renewal of a permit or amendment. As a means of formalizing ADEC's existing and on-going practices in this area, the Commissioner of ADEC issued a policy paper on October 9, 1996, entitled ''Policy Regarding Public Notice Requirements for Solid Waste Renewals and Modifications''. A copy has been placed in Alaska's application, and this policy is included in today's tentative approval.

Alaska, in its application to Region 10 for approval, has adequately described its staffing and implementation capabilities. ADEC was reorganized during 1995 to further improve the administration of its solid waste program. A memorandum of agreement (MOA) establishes the relationship and duties of the two key divisions of ADEC that will implement and enforce the solid waste program. The MOA for solid waste services is between the Division of Environmental Health and the Division of Public Service; both are divisions of ADEC. It outlines the types of services that will be provided to DEH. A copy of the MOA that was signed by the Directors in late February is included in Alaska's application.

With respect to effective dates, a gap of one-quarter year exists between the dates contained in the regulations of Alaska versus EPA with respect to closure of those existing landfills that do not meet the location restrictions regarding airports, floodplains, and unstable areas. The Alaska MSWLF criteria require that the landfill must close within one year after January 28, 1996, if it does not meet these location restrictions. This results in Alaska's rule having effective dates that are one-quarter year later than Part 258. Likewise, the Alaska criteria allow the State Director to extend the deadline for up to two years if the landfill owner/operator makes the required demonstration, which represents an extension to January 28, 1999. The EPA criteria specify that such landfills must close by October 9, 1996, and that extensions of the deadline shall require closure on or before October 9, 1998. A factor related to these deadlines is that in late 1995 EPA extended the effective date for which small arid or remote qualifying landfills must meet Part 258 to October 9, 1997. EPA believes that to partial out the two quarter-year gaps, from today's partial approval, is not practicable in comparison to the relatively short time delay that each of these gaps represent. EPA will request that the State eliminate this gap either by adopting a guidance that achieves closure in all cases by October 9, 1998, or by changing the Alaska rule itself. An optional avenue for an owner/operator of a qualifying small landfill who has concerns about operating during this gap, is to request via the Governor of Alaska, under the provisions of the LDP Flexibility Act, for a quarter-year ''bridge'' exemption for the three-month time period. EPA invites comments on this issue as to whether the three-month effective-date gaps will result in a significant difference on protection of human health and the environment.

C. Decision

The portions of Alaska's municipal solid landfill program, including its provisions for permafrost landfills and municipal-ash monofills, that are being tentatively approved today are the following Subparts of 40 CFR part 258. These portions are also being tentatively approved under 40 CFR 261.5, as amended per the Federal Register of July, 1, 1996, for disposal of hazardous wastes from Conditionally Exempt Small Quantity Generators that is disposed of in landfills that are subject to 40 CFR Part 258. The portions of 40 CFR Part 258 that are included in today's tentative approval are:

Subpart A—General, including, but not limited to, Section 60.300(c) with respect to the October 9, 2010 date.

Subpart B—Location Restrictions;

Subpart C—Operating Criteria;

Subpart D—Design Criteria;

Subpart E—Ground-Water Monitoring and Corrective Action; and

Subpart F—Closure and Post-Closure Care.

The flexibility elements in Part 258 are an important factor that becomes available to a State/Tribe upon approval by EPA of its solid waste program. Not all existing State and Tribal permit programs ensure compliance with all provisions of the revised Federal Criteria. Were EPA to restrict a State or a Tribe from submitting its application until it could ensure compliance with the entirety of 40 CFR Part 258, many States/Tribes would need to postpone obtaining approval of their permit programs for a significant period of time. This delay in determining the adequacy of the State/Tribal permit program, while the State/Tribe revises its statutes or regulations, could impose a substantial burden on owners and operators of landfills because the State/Tribe would be unable to exercise the flexibility available to States/Tribes with approved permit programs.

As State/Tribal regulations and statutes are amended to comply with the Federal MSWLF landfill regulations, unapproved portions of a partially approved MSWLF permit program may be approved by the EPA. The State/Tribe may submit an amended application to EPA for review, and an adequacy determination will be made using the same criteria used for the initial application. This adequacy determination will be published in the Federal Register which will summarize the Agency's decision and the portion(s) of the State/Tribal MSWLF permit program affected. It will also provide for a minimum 30 day public comment period. This future adequacy determination will become effective 60 days following publication if no significant adverse comments are received. If EPA receives adverse comments on its adequacy determination, another Federal Register notice will be published either affirming or reversing the initial decision while responding to the public comments.

To ensure compliance with all of the current Federal Criteria and to obtain full approval of its municipal solid waste landfill permit program, the Alaska Department of Environmental Conservation must:

1. Add financial assurance requirements which meet one or more of the criteria in Subpart G of Part 258 that will cover all of the types of municipal landfills that are permitted by the State.

Comments are solicited on this tentative determination until the date shown in the **DATES** section of this notice. Copies of Alaska's application are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

EPA Region 10 will hold a public hearing if, and only if, requested (see **DATES** section of this notice) on this tentative decision, on the date and in the location shown in the **DATES** section of this notice. Comments can be submitted at the hearing, if held, as transcribed from oral comments presented, or in writing at the time of the hearing.

EPA will consider all written public comments on its tentative determination received during the public comment period, as well as those presented at the public hearing. Issues raised by those comments may be the basis for EPA's reconsideration of this tentative determination of adequacy for Alaska's program. EPA will make a final decision on whether or not to approve Alaska's program and will provide notice in the Federal Register. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of Section 7002 of RCRA to

enforce the Federal MSWLF criteria in 40 CFR Part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12866

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

Certification Under the Regulatory Flexibility Act

EPA has determined that this authorization will not have a significant adverse economic impact on a substantial number of small entities. By approving State/Tribal municipal solid waste permitting programs, owners and operators of municipal solid waste landfills who are also small entities will be eligible to use the site-specific flexibility provided by Part 258 to the extent the State/Tribal permit program allows such flexibility. However, since such small entities which own and/or operate municipal solid waste landfills are already subject to the requirements in 40 CFR Parts 258 or are exempted from certain of these requirements, such as the groundwater monitoring and design provisions, this approval does not impose any additional burdens on these small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant adverse economic impact on a substantial number of small entities. It does not impose any new burdens on small entities; rather this approval creates flexibility for small entities in complying with the 40 CFR Part 258 requirements. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (the Act), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the Act EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The Agency does not believe that approval of the State's program would result in estimated costs of $100 million or more to State, local, and tribal governments in the aggregate, or to the private sector, in any one year. This is due to the additional flexibility that the State can exercise (which will reduce, not increase, compliance costs). Thus, today's notice is not subject to the written statement requirements in sections 202 and 205 of the Act.

As to section 203 of the Act, the approval of the State program will not significantly or uniquely affect small governments other than the applicant, the State of Alaska. As to the applicant, the State has received notice of the requirements of an approved program, has had meaningful and timely input into the development of the program requirements, and is fully informed as to compliance with the approved program. Thus, any applicable requirements of section 203 of the Act have been satisfied.

Authority: This notice is issued under the authority of sections 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended; 42 U.S.C. 6912, 6945 and 6949(a)(c).

Dated: November 14, 1996.

Chuck Clarke,

Regional Administrator.

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30–39	(869–028–00098–3)	20.00	Apr. 1, 1996
40–49	(869–028–00099–1)	13.00	Apr. 1, 1996
50–299	(869–028–00100–9)	14.00	Apr. 1, 1996
300–499	(869–028–00101–7)	25.00	Apr. 1, 1996
500–599	(869–028–00102–5)	6.00	[4] Apr. 1, 1990
600–End	(869–028–00103–3)	8.00	Apr. 1, 1996
27 Parts:			
1–199	(869–028–00104–1)	44.00	Apr. 1, 1996
200–End	(869–028–00105–0)	13.00	Apr. 1, 1996
28 Parts:			
1-42	(869–028–00106–8)	35.00	July 1, 1996
43-end	(869-028-00107-6)	30.00	July 1, 1996
29 Parts:			
0–99	(869–028–00108–4)	26.00	July 1, 1996
100–499	(869–028–00109–2)	12.00	July 1, 1996
500–899	(869–028–00110–6)	48.00	July 1, 1996
900–1899	(869–028–00111–4)	20.00	July 1, 1996
1900–1910 (§§ 1909 to 1910.999)	(869–028–00112–2)	43.00	July 1, 1996
1910 (§§ 1910.1000 to end)	(869–028–00113–1)	27.00	July 1, 1996
1911–1925	(869–028–00114–9)	19.00	July 1, 1996
1926	(869–028–00115–7)	30.00	July 1, 1996
1927–End	(869–026–00118–9)	36.00	July 1, 1995
30 Parts:			
1–199	(869–028–00117–3)	33.00	July 1, 1996
200–699	(869–028–00118–1)	26.00	July 1, 1996
700–End	(869–028–00119–0)	38.00	July 1, 1996
31 Parts:			
0–199	(869–028–00120–3)	20.00	July 1, 1996
200–End	(869–028–00121–1)	33.00	July 1, 1996
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
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191–399	(869–028–00123–8)	50.00	July 1, 1996
400–629	(869–028–00124–6)	34.00	July 1, 1996
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700–799	(869–028–00126–2)	28.00	July 1, 1996
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33 Parts:			
1–124	(869–028–00128–9)	26.00	July 1, 1996
125–199	(869–026–00131–6)	27.00	July 1, 1995
200–End	(869–028–00130–1)	32.00	July 1, 1996
34 Parts:			
1–299	(869–028–00131–9)	27.00	July 1, 1996
300–399	(869–028–00132–7)	27.00	July 1, 1996
400–End	(869–026–00135–9)	37.00	July 5, 1995
35	(869–028–00134–3)	15.00	July 1, 1996
36 Parts			
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200–End	(869–028–00136–0)	48.00	July 1, 1996
37	(869–028–00137–8)	24.00	July 1, 1996
38 Parts:			
0–17	(869–026–00140–5)	30.00	July 1, 1995
18–End	(869–028–00139–4)	38.00	July 1, 1996
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40 Parts:			
●1–51	(869–028–00141–6)	50.00	July 1, 1996
●52	(869–028–00142–4)	51.00	July 1, 1996
●53–59	(869–028–00143–2)	14.00	July 1, 1996
60	(869-026-00146-4)	36.00	July 1, 1995
●61–71	(869–028–00145–9)	47.00	July 1, 1996
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●81–85	(869–028–00147–5)	31.00	July 1, 1996
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●87-135	(869–028–00149–1)	35.00	July 1, 1996
●136–149	(869–028–00150–5)	35.00	July 1, 1996
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●190–259	(869–028–00152–1)	22.00	July 1, 1996
260–299	(869–026–00153–7)	40.00	July 1, 1995
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●400–424	(869–028–00155–6)	33.00	July 1, 1996
●425–699	(869–028–00156–4)	38.00	July 1, 1996
●700–789	(869–028–00157–2)	33.00	July 1, 1996
●790–End	(869–028–00158–7)	19.00	July 1, 1996
41 Chapters:			
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1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
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10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
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42 Parts:			
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400–429	(869–026–00164–2)	26.00	Oct. 1, 1995
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43 Parts:			
1–999	(869–026–00166–9)	23.00	Oct. 1, 1995
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4000–End	(869–026–00168–5)	15.00	Oct. 1, 1995
44	(869–026–00169–3)	24.00	Oct. 1, 1995
45 Parts:			
1–199	(869–022–00170–7)	22.00	Oct. 1, 1995
200–499	(869–028–00170–0)	14.00	[6] Oct. 1, 1995
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1200–End	(869–026–00173–1)	26.00	Oct. 1, 1995
46 Parts:			
1–40	(869–026–00174–0)	21.00	Oct. 1, 1995
41–69	(869–026–00175–8)	17.00	Oct. 1, 1995
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166–199	(869–026–00180–4)	17.00	Oct. 1, 1995
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47 Parts:			
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1996. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments were promulgated during the period October 1, 1995 to September 30, 1995. The CFR volume issued October 1, 1995 should be retained.