1–17–97
Vol. 62 No. 12
Pages 2547–2890

Federal Register

Friday
January 17, 1997

Briefings on how to use the Federal Register
For information on briefings in Washington, DC, see announcement on the inside cover of this issue

Now Available Online

Code of Federal Regulations

via

GPO Access

(Selected Volumes)

Free, easy, online access to selected *Code of Federal Regulations (CFR)* volumes is now available via *GPO Access*, a service of the United States Government Printing Office (GPO). *CFR* titles will be added to *GPO Access* incrementally throughout calendar years 1996 and 1997 until a complete set is available. GPO is taking steps so that the online and printed versions of the *CFR* will be released concurrently.

The *CFR* and *Federal Register* on *GPO Access*, are the official online editions authorized by the Administrative Committee of the Federal Register.

New titles and/or volumes will be added to this online service as they become available.

http://www.access.gpo.gov/nara/cfr

For additional information on ***GPO Access*** products, services and access methods, see page II or contact the *GPO Access* User Support Team via:

★ Phone: toll-free: 1-888-293-6498
★ Email: gpoaccess@gpo.gov

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the Federal Register as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the Federal Register shall be judicially noticed.

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online edition of the Federal Register on *GPO Access* is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions. The online database is updated by 6 a.m. each day the Federal Register is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling toll free 1–888–293–6498 or (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the Federal Register paper edition is $494, or $544 for a combined Federal Register, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the Federal Register including the Federal Register Index and LSA is $433. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the Federal Register.

How To Cite This Publication: Use the volume number and the page number. Example: 60 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530 1–888–293–6498

Single copies/back copies:

Paper or fiche	512–1800
Assistance with public single copies	512–1803

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

NOW AVAILABLE ONLINE

The January 1997 Office of the Federal Register Document Drafting Handbook

Free, easy, online access to the newly revised January 1997 Office of the Federal Register Document Drafting Handbook (DDH) is now available at:

http://www.nara.gov/nara/fedreg/ddh/ddhout.html

This handbook helps Federal agencies to prepare documents for publication in the Federal Register.

For additional information on access, contact the Office of the Federal Register's Technical Support Staff.

Phone: 202–523–3447

E-mail: info@fedreg.nara.gov

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Registers system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: January 28, 1997 at 9:00 am

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register

Vol. 62, No. 12

Friday, January 17, 1997

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 62, No. 12
Friday, January 17, 1997

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

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

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Parts 2470, 2471, 2472, and 2473

Federal Service Impasses Panel-General; Procedures of the Panel; Impasses Arising Pursuant to Agency Determinations Not To Establish or To Terminate Flexible or Compressed Work Schedules; Miscellaneous Requirements

AGENCY: Federal Service Impasses Panel, FLRA.

ACTION: Final rules; correction.

SUMMARY:

This document contains corrections to the final regulations that were published Thursday, August 8, 1996 (61 FR 41293–41297). The regulations pertain to the filing of requests for assistance with the Panel and the filing and service of documents with the Panel, and establish procedures for obtaining a subpena by parties to Panel proceedings.

EFFECTIVE DATE: August 18, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph Schimansky, Executive Director, Federal Service Impasses Panel, 607 14th Street, NW., Suite 220, Washington, DC 20424–0001. Telephone (202) 482–6670.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction were intended to revise the Panel's regulations to permit parties to file requests for Panel assistance, and other documents, by facsimile transmission and to establish procedures by which a party to a Panel proceeding may seek to obtain a subpena.

Need For Correction

As published, the final regulations added a new part to the Panel's regulations, 5 CFR part 2473–Subpenas. However, due to an error, the heading *with authority citation for* that part of the regulations was not placed before the regulatory text.

Correction of Publication

Accordingly, the publication on August 8, 1996, of the final regulations at 61 FR 41293–41297 is corrected by adding the heading of Part 24.73 and the authority citation as follows:

PART 2473—SUBPOENAS [CORRECTED]

Authority: 5 U.S.C. 7119, 7134.

Dated: January 13, 1997.

Joseph Schimansky,

Executive Director, Federal Service Impasses Panel.

[FR Doc. 96–1176 Filed 1–16–97; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Docket No. FV96–925–1 IFR]

Grapes Grown in a Designated Area of Southeastern California; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the California Desert Grape Administrative Committee (Committee) under Marketing Order No. 925 for the 1997 and subsequent fiscal years. The Committee is responsible for local administration of the marketing order which regulates the handling of table grapes grown in a designated area of southeastern California. Authorization to assess grape handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective on January 1, 1997. Comments received by February 18, 1997, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, FAX (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Tershirra T. Yeager, 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) 720–5127, FAX (202) 720–5698 or Rose Aguayo, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone (209) 487–5901, FAX (209) 487–5906. 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 under Marketing Agreement and Order No. 925 (7 CFR part 925) regulating the handling of table grapes grown in a designated area of southeastern California, hereinafter referred to as the ''order.'' The marketing agreement and order are 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order now in effect, California table grape handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable grapes beginning January 1, 1997, 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.

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. Such 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 the 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 the 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. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

There are approximately 80 producers of table grapes in the production area and approximately 20 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of table grape producers and handlers are not classified as small entities.

The order 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. The members of the Committee are producers and handlers of California desert grapes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on December 3, 1996, and unanimously recommended 1997 expenditures of $156,865 and an assessment rate of $0.01 per lug of table grapes. In comparison, last year's budgeted expenditures were $114,827. The Committee recommended not to have an assessment rate for the 1996 fiscal year because there was adequate money in the reserve to cover estimated expenses. Major expenditures recommended by the Committee for the 1997 year include $100,000 for research, $25,000 for compliance purposes, and $8,675 for the manager's salary. Budgeted expenses for these items in 1996 were $60,000 for research, $25,000 for the sheriff's patrol and $7,887 for the manager's salary.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of California table grapes. Table grape shipments for the year are estimated at 8,000,000 lugs which should provide $80,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

While this rule will impose additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rate 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 this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal 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 1997 budget and those for subsequent fiscal years will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material 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 upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and 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) the 1997 fiscal year begins on January 1, 1997, and the marketing order requires that the rate of assessment for each fiscal year apply to all assessable table grapes handled during such fiscal year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 925 is amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

1. The authority citation for 7 CFR part 925 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new subpart—Assessment Rates and a new §925.215 are added to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Assessment Rates

§925.215 Assessment rate.

On and after January 1, 1997, an assessment rate of $0.01 per lug is established for grapes grown in a designated area of southeastern California.

Dated: January 10, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–1162 Filed 1–16–97; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 932

[Docket No. FV96–932–4 IFR]

Olives Grown In California; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the California Olive Committee (Committee) under Marketing Order No. 932 for the 1997 fiscal year and subsequent fiscal years. The Committee is responsible for local administration of the marketing order which regulates the handling of olives grown in California. Authorization to assess olive handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective on January 1, 1997. Comments received by February 18, 1997, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, FAX (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Mary Kate Nelson, Marketing Assistant, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone (209) 487–5901, FAX (209) 487–5906, or Tershirra Yeager, 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) 720–5127, FAX (202) 720–5698. 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 under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California olive handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable olives beginning January 1, 1997, 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.

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. Such 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 the 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 the 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. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

There are approximately 1,200 producers of olives in the production area and approximately 4 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. None of the olive handlers may be classified as small entities, while the majority of olive producers may be classified as small entities.

The olive marketing order 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. The members of the Committee are producers and handlers of California olives. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on December 11, 1996, and recommended 1997 expenditures of $2,159,265 and an assessment rate of $14.99 per ton covering olives from the appropriate crop year. The vote on the assessment rate was 13 in favor and 1 opposed, with the opposing grower maintaining that the assessment is not sufficient for the industry's needs. In comparison, last year's budgeted expenditures were $2,600,785. The assessment rate of $14.99 is $13.27 lower than last year's established rate. Major expenditures recommended by the Committee for the 1997 fiscal year include $390,890 for

administration, $173,375 for research, and $1,595,000 for market development. Budgeted expenses for these items in 1996 were $388,350, $213,000, and $1,999,435 respectively.

The order requires that the assessment rate for a particular fiscal year apply to all assessable olives handled during the appropriate crop year, which for this season is August 1, 1996, through July 31, 1997. The assessment rate recommended by the Committee was derived by dividing anticipated expenses by actual receipts of olives by handlers during the crop year. Because that rate is applied to actual receipts, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses.

The recommended budget and rate of assessment is usually acted upon by the Committee after the crop year begins and before the fiscal year starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses. The olive receipts for the year are 144,075 tons which should provide $2,159,684 in assessment income. Income derived from handler assessments will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

This action will reduce the assessment obligation imposed on handlers. The assessments will be uniform for all handlers. The assessment costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rate 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 this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal 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 1997 budget and those for subsequent fiscal years will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material 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 upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and 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) the 1997 fiscal year began on January 1, 1997, and the marketing order requires that the rate of assessment for each fiscal year apply to all assessable olives handled during the appropriate crop year; (3) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new subpart—Assessment Rates and a new § 932.230 are added to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Assessment Rates

§ 932.230 Assessment rate.

On and after January 1, 1997, an assessment rate of $14.99 per ton is established for assessable olives grown in California.

Dated: January 10, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–1161 Filed 1–16–97; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 96–033–2]

Official Brucellosis Tests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the brucellosis regulations to add the rapid automated presumptive test to the list of official tests for determining the brucellosis disease status of test-eligible cattle, bison, and swine. We are taking this action because the rapid automated presumptive test has been shown to provide an accurate, automated, and cost-effective means of determining the brucellosis status of test eligible cattle, bison, and swine. Adding the rapid automated presumptive test to the list of official tests for brucellosis in cattle, bison, and swine will help to prevent the spread of brucellosis by making available an additional tool for its diagnosis in those animals.

EFFECTIVE DATE: February 18, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. M.J. Gilsdorf, National Brucellosis Epidemiologist, Brucellosis Eradication Staff, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1228, (301) 734–7708; or E-mail: mgilsdorf@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella.* In its principal animal hosts—cattle, bison, and swine—brucellosis is characterized by abortion and impaired fertility. The regulations in 9 CFR part 78 (referred to below as the regulations) govern the interstate movement of cattle, bison, and swine in order to help prevent the spread of brucellosis.

Official brucellosis tests are used to determine the brucellosis disease status of cattle, bison, and swine. The regulations stipulate that certain cattle, bison, and swine must, among other requirements, test negative to an official brucellosis test prior to interstate movement. Official brucellosis tests are also used to determine eligibility for

indemnity payments for animals destroyed because of brucellosis. In §78.1 of the regulations, the definition of *official test* lists those tests that have been designated as official tests for determining the brucellosis disease status of cattle, bison, and swine.

In a proposed rule published in the Federal Register on September 13, 1996 (61 FR 48430–48431, Docket No. 96–033–1), we proposed to amend §78.1 of the regulations to add the rapid automated presumptive (RAP) test as an official test.

We solicited comments concerning our proposed rule for 60 days ending November 12, 1996. We received one comment by that date. The comment we received was from a State cattlemen's association and supported the proposed rule change.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12866 and Regulatory Flexibility Act

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

This rule amends the brucellosis regulations by adding the RAP test to the list of official tests for determining the brucellosis disease status of test-eligible cattle, bison, and swine. The RAP test has been shown to provide an accurate, automated, and cost-effective means of determining the brucellosis status of test eligible cattle, bison, and swine. We believe that adding the RAP test to the list of official tests for brucellosis in cattle, bison, and swine will help to prevent the spread of brucellosis by making available a highly efficient tool for its diagnosis in those animals.

Adding the RAP test as an official test is not expected to affect the market price of the animals tested. Although more rapid testing will likely allow faster marketing, the effect on owners of cattle, bison, and swine will not be significant. Use of the RAP test is optional, and other presumptive official tests remain available for use by State and Federal animal health officials. The cost of the RAP test is equal to or lower than other presumptive official tests in use. Therefore, if those States currently using higher-cost presumptive tests switch over to the RAP test, the total testing costs for the Cooperative State/Federal Brucellosis Eradication Program will be reduced.

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

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78 is amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

2. In §78.1, in the definition of *official test,* paragraph (a)(12) is redesignated as paragraph (a)(13) and new paragraphs (a)(12) and (b)(4) are added to read as set forth below.

§ 78.1 Definitions.

* * * * *

Official test.

(a) * * *

(12) *Rapid Automated Presumptive (RAP) test.* An automated serologic test to detect the presence of *Brucella* antibodies in test-eligible cattle and bison. RAP test results are interpreted as either positive or negative; the results are interpreted and reported by a scanning autoreader that measures alterations in light transmission through each test well and the degree of agglutination present. Cattle and bison negative to the RAP test are classified as brucellosis negative; cattle and bison positive to the RAP test shall be subjected to other official tests to determine their brucellosis disease classification.

* * * * *

(b) * * *

(4) *Rapid Automated Presumptive (RAP) test.* An automated serologic test to detect the presence of *Brucella* antibodies in test-eligible swine. RAP test results are interpreted as either positive or negative; the results are interpreted and reported by a scanning autoreader that measures agglutination based on alterations in light transmission through each test well. Swine negative to the RAP test are classified as brucellosis negative; swine positive to the RAP test shall be subjected to other official tests to determine their brucellosis disease classification.

* * * * *

Done in Washington, DC, this 13th day of January 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–1224 Filed 1–16–97; 8:45 am]

BILLING CODE 3410–34–P

Food Safety and Inspection Service

9 CFR Parts 304, 308, 310, 320, 327, 381, 416, and 417

[Docket No. 93–016–11N]

Sanitation Standard Operating Procedures (Sanitation SOP's) and E. coli Testing Requirements—Conference

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule; notice of meeting.

SUMMARY: The Food Safety and Inspection Service (FSIS) is holding a conference, ''Sanitation Standard Operating Procedures (Sanitation SOP's) and *E. coli* Testing Requirements,'' on January 23, 1997. The purpose of the conference is to review and discuss initial operational procedures for the Sanitation SOP and *E. coli* testing requirements that are effective on January 27, 1997.

DATES: The conference will be held from 1:00 p.m. until 5:00 p.m. on January 23, 1997.

ADDRESSES: The conference will be held at the Arlington Hilton, 950 N. Stafford Street, Arlington VA 22203, (703) 528–6000.

FOR FURTHER INFORMATION CONTACT: To register for the conference, contact Lisa

Parks at (202) 501–7138, FAX (202) 501–7642, or E-mail usdafsis/s=confer@mhs.attmail.com.

SUPPLEMENTARY INFORMATION: On July 25, 1996, FSIS published a final rule, ''Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems'' (61 FR 38805). This rule introduced sweeping changes to the meat and poultry inspection system. The first stage in the implementation of the rule begins on January 27, 1997, when slaughter and processing establishments must have written sanitation standard operating procedures to prevent direct product contamination and ensure food safety, and slaughter establishments must begin testing for *E. coli* as a means of verifying process control for preventing fecal contamination.

To provide interested parties an opportunity to further discuss issues relating to the implementation of Sanitation SOP's and *E. coli* testing requirements, FSIS will meet with the public from 1 p.m. to 5 p.m. on January 23, 1997.

Done at Washington, DC, on: January 13, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 97–1235 Filed 1–14–97; 1:56 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–64–AD; Amendment 39–9886; AD 97–02–02]

RIN 2120–AA64

Airworthiness Directives; Fairchild Aircraft, Inc. SA26, SA226, and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Fairchild Aircraft, Inc. (Fairchild) SA26, SA226, and SA227 series airplanes. This action requires applying torque to the control column pitch bearing attaching nuts, inspecting for any looseness or movement of the bearing assembly, and inspecting the elevator control rod end bearing retainer/dust seals for creasing. If either of these problems are evident, this action requires replacing these parts, as well as installing a new bolt and washer to the elevator control rod end bearing assembly at the walking beam connection. Reports of Fairchild SA227 series airplanes losing pitch control in-flight prompted this action. The actions specified by this AD are intended to prevent loss of pitch control, which if not corrected, could result in loss of the airplane.

DATES: Effective February 6, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 6, 1997.

Comments for inclusion in the Rules Docket must be received on or before March 6, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–64–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Fairchild Aircraft, Inc., P.O. Box 790490, San Antonio, Texas, 78279–0490; telephone (210) 824–9421. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–64–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Werner Koch, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5133; facsimile (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Events Leading to This Action

The FAA has recently received two incident reports on Fairchild SA227 series airplanes in which the airplane lost some pitch control because of fatigue failure of the pitch pivot bearing shaft. Further investigation revealed fatigue and wear in the control column pitch pivot bearings resulting from insufficient torque on the control column roller bearing stud attaching nuts. While inspecting the pivot bearing on four other Fairchild airplanes, it was discovered that the rod end bearing retainer of the elevator control rod at the walking beam connection was deformed or creased. This creasing is caused by improper installation and could allow the bearing to come apart, disconnecting the joint, and possibly resulting in loss of pitch control.

Fairchild has issued four service bulletins (SB) numbered 26–27–30–046, 226–27–060, 227–27–041, and CC7–27–010, dated December 11, 1996, which specify applying torque to the control column pitch bearing attaching nut, inspecting the control column roller bearing assembly for movement, replacing the bearing and attaching nut if necessary, inspecting the elevator control rod end bearing retainer/dust covers for creasing, replacing the rod end assemblies, if necessary, and installing a new bolt and washer to the elevator control rod end bearing assembly at the walking beam connection.

FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent loss of pitch control, which if not corrected, could result in loss of the airplane.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop in other Fairchild SA26, SA226, and SA227 series airplanes of the same type design, this AD requires:

(1) Applying torque to the control column pitch bearing attaching nut,

(2) Inspecting for movement in the control column roller bearing assembly,

(3) Replacing the bearing assembly and attaching nut, if applicable,

(4) Inspecting the elevator control rod end bearing retainer/dust covers for creasing,

(5) Replacing the elevator control rod end assemblies, if applicable, and

(6) Installing a new bolt and adding a washer to the elevator control rod end bearing assembly at the walking beam connection.

Related Service Information

These actions are to be done in accordance with the ACCOMPLISHMENT INSTRUCTIONS in Fairchild SBs 26–27–30–046, 226–27–060, 227–27–041, and CC7–27–010, Issued December 11, 1996.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–CE–64–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–02–02 Fairchild Aircraft, Inc.: Amendment 39–9886; Docket No. 96–CE–64–AD.

Applicability: Models SA26, SA226, SA227–AC, SA227–AT, SA227–BC, SA227–TT, and SA227–CC/DC (serial numbers CC/DC784, and CC/DC790 through CC/DC884), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) 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 within the next 75 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent loss of pitch control, which if not corrected, could result in loss of the airplane, accomplish the following:

(a) Apply torque to the control column pitch bearing attaching nuts and inspect for movement in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild Aircraft (Fairchild) Service Bulletin (SB) No. 26–27–30–046, 226–27–060, 227–27–041, or CC7–27–010, dated December 11, 1996, whichever is applicable.

(1) If there is no movement, then no further action is necessary.

(2) If there is movement, prior to further flight, replace the pitch control column roller bearing and attaching nut in accordance with Fairchild SB 26–27–30–046, 226–27–060, 227–27–041, or CC7–27–010, dated December 11, 1996, whichever is applicable.

(b) Inspect the elevator control rod end bearing retainer/dust seals for evidence of creasing in accordance with Fairchild SB 26–27–30–046, 226–27–060, 227–27–041, or CC7–27–010, dated December 11, 1996, whichever is applicable.

(1) If no creasing is found, then rod end assembly replacement is not necessary.

(2) If creasing is found, prior to further flight, replace the elevator control rod end assembly in accordance with Fairchild SB 26–27–30–046, 226–27–060, 227–27–041, or CC7–27–010, dated December 11, 1996, whichever is applicable.

(c) Install a new washer (part number (P/N) AN970–4) and replace the bolt (P/N NAS6604D31) with a new bolt (P/N NAS6604D34) on the elevator control rod end bearing assembly at the walking beam connections in accordance with Fairchild SB 26–27–30–046, 226–27–060, 227–27–041, or CC7–27–010, dated December 11, 1996, whichever is applicable.

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

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Airplane Certification Office.

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

(f) The inspections and replacement required by this AD shall be done in accordance with FAIRCHILD AIRCRAFT Service Bulletin No. SB 26–27–30–046, 226–27–060, 227–27–041, or CC7–27–010, Issued: December 11, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Aircraft, Inc., P.O. Box 790490, San Antonio, Texas 78279–0490; telephone (210) 824–9421. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment (39–9886) becomes effective on February 6, 1997.

Issued in Kansas City, Missouri, on January 6, 1997.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–814 Filed 1–16–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Drug Evaluation and Research

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to functions performed by the Center for Drug Evaluation and Research (CDER). This amendment updates the titles of CDER delegates and organizational components to reflect the organizational restructuring. This action is intended to ensure the accuracy and consistency of the regulations.

EFFECTIVE DATE: January 17, 1997.

FOR FURTHER INFORMATION CONTACT:

Rixie L. Scott, Center for Drug Evaluation and Research (HFD–54), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0494, or

Donna G. Page, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4816.

SUPPLEMENTARY INFORMATION: CDER recently underwent a major organizational restructuring. The Center level structure was approved by the Commissioner of Food and Drugs and published in the Federal Register of October 13, 1995 (60 FR 53379). Most of the authorities delegated to the center officials are amended in this document to reflect new titles and organization placement under the restructuring.

This document revises the delegations of authority contained in part 5 (21 CFR part 5) relating to the functions assigned to CDER.

Further redelegation of the authorities delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591.

2. Section 5.22 is amended by revising paragraphs (a)(13)(i) through (a)(13)(v) and by adding new paragraphs (a)(13)(vi) through (a)(13)(viii) to read as follows:

§ 5.22 Certification of true copies and use of Department seal.

(a) * * *

(13)(i) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(ii) The Director and Deputy Director, Office of Management, CDER.

(iii) The Director and Deputy Director, Office of Compliance, CDER.

(iv) The Directors of the Offices of Drug Evaluation I, II, III, IV, and V, and the Director and Deputy Director of the Office of Epidemiology and Biostatistics, Office of Review Management, CDER.

(v) The Directors and Deputy Directors of the Offices of Testing and Research, Generic Drugs, New Drug Chemistry, and Clinical Pharmacology and Biopharmaceutics, Office of Pharmaceutical Science, CDER.

(vi) The Chief, Freedom of Information Staff, Office of Training and Communications, CDER.

(vii) The Directors of the Divisions of Labeling and Nonprescription Drug Compliance, Prescription Drug Compliance and Surveillance, and Manufacturing and Product Quality, Office of Compliance, CDER.

(viii) The Director and Deputy Director, Division of Bioequivalence, Office of Generic Drugs, Office of Pharmaceutical Science, CDER.

* * * * *

3. Section 5.23 is amended by revising paragraph (b) to read as follows:

§ 5.23 Disclosure of official records.

* * * * *

(b) The Chief, Product Information Management Branch, Division of Database Management, Office of Management, Center for Drug Evaluation and Research (CDER), is authorized to sign affidavits regarding the presence or absence of records of Registration of Drug Establishments.

* * * * *

4. Section 5.25 is amended by revising paragraph (a)(6) to read as follows:

§ 5.25 Research, investigation, and testing programs and health information and health promotion programs.

(a) * * *

(6) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

* * * * *

5. Section 5.26 is amended by revising paragraph (g) to read as follows:

§ 5.26 Service fellowships.

* * * * *

(g) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER), and the Director and Deputy Director, Office of Management, CDER.

* * * * *

6. Section 5.30 is amended by revising paragraphs (a)(2) and (c)(3) to read as follows:

§ 5.30 Hearings.

(a) * * *

(2) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER); the Directors of the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER; and the Director and Deputy Director, Office of Compliance, CDER.

* * * * *

(c) * * *

(3) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, CDER; the

Directors of the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER; and the Director and Deputy Director, Office of Compliance, CDER.

* * * * *

7. Section 5.31 is amended by revising paragraphs (a)(2)(i) through (a)(2)(iii), (b)(1) through (b)(3), (c)(1), (d)(1), (d)(2), (e)(4), the introductory text of paragraph (f)(2), (f)(3), and (f)(5)(ii); by removing paragraph (a)(2)(iv); and by adding new paragraph (d)(3) to read as follows:

§ 5.31 Petitions under part 10.

(a) * * *

(2)(i) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(ii) The Directors of the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

(iii) The Directors and Deputy Directors of the divisions in the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

(b) * * *

(1) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, CDER.

(2) The Director, Office of Drug Evaluation V, Office of Review Management, CDER.

(3) The Director and Deputy Director, Division of Over-the-Counter Drug Products, Office of Drug Evaluation V, Office of Review Management, CDER.

(c) * * *

(1) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, CDER.

* * * * *

(d) * * *

(1) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, CDER.

(2) The Director, Office of Drug Evaluation V, Office of Review Management, CDER.

(3) The Director and Deputy Director, Division of Over-the-Counter Drug Products, Office of Drug Evaluation V, Office of Review Management, CDER.

(e) * * *

(4) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, CDER, are authorized to issue 180-day tentative responses to citizen petitions on drug product matters under § 10.30(e)(2)(iii) of this chapter that relate to the assigned functions of that Center.

* * * * *

(f) * * *

(2) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, CDER, are authorized to grant or deny citizen petitions submitted under § 10.30 of this chapter on drug product matters in program areas where they have been delegated final approval authority in the following sections of this part:

* * * * *

(3) The Director and Deputy Director, Division of Bioequivalence, Office of Generic Drugs, Office of Pharmaceutical Science, CDER, except for those drug products listed in § 314.440(b) of this chapter, are authorized to issue responses to citizen petitions submitted under § 10.30 of this chapter seeking a determination of the suitability of an abbreviated new drug application for a drug product.

* * * * *

(5) * * *

(ii) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, CDER.

* * * * *

8. Section 5.33 is amended by revising paragraph (c) to read as follows:

§ 5.33 Premarket approval of a product that is or contains a biologic, a device, or a drug.

* * * * *

(c) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER); and the Directors of the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

9. Section 5.37 is amended by revising paragraphs (a)(5)(i) and (a)(5)(ii) and by adding new paragraphs (a)(5)(iii) and (a)(5)(iv) to read as follows:

§ 5.37 Issuance of reports of minor violations.

(a) * * *

(5)(i) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(ii) The Director and Deputy Director, Office of Compliance, CDER.

(iii) The Associate Director for Medical Policy, CDER.

(iv) The Director, Division of Drug Marketing, Advertising, and Communications, Office of Drug Evaluation I, Office of Review Management, CDER.

* * * * *

10. Section 5.38 is amended by revising paragraphs (a)(1) through (a)(6) to read as follows:

§ 5.38 Issuance of written notices concerning patent information, current good manufacturing practices and false or misleading labeling of new drugs, new animal drugs, and feeds bearing or containing new animal drugs.

(a) * * *

(1) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(2) The Director and Deputy Director, Office of Compliance, CDER.

(3) The Director and Deputy Director, Division of Labeling and Nonprescription Drug Compliance, Office of Compliance, CDER.

(4) The Director and Deputy Director, Division of Manufacturing and Product Quality, Office of Compliance, CDER.

(5) The Director and Deputy Director, Division of Prescription Drug Compliance and Surveillance, Office of Compliance, CDER.

(6) The Director and Deputy Director, Division of Scientific Investigations, Office of Compliance, CDER.

* * * * *

11. Section 5.44 is amended by revising paragraphs (a)(1)(iii) and (b)(1)(iii) to read as follows:

§ 5.44 Export of unapproved drugs.

(a) * * *

(1) * * *

(iii) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

* * * * *

(b) * * *

(1) * * *

(iii) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, CDER.

* * * * *

12. Section 5.45 is amended by revising paragraph (f)(2) to read as follows:

§ 5.45 Imports and exports.

* * * * *

(f) * * *

(2) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER) and the Director and Deputy Director, Office of Compliance, CDER.

13. Section 5.54 is amended by revising paragraph (c) to read as follows:

§ 5.54 Determinations that medical devices present unreasonable risk of substantial harm.

* * * * *

(c) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER); and the Director and Deputy Director, Office of Compliance, CDER.

14. Section 5.55 is amended by revising paragraph (c) to read as follows:

§ 5.55 Orders to repair or replace, or make refunds for, medical devices.

* * * * *

(c) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER); and the Director and Deputy Director, Office of Compliance, CDER.

15. Section 5.56 is amended by revising paragraph (c) to read as follows:

§ 5.56 Recall authority.

* * * * *

(c) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER); and the Director and Deputy Director, Office of Compliance, CDER.

* * * * *

16. Section 5.57 is amended by revising paragraph (d) to read as follows:

§ 5.57 Temporary suspension of a medical device application.

* * * * *

(d) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER); the Directors of the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER; the Director and Deputy Director, Office of Generic Drugs, Office of Pharmaceutical Science, CDER; and the Director and Deputy Director, Office of Compliance, CDER.

* * * * *

17. Section 5.58 is amended by revising paragraphs (c)(1)(i) through (c)(1)(iii) and by removing paragraph (c)(1)(iv) to read as follows:

§ 5.58 Orphan products.

* * * * *

(c) * * *

(1) * * *

(i) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(ii) The Directors of the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

(iii) The Directors and Deputy Directors of the divisions in the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

* * * * *

18. Section 5.60 is amended by removing paragraphs (a)(10) and (b)(9), by redesignating paragraphs (a)(11) through (a)(13) as paragraphs (a)(10) through (a)(12), and (b)(10) through (b)(12) as paragraphs (b)(9) through (b)(11), by revising paragraphs (a)(7) through (a)(9), and paragraphs (b)(6) through (b)(8) to read as follows:

§ 5.60 Required and discretionary postmarket surveillance.

(a) * * *

(7) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(8) The Directors of the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

(9) The Director and Deputy Director, Office of Compliance, CDER.

* * * * *

(b) * * *

(6) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, CDER.

(7) The Directors of the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

(8) The Director and Deputy Director, Office of Compliance, CDER.

* * * * *

19. Section 5.70 is revised to read as follows:

§ 5.70 Issuance of notice implementing the provisions of the Drug Amendments of 1962.

The Director, Deputy Center Director for Review Management, and Deputy Director, Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER), are authorized to issue notices and amendments thereto implementing section 107(c)(3) of the Drug Amendments of 1962 (Pub. L. 87–781) by announcing new or revised efficacy findings on human drugs that are or were subject to the provisions of sections 505 and 507 of the Federal Food, Drug, and Cosmetic Act.

20. Section 5.71 is amended by revising paragraphs (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2) to read as follows:

§ 5.71 Termination of exemptions for new drugs for investigational use in human beings and in animals.

(a) * * *

(2) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(b) * * *

(1) The Directors of the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

(2) The Directors and Deputy Directors of the divisions in the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

* * * * *

(c) * * *

(1) The Directors of the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

(2) The Directors and Deputy Directors of the divisions in the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

* * * * *

21. Section 5.72 is amended by revising paragraph (a) to read as follows:

§ 5.72 Authority to approve and to withdraw approval of a charge for investigational new drugs.

* * * * *

(a) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

* * * * *

22. Section 5.73 is amended by revising paragraphs (a) through (d) and by adding new paragraphs (e) and (f) to read as follows:

§ 5.73 Certification of insulin.

* * * * *

(a) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(b) The Director, Office of Drug Evaluation II, Office of Review Management, CDER.

(c) The Director and Deputy Director, Division of Metabolism and Endocrine Drug Products, Office of Drug Evaluation II, Office of Review Management, CDER.

(d) The Director and Deputy Director, Office of Compliance, CDER.

(e) The Director and Deputy Director, Division of Prescription Drug Compliance and Surveillance, Office of Compliance, CDER.

(f) The Team Leader and Assistant, Post-Marketing Surveillance Team, Division of Prescription Drug

Compliance and Surveillance, Office of Compliance, CDER.

23. Section 5.74 is amended by revising paragraphs (a) and (b) and by adding new paragraphs (c) and (d) to read as follows:

§ 5.74 Issuance, amendment, or repeal of regulations pertaining to drugs containing insulin.

* * * * *

(a) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(b) The Director, Office of Drug Evaluation II, Office of Review Management, CDER.

(c) The Director and Deputy Director, Division of Metabolism and Endocrine Drug Products, Office of Drug Evaluation II, Office of Review Management, CDER.

(d) The Director and Deputy Director, Office of Compliance, CDER.

24. Section 5.75 is amended by revising paragraphs (a) through (c) to read as follows:

§ 5.75 Designation of official master and working standards for antibiotic drugs.

* * * * *

(a) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(b) The Director and Deputy Director, Office of Testing and Research, Office of Pharmaceutical Science, CDER.

(c) The Director and Deputy Director, Division of Research and Testing, Office of Testing and Research, Office of Pharmaceutical Science, CDER.

25. Section 5.76 is amended by revising paragraphs (a) through (d) to read as follows:

§ 5.76 Certification of antibiotic drugs.

* * * * *

(a) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(b) The Director and Deputy Director, Office of Compliance, CDER.

(c) The Director and Deputy Director, Division of Prescription Drug Compliance and Surveillance, Office of Compliance, CDER.

(d) The Team Leader and Assistant, Post-Marketing Surveillance Team, Division of Prescription Drug Compliance and Surveillance, Office of Compliance, CDER.

26. Section 5.78 is amended by revising paragraphs (a)(1) and (a)(2) and adding new paragraphs (a)(3) through (a)(7) to read as follows:

§ 5.78 Issuance, amendment, or repeal of regulations pertaining to antibiotic drugs.

(a) * * *

(1) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(2) The Director, Office of Drug Evaluation I, Office of Review Management, CDER.

(3) The Director, Office of Drug Evaluation IV, Office of Review Management, CDER.

(4) The Director and Deputy Director, Division of Oncologic Drug Products, Office of Drug Evaluation I, Office of Review Management, CDER.

(5) The Director and Deputy Director, Division of Anti-Infective Drug Products, Office of Drug Evaluation IV, Office of Review Management, CDER.

(6) The Director and Deputy Director, Division of Anti-Viral Drug Products, Office of Drug Evaluation IV, Office of Review Management, CDER.

(7) The Director and Deputy Director, Office of Compliance, CDER.

* * * * *

27. Section 5.80 is amended by revising paragraphs (a)(1)(i), (a)(1)(ii), (b), (c)(1)(i) and (c)(1)(ii), (d)(1) through (d)(3), the first sentence in paragraph (e), and paragraph (f) and by removing paragraphs (a)(1)(iii), (c)(1)((iii), and (c)(1)(iv) to read as follows:

§ 5.80 Approval of new drug applications and their supplements.

(a)(1) * * *

(i) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(ii) The Directors of the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER, for drugs under their jurisdiction.

* * * * *

(b) The Directors and Deputy Directors of the divisions in the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER, for drugs under their jurisdiction, are authorized to perform all functions of the Commissioner of Food and Drugs with regard to approval of supplemental applications to approved new drug applications for drugs for human use that have been submitted under § 314.70 of this chapter and of new drug applications for drug products other than those that contain new molecular entities (new chemical entities). The applications to which this authorization applies may, in appropriate circumstances, continue to be acted upon by the officials so authorized in § 5.10(a) and paragraph (a) of this section.

(c) * * *

(1) * * *

(i) The Director and Deputy Director, Office of Generic Drugs (OGD), Office of Pharmaceutical Science, CDER, except that the Director and Deputy Director, OGD are not authorized to approve new drug applications with a 5S classification if clinical studies are needed.

(ii) The Directors and Deputy Directors of the divisions in Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

(d) * * *

(1) The Director and Deputy Director, Division of Chemistry I, Office of Generic Drugs, Office of Pharmaceutical Science, CDER.

(2) The Director and Deputy Director, Division of Chemistry II, Office of Generic Drugs, Office of Pharmaceutical Science, CDER.

(3) Associate Director for Chemistry, Office of Pharmaceutical Science, CDER.

(e) The Director, Division of Labeling and Program Support, Office of Generic Drugs, Office of Pharmaceutical Science, CDER, are authorized to perform all the functions of the Commissioner of Food and Drugs with respect to approval of supplemental applications to abbreviated new drug applications, 5S applications, or 505(b)(2) applications for drugs for human use that are described in § 314.70(b)(3) and (c)(2)(i) through (c)(2)(iv) of this chapter. * * *

(f) The supervisory and team leader chemists in the Divisions of New Drug Chemistry I, II, and III, Office of New Drug Chemistry, Office of Pharmaceutical Science, CDER, are authorized to perform all functions of the Commissioner of Food and Drugs with respect to approval of supplemental applications to new drug applications for drugs for human use that are described in § 314.70(b)(1), (b)(2)(ii) through (b)(2)((x), (c)(1), and (c)(3) of this chapter. Authority to approve supplements that require in vivo bioavailability information or that require a change in the labeling of the drug, except changes that reflect only the use of a different facility or establishment, are not included in this paragraph. The supplemental applications to which this authorization applies may continue to be acted upon by the officials so authorized in § 5.10(a) and paragraphs (a) and (b) of this section.

28. Section 5.82 is amended by revising paragraph (a) to read as follows:

§ 5.82 Issuance of notices relating to proposals to refuse approval or to withdraw approval of new drug applications and their supplements.

(a) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER), are authorized to issue notices of an opportunity for a hearing on proposals to refuse approval or to withdraw approval of new drug applications and abbreviated new drug applications and supplements thereto on drugs for human use, except for those drugs listed in § 314.440(b) of this chapter, that have been submitted under section 505 of the Federal Food, Drug, and Cosmetic Act and subpart B of part 314 of this chapter and to issue notices refusing approval or withdrawing approval when opportunity for hearing has been waived.

* * * * *

29. Section 5.93 is amended by revising paragraphs (a) and (b) to read as follows:

§ 5.93 Submission of and effective approval dates for abbreviated new drug applications and certain new drug applications.

* * * * *

(a) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(b) The Director and Deputy Director, Division of Bioequivalence, Office of Generic Drugs, Office of Pharmaceutical Science, CDER.

30. Section 5.94 is amended by revising paragraphs (b)(1) through (b)(3) and by removing paragraph (b)(4) to read as follows:

§ 5.94 Extensions or stays of effective dates for compliance with certain labeling requirements for human prescription drugs.

* * * * *

(b) * * *

(1) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(2) The Directors of the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

(3) The Directors and Deputy Directors of the divisions in the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

Dated: December 16, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–1202 Filed 1–16–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah, Virgin Islands and Wyoming State Plans; Approval of Plan Supplements; Changes in Level of Federal Enforcement

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Final rule.

SUMMARY: This document amends OSHA's regulations to reflect the Assistant Secretary's decision approving amendments to nine (9) State plans to exclude coverage of the field sanitation standard and the temporary labor camp standard as it applies in agriculture (with the exception of temporary labor camps for employees engaged in egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities) from their State Plans. The States of Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah, Virgin Islands, and Wyoming have elected to follow the jurisdictional transfer of authority as effected by Secretary of Labor's Orders 5–96 and 6–96, published in the Federal Register on January 2, 1997, between the Employment Standards Administration (ESA) and OSHA with regard to these two OSHA standards. OSHA is hereby amending pertinent sections of its regulations on approved State plans to reflect this relinquishment of State jurisdiction and transfer of OSHA enforcement authority to ESA in these nine (9) States and to notify affected employers and employees of this action. In fourteen (14) other States operating OSHA-approved State plans, enforcement of the field sanitation and temporary labor camp standards in agriculture will not transfer to ESA and will continue as a State responsibility. (These States are: Arizona, California, Hawaii, Maryland, Michigan, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, Tennessee, Vermont, Virginia and Washington). In all other States under Federal OSHA jurisdiction, ESA will now exercise responsibility for enforcement in agriculture of the OSHA field sanitation and temporary labor camp standards, except as noted.

EFFECTIVE DATE: February 3, 1997.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3637, 200 Constitution Avenue NW., Washington, DC 20210, (202) 219–8148.

SUPPLEMENTARY INFORMATION:

A. Introduction

Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 667, provides that States which wish to assume responsibility for developing and enforcing their own occupational safety and health standards may do so by submitting and obtaining Federal approval of a State plan. State plan approval occurs in stages which include initial approval under section 18(b) of the Act and, ultimately, final approval under section 18(e). Pursuant to section 18(e) OSHA previously announced in the Federal Register final state plan approval and relinquishment of concurrent Federal jurisdiction for each of the following nine States: Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah, Virgin Islands, and Wyoming. Through amendments to their State plans, these nine States have excluded coverage of the field sanitation (29 CFR 1928.110) and temporary labor camp (29 CFR 1910.142) standards in agriculture (with the exception of temporary labor camps for employees engaged in egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities) from their State plans. As provided in Secretary of Labor's Orders 5–96 and 6–96, effective February 3, 1997, (62 FR 107–113, January 2, 1997) this authority has been subsequently transferred from the Occupational Safety and Health Administration (OSHA) to the Employment Standards Administration (ESA). Therefore, the applicable subparts of 29 CFR Part 1952 are being revised to effect this change in coverage and enforcement jurisdiction.

B. Background

Following a one year pilot project and pursuant to Secretary's Orders 5–96 and 6–96 (62 FR 107–113), an exchange of specific authorities and responsibilities has been effected between the Assistant Secretary for Occupational Safety and Health and Assistant Secretary for

Employment Standards, as of February 3, 1997. This is the result of a determination that the respective agencies' program expertise would be better utilized, and, therefore, that the Department of Labor's resources would be more effectively and efficiently utilized, by a permanent transfer of particular enforcement activities between the Assistant Secretaries for OSHA and ESA. Secretary's Order 5–96 delegates to the Assistant Secretary for ESA the Secretary's authority under sections 8, 9, and 10 of the Occupational Safety and Health Act to conduct inspections and investigations, issue administrative subpoenas, issue citations, assess and collect penalties, and enforce any other remedies available under the statute, and to develop and issue compliance interpretations under the statute, with regard to the OSHA standards on:

(1) Field sanitation, 29 CFR 1928.110; and

(2) Temporary labor camps, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in ''agricultural employment'' within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that the Assistant Secretary for OSHA retains enforcement responsibility over temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

The authority of the Assistant Secretary for ESA under the OSH Act with regard to the standards on field sanitation and temporary labor camps does not include any other agency authorities or responsibilities, such as rulemaking authority. Such authorities under the statute are retained by the Assistant Secretary for OSHA.

Similarly, the Secretary's Order 6–96 delegates to the Assistant Secretary for OSHA the authority for investigating and resolving allegations of discriminatory actions taken by employers against employees in violation of the requirements of the following environmental and public health statutes (so called ''whistleblower'' protection): the Safe Drinking Water Act, the Energy Reorganization Act of 1974, the Comprehensive Environmental Response Compensation and Liability Act of 1980, the Federal Water Pollution Control Act, the Toxic Substances Control Act, the Solid Waste Disposal Act, and the Clean Air Act) which had been previously delegated to the Assistant Secretary for Employment Standards.

State Plan States

Because OSHA standards under section 6 of the Act are in effect with regard to the issues of field sanitation and temporary labor camp safety and health, the principles of preemption under section 18 of the Act continue to apply and are unaffected by the transfer of responsibility for enforcement of these standards from OSHA to ESA. States may adopt and enforce requirements relating to these occupational issues only through the vehicle of an OSHA-approved State plan.

The 23 States who had assumed responsibility for field sanitation and temporary labor camp enforcement in the private sector under their OSHA-approved State plans were given two options with regard to this Federal transfer of responsibility: (1) They could follow OSHA's example by excluding field sanitation and certain temporary labor camp enforcement in agriculture from coverage under their State plan. OSHA would then modify the ''Final Approval Determination,'' ''Level of Federal Enforcement'' and the ''Changes to Approved Plans'' sections in 29 CFR Part 1952 for those State programs to note the exclusion. Nine States [Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah, Virgin Islands, and Wyoming] have chosen to relinquish their authority by submitting appropriate plan change supplements; or, (2) States could choose to retain their OSHA enforcement responsibility for the two standards under their State plan. In this case, ESA would not exercise its delegated authority and would look to the State plan State to continue to enforce the State's analogues of the temporary labor camp and field sanitation standards. Fourteen States [Arizona, California, Hawaii, Maryland, Michigan, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, Tennessee, Vermont, Virginia and Washington] have chosen to retain their OSHA enforcement responsibility for these two standards. Under the terms of the Secretary's Orders, the Assistant Secretary for OSHA retains the authority to monitor the activity of State plan States with respect to field sanitation and temporary labor camps.

Thus, the delegation of OSHA enforcement authority to ESA with regard to standards on field sanitation and temporary labor camps will apply in all States under Federal OSHA enforcement jurisdiction and in those nine (9) State plan States which choose to exclude these standards from their State Plan. OSHA (and the States) will continue to enforce other standards that are applicable to the agriculture industry, including the temporary labor camp standard as it applies to employees engaged in egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities. The whistleblower authority transferred from ESA to OSHA will be retained Federally as it is not delegable to the State plans States.

C. Decision

29 CFR Part 1953 sets forth the procedures by which the Assistant Secretary will review changes to State plans approved in accordance with section 18(c) of the Act and Part 1902. Having reviewed the nine States' plan change supplements in accordance with these procedures, OSHA is hereby amending 29 CFR Part 1952 to reflect approval of these amendments and other related changes with regard to enforcement responsibility.

D. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. As these State changes are identical to the Federal action and impose no new responsibilities or requirements on employers, employees or the State, no opportunity for further public comment is required.

E. Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that this action will not have a significant economic impact on a substantial number of small entities. Transfer of enforcement responsibility in these nine States will not place small employers in these States under any new or different requirements, nor will any additional burden be placed upon the State government beyond the responsibilities already assumed as part of the approved State plan.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health. It is

issued under Section 18 of the OSH Act, (29 U.S.C. 667), 29 CFR Part 1902, and Secretary of Labor's Order No. 1–90 (55 FR 9033).

Signed at Washington, D.C. this 9th day of January 1997.

Joseph A. Dear,

Assistant Secretary.

For the reasons set out in the preamble, 29 CFR part 1952, subparts C (South Carolina), E (Utah), J (Iowa), N (Minnesota), Q (Kentucky), R (Alaska), S (Virgin Islands), Z (Indiana) and BB (Wyoming) are hereby amended as set forth below:

PART 1952—[AMENDED]

1. The authority citation of Part 1952 continues to read as follows:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902, Secretary of Labor's Order No. 1–90 (55 FR 9033).

Subpart C—South Carolina

2. Section 1952.94 is amended by revising paragraph (b) to read as follows:

§ 1952.94 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in South Carolina. The plan does not cover private sector maritime employment; military bases; Area D of the Savannah River Site (power generation and transmission facilities operated by South Carolina Electric and Gas); the enforcement of the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in ''agricultural employment'' within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that South Carolina retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

* * * * *

3. Section 1952.95 is amended by revising paragraph (b)(1) to read as follows:

§ 1952.95 Level of Federal enforcement.

* * * * *

(b) (1) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the South Carolina plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities, and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments, and employment on military bases and at Area D of the Savannah River Site (power generation and transmission facilities operated by South Carolina Electric and Gas). Federal jurisdiction is retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5–96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.94(b). Federal jurisdiction is also retained with respect to Federal government employers and employees.

* * * * *

4. Section 1952.97 is amended by adding paragraph (c) to read as follows:

§ 1952.97 Changes to approved plan.

* * * * *

(c) *Temporary Labor Camps/Field Sanitation*. Effective February 3, 1997, the Assistant Secretary approved South Carolina's plan amendment, dated August 1, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities.) The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in South Carolina pursuant to Secretary of Labor's Order 5–96, dated December 27, 1996.

Subpart E—Utah

5. Section 1952.114 is amended by revising paragraph (b) to read as follows:

§1952.114 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Utah. The plan does not cover private sector maritime employment; employment on Hill Air Force Base; the enforcement of the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142 with respect to any agricultural establishment where employees are engaged in ''agricultural employment'' within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Utah retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

* * * * *

6. Section 1952.115 is amended by revising paragraph (b) to read as follows:

§1952.115 Level of Federal enforcement.

* * * * *

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Utah plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health enforcement in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments. Federal jurisdiction is retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5–96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor

camps standard, 29 CFR 1910.142, in agriculture, as described in §1952.114(b). Federal jurisdiction is also retained on the Hill Air Force Base, and with respect to all Federal government employers and employees. In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the finally approved plan, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability, Federal jurisdiction may be assumed over the entire project or facility. Ineither of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal and State OSHA.

* * * * *

7. Section 1952.117 is amended by adding paragraph (c) to read as follows:

§1952.117 Changes to approved plans.

* * * * *

(c) *Temporary Labor Camps/Field Sanitation*. Effective February 3, 1997, the Assistant Secretary approved Utah's plan amendment, dated July 31, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities.) The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in Utah pursuant to Secretary of Labor's Order 5–96, dated December 27, 1996.

Subpart J—Iowa

8. Section 1952.164 is amended by revising paragraph (b) to read as follows:

§1952.164 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Iowa. The plan does not cover private sector maritime employment; Federal government-owned, contractor-operated military/munitions facilities; bridge construction projects spanning the Mississippi and Missouri Rivers between Iowa and other States; private sector hazardous waste disposal facilities designated as Superfund sites; the enforcement of the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in ''agricultural employment'' within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Iowa retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

* * * * *

9. Section 1952.165 is amended by revising paragraph (b) to read as follows:

§1952.165 Level of Federal enforcement.

* * * * *

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Iowa plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments; Federal government-owned, contractor-operated military/munitions facilities; bridge construction projects spanning the Mississippi and Missouri Rivers between Iowa and other States; private sector hazardous waste disposal facilities designated as Superfund sites. Federal jurisdiction is also retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5–96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in §1952.164(b). In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the finally approved plan, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability, Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal and State OSHA.

* * * * *

10. Section 1952.167 is amended by adding paragraph (b) to read as follows:

§1952.167 Changes to approved plans.

* * * * *

(b) *Temporary Labor Camps/Field Sanitation*. Effective February 3, 1997, the Assistant Secretary approved Iowa's plan amendment, dated August 2, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities). The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in Iowa pursuant to Secretary of Labor's Order 5–96, dated December 27, 1996.

Subpart N—Minnesota

11. Section 1952.204 is amended by revising paragraph (b) to read as follows:

§1952.204 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Minnesota. The plan does not cover private sector offshore maritime employment; employment at the Twin Cities Army Ammunition Plant; Federal government employers and employees; any tribal or private sector employment within any Indian reservation in the State; the enforcement of the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in

''agricultural employment'' within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Minnesota retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

* * * * *

12. Section 1952.205 is amended by revising paragraph (b) to read as follows:

§1952.205 Level of Federal enforcement.

* * * * *

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Minnesota plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector offshore maritime activities and will continue to enforce offshore all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments. Federal jurisdiction is retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5–96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in §1952.204(b). Federal jurisdiction is also retained over the Twin Cities Army Ammunition Plant, over Federal government employers and employees, and over any tribal or private sector employment within any Indian reservation in the State. In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the finally approved plan, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability, Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal and State OSHA.

* * * * *

13. Section 1952.207 is amended by adding paragraph (b) to read as follows:

§1952.207 Changes to approved plans.

* * * * *

(b) *Temporary Labor Camps/Field Sanitation.* Effective February 3, 1997, the Assistant Secretary approved Minnesota's plan amendment, dated July 24, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities). The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in Minnesota pursuant to Secretary of Labor's Order 5–96, dated December 27, 1996.

Subpart Q—Kentucky

14. Section 1952.234 is amended by revising paragraph (b) to read as follows:

§1952.234 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Kentucky. The plan does not cover private sector maritime employment; employment at Tennessee Valley Authority facilities, and on all military bases as well as any other properties ceded to the U.S. Government; the enforcement of the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in ''agricultural employment'' within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Kentucky retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

* * * * *

15. Section 1952.235 is amended by revising paragraph (b) to read as follows:

§1952.235 Level of Federal enforcement.

* * * * *

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Kentucky plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments); employment at Tennessee Valley Authority facilities and on all military bases as well as any other properties ceded to the U.S. Government. Federal jurisdiction is retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5–96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.234(b). Federal jurisdiction is also retained with respect to Federal government employers and employees. In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the finally approved plan, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability, Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised

immediately upon agreement between Federal and State OSHA.

* * * * *

16. Section 1952.237 is amended by adding paragraph (c) to read as follows:

§1952.237 Changes to approved plans.

* * * * *

(c) *Temporary Labor Camps/Field Sanitation.* Effective February 3, 1997 the Assistant Secretary approved Kentucky's plan amendment, dated July 29, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities.) The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in Kentucky pursuant to Secretary of Labor's Order 5–96, dated December 27, 1996.

Subpart R—Alaska

17. Section 1952.243 is amended by revising paragraph (b) to read as follows:

§1952.243 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Alaska. The plan does not cover private sector maritime employment; operations of private sector employers within the Metlakatla Indian Community on the Annette Islands; operations of private sector employers within Denali (Mount McKinley) National Park; worksites located on the navigable waters, including artificial islands; the enforcement of the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in ''agricultural employment'' within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Alaska retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

* * * * *

18. Section 1952.244 is amended by revising paragraph (b) to read as follows:

§1952.244 Level of Federal enforcement.

* * * * *

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Alaska plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments). Federal jurisdiction is also retained and exercised by the Employment Standards Administration, U.S. Department of Labor (Secretary's Order 5–96, December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.243(b). Federal jurisdiction will also be retained over marine-related private sector employment at worksites on the navigable waters, such as floating seafood processing plants, marine construction, employments on artificial islands, and diving operations in accordance with section 4(b)(1) of the Act. Federal jurisdiction is also retained for private sector worksites located within the Annette Islands Reserve of the Metlakatla Indian Community, for private sector worksites located within the Denali (Mount McKinley) National Park, and for Federal government employers and employees.

* * * * *

19. Section 1952.246 is amended by adding paragraph (c) to read as follows:

§1952.246 Changes to approved plans.

* * * * *

(c) *Temporary Labor Camps/Field Sanitation.* Effective February 3, 1997, the Assistant Secretary approved Alaska's plan amendment, dated October 1, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities.) The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in Alaska pursuant to Secretary of Labor's Order 5–96, dated December 27, 1996.

Subpart S—The Virgin Islands

20. Section 1952.253 is amended by revising paragraph (b) to read as follows:

§1952.253 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in the Virgin Islands. The plan does not cover occupational health and the issues of maritime safety and health in the private sector; the enforcement of the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in ''agricultural employment'' within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that the Virgin Islands retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities. *Note:* The Virgin Islands final approval status under Section 18(c) of the Act was suspended and Federal concurrent enforcement authority reinstated on November 13, 1995.

* * * * *

21. Section 1952.254 is amended by revising paragraph (b) to read as follows:

§1952.254 Level of Federal enforcement.

* * * * *

(b) Federal OSHA also continues to retain full authority over issues which have not been subject to State enforcement under the Virgin Islands plan. Thus, OSHA retains authority to enforce all provisions of the Act, Federal standards, rules, or orders,

which relate to occupational health in private sector employment in the Virgin Islands. OSHA also retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules, or order and all Federal standards, current or future, specifically directed to maritime employment (e.g., 29 CFR Part 1915, shipyard employment; 29 CFR Part 1917, marine terminals; 29 CFR Part 1918, longshoring; 29 CFR Part 1919, gear certification), as well as provisions of general industry (29 CFR Part 1910) standards appropriate to hazards found in these employments. Federal jurisdiction is also retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5–96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142 , in agriculture, as described in § 1952.253(b). Federal jurisdiction also remains in effect with respect to Federal government employers and employees.

* * * * *

22. Section 1952.256 is amended by adding paragraph (b) to read as follows:

§ 1952.256 Changes to approved plans.

* * * * *

(b) *Temporary Labor Camps/Field Sanitation.* Effective February 3, 1997, the Assistant Secretary approved the Virgin Island's plan amendment, dated July 31, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities.) The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in the Virgin Islands pursuant to Secretary of Labor's Order 5–96, dated December 27, 1996.

Subpart Z—Indiana

23. Section 1952.324 is amended by revising paragraph (b) to read as follows:

§ 1952.324 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Indiana. The plan does not cover maritime employment in the private sector; private sector hazardous waste disposal facilities designated as Superfund sites; the enforcement of the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in ''agricultural employment'' within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Indiana retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

* * * * *

24. Section 1952.325 is amended by revising paragraph (b)(1) to read as follows:

§ 1952.325 Level of Federal enforcement.

* * * * *

(b) (1) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Indiana plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments. Federal jurisdiction is retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5–96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.324(b). Federal jurisdiction is also retained at private-sector hazardous-waste disposal facilities designated as Superfund sites, and with respect to Federal government employers and employees.

* * * * *

25. Section 1952.327 is amended by adding paragraph (b) to read as follows:

§ 1952.327 Changes to approved plans.

* * * * *

(b) Temporary Labor Camps/Field Sanitation. Effective February 3, 1997, the Assistant Secretary approved Indiana's plan amendment, dated July 9, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities.) The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in Indiana pursuant to Secretary of Labor's Order 5–96, dated December 27, 1996.

* * * * *

Subpart BB—Wyoming

26. Section 1952.344 is amended by revising paragraph (b) to read as follows:

§ 1952.344 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Wyoming. The plan does not cover private sector maritime employment; employment on the Warren Air Force Base employment; employment at private sector hazardous waste disposal facilities designated as Superfund sites; the enforcement of the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in ''agricultural employment'' within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Wyoming retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest

processing of agricultural or horticultural commodities.

* * * * *

27. Section 1952.345 is amended by revising paragraph (b) to read as follows:

§ 1952.345 Level of Federal enforcement.

* * * * *

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Wyoming plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, Federal standards, rules, or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments. Federal jurisdiction is retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5–96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.344(b). Federal jurisdiction is also retained for employment at Warren Air Force Base and at private-sector hazardous-waste disposal facilities designated as Superfund sites as well as with respect to Federal government employers and employees. In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the finally approved plan, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability, Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal and State OSHA.

* * * * *

28. Section 1952.347 is amended by adding paragraph (d) to read as follows:

§ 1952.347 Changes to approved plans.

* * * * *

(d) Temporary Labor Camps/Field Sanitation. Effective February 3, 1997, the Assistant Secretary approved Wyoming's plan amendment, dated July 19, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities.) The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in Wyoming pursuant to Secretary of Labor's Order 5–96, dated December 27, 1996.

[FR Doc. 97–1028 Filed 1–16–97; 8:45 am]
BILLING CODE 4510–26–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 57

[DoD Instruction 1342.12]

Provision of Early Intervention and Special Education Services to Eligible DOD Dependents in Overseas Areas

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: Prior to 1991, the Department of Defense Dependents Schools (DoDDS) was required by the ''Defense Dependent's Education Act of 1978,'' as amended, to adhere to the provisions of the ''Education of All Handicapped Children Act.'' With the enactment of ''Individuals with Disabilities Education Act Amendments of 1991,'' the Department of Defense was required to modify its existing special education program for children with disabilities, ages 3 through 21, and to provide early intervention services to children birth through 2 years. This final rule assigns responsibility for the implementation of the Act to the Under Secretary of Defense for Personnel and Readiness, reflecting a reorganization of the Department of Defense; assigns responsibilities for duties previously assigned to Regional Directors to Area Superintendents, reflecting a reorganization of the DoDDS; requires DoD to provide early intervention services to children with disabilities from birth through 2 years of age, requires DoDDS to extend special education services to students from 3 through 21 years of age rather than from 5 through 21; expands the categories of disability to include both autism and traumatic brain injury; expands special education services to include both assistive technology and transition; expands the role of the DoD Coordinating Committee to include early intervention as well as special education and related services; establishes a DoD Inter-Component Coordinating Council on Early Intervention; expands the definition section to include terminology not contained in the previous part; and transfers the administrative responsibility for conducting hearings pursuant to this rule to the Defense Office of Hearings and Appeals.

EFFECTIVE DATE: March 12, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. Rebecca Posante, DOD, Office of Family Policy, 4015 Wilson Blvd, BCT #3, Arlington, VA 22203–5190, 703–696–5734.

SUPPLEMENTARY INFORMATION: On May 31, 1995 (60 FR 28362), the Department of Defense published a proposed rule. Written comments were invited and due by July 31, 1995. In response to this invitation, six individuals and organizations submitted comments. In addition, pursuant to a notice appearing in the Federal Register on July 13, 1995 (60 FR 36081), DoD conducted a public hearing concerning the proposed rule on August 4, 1995. All written comments and the transcript of the public hearing are available for public inspection in the DoD Office of Family Policy at the above address.

The Office of the Secretary of Defense has carefully considered the views of the public as reflected in the written comments and testimony at the public hearing. A description of these views and a discussion of the Department's response to them follow.

General. One commenter noted that the proposed rule did not contain a reference to 29 U.S.C. 794, Section 504 of the Rehabilitation Act of 1973, as amended. This section does not apply to persons outside of the United States. Therefore, the final rule will not include a reference to it.

The same commenter noted that reference should be made to the Architectural Barriers Act of 1968. This act is implemented in other regulatory guidance, and therefore does not require reference in this final rule.

One commenter recommended that consideration be given to consolidating the DoD Instructions that pertain to the

Department's overseas and domestic schools' special education and related services programs. The underlying statutory bases are different for the DoD domestic and overseas schools and their service delivery models are different. Therefore, the Department will maintain separate regulatory guidance.

Section 57.3. One commenter recommended that the final rule include the term ''psychotherapy'' in the definition of psychological services. The final rule uses the definition from the U.S. Department of Education regulation regarding special education. That definition does not contain the term ''psychotherapy;'' therefore, this recommendation was not accepted.

Section 57.3. One commenter requested that the reference to early intervention provided under the supervision of a military health department be changed to acknowledge that early intervention services are not necessarily health or medical in nature. The final rule will not incorporate this suggestion since the assignment of early intervention to the military medical departments was accomplished for organizational efficiency.

The same commenter recommended that reference in the definitions to ''medically related services'' might confuse the supportive and educational nature of occupational therapy in schools and perpetuate a medical model of services. The final rule will not incorporate this recommendation. Present practice in the DoD includes occupational therapy and some other types of related services under the heading of medically related services because these responsibilities were assigned to the military medical departments. The Department does not believe that this has resulted in the use of the medical model in the provision of medically related services.

Appendix A, Section C.1.M. One commenter noted that the definition for ''developmental delay'' contained in the proposed rule included two criteria that were not equivalent. In order to clarify the intent of the criteria, the definition was changed to the following. ''C.1. The child is experiencing a developmental delay as measured by diagnostic instruments and procedures of 2 standard deviations below the mean in at least one area, or by a 25 percent delay in at least one area on assessment instruments that yield scores in months, or a developmental delay of 1.5 standard deviations below the mean in two or more areas, or by a 20 percent delay on assessment instruments that yield scores in months in two or more of the following areas of development: cognitive, physical, communication, social or emotional, or adaptive.''

Appendix B, Section B.1.(e). One commenter recommended that the term ''education'' be defined for students with disabilities to delineate clearly that this is a broad concept including socialization and life skills for more involved students. The Final Rule will not further define this term since DoD guidance and practice include the concept of education in the broadest sense of the term.

Appendix B, Section 4. A commenter noted that the frequency of the reevaluation process should not be limited to every three years, but should occur each year. This section in the proposed rule states that ''a reevaluation *for eligibility* must occur *at least* every three years, *or more frequently*.'' Evaluations to determine the need for services may be completed at any time, and progress reports on goals and objectives must be developed at each annual review. The final rule follows the U.S. Department of Education regulation regarding reevaluation. Therefore, this recommendation will not be incorporated in the final rule.

Appendix C, Appendix D, and Appendix E. One commenter recommended expanding the membership on the National Advisory Panel on the Education of Dependents with Disabilities, the DoD Coordinating Committee on Early Intervention, Special Education and Related Services, and the DoD Inter-Component Coordinating Council on Early Intervention to include individuals who are knowledgeable of early intervention, special education, and related services in the States and who have experience in providing those services to children and their families. The proposed rule conformed to the statutory requirements of membership. Therefore, the membership of the committees and panel has not been changed in the final rule.

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that this final rule will not be significant as defined by Executive Order 12866.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that this final rule will not have a significant economic impact on substantial numbers of small entities because it affects only eligible DoD dependents in overseas areas.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 44)

It has been certified that this final rule will not impose any reporting and recordkeeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 57

Education of individuals with disabilities, Elementary and secondary education, Government employees, Military personnel.

Accordingly, 32 CFR part 57 is revised to read as follows:

PART 57—PROVISION OF EARLY INTERVENTION AND SPECIAL EDUCATION SERVICES TO ELIGIBLE DOD DEPENDENTS IN OVERSEAS AREAS

Sec.

Authority: 20 U.S.C. 921 and 1400.

§ 57.1 Purpose.

This part:

(a) Implement policy and update responsibilities and procedures under 20 U.S.C. 921–932, 20 U.S.C. 1400 *et seq.*, DoD Directive 1342.6 [1], and DoD Directive 1342.13 [2] for providing the following:

(1) A free appropriate public education (FAPE) for children with disabilities who are eligible to enroll in the Department of Defense Dependent Schools (DoDDS).

(2) Early intervention services for infants and toddlers birth through age 2 years who, but for their age, would be eligible to enroll in the DoDDS under DoD Directive 1342.13.

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 57.1(a).

(3) A comprehensive and multidisciplinary program for early intervention services for infants and toddlers with disabilities and their families.

(b) Establishes a National Advisory Panel (NAP) on Education for Children with Disabilities, ages 3 to 21, inclusive, and a DoD Inter-Component Council (ICC) on Early Intervention, in accordance with DoD Directive 5105.4 [3].

(c) Establishes a DoD Coordinating Committee (DoD–CC) on Early Intervention, Special Education, and Medically Related Services (MRS).

(d) Authorizes implementing instructions consistent with DoD 5025.1–M [4], and DoD forms consistent with DoD 83201–M [5], DoD 8910.1–M [6], and DoD Instruction 7750.7 [7].

§ 57.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as ''the DoD Components'').

(b) Does not apply to schools operated by the Department of defense in the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianna Islands, and the possessions of the United States (excluding the Trust Territory of the Pacific Islands and Midway Islands).

(c) Applies to infants, toddlers, and children receiving or entitled to receive early intervention services or special educational instruction and related services from the Department of Defense, and their parents.

§ 57.3 Definitions.

Area superintendent. The Superintendent of a DoDDS area, or designee.

Assessment. Techniques, procedures, and/or instruments used to measure the individual components of an evaluation.

Assistive technology device. Any item, piece of equipment, or product system that is used to increase, maintain, or improve functional capabilities of children with disabilities.

Assistive technology service. Any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. That term includes the following:

(1) The evaluation of the needs of an individual with a disability, including a functional evaluation in the individual's customary environment.

(2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities.

(3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices.

(4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing educational and rehabilitative plans and programs.

(5) Training or technical assistance for an individual with disabilities, or, the family of an individual with disabilities.

(6) Training or technical assistance for professionals (including individuals providing educational rehabilitative services), employers, or other individuals who provide services to employ, or are otherwise substantially involved in the major life functions of an individual with a disability.

Audiology. A service that includes the following:

(1) Identification of children with auditory impairments.

(2) Determination of the range, nature, and degree of hearing loss, and communication functions including referral for medical or other professional attention for the habilitation of hearing.

(3) Provision of habilitative activities, such as language habilitation, auditory training, speech-reading (lip-reading), hearing evaluation, and speech conservation.

(4) Creation and administration of programs for the prevention of hearing loss.

(5) Counseling and guidance of pupils for the prevention of hearing loss.

(6) Determination of the child's need for group and individual amplification, selecting and fitting an aid, and evaluating the effectiveness of amplification.

Autism. A development disability significantly affecting verbal and nonverbal communication and social interaction generally evident before age 3 that adversely affects educational performance. That term does not include a child with characteristics of the disability termed ''serious emotional disturbance.''

Case study committee (CSC). (1) A school-level team comprised of, among others, the principal, other educators, parents, and MRS providers who do the following:

(i) Oversee screening and referral of children who may require special education.

(ii) Oversee the multidisciplinary evaluation of such children.

(iii) Determine the eligibility of the student for special education and related services.

(iv) Formulate an individualized education curriculum reflected in an Individualized Education Program (IEP), in accordance with this part.

(v) Monitor the development, review, and revision of IEPs.

(2) In addition to the required members of the CSC, other membership will vary depending on the purpose of the meeting. An area CSC, appointed by the DoDDS Area Superintendent, acts in the absence of a school CSC. Members of an area CSC may be assigned to augment a school CSC. The area CSC must have at least two members besides the parent. One of the DoDDS members must have the authority to commit DoDDS resources; one shall be qualified to provide, or supervise the provision of special education. Other members may be selected from the following groups:

(i) DoDDS regular education personnel.

(ii) DoDDS special education personnel.

(iii) MRS personnel.

Child-find. The ongoing process used by the DoDDS, the Military Departments, and the other DoD Components to seek and identify children from birth to age 21, inclusive, who may require early intervention services or special education and related services. Child-find activities include the dissemination of information to the public, the identification and screening of children, and the use of referral procedures.

Children with disabilities (ages 3 To 21, inclusive). Children, before graduation from high school or completion of the General Education Degree, who have one or more impairments, as determined by a CSC and who need special education and related services.

Consent. That term means the following:

(1) The parent is fully informed of all information about the activity for which consent is sought in the native language or in another mode of communication, if necessary.

(2) The parent understands and agrees in writing to the implementation of the activity for which permission is sought. That consent describes the activity, lists the child's records (if any) to be released outside the Department of Defense, and specifies to whom the records shall be sent. The signed consent acknowledges

[3] See footnote 1 to § 57.1(a).
[4] See footnote 1 to § 57.1(a).
[5] See footnote 1 to § 57.1(a).
[6] See footnote 1 to § 57.1(a).
[7] See footnote 1 to § 57.1(a).

the parent's understanding that the parental consent is voluntary and may be revoked at any time.

Counseling service. A service provided by a qualified social worker, psychologist, guidance counselor, or other qualified personnel.

Deaf-blindness. Concomitant hearing and visual impairments. That disability causes such severe communication, developmental, and educational problems that it cannot be accommodated in special education programs solely for children with deafness or blindness.

Deafness. A severe hearing loss or deficit that impairs a child's ability to process linguistic information through hearing, with or without amplification, and affects the educational performance adversely.

Developmental delay. That term means the following:

(1) A significant discrepancy in the actual functioning of an infant, toddler, or child, birth through age 5, when compared with the functioning of a nondisabled infant, toddler, or child of the same chronological age in any of the following areas: physical, cognitive, communication, social or emotional, and adaptive developmental as measured using standardized evaluation instruments and confirmed by clinical observation and judgment.

(2) *High probability for developmental delay.* An infant or toddler, birth through age 2, with a diagnosed physical or mental condition, such as chromosomal disorders and genetic syndromes, that places the infant or toddler at substantial risk of evidencing a developmental delay without the benefit of early intervention services.

Early identification. The implementation of a formal plan for identifying a disability as early as possible in a child's life.

Early intervention services. (1) Developmental services that meet the following criteria:

(i) Are provided under the supervision of a Military medical Department.

(ii) Are provided using Military Health Services System resources at no cost to the parents. Parents may be charged in those instances where Federal law provides for a system of payments by families including a schedule of sliding fees, if any, (and incidental fees identified in Service guidance) that are normally charged to infants, toddlers, and children without disabilities or to their parents.

(iii) Are designed to meet the developmental needs of an infant or toddler with a disability in any one or more of the following areas:

(A) Physical.

(B) Cognitive.

(C) Communication.

(D) Social or emotional.

(E) Adaptive development.

(iv) Meet the standards developed or adopted by the Department of Defense.

(v) Are provided by qualified personnel including early childhood special educators, speech and language pathologists and audiologists, occupational therapists, physical therapists, psychologists, social workers, nurses, nutritionists, family therapists, orientation and mobility specialists, and pediatricians and other physicians.

(vi) Maximally, are provided in natural environments including the home and community settings where infants and toddlers without disabilities participate.

(vii) Are provided in conformity with an Individualized Family Service Plan (IFSP).

(2) Developmental services include, but are not limited to, the following services: family training, counseling, and home visits; special instruction; speech pathology and audiology; occupational therapy; physical therapy; psychological services; service coordination services; medical services only for diagnostic or evaluation purposes; early identification, screening and assessment services; vision services; and social work services. Also included are assistive technology devices and assistive technology services; health services necessary to enable the infant or toddler to benefit from the above early intervention services; and transportation and related costs necessary to enable an infant or toddler and the family to receive early intervention services.

Eligible. The term refers to children who meet the age, command sponsorship, and dependency requirements established by the DDEA, as amended, 20 U.S.C. 921 *et seq.* and DoD Directive 1342.13. When those conditions are met, children without disabilities, ages 5 to 21, and children with disabilities, ages 3 to 21, inclusive, are authorized to receive educational instruction from the DoDDS. Additionally, an eligible infant or toddler with disabilities is a child from birth through age 2 years who meets all of the DoDDS eligibility requirements except for the age requirement. In school year 1994 through 1995, multidisciplinary assessments, IFSPs, and case management services shall be required and beginning in school year 1995 through 1996, an eligible infant or toddler is entitled to receive early intervention services, in accordance with 20 U.S.C. 1400 *et seq.*

Evaluation. The synthesis of assessment information by a multidisciplinary team used to determine whether a particular child has a disability, the type and extent of the disability, and the child's eligibility to receive early intervention or special education and/or related services.

Family training, counseling, and home visits. Services provided by social workers, psychologists, and other qualified personnel to assist the family of an infant or toddler eligible for early intervention services. Those services assist a family in understanding the special needs of the child and enhancing the child's development.

Free appropriate public education (FAPE). Special education and related services that do the following:

(1) Are provided at no cost to parents of a child with a disability, and are under the general supervision and direction of the DoDDS.

(2) Are provided in the least restrictive environment at a preschool, elementary, or secondary school.

(3) Are provided in conformity with an IEP.

(4) Meet the requirements of this part.

Functional vocational evaluation. A student-centered appraisal process for vocational development and career decision making. It allows students, educators, and others to gather information about such development and decision making. Functional vocational evaluation activities for transitional, vocational, and career planning; instructional goals; objectives; and implementation.

Health services. Services necessary to enable an infant or toddler to benefit from the other early intervention services being received under this part. That term includes the following:

(1) Services such as clean intermittent catheterization, tracheotomy care, tube feeding, changing of dressings or colostomy collection bags, and other health services.

(2) Consultation by physicians with other service providers about the special healthcare needs of infants and toddlers with disabilities that shall need to be addressed in the course of providing other early intervention services.

(3) That term does not include the following:

(i) Services that are surgical or solely medical.

(ii) Devices necessary to control or treat a medical condition.

(iii) Medical or health services routinely recommended for all infants or toddlers.

Hearing impairment. An impairment in hearing, whether permanent or

fluctuating, which adversely affects a child's educational performance, but is not included under deafness.

Independent evaluation. An evaluation conducted by a qualified examiner who is not employed by the DoDDS.

Individualized education program (IEP). A written document defining specially designed instruction for a student with a disability, ages 3 to 21, inclusive. That document is developed and implemented, in accordance with this part.

Individualized family service plan (IFSP). A written document for an infant or toddler, age birth through 2, with a disability and the family of such infant or toddler that is based on a multidisciplinary assessment of the unique needs of the child and concerns and priorities of the family, and identifies the early intervention and other services appropriate to meet such needs, concerns, and priorities.

Infants and toddlers with disabilities. Children, ages birth through 2, who need early intervention services because they:

(1) Are experiencing a developmental delay; or,

(2) Have a diagnosed physical or mental condition that has high probability of resulting in a developmental delay.

Inter-component. Cooperation among DoD organizations and programs, ensuring coordination and integration of services to infants, toddlers, children with disabilities and to their families.

Medical services. Those evaluative, diagnostic, therapeutic, and supervisory services provided by a licensed and /or credentialed physician to assist CSCs and to implement IEPs. Medical services include diagnosis, evaluation, and medical supervision of related services that, by statute, regulation, or professional tradition, are the responsibility of a licensed and credentialed physician.

Medically related services. (1) Medical services (as defined in definition ''Medical services'') are those services provided under professional medical supervision, which are required by a CSC to determine a student's eligibility for special education and, if the student is eligible, the special education and related services required by the student under this part.

(2) Direct or indirect services under the development or implementation of an IEP necessary for the student to benefit from the educational curriculum. Those services may include medical services for diagnostic or evaluative purpose, social work, community health nursing, dietary, occupational therapy, physical therapy, audiology, ophthalmology, and psychological testing and therapy.

Meetings. All parties attending a meeting to determine eligibility or placement of a child shall appear personally at the meeting site on issuance of written notice and establishment of a date convenient to the concerned parties. When a necessary participant is unable to attend, electronic communication suitable to the occasion may be used to involve the unavailable party. Parents generally shall be responsible for the cost of travel to personally attend meetings about the eligibility or placement of their child.

Mental retardation. Significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior. That disability is manifested during the developmental period and adversely affects a child's educational performance.

Multidisciplinary. The involvement of two or more disciplines or professions in the integration and coordination of services, including evaluation and assessment activities, and development of an IFSP or an IEP.

Native language. When used with reference to an individual of limited English proficiency, the home language normally used by such individuals, or in the case of a child, the language normally used by the parent of the child.

Natural environments. Settings that are natural or normal (e.g., home or day care setting) for the infant, toddler, or child's same-age peers who have no disability.

Non-DoDDS placement. An assignment by the DoDDS of a child with a disability to a non-DoDDS school or facility.

Non-DoDDS school or facility. A public or private school or other institution not operated by the DoDDS.

Nutrition services. Those services to infants and toddlers include the following:

(1) Conducting individual assessments in nutritional history and dietary intake; anthropometric, biochemical, and clinical variables; feeding skills and feeding problems; and food habits and food preferences.

(2) Developing and monitoring plans to address the nutritional needs of infants and toddlers eligible for early intervention services.

(3) Making referrals to community resources to carry out nutrition goals.

Occupational therapy. That term includes services to address the functional needs of children (birth to age 21, inclusive) related to adaptive development; adaptive behavior and play; and sensory, motor, and postural development. Those services are designed to improve the child's functional ability to perform tasks in home, school, and community settings, and include the following:

(1) Identification, assessment, and intervention.

(2) Adaption of the environment and selection, design, and fabrication of assistive and orthotic devices to help development and promote the acquisition of functional skills.

(3) Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

Orthopedic impairment. A severe physical impairment that adversely affects a child's educational performance. That term includes congenital impairments such as club foot or absence of some member; impairments caused by disease, such as poliomyelitis and bone tuberculosis, and impairments from other causes such as cerebra palsy, amputations, and fractures or burns causing contractures.

Other health impairment. Limited strength, vitality, or alterness due to chronic or acute health problems that adversely affect a child's educational performance. Such impairments include heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, seizure disorder, lead poisoning, leukemia, diabetes, or attention deficit disorder.

Parent. The biological father or mother of a child; a person who, by order of a court of competent jurisdiction, has been declared the father or mother of a child by adoption; the legal guardian of a child; or a person in whose household a child resides, if such person stands in loco parentis to that child and contributes at least one-half of the child's support.

Parent counseling and training. A service to assist parents in understanding the special needs of their child's development and by providing them with information on child development and special education.

Personally identifiable information. Information that would make it possible to identify the infant, toddler, or child with reasonable certainty. Examples include name, parent's name, address, social security number, or a list of personal characteristics.

Physical therapy. That term includes services to children (birth to age 21, inclusive) to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development,

cardiopulmonary status, and effective environmental adaption. Those services include the following:

(1) Screening, evaluation, and assessment to identify movement dysfunction.

(2) Obtaining, interpreting, and integrating information to appropriate program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems.

(3) Providing individual and group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems.

Primary referral source. Parents and the DoD Components, including child development centers, pediatric clinics, and newborn nurseries, that suspect an infant or toddler has a disability and brings the child to the attention of the EIP.

Psychological services. A service that includes the following:

(1) Administering psychological and educational tests and other assessment procedures.

(2) Interpreting test and assessment results.

(3) Obtaining, integrating, and interpreting information about a child's behavior and conditions to learning.

(4) Consulting with other staff members, including service providers, to plan programs to meet the special needs of children, as indicated by psychological tests, interviews, and behavioral evaluations.

(5) Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

Public awareness program. Activities or print materials focusing on early identification of infants and toddlers with disabilities. Materials may include information prepared and disseminated by a military medical department to all primary referral sources and information for parents on the availability of early intervention services. Procedures to determine the availability of information on early intervention services to parents are also included in that program.

Qualified. A person who meets the DoD-approved or recognized certification, licensing, or registration requirements or other comparable requirements in the area in which the person provides special education or related services or early intervention services to an infant, toddler, or child with a disability.

Recreation. A related service that includes the following.

(1) Assessment of leisure activities.

(2) Therapeutic recreational activities.

(3) Recreational programs in schools and community agencies.

(4) Leisure education.

Rehabilitation counseling. Services provided by a rehabilitation counselor or other qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of the student with a disability.

Related services. Transportation and such developmental, corrective, and other supportive services as required to assist a child, age 3 to 21, inclusive, with a disability to benefit from special education under the child's IEP. The term includes speech therapy and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluative purposes. That term also includes rehabilitation counseling services, school health services, social work services in schools, and parent counseling. The sources for those services are school, community, and medical treatment facilities (MTFs).

School health services. Services provided by a qualified school nurse or other qualified person.

Separate facility. A school or a portion of a school, regardless of whether it is operated by the DoDDS, attended exclusively by children with disabilities.

Serious emotional disturbance. A condition confirmed by clinical evaluation and diagnosis and that, over a long period of time and to a marked degree, adversely affect educational performance, and exhibits one or more of the following characteristics:

(1) Inability to learn that cannot be explained by intellectual, sensory, or health factors.

(2) Inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(3) Inappropriate types of behavior under normal circumstances.

(4) A tendency to develop physical symptoms or fears associated with personal or school problems.

(5) A general pervasive mood of unhappiness or depression. Includes children who are schizophrenic, but does not include children who are socially maladjusted unless it is determined they are seriously emotionally disturbed.

Service coordination. Activities of a service coordinator to assist and enable an infant or toddler and the family to receive the rights, procedural safeguards, and services that are authorized to be provided under the DoD EIP. Those activities include the following:

(1) Coordinating the performance of evaluation and assessments.

(2) Assisting families to identify their resources, concerns, and priorities.

(3) Facilitating and participating in the development, review, and evaluation of IFSPs.

(4) Assisting in identifying available service providers.

(5) Coordinating and monitoring the delivery of available services.

(6) Informing the family of support or advocacy services.

(7) Coordinating with medical and health providers.

(8) Facilitating the development of a transition plan to preschool services.

Service provider. Any individual who provides services listed in an IEP or an IFSP.

Social work services in schools. A service that includes the following:

(1) Preparing a social or developmental history on a child with a disability.

(2) Counseling a child and the family on a group or individual basis.

(3) Working with those problems in a child's home, school, or community that adversely affect adjustment in school.

(4) Using school and community resources to enable a child to receive maximum benefit from the educational program.

Special education. Instruction and related services for which a child, age 3 to 21, inclusive, becomes entitled when a CSC determines a child's educational performance is adversely affected by one or more disabling conditions.

(1) Special education is specially designed instruction, including physical education, which is provided at no cost to the parent or guardians to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings.

(2) That term includes speech therapy or any other related service if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

(3) That term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

(4) *At no cost.* For a child eligible to attend the DoDDS without paying

tuition, specially designed instruction and related services are provided without charge. Incidental fees normally charged to nondisabled students or their parents as a part of the regular educational program may be imposed.

(5) *Physical education.* The development of the following:

(i) Physical and motor fitness.

(ii) Fundamental motor skills and patterns.

(iii) Skills in aquatics, dance, and individual and group games and sports, including intramural and lifetime sports.

(iv) A program that includes special physical education, adapted physical education, movement education, and motor development.

(6) *Vocational education.* Organized educational programs for the preparation of individuals for paid or unpaid employment or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

Special instruction. That term includes the following:

(1) The design of learning environments and activities to promote acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction.

(2) Curriculum planning, including the planned interaction of personnel, materials, time, and space, that leads to achieving the outcomes in an IEP or an IFSP.

(3) Providing families with information, skills, and support to enhance skill development.

(4) Working with a child to enhance development and cognitive processes.

Specific learning impairment. A disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written language that may manifest itself as an imperfect ability to listen, think, speak, read, write, spell, remember, or do mathematical calculations. That term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term, commonly called, ''specific learning disability,'' does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; mental retardation; emotional disturbance; or environmental, cultural, or economic differences.

Speech and language impairments. A communication disorder, such as stuttering, impaired articulation, voice impairment, or a disorder in the receptive or expressive areas of language that adversely affects a child's educational performance.

Speech therapy. That related service includes the following:

(1) Identification of children with communicative or oropharyngeal disorders and delays in development of communication skills.

(2) Diagnosis and appraisal of specific speech or language impairments.

(3) Referral for medical or other professional attention to correct or habilitate speech or language impairments.

(4) Provision of speech and language services for the correction, habilitation, and prevention of communicative impairments.

(5) Counseling and guidance of children, parents, and teachers for speech and language impairments.

Transition services. That term means the following:

(1) A coordinated set of activities for a student that may be required to promote movement from early intervention, preschool, and other educational programs into different educational settings or programs.

(2) For students 14 years of age and older, transition services are designed in an outcome-oriented process which promotes movement from school to postschool activities; including, post-secondary education, vocational training, integrated employment; and including supported employment, continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based on the individual student's needs, considering the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other postschool adult living objectives, and acquisition of daily living skills and functional vocational evaluation.

Transportation. A service that includes the following:

(1) Services rendered under the IEP of a child with a disability:

(i) Travel to and from school and between schools, including travel necessary to permit participation in educational and recreational activities and related services.

(ii) Travel in and around school buildings.

(iii) Specialized equipment, including special or adapted buses, lifts, and ramps, if required to provide transportation for a child with a disability.

(2) Transportation and related costs for early intervention services include the cost of travel (e.g., mileage or travel by taxi, common carrier, or other means) and other costs (e.g., tolls and parking expenses) that are necessary to enable an eligible child and the family to receive early intervention services.

Traumatic brain injury. An acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment that adversely affects educational performance. That term includes open or closed head injuries resulting in mild, moderate, or severe impairments in one or more areas including cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory, perceptual and motor abilities, psychosocial behavior, physical function, information processing, and speech. That term does not include brain injuries that are congenital or degenerative, or brain injuries that are induced by birth trauma.

Vision services. Services necessary to habilitate or rehabilitate the effects of sensory impairment resulting from a loss of vision.

Visual impairment. An impairment of vision that, even with correction, adversely affects a child's educational performance. That term includes both partially seeing and blind children.

§ 57.4 Policy.

It is DoD policy that:

(a) Eligible infants and toddlers with disabilities and their families shall be entitled to receive early intervention services consistent with Appendix A to this part.

(b) Eligible children with disabilities, ages 3 to 21, inclusive, shall be provided a FAPE in the least restrictive environment, consistent with Appendix B to this part.

(c) Parents of eligible infants, toddlers, and children with disabilities from birth to age 21, inclusive, shall be full participants in early intervention and special education services.

§ 57. 5 Responsibilities.

(a) The Under Secretary of Defense for Personnel and Readiness shall:

(1) Establish a NAP consistent with Appendix C to this part.

(2) Establish and chair, or designate a ''Chair,'' of the DoD-CC on Early Intervention, Special Education, and MRS consistent with Appendix D to this part.

(3) Establish and chair, or designate a ''Chair,'' of the DoD Inter-Component Coordinating Council (ICC) on Early Intervention consistent with Appendix E to this part.

(4) Ensure compliance with this part in the provision of early intervention services, special education, and related

services through the DoD-CC, in accordance with DoD Instruction 1342.14[8] and other appropriate guidances.

(5) In consultation with the General Counsel of the Department of Defense (GC, DoD) and the Secretaries of the Military Departments, do the following:

(i) Ensure that eligible infants and toddlers with disabilities and their families are provided early intervention services under 20 U.S.C. 921 *et seq.* and 1400 *et seq.*

(ii) Ensure the coordination of early intervention, special education, and related services.

(iii) Ensure the development of a DoD-wide comprehensive child-find system to identify eligible infants, toddlers, and children ages birth to age 21, inclusive, under 20 U.S.C 921 *et seq.* and 1400 *et seq.* who may require early intervention or special education services.

(iv) Ensure that DoD personnel are trained to provide the mediation services specified in Appendix F to this part.

(v) Ensure that transition services are available to promote movement from early intervention, preschool, and other educational programs into different educational settings and postsecondary environments.

(vi) Ensure that DoD personnel who provide services (e.g., child care, medical care, and recreation) to infants and toddlers and their families are participants in a comprehensive inter-Component system for early intervention services.

(vii) Assign functions and geographic regions of responsibility to the Military Departments for providing MRS and early intervention services.

(viii) Ensure that the Military Departments deliver the following:

(A) A comprehensive, coordinated and multidisciplinary program of early intervention services for eligible infants and toddlers with disabilities.

(B) MRS for eligible children with disabilities, ages 3 to 21, inclusive.

(ix) Ensure that qualified personnel participate in providing transition services for eligible infants, toddlers, and children with disabilities from birth to age 21, inclusive.

(x) Ensure the development and implementation of a comprehensive system of personnel development for the DoDDS and the Military Departments. That system shall include professionals, paraprofessionals, and primary referral source personnel in the areas of early intervention, special education, and MRS. That system may include the following:

(A) Implementing innovative strategies and activities for the recruitment and retention of providers of early intervention services, special education, and MRS.

(B) Ensuring that personnel requirements are established consistent with recognized certification, licensing, registration, or other comparable requirements for personnel providing early intervention services, special education, or MRS.

(C) Ensuring that training is provided in and across disciplines.

(D) Training providers of early intervention services, special education, and MRS to work overseas.

(xi) Develop procedures to compile data on the numbers of eligible infants and toddlers with disabilities and their families in need of early intervention services, in accordance with DoD Directives 5400.7 and 5400.11.[9] Those data elements shall include the following:

(A) The number of infants and toddlers and their families served.

(B) The types of services provided.

(C) Other information required to evaluate the implementation of early intervention programs (EIPs).

(xii) Resolve disputes in the DoD Components arising under Appendix A to this part.

(b) The Secretaries of the Military Departments shall:

(1) Provide MRS for eligible children with disabilities, ages 3 to 21, inclusive.

(2) Plan, develop, and implement a comprehensive, coordinated, intra-Component, and community-based system of early intervention services for eligible infants and toddlers with disabilities and their families.

(3) Design and implement activities to ensure compliance through technical assistance and program evaluation for early intervention and MRS.

(c) The Director, Department of Defense Education Activity, shall ensure that the Director, DoDDS, does the following:

(1) Ensures that eligible children with disabilities, ages 3 to 21, inclusive, are provided a FAPE.

(2) Ensures that the educational needs of children with and without disabilities are met comparably, consistent with Appendix B to this part.

(3) Ensures that educational facilities and services operated by the DoDDS for children with and without disabilities are comparable.

(4) Maintains records on special education and related services provided to eligible children with disabilities, ages 3 to 21, inclusive, consistent with DoD Directive 5400.11.

(5) Provides any or all special education and related services required by a child with a disability, ages 3 to 21, inclusive, other than those furnished by the Secretaries of the Military Departments. The Director, DoDDS, may act through inter-Agency, intra-Agency, and inter-Service arrangements, or through contracts with private parties when funds are authorized and appropriated.

(6) Participates in the development and implementation of a comprehensive system of personnel development.

(7) Undertakes activities to ensure compliance by the DoDDS with this part through monitoring, technical assistance, and program evaluation of special education and those related services provided by the DoDDS.

(d) The *Director, Defense Office of Hearings and Appeals,* under the *General Counsel of the Department of Defense,* shall ensure impartial due process hearings are provided consistent with Appendix F to this part.

§ 57.6 Procedures.

(a) The procedures for early intervention services for infants and toddlers with disabilities and their families are prescribed in Appendix A to this part.

(b) The procedures for educational programs and services for children with disabilities, ages 3 to 21, inclusive, are prescribed in Appendix B to this part.

(c) The procedures for conducting hearings are prescribed in Appendix F to this part.

Appendix A to Part 57—Procedures for the Provision of Early Intervention Services for Infants and Toddlers With Disabilities and Their Families

A. Requirements for an Early Intervention Program (EIP)

1. All eligible infants and toddlers with disabilities from birth through age 2 and their families shall receive early intervention services, as follows:

a. In school years 1991 through 1994, the Department of Defense planned and continues to develop a comprehensive, coordinated, multidisciplinary program of early intervention services for infants and toddlers with disabilities among DoD entities involved in providing such services.

b. In school year 1994 through 1995, the Department of Defense implemented and shall continue to implement the following program components described in paragraph A.1.a. of this Appendix:

(1) Multidisciplinary assessments.

(2) IFSPs.

(3) Service coordination.

c. In school year 1995 through 1996, the Department of Defense shall implement the program described in paragraph A.1.a. of this Appendix.[1]

2. Early intervention services shall be provided in the natural environment.

3. Parents of infants and toddlers with disabilities are to be full and meaningful participants in the EIP.

B. Military Department Responsibilities

Each Military Department shall develop and implement in its assigned geographic area a system to provide for the following:

1. A comprehensive child find procedure coordinated with the DoDDS child find system and primary referral sources such as the child development center and the pediatric clinic.

2. Administration and supervision of EIPs and services.

3. Identification of available resources and coordination with those resource providers,

[8] See footnote 1 to § 57.1(a).

[9] See footnote 1 to § 57.1(a).

[1] The EIP shall be continuously implemented.

including the DoD Components, who routinely provide services to infants and toddlers without disabilities and their families.

4. Procedures to provide timely services for infants and toddlers with disabilities and their families.

5. Procedures to resolve inter-Component disputes about the delivery of early intervention services.

6. Procedures to collect and report data reflecting the number of infants and toddlers and their families served, the types of services provided, and other information required by the USD(P&R) implementation of early intervention services.

7. Multidisciplinary, comprehensive, and functional assessment of the unique strengths and needs of infants or toddlers and the identification of services to meet those needs.

8. Procedures for a family-directed assessment to determine resources, priorities, and concerns of a family and to identify services necessary to enhance a family's capacity to meet the child's needs.

9. An IFSP that details the early intervention services and the coordination of those services.

10. A public awareness program focusing on early identification of infants and toddlers with disabilities.

11. A central directory that includes a description of the early intervention services and other relevant resources available in each military community overseas.

12. Information to parents about their EIP procedural safeguards.

13. Establishment of ICCs at appropriate levels. Memberships shall include parents and the DoD Components who are involved in the delivery of early intervention services.

14. Policies and procedures for the establishment and maintenance of standards to ensure that personnel necessary to carry out the EIP are prepared and trained.

C. Eligibility

Infants and toddlers with disabilities from birth through age 2 are eligible for early intervention services because they meet one of the following criteria:

1. The child is experiencing a developmental delay as measured by diagnostic instruments and procedures of 2 standard deviations below the mean in at least one area, or by a 25 percent delay in at least one area on assessment instruments that yield scores in months, or a developmental delay of 1.5 standard deviations below the mean in two or more areas, or by a 20 percent delay on assessment instruments that yield scores in months in two or more of the following areas of development: Cognitive, physical, communication, social or emotional, or adaptive.

2. The child has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay; e.g., chromosomal disorders or genetic syndromes.

D. IFSP

1. Each military medical department shall develop and implement procedures to ensure that an IFSP is developed by a multidisciplinary team including the parents of each infant or toddler with a disability who meets the eligibility criteria in section C.1. of this appendix.

2. Meetings to develop and review the IFSP must include the following participants:

a. The parent or parents of the child.

b. Other family members, as requested by the parent, if possible.

c. An advocate outside of the family, if the parent requests that person's participation.

d. The EIP services coordinator who has worked with the family since the initial referral of the child or who has been designated as ''responsible for the implementation of the IFSP.''

e. The person(s) directly involved in conducting the evaluations and assessments.

f. As appropriate, persons who shall provide services to the child or family.

3. If a person listed in section D.2. of this appendix is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including the following:

a. Participating in a telephone conference call.

b. Having a knowledgeable representative attend the meeting.

c. Making pertinent records available at the meeting.

4. The IFSP shall be written in a reasonable time after assessment and shall contain the following:

a. A statement of the child's current developmental levels including physical, cognitive, communication, social or emotional, and adaptive behaviors based on acceptable objective criteria.

b. A statement of the family's resources, priorities, and concerns on enhancing the child's development.

c. A statement of the major outcomes expected to be achieved for the child and the family. Additionally, the statement shall contain the criteria, procedures, and timeliness used to determine the degree to which progress toward achieving the outcomes is being made and whether modification or revision of the outcomes and services are necessary.

d. A statement of the specific early intervention services necessary to meet the unique needs of the child and the family including the frequency, intensity, and method of delivering services.

e. A statement of the natural environments in which early intervention services shall be provided.

f. The projected dates for initiation of services and the anticipated duration of those services.

g. The name of the EIP service coordinator.

h. The steps to be taken supporting the transition of the toddler with a disability to preschool or other services.

5. The IFSP shall be evaluated at least once a year and the family shall be provided an opportunity to review the plan at 6-month intervals (or more frequently, based on the child and family needs).

6. The contents of the IFSP shall be explained to the parents and an informed, written consent from the parents shall be obtained before providing early intervention services described in that plan.

7. With the parent's consent, early intervention services may begin before the completion of the evaluation and assessment when it has been determined by a multidisciplinary team that a service is needed immediately by the child and/or the child's family. Although all assessments have not been completed, an IFSP must be developed before the start of services. The remaining assessments must then be completed in a timely manner.

8. If a parent does not provide consent for participation in all early intervention services, the services shall still be provided for those interventions to which a parent does give consent.

E. Procedural Safeguards in the EIP

1. Parents of infants and toddlers with disabilities are afforded the following procedural safeguards to ensure that their children receive appropriate early intervention services:

a. The timely administrative resolution of parental complaints, including hearing procedures in appendix F to this part.

b. The right to confidentiality of personally identifiable information under DoD Directive 5400.11.[2]

c. The right to written notice and consent to the release of relevant information outside the Department of Defense.

d. The right to determine whether they, their child, or other family members shall accept or decline any early intervention services without jeopardizing other early intervention services.

e. The opportunity to examine records on assessment, screening, eligibility determinations, and the development and implementation of the IFSP.

f. The right to prior written notice when the EIP multidisciplinary team proposes, or refuses, to initiate or change the identification, evaluation, placement, or provision of early intervention services to the infant or toddler with a disability.

g. The right to prior written notice in their native language, unless it clearly is not possible to do so, which informs them of all procedural safeguards.

h. During the pendency of any proceeding or action involving a complaint, unless the EIP and the parents otherwise agree, the child shall continue to receive the appropriate early intervention services currently being provided, or, if applying for initial services, shall receive the services not in dispute.

2. Parents shall be advised of their rights to due process, as defined in appendix F to this part.

Appendix B to Part 57—Procedures for Educational Programs and Services for Children With Disabilities, Ages 3 to 21, Inclusive

A. Identification and Screening

It is the responsibility of school officials of the DoDDS to locate, identify, and with the consent of a child's parent, evaluate all children who are eligible to enroll in the

[2] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

DoDDS under DoD Directive 1342.13[1] who may require special education and related services.

1. *Procedures for Identification and Screening.* The DoDDS officials shall conduct the following activities to determine if a child needs special education and related services:

a. Screen educational records.

b. Screen students using system-wide or other basic skill tests in the areas of reading, math, and language arts.

c. Screen school health data such as reports of hearing, vision, speech, or language tests and reports from healthcare personnel about the health status of a child.

d. Analyze school records to obtain pertinent information about the basis for suspensions, exclusions, withdrawals, and disciplinary actions.

e. In cooperation with the Military Departments, conduct on-going child-finding activities and publish, periodically, any information, guidelines, and direction on child-find activities for eligible children with disabilities, ages 3 to 21, inclusive.

f. Coordinate the transition of children from early intervention to preschool with the Military Services.

2. *Referral of a Child for Special Education or Related Services.* The DoDDS officials, MRS providers, or others who suspect that a child has a possible disabling condition shall refer that child to the CSC.

B. Assessment and Evaluation

Any eligible child who is referred to a CSC shall receive a full and comprehensive diagnostic evaluation of educational needs. An evaluation shall be conducted before an IEP is developed or placement is made in a special education program.

1. *Procedures for Assessment and Evaluation.* A CSC shall ensure that the following elements are included in a comprehensive assessment and evaluation of a child:

a. Assessment of visual and auditory acuity.

b. A plan to assess the type and extent of the disability. A child shall be assessed in all areas related to the suspected disability. When necessary, the assessment plan shall include the following:

(1) Assessment of the level of functioning academically, intellectually, emotionally, socially, and in the family.

(2) Observation in an educational environment.

(3) Assessment of physical status including perceptual and motor abilities.

(4) Assessment of the need for transition services for students 14 years and older, the acquisition of daily living skills, and functional vocational assessment.

c. The involvement of parents, under this part.

d. The use of all locally available community, medical, and school resources to accomplish the assessment. At least one specialist with knowledge in the area of the suspected disability shall be a member of the multidisciplinary assessment team.

e. The requirement that each assessor prepare an individual assessment report that describes the instruments and techniques used, the results of the testing, and the relationship of those findings to educational functioning.

f. The inclusion of a description of the problem area constituting the basis for an MRS referral.

2. *Standards for Assessment Selection and Procedures.* All DoD elements, including the CSC and MRS providers, shall ensure that assessment materials and evaluation procedures comply, as follows:

a. Selected and administered so as not to be racially or culturally discriminatory.

b. Administered in the native language or mode of communication of the child unless it clearly is not possible to do so.

c. Validated for the specific purpose for which they are used or intended to be used.

d. Administered by trained personnel in compliance with the instructions of the testing instrument.

e. Administered such that no single procedure is the sole criterion for determining an appropriate educational program for a child with a disability.

f. Selected to assess specific areas of educational needs and strengths and not merely to provide a single general intelligence quotient.

g. Administered to a child with impaired sensor, motor, or communication skills so that the results reflect a child's actual ability or level of achievement, and simply not the impaired skill itself.

3. *Determination of Eligibility for Special Education and Related Services.* The CSC shall be convened to determine the eligibility of a child for special education and related services. The CSC shall do the following:

a. Ensure that the full comprehensive evaluation of a child is accomplished by a multidisciplinary team. The team shall be comprised of teachers or other specialists with knowledge in the area of the suspected disability.

b. Meet as soon as possible after a child has been assessed to determine the eligibility of the child for services.

c. Afford the child's parents the opportunity to participate in the CSC eligibility meeting.

d. Issue a written eligibility report that contains the following:

(1) A description of the nature of the child's disabling condition.

(2) A synthesis of the formal and informal findings of the multidisciplinary assessment team of the child's academic progress.

(3) A summary of information from the parents, the child, or other persons having significant previous contact with the child.

(4) A determination of eligibility statement.

(5) A list of the educational areas affected by a child's disability and a description of a child's educational needs.

4. *Reevaluation for Eligibility for Special Education and Related Services.* School officials shall provide a comprehensive reevaluation of a child with a disability every 3 years, or more frequently, if conditions warrant. The scope and type of the comprehensive reevaluation shall be determined individually based on a child's performance, behavior, and needs during the reevaluation.

C. Individualized Education Program (IEP)

The DoDDS officials shall ensure that the CSC develops and implements an IEP for each child with a disability who is enrolled in the DoDDS or is placed in another institution by the DoDDS.

1. *The CSC Meeting for the Development and Implementation of an IEP.* The CSC shall establish and convene a meeting to develop, review, or revise the IEP of a child with a disability. That meeting shall be scheduled as soon as possible following a determination by the school or area CSC that the child is eligible for special education and related services. The meeting participants shall, minimally, include the following:

a. A principal or school representative other than the child's teacher who is qualified to provide or supervise the provision of special education.

b. The child's teacher.

c. A special education teacher.

d. One or both of the child's parents.

e. The child, if appropriate.

f. For a child with a disability who has been evaluated for the first time, a representative of the evaluation team who is knowledgeable about the evaluation procedures used and is familiar with the results of the evaluation.

g. Other individuals invited at the discretion of the parent or school.

2. *Requirements for the Development of the IEP.* The CSC shall prepare the IEP with the following:

a. A statement of the child's present levels of educational performance.

b. A statement of annual goals including short-term instructional objectives.

c. Objective criteria for determining, at least annually, whether the educational objectives are being achieved.

d. A statement of the physical education program provided in one of the following settings:

(1) In the regular education program.

(2) In the regular education program with adaptations, modifications, or the use of assistive technology.

(3) Through specially designed instruction based on the goals and objectives included in the IEP.

e. A statement of the transition services beginning at age 14 and annually, thereafter. When appropriate, include a statement of the inter-Agency responsibilities or linkages (or both) before the student leaves the school setting. If a specially designed instructional program is required, include the goals and objectives in the IEP.

f. A statement of special transportation requirement.

g. A statement of the amount of time a week that each special education and related service shall be provided to the child.

h. The extent to which the child shall participate in regular educational programs, including the following:

(1) The projected date for the initiation and the anticipated length of IEP activities and services.

(2) Any statements requiring an adjusted school day or an extended school year program.

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

i. A statement of the vocational education program for secondary students. If a specially designed instructional program is required, the necessary goals and objectives in the IEP shall be included.

3. *Requirements for the Implementation of the IEP.* The DoDDS CSC shall:

a. Obtain parental agreement and signature before implementation of the IEP.

b. Provide a copy of the child's IEP to the parents.

c. Ensure that the IEP is in effect before a child receives special education and related services.

d. Review and revise the IEP for each child at least annually in a CSC meeting.

e. Accept a child's current IEP when he or she transfers to the DoDDS if the CSC of the gaining school or the area CSC does the following:

(1) Notifies and obtains consent of the parents to use the current IEP and all elements contained in it.

(2) Involves the local DoD Component responsible for the delivery of the MRS of the medical requirements in the IEP.

(3) Initiates a CSC meeting to revise the current IEP.

(4) If necessary, initiates an evaluation of the child.

f. Afford the child's parents the opportunity to participate in every CSC meeting to determine their child's initial or continuing eligibility for special education and related services, or to prepare or change the child's IEP or to determine or change the child's placement.

g. Ensure that at least one parent understands the special education procedures including the due process procedures described in appendix F of this part and the importance of the parent's participation in those processes. School officials shall use devices or hire interpreters or other intermediaries who might be necessary to foster effective communications between the school and the parent about the child.

h. Provide special education and related services, in accordance with the IEP. The Department of Defense and its constituent elements and personnel are not accountable if a child does not achieve the growth projected in the IEP.

i. Ensure that all provisions developed for any child entitled to an education by the DoDDS are fully implemented in schools or in non-DoDDS schools or facilities including those requiring special facilities, other adaptations, or assistive devices.

D. Placement Procedures and Least Restrictive Environment

1. A child shall not be placed by the DoDDS in any special education program unless the CSC has developed an IEP. If a child with a disability is applying for initial admission to a school, the child shall enter on the same basis as a child without a disability. A child with a disability and with the consent of a parent and school officials may receive an initial placement in a special education program under procedures listed in paragraph C.3.e. of this appendix.

2. A placement decision requires the following:

a. A parent consent to the placement before actual placement of the child, except as otherwise provided in section F.2. of this appendix.

b. Delivery of educational instruction and related services in the least restrictive environment. To the maximum extent, a child with a disability should be placed with children who are not disabled. Special classes, separate schooling, or other removal of a child with a disability from the regular education environment shall occur only when the type or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

c. The CSC to base placements on the IEP and to review the IEP at least annually.

d. A child shall participate, to the maximum extent, in school activities including meals, assemblies, recess periods, and field trips with children who are not disabled.

e. Consideration of factors affecting the child's well-being including the effects of separation from parents.

f. A child shall attend a DoDDS school that is located as close as possible to the residence of the parent who is sponsoring the child's attendance. Unless otherwise required by the IEP, the school should be the same school that the child would have attended had he or she not been disabled.

E. Children With Disabilities Who Are Placed in a Non-DOD School or Facility

Children with disabilities who are eligible to receive a DoDDS education, but are placed in a non-DoDDS school or facility by the DoDDS, shall have all the rights of children with disabilities who are enrolled in a DoDDS school. A child with a disability may be placed in a non-DoDDS school or facility only if required by the IEP.

1. *Requirements for a Non-DoDDS School or Facility Placement*

a. Placement in a non-DoDDS school or facility shall be made under the host-nation requirements.

b. Placement in a non-DoDDS school or facility is subject to all treaties, Executive agreements, and status of forces agreements between the United States and the host nations, and all DoD and DoDDS regulations.

c. If the DoDDS places a child with a disability in a non-DoDDS school or facility as a means of providing special education and related services, the program of that institution including nonmedical care and room and board, as in the child's IEP, must be provided at no cost to the child or the child's parents. The DoDDS or the responsible DoD Component shall pay the costs in accordance with DoD 1010.13–R [2].

d. Local school officials shall initiate and conduct a meeting to develop an IEP for the child before placement. A representative of the non-DoDDS school or facility should attend the meeting. If the representative cannot attend, the DoDDS officials shall communicate in other ways to ensure participation including individual or conference telephone calls. The IEP must meet the following standards:

(1) Be signed by an authorized DoDDS official before it becomes valid.

(2) Include a determination that the DoDDS does not currently have or cannot reasonably create an educational program appropriate to meet the needs of the child with a disability.

(3) Include a determination that the non-DoDDS school or facility and its educational program and related services conform to the requirements of this part.

2. *Cost of Tuition For Non-DoDDS School or Facility.* The Department of Defense is not authorized to fund non-DoDDS placement unless it is directed by the DoDDS Area Superintendent in coordination with the Director, DoDDS; or it is directed by an impartial hearing officer or court of competent jurisdiction. A valid IEP must document the necessity of the placement in a non-DoDDS school or facility.

F. Procedural Safeguards for Children and Parents

Parents of children with disabilities are afforded procedural safeguards to ensure that their children receive a free public education consistent with appendix F to this part.

1. *Notice of Procedural Safeguards*

a. Parents shall be provided a written notice in a reasonable time before one of the following:

(1) Receiving a proposal to initiate or change the identification, evaluation, or educational placement of the child or the provision of free public education to the child.

(2) Receiving refusal from the DoDDS to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free public education.

b. The notice shall inform the parent of the following:

(1) Parental procedural rights detailed in appendix F to this part.

(2) A description of the action proposed or refused by the DoDDS with a brief explanation for the decision.

c. The notice shall be provided so as to ensure the parent's understanding. That may be achieved by using simplified language, delivering the notice in the parent's native language, or using an interpreter or other person selected by the parents.

2. *Parental Consent*

a. The consent of a parent of a child with a disability or suspected of having a disability shall be obtained before any of the following:

(1) Initiation of formal evaluation procedures.

(2) Initial educational placement.

(3) Change in educational placement.

b. If the parent refuses consent to any formal evaluation or initial placement in a special education program, the DoDDs or the parent may do the following:

(1) Request a conference between the school and parents.

(2) Request mediation.

(3) Initiate an impartial due process hearing under appendix F to this part, to show cause as to why an evaluation or placement in a special education program should or should not occur without such

[2] See footnote 1 to section A. of this appendix.

consent. If the hearing officer sustains the DoDDS position in the impartial due process hearing, the DoDDS may evaluate or provide special education and related services to the child without the consent of a parent, subject to the further exercise of due process rights.

3. *Independent Evaluation*

a. A parent is entitled to an independent evaluation at the expense of the DoDDS if the parent disagrees with the DoDDS evaluation of the child and successfully challenges the evaluation in an impartial due process hearing. An independent evaluation provided at the DoDDS expense must do the following:

(1) Conform to the requirements of this part.

(2) Be conducted, when possible, in the area where the child resides.

(3) Meet DoD standards governing persons qualified to conduct an educational evaluation including an evaluation for MRS.

b. If the final decision rendered in an impartial due process hearing sustains the DoDDS evaluation, the parent has the right to an independent evaluation, but not at the DoDDS expense.

c. The DoDDS, the CSC, and a hearing officer appointed under this part shall consider any evaluation report presented by a parent.

4. *Access to Records.* The parents of a child with a disability shall be afforded an opportunity to inspect and review educational records about the identification, evaluation, and educational placement of the child, and the provision of a free public education for the child.

5. *Due Process Rights*

a. The parent of a child with a disability or the DoDDS has the opportunity to file a written petition for an impartial due process hearing at the DoDDS expense under appendix F to this part. The dispute may concern issues effecting a partial child's identification, evaluation, or placement, or the provision of a free and appropriate public education.

b. While an impartial due process hearing or judicial proceeding is pending, unless the DoDDS and a parent of the child agree otherwise, the child shall remain in the present educational setting, subject to the disciplinary procedures prescribed in section H. of this appendix.

6. *Dispute Resolution—Other Complaints.* A parent, teacher, or other person covered by this part may file a written complaint about any aspect of this part that is not a proper subject for adjudication by a due process hearing officer, in accordance with DSR 2500.10.[3]

G. Confidentiality of Records

The DoDDS officials shall maintain all student records, in accordance with DoD Directive 5400.11.[4]

H. Disciplinary Procedures

All regular disciplinary rules and procedures applicable to children receiving educational instruction in the DoDDS shall apply to children with disabilities who violate school rules and regulations or disrupt regular classroom activities, subject to the following provisions:

1. Before suspending or expelling a child with a disability, the CSC or, a child with a disability in a non-DoDDS school, authorized DoDDS officials, shall determine the following:

a. Whether the behavioral conduct is the result of the child's disability.

b. If any change in the educational placement is needed.

2. If it is determined that the child's conduct results in whole or part from the disability, the child may not be subject to any regular disciplinary rules and procedures and the following procedures must be followed:

a. The child's parents shall be notified of the right to have an IEP meeting before any change in the child's educational placement.

b. The CSC or authorized DoDDS officials shall ensure that a meeting is held to determine the appropriate educational placement for the child in consideration of the child's conduct.

c. The child may not be suspended for more than 10 days during a school year.

3. A child with a disability may be suspended on an emergency basis when it reasonably appears that the child's behavior may endanger the health, welfare, or safety of self or any other child, teacher, or school personnel. The following conditions apply:

a. The child's parents shall be notified immediately of that suspension and of the time, purpose, and location of the CSC meeting and of their right to attend the meeting.

b. That suspension remains in effect only for the duration of the emergency.

4. If it is determined that the child requires a change in educational placement, the CSC or, in the case of a child with a disability in a non-DoDDS school, authorized DoDDS officials shall ensure that a meeting is held to determine the appropriate educational placement for the child in consideration of the child's conduct.

Appendix C to Part 57—The National Advisory Panel (Nap) on the Education of Dependents With Disabilities

A. Membership

The NAP shall meet as needed in publicly announced, accessible meetings open to the general public and shall comply with DoD Directive 5105.4[1]. The NAP members, appointed by the Secretary of Defense, or designee, shall include at least one representative from each of the following groups.

1. Persons with disabilities
2. The DoDDS special education teachers
3. The DoDDS regular education teachers.
4. Parents of children, ages 3 to 21, inclusive, who are receiving special education from the DoDDS.
5. The staff personnel of the DoDDS Headquarters.
6. Special education program managers from the DoDDS field activities.
7. Representatives of the Military Departments and overseas commands, including providers of related services.
8. Providers of the DoD early intervention services.
9. Other appropriate persons.

B. Activities

1. The NAP shall perform the following activities:

a. Review information about improvements in service provided to children with disabilities, ages 3 to 21, inclusive in the Department of Defense.

b. Receive and consider comments from parents, students, professional groups, and individuals with disabilities.

c. When necessary establish committees for short-term purposes comprised of representatives from parent, student, professional groups, and individuals with disabilities.

d. Review the findings of fact and decisions of each impartial due process hearing conducted under appendix F of this part.

e. Assist in developing and reporting such information and evaluations as may assist the Department of Defense.

f. Make recommendations based on program and operational information for changes in policy and procedures and in the budget, organization, and general management of the special education program.

g. Comment publicly on rules or standards about the education of children with disabilities, ages 3 to 21, inclusive.

h. Perform such other tasks as may be requested by the USD(P&R) or the Director, DoDDS.

2. The NAP members shall serve under appointments that shall be for a term not to exceed 3 years.

C. Reporting Requirements

Submit an annual report of the NAP's activities and suggestions to the USD(P&R) and the Director, DoDDS, by July 31 of each year. That report is exempt from formal review and licensing under section E. of DoD Instruction 7750.7.[2]

Appendix D to Part 57—DoD Coordinating Committee on Early Intervention, Special Education, and Medically Related Services

A. Committee Membership

The committee shall meet at least twice yearly to facilitate collaboration in early intervention, special education, and Medically Related Services (MRS) in the Department of Defense. The committee shall consist of the following members:

1. A representative of the USD(P&R) or designee, who shall serve as the Chair.
2. Representatives of the Secretaries of the Military Departments.
3. Representatives of the Assistant Secretary of Defense (Health Affairs) (ASD(HA)).

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to section A. of this appendix.

[3] Copies of the appropriate forms are available at every school office.

[4] See footnote 1 to section A. of this appendix.

4. Representatives from the DoD school systems (domestic and overseas).

5. Representatives from the GC, DoD.

B. Responsibilities

1. Advise and assist the USD(P&R) in the performance of his or her responsibilities.

2. At the direction of the USD(P&R), advise and assist the Military Departments, and the DoD school systems (overseas and domestic) in the coordination of services among providers of early intervention, special education, and MRS.

3. Ensure compliance in the provision of early intervention services for infants and toddlers and special education and related services for children ages 3 to 21, inclusive.

4. Oversee the coordination of early intervention, special education, and related services.

5. Review the recommendations of the NAP and the Early Intervention ICC to identify common concerns, ensure coordination of effort, and forward issues requiring resolution to the USD(P&R).

6. Promote the coordination of services and information sharing among the providers of early intervention, special education, and MRS.

7. Assist in the coordination of assignments of sponsors who have children with disabilities who are or who may be eligible for special education and MRS in the DoDDS or the EIP through the Military Departments.

Appendix E to Part 57—DoD Inter-Component Coordinating Council (ICC) on Early Intervention

A. Council Membership

The USD(P&R) shall appoint members to the ICC. The Council shall meet at least yearly in publicly announced, open meetings that are accessible to the general public and shall comply with DoD Directive 5105.4.[1] The Council shall be comprised of the following:

1. *Parents.* At least 20 percent of the members shall be parents with infants or toddlers with disabilities or children ages 12 or younger with disabilities, with knowledge of, or experience with, programs for infants and toddlers with disabilities. At least one such member shall be a parent of an infant or toddler or a child age 6 or younger.

2. Representatives of the Surgeons General of the Military Departments.

3. Representatives of the family support programs of the Military Departments.

4. Representatives from the ASD(HA).

5. Representative(s) from the DoDDS.

6. A representative from the GC, DoD.

B. Responsibilities

1. Advise and assist the Military medical Departments in the performance of their responsibilities, particularly the identification of appropriate resources and Agencies for providing early intervention services and the promoting of inter-Component agreements.

2. Advise and assist the DoDDS on the transition of toddlers with disabilities to preschool services.

3. Identify strategies to address areas of conflict, overlap, duplication, or omission of early intervention services.

4. Review policy memoranda on effective inter-Department and inter-Component collaboration.

5. Review reports of technical assistance and monitoring activities and make recommendations to improve the policies, procedures, programs, and delivery of early intervention services.

6. Make recommendations based on program and operational information for changes in the policy, procedures, budget, organization, and general management of the EIPs.

7. Provide advice and technical assistance in the establishment, membership, and operation of installation or command level ICCs.

8. When necessary, establish committees for short-term purposes comprised of parents of children with disabilities, service providers, and representatives of professional groups.

9. Submit an annual report of its activities and suggestions to the USD(P&R) by July 31 of each year. That report is exempt from formal review and licensing under section E. of DoD Instruction 7750.7.[2]

C. Procedures

1. The USD(P&R) shall nominate and select all members to the ICC to include those listed in section A.1. of this appendix.

2. Appointments shall be for a term not to exceed 3 years except for DoD personnel who are not representing the parent category of membership.

3. The USD(P&R), or designee, shall call and conduct the meeting of the Council.

Appendix F to Part 57—Mediation and Hearing Procedures

A. Purpose

This appendix establishes requirements for the resolution of conflicts through mediation and impartial due process hearings. Parents of infants, toddlers, and children who are covered by this Instruction and, as the case may be, the cognizant Military Department or the DoDDS are afforded impartial mediation and/or impartial due process hearings and administrative appeals about the provision of early intervention services, or the identification, evaluation, educational placement of, and the FAPE provided to, such children by the Department of Defense, in accordance with 20 U.S.C. 921 *et seq.* and 1400 *et seq.*

B. Mediation

1. Mediation may be initiated by either a parent or the Military Department concerned, or the DoDDS to resolve informally a disagreement on the early intervention services for an infant or toddler or the identification, evaluation, educational placement of, or the FAPE provided to, a child age 3 to 21, inclusive. The cognizant Military Department, rather than the DoDDS, shall participate in mediation involving early intervention services. Mediation shall consist of, but not be limited to, an informal discussion of the differences between the parties in an effort to resolve those differences. The parents and the school or Military Department officials may attend mediation sessions.

2. Mediation must be conducted, attempted, or refused in writing by a parent of the infant, toddler, or child whose early intervention or special education services (including related services) are at issue before a request for, or initiation of, a formal due process hearing authorized by this appendix. Any request by the DoDDS or the Military Department for a hearing under this appendix shall state how that requirement has been satisfied. No stigma may be attached to the refusal of a parent to mediate or to an unsuccessful attempt to mediate.

C. Hearing Administration

1. The Defense Office of Hearings and Appeals (DOHA) shall have administrative responsibility for the proceedings authorized by sections D. through G. of this appendix.

2. This appendix shall be administered to ensure that the findings, judgments, and determinations made are prompt, fair, and impartial.

3. Impartial hearing officers who shall be DOHA Administrative Judges, shall be appointed by the Director, DOHA, and shall be attorneys in good standing of the bar of any State, the District of Columbia, or a territory or possession of the United States who are independent of the DoDDS or the Military Department concerned in proceedings conducted under this appendix. A parent shall have the right to be represented in such proceedings, at no cost to the Government, by counsel, and by persons with special knowledge or training with respect to the problems of individuals with disabilities. The DOHA Department counsel normally shall appear and represent the DoDDS in proceedings conducted under this appendix, when such proceedings involve a child age 3 to 21, inclusive. When an infant or toddler is involved, the Military Department responsible under this Instruction for delivering early intervention services shall either provide its own counsel or request counsel from DOHA.

D. Hearing Practice and Procedure

1. *Hearing*

a. Should mediation be refused or otherwise fail to resolve the issues on the provision of early intervention services to an infant or toddler or the identification or evaluation of such an individual, the parent may request and shall receive a hearing before a hearing officer to resolve the matter. The parents of an infant or toddler and the Military Department concerned shall be the only parties to a hearing conducted under this appendix.

b. Should mediation be refused or otherwise fail to resolve the issues on the provision of a FAPE to a child with a disability, age 3 to 21, inclusive, or the identification, evaluation, or educational placement of such an individual, the parent or the school principal, for the DoDDS, may

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to section A. of this appendix.

request and shall receive a hearing before a hearing officer to resolve the matter. The parents of a child age 3 to 21, inclusive, and the DoDDS shall be the only parties to a hearing conducted under this appendix.

c. The party seeking the hearing shall submit a written request, in the form of a petition, setting forth the facts, issues, and proposed relief, to the Director, DOHA. The petitioner shall deliver a copy of the petition to the opposing party (i.e., the parent or the school principal, for the DoDDS, or the military MTF commander, for the Military Department), either in person or by first-class mail, postage prepaid. Delivery is complete on mailing. When the DoDDS or the Military Department petitions for a hearing, it shall inform the other parties of the deadline for filing an answer under paragraph D.1.c. of this appendix, and shall provide the other parties with a copy of this part.

d. An opposing party shall submit an answer to the petition to the Director, DOHA, with a copy to the petitioner, within 15 calendar days of receipt of the petition. The answer shall be as full and complete as possible, addressing the issues, facts, and proposed relief. The submission of the answer is complete on mailing.

e. In 10 calendar days after receiving the petition, the Director, DOHA, shall assign a hearing officer, who then shall have jurisdiction over the resulting proceedings. The Director, DOHA, shall forward all pleadings to the hearing officer.

f. The questions for adjudication shall be based on the petition and the answer, if a party may amend a pleading if the amendment is filed with the hearing officer and is received by the other parties at least 5 calendar days before the hearing.

g. The Director, DOHA, shall arrange for the time and place of the hearing, and shall provide administrative support. Such arrangements shall be reasonably convenient to the parties.

h. The purpose of a hearing is to establish the relevant facts necessary for the hearing officer to reach a fair and impartial determination of the case. Oral and documentary evidence that is relevant and material may be received. The technical rules of evidence shall be relaxed to permit the development of a full evidentiary record, with the ''Federal Rules of Evidence'' (Rules 1–1102) of 28 U.S.C., serving as a guide.

i. The hearing officer shall be the presiding officer, with judicial powers to manage the proceeding and conduct the hearing. Those powers shall include the authority to order an independent evaluation of the child at the expense of the DoDDS or the Military Department concerned and to call and question witnesses.

j. Those normally authorized to attend a hearing shall be the parents of the individual with disabilities, the counsel and personal representative of the parents, the counsel and professional employees of the DoDDS or the Military Department concerned, the hearing officer, and a person qualified to transcribe or record the proceedings. The hearing officer may permit other persons to attend the hearing, consistent with the privacy interests of the parents and the individual with disabilities, if the parents have the right to an open hearing on waiving in writing their privacy rights and those of the individual with disabilities.

k. A verbatim transcription of the hearing shall be made in written or electronic form and shall become a permanent part of the record. A copy of the written transcript or electronic record of the hearing shall be made available to a parent on request and without cost. The hearing officer may allow corrections to the written transcript or electronic recording for conforming it to actual testimony after adequate notice of such changes is given to all parties.

l. The hearing officer's decision of the case shall be based on the record, which shall include the petition, the answer, the written transcript or the electronic recording of the hearing, exhibits admitted into evidence, pleadings or correspondence properly filed and served on all parties, and such other matters as the hearing officer may include in the record, if such matter is made available to all parties before the record is closed under paragraph D.1.m. of this appendix.

m. The hearing officer shall make a full and complete record of a case presented for adjudication.

n. The hearing officer shall decide when the record in a case is closed.

o. The hearing officer shall issue findings of fact and render a decision in a case not later than 50 calendar days after being assigned to the case, unless a discovery request under section D.2. of this appendix, is pending.

2. *Discovery*

a. Full and complete discovery shall be available to parties to the proceeding, with the ''Federal Rules of Civil Procedure,'' Rules 26–37, codified at 28 U.S.C. serving as a guide.

b. If voluntary discovery cannot be accomplished, a party seeking discovery may file a motion with the hearing officer to accomplish discovery, provided such motion is founded on the relevance and materiality of the proposed discovery to the issues. An order granting discovery shall be enforceable as is an order compelling testimony or the production of evidence.

c. A copy of the written or electronic transcription of a deposition taken by the DoDDS or the Military Department concerned shall be made available free of charge to a parent.

3. *Witnesses; Production of Evidence*

a. All witnesses testifying at the hearing shall be advised that it is a criminal offense knowingly and willfully to make a false statement or representation to a Department or Agency of the U.S. Government as to any matter in the jurisdiction of that Department or Agency. All witnesses shall be subject to cross-examination by the parties.

b. A party calling a witness shall bear the witness' travel and incidental expenses associated with testifying at the hearing. The DoDDS or the Military Department concerned shall pay such expenses when a witness is called by the hearing officer.

c. The hearing officer may issue an order compelling the attendance of witnesses or the production of evidence on the hearing officer's own motion or, if good cause be shown, on motion of a party.

d. When the hearing officer determines that a person has failed to obey an order to testify or to produce evidence, and such failure is in knowing and willful disregard of the order, the hearing officer shall so certify.

e. The party or the hearing officer seeking to compel testimony or the production of evidence may, on the certification provided for in paragraph D.3.d. of this appendix, file an appropriate action in a court of competent jurisdiction to compel compliance with the hearing officer's order.

4. *Hearing Officer's Findings of Fact and Decision*

a. The hearing officer shall make written findings of fact and shall issue a decision setting forth the questions presented, the resolution of those questions, and the rationale for the resolution. The hearing officer shall file the findings of fact and decision with the Director, DOHA, with a copy to the parties.

b. The Director, DOHA, shall forward to the Director, DoDDS, or to the Military Department concerned, and to the NAP or the ICC, as appropriate, copies with all personally identifiable information deleted, of the hearing officer's findings of fact and decision or, in cases that are administratively appealed, of the final decision of the DOHA Appeal Board.

c. The hearing officer shall have the authority to impose financial responsibility for early intervention services, educational placements, evaluations, and related services under his or her findings of fact and decision.

d. The findings of fact and decision of the hearing officer shall become final unless a notice of appeal is filed under section F.1. The DoDDS or the Military Department concerned shall implement a decision as soon as practicable after it becomes final.

E. Determination Without Hearing

1. At the request of a parent of an infant, toddler, or child age 3 to 21, inclusive, when early intervention or special educational (including related) services are at issue, the requirement for a hearing may be waived, and the case may be submitted to the hearing officer on written documents filed by the parties. The hearing officer shall make findings of fact and issue a decision in the period fixed by paragraph D.1.o. of this appendix.

2. The DoDDS or the Military Department concerned may oppose a request to waive that hearing. In that event, the hearing officer shall rule on that request.

3. Documents submitted to the hearing officer in a case determined without a hearing shall comply with paragraph D.1.h. of this appendix. A party submitting such documents shall provide copies to all other parties.

F. Appeal

1. A party may appeal the hearing officer's findings of fact and decision by filing a written notice of appeal with the Director, DOHA, within 5 calendar days of receipt of the findings of fact and decision. The notice of appeal must contain the appellant's certification that a copy of the notice of appeal has been provided to all other parties. Filing is complete on mailing.

2. Within 10 calendar days of filing the notice of appeal, the appellant shall submit a written statement of issues and arguments to the Director, DOHA, with a copy to the other parties. The other parties shall submit a reply or replies to the Director, DOHA, within 15 calendar days of receiving the statement, and shall deliver a copy of each reply to the appellant. Submission is complete on mailing.

3. The Director, DOHA, shall refer the matter on appeal to the DOHA Appeal Board. It shall determine the matter, including the making of interlocutory rulings, within 60 calendar days of receiving timely submitted replies under section F.2. of this appendix. The DOHA Appeal Board may require oral argument at a time and place reasonably convenient to the parties.

4. The determination of the DOHA Appeal Board shall be a final administrative decision and shall be in written form. It shall address the issues presented and set forth a rationale for the decision reached. A determination denying the appeal of a parent in whole or in part shall state that the parent has the right under 20 U.S.C. 921 *et seq.* and 1400 *et seq.*, to bring a civil action on the matters in dispute in a district court of the United States without regard to the amount in controversy.

5. No provision of this Instruction or other DoD guidance may be construed as conferring a further right of administrative review. A party must exhaust all administrative remedies afforded by this appendix before seeking judicial review of a determination made under this appendix.

G. Publication and Indexing of Final Decisions

The Director, DOHA, shall ensure that final decisions in cases arising under this appendix are published and indexed to protect the privacy rights of the parents who are parties in those cases and the children of such parents, in accordance with DoD Directive 5400.11[1].

Dated: January 9, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–888 Filed 1–16–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC30

Badlands National Park, Commercial Vehicles

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is implementing this final rule to exempt local commercial vehicle traffic on the 5.8 miles of park roads between the park's Northeast and Interior Entrances from the general prohibition on the use of NPS roads by commercial vehicles. The Superintendent will retain sufficient discretion: To require permits for local commercial vehicles traveling within or through the park; establish terms and conditions of such permits; and annually establish and adjust fees for such use based on current administrative costs. The rule will prohibit the transportation of hazardous materials on all park roads, except in limited circumstances. The rule will also prohibit certain oversize/overweight vehicles on all park roads, except in limited circumstances.

EFFECTIVE DATE: This rule is effective on February 18, 1997.

FOR FURTHER INFORMATION CONTACT: Irvin L. Mortenson, Superintendent, Badlands National Park, P.O. Box 6, Interior, SD 57750. Telephone 605–433–5361.

SUPPLEMENTARY INFORMATION:

Background

South Dakota Route 240, from Exit 131 on Interstate 90, passes through the northeast corner of Badlands National Park, traversing the Badlands ''Wall'' at Cedar Pass and intersects with South Dakota Route 377 which, in turn, connects with South Dakota Route 44 at the town of Interior. In 1929, Congress passed legislation authorizing the establishment of Badlands National Monument, subject to the condition ''that the State of South Dakota first construct 30 miles of highways through the 'proposed park' area in a manner satisfactory to the Secretary of Interior.'' After the State of South Dakota completed the highway construction, Badlands National Monument was proclaimed on January 25, 1939. In 1941, the State relinquished ownership to roads within the Monument's boundary.

A general park regulation, 36 CFR 5.6, prohibits commercial traffic in National Parks. Under the final regulation, local commercial traffic would be allowed to use the park road connecting the Northeast entrance and the Interior entrance. The transportation of certain hazardous materials and oversize/overweight vehicles on park roads will be prohibited, except as permitted by the Superintendent. The NPS may allow transportation of certain hazardous materials on park roads as necessary to provide access to otherwise inaccessible lands within or contiguous to the park, or in emergency situations as determined by the Superintendent.

The paving of South Dakota Highway 44 in 1986 considerably changed the park's recreational and commercial vehicle patterns and number. In December of 1989, in response to these increases, Badlands National Park mailed over 500 ''scoping brochures'' to various organizations, agencies and individuals seeking public participation in the development of alternatives for the management of commercial traffic in the park. A public scoping meeting was held on January 24, 1990, in Interior, South Dakota, attended by approximately 115 people. Following the public meeting, written comments also were solicited. Public input was received during review of the environmental assessment prepared for the regulation of commercial traffic. This review occurred in April of 1990. Public comments received during that time and NPS review of the issues are reflected in the proposed rule.

Existing Conditions

Local commercial vehicles and some long haul trucks continue to travel through the Badlands National Park's northeast corner on 5.8 miles of park road between the Northeast and the Interior Entrances. South Dakota Route 240 connects with the Badlands Loop Road at the Northeast Entrance and South Dakota Route 377 connects to the park road at the Interior Entrance. South Dakota Routes 240 and 377 are exterior to park boundaries and are maintained by the State of South Dakota only up to the park boundaries. Inside the park, road maintenance is the responsibility of the NPS.

South Dakota Routes 240 and 377 are two-lane, paved rural highways designed for a 55-mph speed limit for all vehicle types. The park roads are two-lane, paved roads designed for 45 mph and 25 mph speed limits. Their purpose, as defined by the *Park Road Standards for the National Park System*,

> * * * ''(R)emains in sharp contrast to that of the Federal and State highway systems. Park roads are not intended to provide fast and convenient transportation; they are intended to enhance visitor experience while providing safe and efficient accommodation of park visitors and to serve essential management access needs. They are not, therefore intended nor designed as continuations of the State and Federal-aid network.''

Conclusion

Based on available data on road use and relevant environmental analysis, the impact of local commercial traffic on park roads within Badlands National Park is not sufficient to compel the NPS to prohibit all local commercial traffic on park roads between the Northeast

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

and Interior Entrances. The NPS recognizes the potential hazard posed by the transportation of certain hazardous materials and oversize/overweight vehicles through the park and will regulate or prohibit such use. Those local commercial vehicles carrying hazardous materials that require placarding, or marine pollutants that require marking according to U.S. Department of Transportation regulations, must first obtain a permit when such transportation is necessary for access to lands within or adjacent to the park, where access is not otherwise available, or in emergency situations as determined by the Superintendent. Exceptions include local bulk deliveries of gasoline, diesel, LP gas and certain oversize/overweight agricultural vehicles as provided for by South Dakota State Law. The NPS proposed regulation will not regulate state highways or traffic outside of Badlands National Park.

The rule will allow only those vehicles that originate from, or are destined to, U.S. Postal Service ZIP codes within a 45-mile radius of Cedar Pass in Badlands National Park. These Postal Service ZIP codes, which are in close proximity to the park, were chosen because nearly all the commercial traffic accessing the park originates from these areas. The use of geographic County designations for commercial access to the park would not be appropriate because, with the Counties being so large, thousands of additional commercial vehicles could claim entry to the park. The allowable ZIP code service area includes the following towns:

Allen 57714
Belvedere 57521
Cottonwood 57775
Creighton 57729
Interior 57750
Kadoka 57543
Kyle 57752
Long Valley 57547
Owanka 57767
Philip 57567
Scenic 57780
Wall 57790
Wanblee 57577
Wasta 57791

The NPS prepared an Environmental Assessment (EA) addressing commercial traffic on park roads. The assessment was released for public review in 1990. On March 19, 1990, the Regional Director for the Rocky Mountain Region, National Park Service, signed a Finding of No Significant Impact (FONSI) for the proposal, which would allow local commercial traffic on park roads between the park's Northeast and Interior Entrances, but continue the prohibition of the transportation of certain hazardous materials requiring placarding and certain oversize/overweight cargos through Badlands National Park. Copies of this EA are available from the Chief Ranger's Office.

Summary of Public Comments

The proposed rule, which was published in the Federal Register on August 7, 1996 (61 FR 41058), afforded the public an opportunity to comment for a period of 60 days, from August 7 to October 7, 1995. No comments were received by the office of the Superintendent at Badlands National Park.

Drafting Information

The principal authors of this proposed rulemaking are Irvin L. Mortenson, Superintendent, former District Ranger Stan Robins, Badlands National Park and Dennis Burnett, Washington Office of Ranger Activities.

Paperwork Reduction Act

The collection of information contained in the permit section of this rule is for the purpose of determining which commercial vehicles meet the requirements allowing them to travel through the park. This collection of information is necessary to issue the permit and has previously been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0124 in accordance with the Paperwork Reduction Act of 1995.

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities.

An Environmental Assessment was issued in 1990 under the provisions of the National Environmental Policy Act and a Finding of No Significant Impact signed on June 19, 1990.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter I, is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. Section 7.23 is added to read as follows:

§ 7.23 Badlands National Park.

(a) *Commercial vehicles.* (1) Notwithstanding the prohibition of commercial vehicles set forth in § 5.6 of this chapter, local commercial vehicles may operate on the park road between the Northeast entrance and the Interior entrance in accordance with the provisions of this section.

(2) The term ''Local Commercial Vehicles'', as used in this section, will include the definition of ''commercial vehicle'' in § 5.6(a), but specifically includes only those vehicles that originate from, or are destined to, the following U.S. Postal Service ZIP code areas:

Allen 57714
Belvedere 57521
Cottonwood 57775
Creighton 57729
Interior 57750
Kadoka 57543
Kyle 57752
Long Valley 57547
Owanka 57767
Philip 57567
Scenic 57780
Wall 57790
Wanblee 57577
Wasta 57791

(3) The Superintendent may require a permit and establish terms and conditions in accordance with § 1.6 of this chapter for the operation of local commercial vehicles on the park road between the park's Northeast and Interior entrances. The Superintendent may charge a fee for any permits issued to commercial vehicles in accordance with a fee schedule established annually.

(4) The commercial transport on the park road between the Northeast and Interior entrances of any substance or combination of substances, including any hazardous substance, hazardous material, or hazardous waste that requires placarding, or any marine

pollutant that requires marking, as defined in 49 CFR Subtitle B, is prohibited; except for local bulk deliveries of gasoline, fuel oil and LP gas; provided, however, that the Superintendent may issue permits for the transportation of such substance or combination of substances, including hazardous waste, in emergencies, and may issue permits when such transportation is necessary for access to lands within or adjacent to the park area to which access is otherwise not available as provided in 36 CFR 5.6.

(5) The operator of a motor vehicle transporting any hazardous substance, hazardous material, hazardous waste, or marine pollutant in accordance with a permit issued under this section, is not relieved in any manner from complying with all applicable regulations in 49 CFR Subtitle B, or with any other State or Federal laws and regulations applicable to the transportation of any hazardous substance, hazardous material, hazardous waste, or marine pollutant.

(6) The transportation or use of oversize or overweight commercial vehicles on the park road between the Northeast and Interior entrances is prohibited; provided, however that the Superintendent may issue permits for transportation or use of such vehicles and may condition such permits on the use of special routes within the park in order to minimize impacts to park facilities and resources and also may issue permits when the transportation or use of such vehicles is necessary for access to lands within or adjacent to the park area to which access is otherwise not available as provided in 36 CFR 5.6.

(7) Operating without, or violating a term or condition of, a permit issued in accordance with this section is prohibited. In addition, violating a term or condition of a permit may result in the suspension or revocation of the permit.

(b) [Reserved]

Dated: December 5, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 97–1200 Filed 1–16–97; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NJ25–1a–159, FRL–5662–3]

Approval and Promulgation of Implementation Plans; Reasonably Available Control Technology for Oxides of Nitrogen for Specific Sources in the State of New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is announcing approval of twenty-two (22) revisions to the State Implementation Plan (SIP) for ozone submitted by the State of New Jersey. These revisions consist of source-specific reasonably available control technology (RACT) determinations for controlling oxides of nitrogen (NO_X) from various sources in New Jersey. The intended effect of this action is to approve the source-specific RACT determinations made by New Jersey in accordance with provisions of its regulation, New Jersey Administrative Code (NJAC) 7:27–19. This action is being taken in accordance with Section 110 of the Clean Air Act (the Act).

DATES: This rule is effective on March 18, 1997, unless adverse or critical comments are received by February 18, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: All comments should be addressed to: Ronald Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007–1866.

Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866

New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Pollution Control, 401 East State Street, CN027, Trenton, New Jersey 08625

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ted Gardella, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

A. Background

The air quality planning requirements for the reduction of NO_X emissions through RACT are set out in section 182(f) of the Act. Section 182(f) requirements are described by EPA in a notice, ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' published November 25, 1992 (57 FR 55620). The November 25, 1992 notice should be referred to for detailed information on the NO_X requirements. Additional guidance memoranda which have been released subsequent to the NO_X Supplement should also be referred to.

The EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762, September 17, 1979).

Section 182(f) of the Act requires states within ozone nonattainment areas classified moderate or above or areas within the ozone transport region to apply the same requirements to major stationary sources of NO_X (''major'' as defined in section 302 and section 182 (c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs). For more information on what constitutes a major source, see section 2 of the NO_X Supplement to the General Preamble.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC emissions (not covered by a pre-enactment control technique guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X sources since enactment. States, in their RACT rules, are expected to require final installation of the actual NO_X controls by May 31, 1995 from those sources for which installation by that date is practicable.

States within the Northeast ozone transport region established by section 184(a) should have revised their SIPs to include the RACT measures by November 15, 1992. Because major sources in states in a transport region are generally subject to at least the same level of control as sources in moderate ozone nonattainment areas, EPA believes that the schedule for implementing these RACT rules in the

ozone transport region should be consistent with the requirements of section 182(b)(2) and were expected to require final installation of the actual NO_X controls by May 31, 1995 on those sources for which installation by that date is practicable. Based on sections 182(f) and 184(b), New Jersey is required to apply the NO_X RACT requirements Statewide.

New Jersey's NO_X RACT Regulation

On November 15, 1993, New Jersey submitted to EPA as a revision to the SIP, Subchapter 19, ''Control and Prohibition of Air Pollution From Oxides of Nitrogen'' of Chapter 27, Title 7 of the New Jersey Administrative Code. Subchapter 19 contains the NO_X RACT requirements for New Jersey and has an effective date of December 20, 1993. New Jersey held public hearings on Subchapter 19 in March 1993 and adopted it on November 15, 1993. New Jersey submitted Subchapter 19 to EPA as a revision to the SIP on November 15, 1993. EPA found it to be administratively and technically complete on December 29, 1993 and proposed approval of Subchapter 19 on October 2, 1995 (60 FR 51379). Final EPA action on Subchapter 19 is expected to be published in the Federal Register soon.

C. Section 19.13—Facility Specific NO_X Emission Limits

Section 19.13 of New Jersey's regulation establishes a procedure for a case-by-case determination of what represents RACT for a particular facility, item of equipment or source operation. This procedure is applicable in two situations: (1) If the major NO_X facility contains any source operation or item of equipment of a category not listed in section 19.2 and which has the potential to emit more than 10 tons of NO_X per year, except for non-utility boilers, or (2) if the owner or operator of a source operation or item of equipment of a category that is listed in section 19.2 seeks approval of an alternative maximum allowable emission rate.

New Jersey's procedure requires the owners and/or operators of the affected facility to submit either a NO_X control plan if they are not covered by specific emission limitations or a request for an alternative maximum allowable emission rate if they are covered by specific emission limitations. The owners/operators must include a technical and economic feasibility analysis of the possible alternative control measures. RACT determinations for an alternative maximum allowable emission rate must consider alternative control strategies (e.g., emissions averaging, seasonal fuel switching to natural gas, and repowering) in addition to considering control technologies (e.g., low NO_X burners). In either case, Subchapter 19 provides for New Jersey to establish emission limits based upon a RACT determination specific to the facility. The resulting control plan or alternate maximum allowable emission rate must be submitted to EPA for approval as a SIP revision.

D. Analysis of State Submittals

The twenty-two (22) source specific SIP revisions were all adopted by New Jersey at different times during 1994 and 1995 and were found by EPA to be administratively and technically complete. Prior to adoption, New Jersey published their proposed RACT determinations in local newspapers and provided 30 days for public comment and an opportunity to request a public hearing. New Jersey reviewed and responded to all comments made. New Jersey determined that the proposed NO_X control plans and alternative maximum allowable emission rates from the owners conform with the provisions of section 19.13. New Jersey has issued to each owner a ''conditions of approval'' document incorporating approved permit conditions which are fully enforceable by the State and which contain conditions consistent with Subchapter 19. These ''conditions of approval'' documents are identified in the ''Incorporation by reference'' section at the end of this document.

EPA has determined that the NO_X emission limits identified in New Jersey's letters of approval (with attached ''conditions of approval'' document) to the owners represent RACT for each source identified in this document. The permit conditions include emission limits, work practice standards, testing, monitoring, and recordkeeping/reporting requirements. These permit conditions are consistent with the NO_X RACT requirements specified in Subchapter 19 and conform to EPA NO_X RACT guidance. Therefore, EPA is approving the twenty-two (22) source-specific SIP revisions submitted by New Jersey dated May 26, 1995, November 8, 1995, January 10, 1996 and October 10, 1996 as identified in this document.

EPA's evaluation of each RACT submittal is detailed in a document dated October 29, 1996, entitled ''Technical Support Document—NO_X RACT Source Specific SIP Revisions—State of New Jersey.'' A copy of that document is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

A summary of EPA's findings of each RACT submittal is provided in the following sections and is organized into two groups: I. ''Facility-Specific NO_X Emission Limits'' in which a major NO_X facility has a source operation or item of equipment for which an emission limit has not been established pursuant to the presumptive limits identified in Subchapter 19, and II. ''Alternative NO_X Emission Limits'' in which an owner or operator of a source operation or item of equipment of a category that is listed in section 19.2 seeks approval of a RACT emission limit different from that which is established in Subchapter 19. This Notice takes action only on the permitted emission rates and conditions of approval related to emissions of NO_X; action is not being taken on any other pollutants which may be permitted by New Jersey with regard to these sources.

I. Facility-Specific NO_X Emission Limits

1. Edgeboro Disposal, Inc.

Edgeboro Disposal, Inc. operates a solid waste landfill in East Brunswick, Middlesex County, which generates landfill gas that is disposed of by five flares. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is the current operation of the existing flares. The facility-specific NO_X emission limit is 0.08 pounds NO_X per million BTUs (lbs/MM BTU).

2. E.I. duPont DeNemours and Company, Inc.

E.I. duPont DeNemours and Company, Inc., operates a carbon regeneration furnace located in Deepwater, Salem County. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is the use of the previously installed low NO_X burners (LNB), based on DuPont's 1994 updated Best Available Control Technology (BACT) analysis. The facility-specific NO_X emission limit is 18.6 pounds per hour (lbs/hr).

3. Hoeganaes Corporation

The Hoeganaes Corporation, located in Riverton, Burlington County, manufactures iron and steel powders. Its operations include an electric arc furnace (EAF) for melting steel and a tunnel kiln for manufacturing sponge iron. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is regular maintenance of the EAF refractory which is already standard practice at the facility. The facility-specific NO_X emission limit is 33.6 tons per year (TPY).

NO_X emissions from the tunnel kiln are produced from 252 natural gas fired burners and from the combustion of coal

and coke in the process. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is burner adjustments to the tunnel kiln, which is already a normal procedure to maintain proper combustion control. The facility-specific NO_X emission limit is 26.4 TPY.

4. Parsippany-Troy Hills Township Sewer Authority

Parsippany-Troy Hills Township Sewer Authority owns and operates two multiple hearth type incinerators to burn sewage sludge from its wastewater treatment plant located in Parsippany, Morris County. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is seasonal natural gas combustion. The facility-specific NO_X emission limit is 21 lbs/hr for each incinerator. The State may establish a lower facility NO_X emission limit based on compliance stack test results after the fuel switch.

5. Sandoz Pharmaceuticals Corporation

Sandoz Pharmaceuticals Corporation operates a small scale trash fired boiler energy recovery system located in East Hanover, Morris County. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is the previously installed controlled air combustion system. The facility-specific NO_X emission limit is 3.0 lbs/hr.

6. Griffin Pipe Products Company

Griffin Pipe Products Company produces pipe from scrap steel and operates an iron melting cupola and an annealing furnace in Florence, Burlington County. NO_X emissions from the facility are a result of the combustion of coke in the iron melting cupola and natural gas in the annealing furnace. For the cupola, the facility's RACT analysis concluded, and New Jersey agreed, that RACT is the continued use of low excess air and oxygen enrichment technologies. The facility-specific NO_X emission limit is 0.20 lbs/MM BTU. In addition, the conditions of approval include limiting the cupola operation to 2600 hours per year. For the annealing furnace, the facility's RACT analysis concluded, and New Jersey agreed, that RACT is annual adjustment to the furnace combustion process. The facility-specific NO_X emission limit is 0.15 lbs/MM BTU. Also, the conditions of approval include limiting the annual fuel consumption of the furnace to 200 million standard cubic feet (MMSCF) of natural gas.

7. United States Pipe and Foundry Company

United States Pipe and Foundry Company operates two cupola iron melting furnaces and two annealing ovens in Burlington, Burlington County. NO_X emissions are the result of coke combustion in the cupola and natural gas in the annealing oven. For the cupolas, the facility's RACT analysis concluded, and New Jersey agreed, that RACT is the continued use of oxygen enrichment and preheated blast air. The facility-specific NO_X emission limit is 0.20 lbs/MM BTU. For the annealing ovens, the facility's RACT analysis concluded, and New Jersey agreed, that RACT is annual adjustment to the combustion process. The facility-specific NO_X emission limit is 0.14 lbs/MM BTU.

8. Johnson Matthey Incorporated

Johnson Matthey Incorporated operates a three-chamber natural gas fired ignition recovery furnace system in West Deptford, Gloucester County. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is the installation of LNBs. The facility-specific NO_X emission limit is 7.1 lbs/hr.

9. E.I. duPont DeNemours and Company, Inc.

E.I. duPont DeNemours and Company, Inc. owns and operates a hazardous waste incinerator in Deepwater, Salem County. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is the implementation of Selective Non Catalytic Reduction (SNCR) including ammonia injection, based on a 1994 BACT determination. The facility-specific NO_X emission limit is 10.6 lbs/hr (0.20 lbs/MM BTU).

10. Rollins Environmental Services (NJ), Inc.

Rollins Environmental Services (NJ), Inc. owns and operates a commercial hazardous waste incinerator in Bridgeport, Gloucester County to process organic wastes. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is the modification of the existing burners. The facility-specific NO_X emission limit is 75 lbs/hr.

11. Minnesota Mining and Manufacturing Co.

Minnesota Mining and Manufacturing Co. (3M) operates one rotary kiln and two dryers in Belle Mead, Somerset County. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is the installation of LNBs. In addition, the conditions of approval include requirements that only natural gas will be combusted as the primary fuel and No. 2 fuel oil will be used only during natural gas curtailment. The facility-specific NO_X emission limits while combusting natural gas are 5.7 lbs/hr and 1.6 lbs/hr for the kiln and each dryer, respectively.

12. American Ref-Fuel Company

The American Ref-Fuel Company owns and operates the three mass burning water wall incinerators at the Essex County Resource Recovery Facility in Newark, Essex County. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is the installation of SNCR technology utilizing ammonia injection, based on a 1993 BACT analysis. The facility-specific NO_X emission limit is 95 lbs/hr/unit, with a concentration limit of 174 parts per million (ppm), based on a 3-hour average.

13. Union County Utilities Authority

The Union County Utilities Authority owns and operates the three mass burning water wall incinerators at the Union County Resource Recovery Facility in Rahway, Union County. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is the installation of SNCR technology with ammonia injection, based on a 1989 BACT analysis. The facility-specific NO_X emission limit is 80 lbs/hr/unit, with a concentration limit of 225 ppm on a 3-hour basis.

14. General Motors Corporation

General Motors (GM), located in Linden, Union County, owns and operates a Topcoat autobody coating system which has fifty natural gas burners. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is the existing practice of limiting the Topcoat system's fuel use to 591.1 MMSCF of natural gas per year and annual combustion adjustments to the burners. The facility-specific NO_X emission limit is 41.4 TPY (0.14 lbs/MM BTU) and the Topcoat system production is limited to operate 5094 hours per year.

II. Alternative NO_X Emission Limit

A summary of EPA's analysis of each source facility granted an alternative NO_X emission limit by New Jersey is as follows.

15. Public Service Electric and Gas Company (PSE&G)

PSE&G operates Hudson Unit Number 2 which is a coal-fired, dry bottom utility boiler in Jersey City, Hudson County. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is the use of LNB in combination with Overfire Air (LNB/OFA). The

alternative NO_X emission limits are 0.85 lbs/MM BTU for coal and 0.60 lbs/MM BTU for the combustion of natural gas or number 6 fuel oil. These emission limits may be further reduced by New Jersey based upon results of optimization tests with the LNB/OFA installation.

16. General Motors Corporation

GM operates a tangentially oil-fired boiler (Number 4) at its motor vehicle parts plant in Trenton, Mercer County. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is annual adjustments to the combustion process. The alternative NO_X emission limit is 0.45 lbs/MM BTU. The conditions of approval include limiting operation to no more than 1315 hours per year and ceasing boiler operation after May 31, 2005.

17. International Flavors and Fragrances

International Flavors and Fragrances owns and operates a backup gas-fired boiler (Number 5) in Union Beach, Monmouth County. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is biannual combustion process adjustments and an operation limit to 1440 hours annually. The alternative NO_x emission limit is 0.18 lbs/MM BTU during natural gas combustion and 0.255 lbs/MM BTU during No. 2 fuel oil combustion. Number 6 fuel oil will no longer be used for the boiler.

18. Algonquin Gas Transmission Company

Algonquin Gas Transmission Company operates two natural gas fired, simple cycle combustion turbines in Hanover Township, Morris County. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is annual adjustments to the combustion process. The alternative NO_x emission limit for each turbine shall be 0.345 lbs/MM BTU.

19. Hoffmann-La Roche Incorporated

Hoffmann-La Roche Incorporated, located in Nutley, Essex County, owns and operates a cogeneration facility with three units consisting of combined cycle combustion turbines and heat recovery steam generators with supplemental firing. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is annual adjustment to the combustion process on the duct burners installed on each of the three turbines. The alternative NO_x emission limit for each turbine is 0.34 lbs/MM BTU during natural gas combustion. Each turbine is also permitted to use kerosene as a backup fuel for no more than 500 hours in a calendar year.

20. Texas Eastern Transmission Corporation

Texas Eastern Transmission Corporation operates three 2050 horsepower internal combustion engines at the Linden Compressor Station in Union County and four 1100 horsepower engines at the Lambertville Compressor Station in Hunterdon County. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is the use of electronic ignition controls on each of the Lambertville engines and the use of electronic ignition controls combined with installation of equipment to automatically control the air to fuel ratio on the Linden engines. The alternative NO_x emission limit is 8.26 grams per horsepower-hour (g/hp-hr) for each Linden engine and 7.22 g/hp-hr for each Lambertville engine. After optimization of controls, the NO_x emission limits will be evaluated and lower alternative emission limits may be established.

Final Action

EPA is approving the permitted conditions described above as RACT for the control of NO_x emissions from the sources identified in the twenty-two source-specific SIP revisions.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective March 18, 1997, unless, by February 18, 1997 adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective March 18, 1997.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the state is already imposing. Moreover, this action does not involve generally applicable requirements, but specific requirements for each facility which both the source owner and the State have determined to be economically and technologically reasonable. This action only affects the sources which have requested the SIP revision and which are not small entities. Therefore, EPA certifies that this approval action does not have a significant impact on small entities.

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, 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 EPA to establish a plan for informing and advising any small governments that

may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

Submission to Congress and the General Accounting Office

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).

Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 18, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: November 28, 1996.

William J. Muszynski,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart FF—New Jersey

2. Section 52.1570 is amended by adding new paragraph (c)(59) to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

* * * * *

(59) Revisions to the State Implementation Plan submitted by the New Jersey Department of Environmental Protection on May 26, 1995, November 8, 1995, January 10, 1996 and October 10, 1996.

(i) Incorporation by reference.

(A) Conditions of Approval Documents (COAD):

The following facilities have been issued conditions of approval documents by New Jersey:

(*1*) Edgeboro Disposal's landfill gas flares, Middlesex County, NJ COAD approval dated April 13, 1995, revised October 19, 1995 (effective November 6, 1995).

(*2*) E.I. duPont DeNemours and Co.'s carbon regeneration furnace, Salem County, NJ COAD approval dated June 7, 1995.

(*3*) Hoeganaes Corp.'s electric arc furnace and tunnel kiln, Burlington County, NJ COAD approval dated February 3, 1995.

(*4*) E.I. duPont DeNemours and Co.'s hazardous waste incinerator, Salem County, NJ COAD approval dated July 7, 1995.

(*5*) Rollins Environmental Services' hazardous waste incinerator, Gloucester County, NJ COAD approval dated May 25, 1995.

(*6*) American Ref-Fuel's Municipal Waste Incinerator, Essex County, NJ NO_X RACT approval dated February 6, 1995.

(*7*) Union County Utilities Authority's Municipal Waste Incinerator, Union County; NJ NO_X RACT approval dated May 10, 1994 with an attached permit to construct, operate, and a PSD permit dated December 29, 1989.

(*8*) PSE&G's Hudson Station Unit No. 2 utility boiler, Hudson County, NJ COAD approval dated May 9, 1995.

(*9*) Algonquin Gas Transmission Co.'s simple cycle combustion turbines, Morris County, NJ COAD approval dated March 31, 1995.

(*10*) Hoffmann-La Roche's combined cycle combustion turbines, Essex County, NJ COAD approval dated May 8, 1995.

(*11*) International Flavors and Fragrances' non-utility boiler Number 5, Monmouth County, NJ COAD approval dated June 9, 1995.

(*12*) Parsippany-Troy Hills Township Sewer Authority's sewage sludge incinerators, Morris County, NJ COAD approval dated October 13, 1995.

(*13*) Johnson Matthey's multi-chamber metals recovery furnace, Gloucester County, NJ COAD approval dated June 13, 1995.

(*14*) 3M Company's rotary kiln and dryers, Somerset County, NJ COAD approval dated May 4, 1995.

(*15*) Sandoz Pharmaceuticals Corporation's trash fired boiler, Morris County, NJ COAD approval dated March 23, 1995.

(*16*) General Motors Corporation's non-utility boiler (No.4), Mercer County, NJ COAD approval dated June 22, 1995.

(*17*) General Motors Corporation's Topcoat system, Union County, NJ COAD approval dated November 6, 1995.

(*18*) United States Pipe and Foundry Company's cupolas and annealing ovens (No. 2 and No. 3), Burlington County, NJ COAD approval dated October 16, 1995.

(*19*) Griffin Pipe Products Company's cupola and annealing furnace, Burlington County, NJ COAD approval dated December 14, 1995.

(*20*) Texas Eastern Transmission Corporation's internal combustion engines, Hunterdon County, NJ COAD approval dated May 9, 1995.

(*21*) Texas Eastern Transmission Corporation's internal combustion engines, Union County, NJ COAD approval dated May 9, 1995.

(ii) Additional information—Documentation and information to support NO_x RACT facility-specific emission limits or alternative emission limits in four letters addressed to Regional Administrator Jeanne M. Fox from New Jersey Commissioner Robert C. Shinn, Jr. dated:

(A) May 26, 1995 for two SIP revisions;

(B) November 8, 1995 for eight SIP revisions;

(C) January 10, 1996 for ten SIP revisions; and

(D) October 10, 1996 for two SIP revisions.

[FR Doc. 97–1073 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[CO–001–0008(a); FRL–5660–9]

Approval and Promulgation of Air Quality Implementation Plans; Colorado: Enhanced Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving an enhanced vehicle inspection and maintenance (I/M) State Implementation Plan (SIP) revision submitted by Roy Romer, Governor of Colorado, on September 29, 1995. This revision fulfills the Governor's commitment to adopt final regulations to limit dealership self-testing, allowing EPA to convert Colorado's prior conditional approval to a full approval for the enhanced I/M SIP revisions which established and require the implementation of an enhanced motor vehicle inspection and maintenance (I/M) program in the Denver and Boulder urbanized area. This action is being taken under Section 110 of the Clean Air Act (CAA).

DATES: This action is effective on March 18, 1997 unless adverse or critical comments are received by February 18, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to Richard R. Long, Director, Air Programs, USEPA Region VIII (P2–A), 999 18th Street—Suite 500, Denver, Colorado 80202–2466. Copies of the documents relevant to this action are available for public inspection during normal business hours at the above address. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Scott P. Lee, at (303) 312–6736 or via e-mail at lee.scott@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the EPA Region VIII address above.

I. Background

On November 8, 1994, EPA published a rulemaking (59 FR 55584) conditionally approving an enhanced vehicle I/M program for the Denver and Boulder urbanized areas. The conditional approval was based on the State's commitment to adopt final regulations limiting dealership self-testing as required by EPA's I/M Rule (40 CFR part 51, subpart S). EPA limits self-testing to ensure all vehicles receive a proper independent inspection on a regular interval. The State was required to adopt this regulation revision within one year of final conditional approval. On September 22, 1994, the State adopted a replacement regulation, Colorado Regulation No. 11 (5 CCR 1001–13) satisfying the State's commitment to limit dealership self-testing, and on September 29, 1995, forwarded it to EPA to be acted upon.

II. EPA'S Analysis of Colorado's Submittal

As detailed in the Governor's September 29, 1995 letter, the State held a properly noticed public hearing regarding the revised enhanced I/M regulation on September 22, 1994. EPA found the Governor's submittal to be administratively complete on November 30, 1995.

The September 29, 1995, submittal included: Colorado Air Quality Control Commission (AQCC) Regulation Number 11, Motor Vehicle Emissions Inspection Program (5 CCR 1001–13), adopted on September 22, 1994, and effective on November 30, 1994. This replacement Regulation No. 11 limits dealer self-testing to non-consecutive test-cycles as required by EPA's I/M Rule (40 CFR Part 51, Subpart S), and fulfills the State's commitment allowing EPA to fully approve Colorado's program.

In addition to the dealer self-testing provisions, the AQCC adopted minor revisions to the inspection equipment technical specifications. These revisions are technical corrections not considered to be substantive changes impacting the approvability of the program.

III. Action

EPA is fully approving the Colorado enhanced motor vehicle I/M SIP revision as submitted by Governor Romer on September 29, 1995. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective March 18, 1997 unless, by February 18, 1997, adverse or critical comments are received.

If the EPA receives such comments, EPA will publish a subsequent document withdrawing this final action before its final effective date. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective March 18, 1997.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, 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, 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 EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated 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. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

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).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 18, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: November 20, 1996.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

Part 52, Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows: Authority: 42 U.S.C. 7401–7671q.

2. Section 52.320 is amended by adding paragraph (73) to read as follows:

SUBPART G—COLORADO

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(77) On September 29, 1995, Roy Romer, the Governor of Colorado, submitted a SIP revision to the State Implementation Plan for the Control of Air Pollution. This revision provides a replacement Regulation No. 11, Inspection/Maintenance Program which limits dealer self-testing. This material is being incorporated by reference for the enforcement of Colorado's I/M program.

(i) Incorporation by reference.

(A) Department of Health, Air Quality Control Commission, Regulation No. 11 (Motor Vehicle Emissions Inspection Program) as adopted by the Colorado Air Quality Control Commission (AQCC) on September 22, 1994, effective November 30, 1994.

[FR Doc. 97–1075 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[FL–68–2–9640a; FRL–5662–1]

Approval and Promulgation of Implementation Plans State: Approval of Revisions to the State of Florida State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Florida State Implementation Plan (SIP) to allow the State air pollution control agency to utilize exclusionary rules via general permits for the purpose of limiting potential to emit (PTE) criteria pollutants for certain source categories to less than the title V permitting major source thresholds. EPA is also approving under section 112(l) of the Clean Air Act (CAA) the same source-categories of the submitted regulations for limiting PTE of hazardous air pollutants (HAP) to less than title V permitting major source thresholds. These exclusionary rules allow facilities to compute potential emissions based on actual emissions or raw material usage for the following source categories: Asphalt concrete plants, bulk gasoline plants, emergency generators, surface coating operations, heating units and general purpose internal combustion engines, polyester resin plastic products, cast polymer operations; and mercury reclamation and recovery operations. On April 15, 1996, the State of Florida through the Department of Environmental Protection (DEP) submitted a SIP revision fulfilling the requirements necessary to utilize exclusionary rules to limit PTE of air pollutants in a federally enforceable manner. On August 6, 1996, the State of Florida submitted updates to the earlier submittal which also fulfill the requirements necessary to utilize exclusionary rules to limit PTE in a federally enforceable manner.

DATES: This final rule is effective March 18, 1997 unless adverse or critical comments are received by February 18, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments on this action should be addressed to Scott Miller at the Environmental Protection Agency, Region 4 Air Planning Branch, 100 Alabama Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file FL–68–2–9640. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 100 Alabama Street, SW, Atlanta, Georgia 30303. Scott Miller, 404/562–9120.

Florida Department of Environmental Protection, Division of Air Resources Management, 2600 Blair Stone Road, MS 5500, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Scott Miller at 404/562–9120.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

On April 15, 1996, the State of Florida through the DEP submitted a SIP revision designed to allow the agency to utilize exclusionary rules for the purpose of limiting PTE for asphalt concrete plants, bulk gasoline plants, emergency generators, surface coating operations, heating units and general purpose internal combustion engines, polyester resin plastic products, cast polymer operations, and mercury reclamation and recovery operations. On August 6, 1996, the State of Florida submitted updates to the earlier submittal which also fulfill the requirements necessary to utilize exclusionary rules to limit PTE in a federally enforceable manner. Exclusionary rules are designed to create federally enforceable limits on a facility's PTE in a manner that does not require a facility-specific evaluation of emissions and limiting conditions. As such, exclusionary rules are appropriate for the purpose of limiting PTE when a facility has one type of emission source. EPA is approving all source-category rules found at Florida Administrative Code (F.A.C.) at 62–210.300(3)(c) and 62–210.300(4), submitted for purposes of limiting PTE for criteria pollutants into the SIP. The DEP is implementing these exclusionary rules found at 62–210.300(3)(c) through general permitting regulations found at 62–210.300(4). EPA is also approving under section 112(l) of the CAA, the regulations found in the F.A.C. 62–210.300(3)(c) and 62–210.300(4) for purposes of limiting PTE of HAP. For a description of this and other ways to limit PTE for a facility see the EPA guidance document entitled ''Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)'' dated January 25, 1995, from John Seitz to the EPA Regional Air Division Directors.

These rules which set out specific conditions for a facility to limit its PTE were designed to meet criteria listed in the EPA guidance memorandum entitled ''Guidance for State Rules for Optional Federally Enforceable Emissions Limits Based on Volatile Organic Compound Use'' dated October 15, 1993, from D. Kent Barry to the EPA Regional Air Division Directors, an EPA guidance document entitled ''Approaches to Creating Federally-Enforceable Emissions Limits'' dated November 3, 1993, and the January 25, 1995, guidance memorandum referenced above. These guidance documents set out specific guidelines for exclusionary rule development regarding applicability, compliance determination and certification, monitoring, reporting, record keeping, public involvement, practical enforceability, and the requirement that a facility cannot rely on emission limits or caps contained in a exclusionary rule to justify violation of any rate-based emission limits or other applicable requirements.

These regulations apply to facilities which agree to limit their annual emissions to less than major source thresholds for criteria and/or HAP emissions. A rule which sets out the operating parameters must also provide that a facility owner or operator specifically apply for coverage under the exclusionary rule. F.A.C. Regulations 62–210.300(3)(c) and 62–210.300(4) provide that the exclusionary rules are for certain source categories to define and limit their potential emissions to less than major source levels for title V purposes. The source categories covered by the exclusionary rules are asphalt concrete plants, bulk gasoline plants, emergency generators, surface coating operations, heating units and general purpose internal combustion engines, polyester resin plastic products, cast polymer operations, and mercury reclamation and recovery operations. F.A.C. Regulation 62–210.300(3)(c) provides that even though a facility is exempted from obtaining a title V permit by complying with these exclusionary rules, it is still required to obtain a general permit. As such, these regulations meet the guidelines specified in the October 15, 1993, and the January 25, 1995, guidance documents that require an exclusionary rule to clearly identify the category of sources that qualify for the rule's coverage.

The October 15, 1993, and the January 25, 1995, guidance documents suggest that facilities be required to show compliance with the exclusionary rule on a yearly basis by requiring monthly record keeping of the relevant variable causing emissions and showing compliance using the monthly record of the relevant variable affecting emissions. The January 25, 1995, guidance document stipulates that where monitoring cannot be used to determine emissions directly, limits on appropriate operating parameters must be established for the units or source, and monitoring must verify compliance with those limits. In the case of the Florida exclusionary rule regulations, a facility is required to keep records of the use of or processing of a product or substance that produces the emissions. For instance, F.A.C. Regulation 62–210.300(3)(c)1.g requires concrete asphalt facilities to keep monthly and twelve-month rolling total records of asphaltic concrete produced, gallons of fuel oil consumed and the hours of operation. The asphalt concrete facility must then show compliance with the 500,000 ton per any consecutive twelve-month period, fuel-oil consumption records that show that no more than 1.2 million gallons are combusted in any consecutive twelve-month period, and that fuel-oil sulfur content is less than or equal to 1 percent sulfur as determined by ASTM methods ASTM D4057–88, D129–91, D2622–94, or D4294–90. Finally, a concrete asphalt facility must keep records of its operating hours to show that operating hours do not exceed 4000 hours in any consecutive twelve-month period. EPA believes that the exclusionary rules submitted by the DEP meet the guidelines outlined in the October 15, 1993, and January 25, 1995, guidance documents for purposes of detailing specific compliance monitoring to show compliance with the relevant exclusionary rule limit.

The October 15, 1993, guidance document recommends that all submittals that result from exclusionary rules be certified for truth, accuracy, and completeness. Each facility which chooses to be covered by an exclusionary rule submitted by the DEP must make submissions which are certified by the appropriate official as defined under the Air General Permit Notification Form. For instance, F.A.C. Regulation 62–210.300(3)(c)1.j requires concrete asphalt facilities to submit a notification to DEP that certifies that the facility is operating in compliance with the exclusionary rule to which it is subject. In addition, the facility must also certify that it will continue to operate in compliance with the exclusionary rule to which it is subject. EPA believes that the DEP exclusionary rules meet the requirements of the October 15, 1993, guidance document for purposes of certifying compliance with the exclusionary rule to which a facility is subject.

The October 15, 1993, guidance document recommends that reporting requirements should vary based on how close the facility emissions are to the relevant major source threshold. For facilities with emissions that are close to the major source threshold, the guidance recommends that a state or local air pollution control agency require more frequent reporting of the variable affecting emissions (e.g., gasoline throughput). In lieu of requiring facilities to report emissions to DEP, DEP requires the facility to

maintain records for a period of five years from their origination. These records are required to be readily available for submission or inspection on-site. In addition, the DEP has committed to inspect ten percent of facilities subject to an exclusionary rule every year. While the rules submitted by the DEP do not match recommended guidelines found in the October 15, 1993, guidance document for reporting requirements, the EPA believes that the DEP inspections of subject facilities, along with the above mentioned record keeping requirements, are sufficient to ensure compliance by subject facilities.

The October 15, 1993, and the January 25, 1995, guidance documents specify that record keeping is required by a facility to show that the facility is eligible for the exclusionary rule and that the facility is in compliance with the relevant exclusionary rule. The October 15, 1993, guidance document requires that record keeping shall be maintained on site and available to the permitting authority upon demand. The October 15, 1993, guidance document also requires that a facility be required to retain records for a period sufficient to support enforcement efforts. The DEP regulations require that copies of all records required to be kept for exclusionary rule purposes be kept on site and be available to each agency on demand. The exclusionary rules submitted by DEP require that records be kept for a period of five years from the date the records are originated. EPA believes that a five year time period is an adequate time period for a facility subject to an exclusionary rule to maintain records in order to support enforcement efforts.

The November 3, 1993, and the January 25, 1995, guidance documents set out requirements for public involvement in the development and application of exclusionary rules. The November 3, 1993, guidance document states that if exclusionary rules are sufficiently reliable and replicable, EPA and the public need not be involved with their application to individual sources, as long as the protocols themselves have been subject to notice and opportunity to comment and have been approved by EPA into the SIP. The January 25, 1995, guidance document provides that source-category standards approved into the SIP or under section 112(l) of the CAA, if enforceable as a practical matter, can be used as federally enforceable limits on PTE. Once a specific source qualifies under the applicability requirements of the source-category rule, additional public participation is not required to make the limits federally enforceable as a matter of legal sufficiency since the rule itself underwent public participation and EPA review. The DEP general permit exclusionary rules underwent public participation at the State level when these rules were made State-effective by the DEP. EPA has had an opportunity to review these regulations and is publishing this document to take comment on these regulations at the national level. Later in this Federal Register document, practical enforceability of DEP's exclusionary rules will be addressed. EPA believes that, with this Federal Register document and other public process received at the State and local level, the DEP exclusionary rules satisfy requirements for public participation outlined in the November 3, 1993, and the January 25, 1995, guidance documents.

The January 25, 1995, guidance document sets out requirements for exclusionary rule conditions to be practically enforceable. These requirements stem from past precedence in what the EPA has required for a permit to be considered enforceable as a practical matter. See 54 FR 27274 (June 28, 1989) and a June 13, 1989, EPA policy memorandum entitled ''Limiting Potential to Emit in New Source Permitting.'' The criteria include clear statements as to the applicability, specificity as to the standard that must be met, explicit statements of the compliance time frames (e.g., hourly, daily, monthly, or 12-month averages, etc.), that the time frame and method of compliance employed must be sufficient to protect the standard involved, record keeping requirements must be specified, and equivalency provisions must meet specific requirements. In general, practical enforceability means that the provision must specify; (1) A technically accurate limitation and the portions of the source subject to the limitation; (2) the time period for the limitation; and (3) the method to determine compliance including appropriate monitoring, record keeping, and reporting. All of these elements have been discussed prior to this paragraph in this Federal Register with the exception of (2) above. The DEP regulations require facilities subject to the exclusionary rule to keep records on a monthly basis and to determine compliance with a yearly limit on a calendar monthly rolling average basis. This method for determining compliance with the exclusionary rule limitation was addressed specifically as one practically enforceable way to show compliance with a permit limit in the June 13, 1989, guidance document entitled ''Limiting Potential to Emit in New Source Permitting.'' As such, EPA believes the DEP general permit exclusionary rule regulations meet the requirements necessary for exclusionary rules to be enforceable as a practical matter.

Finally, the October 15, 1993, guidance document stipulates that a facility cannot rely on emission limits or caps contained in a exclusionary rule to justify violation of any rate-based emission limits or other applicable requirements. This requirement is reflected by the fact that exclusionary rules are carried out through general permits. These general permits contain other requirements to which a facility is subject. Since the general permit will include all requirements to which a facility is subject, it follows that the exclusionary rules contained in the general permit cannot be used to override other requirements found in the permit. Therefore, EPA believes that the DEP exclusionary rules meet the requirements listed in the October 15, 1993, guidance document regarding the use of an exclusionary rule cap to justify violation of any rate-based emission limit or other applicable requirements.

Eligibility for federally enforceable exclusionary rule certifications extends not only to certifications made after the effective date of this rule, but also to certifications issued under the State rule prior to the effective date of this rulemaking. If the State agency followed its own regulation, it received exclusionary rule certifications that established a limiting condition on a facility's PTE. EPA will consider all such exclusionary rule certifications which were submitted in a manner consistent with the State agency regulations as federally enforceable upon the effective date of this action.

II. Final Action

In this action, the EPA is approving the State of Florida exclusionary rules and general permit regulations found at FAC Regulation 62–210.300(3)(c) and 62–210.300(4) into the Florida SIP. The EPA is approving Florida regulations FAC Regulation 62–210.300(3)(c) and 62–210.300(4) for purposes of limiting PTE of HAP under section 112(l) of the CAA. The EPA is publishing this document without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective March 18, 1997 unless, by February 18, 1997,

adverse or critical comments are received. If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective March 18, 1997.

EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. EPA has determined that this action conforms with those requirements.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this action from review under Executive Order 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. Section 7410(a)(2).

C. Unfunded Mandates Reform Act of 1995

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, 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, 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 EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the final action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

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).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 18, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Sulfur oxides.

Dated: August 29, 1996.

R. F. McGhee,

Acting, Regional Administrator.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart K—Florida

2. Section 52.520, paragraph (c) is amended by adding paragraph (97) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(97) General permit rules and exclusionary rules for the State of Florida Department of Environmental Protection submitted by the Florida Department of Environmental Protection as part of the Florida SIP.

(i) Incorporation by reference.

(A) Florida Administrative Code Regulation 62–210.300(3)(c) and 62–210.300(4) of the Florida SIP as adopted by the Secretary of the Florida Department of Environmental Protection on July 26, 1996 and which became effective on August 15, 1996.

(ii) Other material. None.

[FR Doc. 96–1077 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[IN64–1a; FRL–5662–7]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On November 21, 1995, the State of Indiana submitted to EPA a rule for control of Non-Methane Organic Compounds (NMOC) emissions from municipal solid waste (MSW) landfills in Clark, Floyd, Lake, and Porter Counties, as a requested revision to the ozone State Implementation Plan (SIP). This rule is part of the State's 15 percent (%) Rate of Progress (ROP) plan to control Volatile Organic Compound (VOC) emissions in Clark and Floyd Counties, and is included in the VOC contingency plan for Lake and Porter Counties. Emissions of VOC react with nitrogen oxides in sunlight to form ground-level ozone, commonly known as smog. Exposure to high ozone concentrations causes respiratory irritation, especially to children, seniors, and people with asthma and other respiratory problems. Indiana expects that the control measures specified in this MSW landfills SIP will reduce VOC emissions by 1,132 pounds per day (lbs/day) in Lake and Porter Counties and 345 lbs/day in Clark and Floyd Counties. In this action, EPA is approving Indiana's rule as a direct final action; the rationale for this approval is set forth below. Elsewhere in this Federal Register, EPA is proposing approval and soliciting comment on this direct final action; if adverse comments are received, EPA will withdraw the direct final and address the comments received in a new final rule. Unless this direct final is withdrawn, no further rulemaking will occur on this requested SIP revision.

DATES: The ''direct final'' is effective on March 18, 1997, unless EPA receives adverse or critical comments by February 18, 1997. If the effective date is delayed, timely notification will be published in the Federal Register.

ADDRESSES: Copies of the revision request are available for inspection at the following address: Environmental Protection Agency, Region 5, Air and Radiation Division, Air Programs Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Francisco J. Acevedo at (312) 886–6082 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo at (312) 886–6061.

SUPPLEMENTARY INFORMATION:

I. Submittal Background

Section 182(b)(1) of the Clean Air Act (the Act) requires all moderate and above ozone nonattainment areas to achieve a 15% reduction of 1990 emissions of VOC by November 15, 1996. In Indiana, Lake and Porter Counties are classified as ''severe'' nonattainment for ozone, while Clark and Floyd Counties are classified as ''moderate'' nonattainment. As such, these counties are subject to the 15% ROP requirement.

The Act specifies under section 182(b)(1)(C) that the 15% emission reduction claimed under the ROP plan must be achieved through the implementation of control measures through revisions to the SIP, the promulgation of federal rules, or the issuance of permits under Title V of the Act, by November 15, 1996. Control measures implemented before November 15, 1990, are precluded from counting toward the 15% reduction.

In addition, section 172(c)(9) requires moderate areas to adopt contingency measures by November 15, 1993. The *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990* (April 28, 1992, 57 FR at 18070), states that the contingency measures generally must provide reductions of 3% from the 1990 base-year inventory. While all contingency measures must be fully adopted rules or measures, the State can use these measures in two different ways. First, the State can use its discretion to implement a measure it wants before 1996. Alternatively, the State may decide not to implement a measure until the area has failed to either meet the 15% ROP requirement or attain the national ambient air quality standards. In that situation, the reductions must be achieved in the year following that in which the failure has been identified by the State.

On November 21, 1995, and February 14, 1996, Indiana submitted 326 IAC 8–8 as its MSW landfill rules for the control of NMOC, which include VOCs and hazardous air pollutants, as a requested revision to the ozone SIP. This rule establishes emission standards and guidelines which require certain MSW landfills to control emissions from landfills by installing a landfill gas collection and control system that either incinerates or recovers the gas. This rule is intended to be part of the 15% ROP plan for Clark and Floyd Counties, as well as included in the contingency plan for Lake and Porter Counties. (Rulemaking on the overall Clark and Floyd Counties 15% ROP plan and Lake and Porter Counties contingency plan SIP revisions will be taken in a subsequent Federal Register action).

On July 12, 1995, the Indiana Air Pollution Control Board (IAPCB) adopted the MSW landfill rule. Public hearings on the rule were held on October 5, 1994 and July 12, 1995, in Indianapolis, Indiana. The rule was filed with the Secretary of State on December 19, 1995, and became effective on January 18, 1996; it was published in the Indiana State Register on February 1, 1996. The IDEM formally submitted the MSW landfill rule to EPA on November 21, 1995, as a revision to the Indiana SIP for ozone; supplemental documentation to this revision was submitted on February 14, 1996. EPA made a finding of completeness of the SIP submittals in a letter dated February 23, 1996.

The November 21, 1995, and February 14, 1996, submittals include the following rules:

326 Indiana Air Code (IAC) 8–8 Municipal Solid Waste Landfills

(1) Applicability
(2) Definitions
(3) Requirements; incorporation by reference of federal standards
(4) Compliance deadlines

The rule establishes NMOC control requirements for new and existing municipal solid waste landfills in Clark, Floyd, Lake, and Porter Counties. Indiana generally based its rules upon EPA's proposed MSW Landfill Standards of Performance for New Stationary Sources (NSPS) and Guidelines for Control of Existing Sources (EG), published in the Federal Register on May 30, 1991 (56 FR 24468).

II. Evaluation of Submittal

As previously discussed, Indiana intends that this MSW Landfill SIP revision submittal will be one of the control measures under 15% ROP plan for Clark and Floyd Counties, and included in the contingency plan for Lake and Porter Counties. A review of what emission reduction this SIP achieves for purposes of the Indiana 15% ROP plan will be addressed when EPA takes rulemaking action on the Clark and Floyd Counties 15% ROP plan and Lake and Porter Counties contingency plan SIPs. (EPA will take rulemaking on these plans in a subsequent rulemaking action).

To determine the approvability of the Indiana MSW landfills SIP, the rule was reviewed for its consistency with the Act, including EPA's proposed and final MSW landfill rules published in the Federal Register on March 12, 1996 (61 FR 9905). A summary of the rule and discussion of EPA's analysis follows. For the complete requirements of this SIP revision, interested parties should see the 326 IAC 8–8 rule.

a. Applicability

The rule's applicability criteria in section 1 provide that new and existing MSW landfills located in the subject counties are subject to the requirements of this rule if such operations emit greater than fifty-five (55) tons per day of non-methane organic compound, or if such landfills have a minimum design capacity of one hundred eleven thousand (111,000) tons (one hundred thousand (100,000) megagrams (Mg)) of solid waste.

For purposes of this rule, ''Existing municipal solid waste (MSW) landfill'' is defined in section 2(c) to mean an existing MSW landfill that has accepted waste since November 8, 1987, or that has capacity available for future use and for which construction commenced prior to the effective date of the State rule (January 18, 1996). It may be active, which means it either is currently accepting waste, or it is having additional capacity to accept waste. Or, an existing landfill may be closed, which means it is no longer accepting waste or it does not have available capacity for future waste deposition. ''New MSW landfill'' is defined in section 2(d) to mean a landfill for which construction, modification, or reconstruction commences on or after the effective date of the State rule.

The applicability criteria in section 1 clearly indicate the industry and activities subject to the rule. The rule's applicability criteria therefore, are approvable.

b. Definitions

The rule's definitions are found in section 2 of the State rule. Section 2(a) states that, for purpose of the State landfill rule, the definitions listed in EPA's proposed rule (56 FR 24468, May 30, 1991) shall apply. The only exemptions to the above is the definition of ''Administrator'' and ''U.S. Environmental Protection Agency''. Section 2(b)(1) defines ''Administrator'' as the commissioner of IDEM, and ''U.S. EPA'' as the IDEM for the purpose of this rule. The only other definitions listed in this section are ''Existing municipal solid waste (MSW) landfill'' and ''New MSW landfill''. Both definitions are discussed above in the applicability section. The definition section accurately describes the MSW Landfill industry and therefore, is approvable.

c. Compliance Dates

Section 4 of the Indiana MSW landfill rule requires that landfills meeting the requirements of this rule shall comply with section 3 of the rule by no later than May 1, 1996.

d. Compliance Procedures, Record Keeping, and Reporting

In Section 3(a) of the Indiana rule, the State air pollution control board has incorporated by reference the following provisions from EPA's May 30, 1991, proposed New Source Performance Standard (NSPS) and Emission Guideline (EG) for MSW landfills: (1) Standards for air emissions from MSW landfills; (2) Test methods and procedures; (3) Compliance provisions; (4) Monitoring operations; (5) Reporting requirements; (6) Record-keeping requirements; and (7) Design specifications for active vertical collection systems. (In addition to the above provisions, Indiana needs to submit additional rulemaking by December 12, 1996, to address subsequent requirements contained in EPA's final MSW Landfill rule published March 12, 1996, in the Federal Register, regarding statewide control of emissions from certain MSW landfill sources.)

Section 3(b) of the State rule explains that all changes to MSW landfills made under this rule constitute minor modifications under IDEM's solid waste permitting program and must be made in accordance with the minor permit modification requirements under 329 IAC 2–8–11 and the applicable fees as specified in IC 13–7–16.1–2(g). Compliance with the requirements of this rule is also subject to the provisions of 326 IAC 2–1, Air Permitting Rules.

III. Final Action

Based upon the analysis above, the EPA finds that Indiana's rule covering MSW landfill operations, 326 IAC 8–8, as submitted on November 21, 1995, and February 14, 1996, is consistent with Federal requirements. EPA, therefore, is approving this SIP revision submittal for the Counties of Lake, Porter, Clark, and Floyd. (In addition to the rule approved by this action, Indiana will need to submit additional rules, by December 12, 1996, to address subsequent requirements contained in EPA's final MSW Landfill rule published March 12, 1996, in the Federal Register, regarding control of emissions from such sources in other counties statewide.)

The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on March 18, 1997 unless, by February 18, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent rulemaking that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on March 18, 1997.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities

with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with 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. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

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).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 18, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: November 25, 1996.

Valdas V. Adamkus,

Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.770 is amended by adding paragraph (c)(110) to read as follows:

§ 52.770 Identification of Plan.

* * * * *

(c)* * *

(110) On November 21, 1995, and February 14, 1996, Indiana submitted Municipal Solid Waste (MSW) Landfill rules for Clark, Floyd, Lake, and Porter Counties as a revision to the State Implementation Plan. This rule requires MSW landfills that emit greater than fifty-five tons per day of non-methane organic compound, or that have a minimum design capacity of one hundred eleven thousand tons (one hundred thousand megagrams) of solid waste, to install a landfill gas collection and control system that either incinerates the gas or recovers the gas for energy use.

(i) *Incorporation by reference.* 326 Indiana Administrative Code 8–8 Municipal Solid Waste Landfills, Section 1 Applicability, Section 2 Definitions, Section 3 Requirements; incorporation by reference of federal standards, Section 4 Compliance deadlines. Adopted by the Indiana Air Pollution Control Board July 12, 1995. Filed with the Secretary of State December 19, 1995. Published at Indiana Register, Volume 19, Number 5, February 1, 1996. Effective January 18, 1996.

[FR Doc. 97–1080 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[IN63–1a; FRL–5663–1]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On November 21, 1995, and February 14, 1996, the State of Indiana submitted rules for the control of volatile organic liquid (VOL) storage operations in Clark, Floyd, Lake, and Porter Counties as a requested State Implementation Plan (SIP) revision. This rule is part of the State's 15 percent (%) Rate of Progress (ROP) plan to control Volatile Organic Compounds (VOC) emissions in Clark and Floyd Counties, and is included in the VOC contingency plan for Lake and Porter Counties. In addition, this rule is intended to satisfy Clean Air Act (Act) requirements to adopt VOC Reasonably Available Control Technology (RACT) rules for non-Control Techniques Guidelines (CTG) sources in Clark, Floyd, Lake, and Porter Counties. Emissions of VOC react with nitrogen oxides in sunlight to form ground-level ozone, commonly known as smog. Exposure to high ozone concentrations causes respiratory irritation, especially to children, seniors, and people with asthma and other respiratory problems. Indiana expects that the control measures specified in this VOL storage SIP will reduce VOC emissions by 2,620 pounds per day (lbs/day) in Lake and Porter Counties and 142 lbs/day in Clark and Floyd Counties. In this action, EPA is approving Indiana's rule as a direct final action; the rationale for this approval is set forth below. Elsewhere in this Federal Register, EPA is proposing approval and soliciting comment on this direct final action; if adverse comments are received, EPA will withdraw the direct final and address the comments received in a new final rule. Unless this direct final is withdrawn, no further rulemaking will occur on this requested SIP revision.

DATES: This final rule is effective March 18, 1997 unless adverse comments are received by February 18, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments can be mailed to:

J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Air and Radiation Division, U.S. Environmental

Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.
Copies of the SIP revision request are available for inspection at the following address: (It is recommended that you telephone Mark J. Palermo at (312) 886–6082, before visiting the Region 5 office.)
U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Air Programs Branch (AR–18J) (312) 886–6082.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b)(1) of the Act requires all moderate and above ozone nonattainment areas to achieve a 15% reduction of 1990 emissions of VOC by November 15, 1996. In Indiana, Lake and Porter Counties are classified as ''severe'' nonattainment for ozone, while Clark and Floyd Counties are classified as ''moderate'' nonattainment. As such, these counties are subject to the 15% ROP requirement.

The Act specifies under section 182(b)(1)(C) that the 15% emission reduction claimed under the ROP plan must be achieved through the implementation of control measures through revisions to the SIP, the promulgation of federal rules, or the issuance of permits under Title V of the Act, by November 15, 1996. Control measures implemented before November 15, 1990, are precluded from counting toward the 15% reduction.

In addition, section 172(c)(9) requires moderate and above areas to adopt contingency measures by November 15, 1993. The General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (April 28, 1992, 57 FR at 18070), states that the contingency measures generally must provide reductions of 3% from the 1990 base-year inventory. While all contingency measures must be fully adopted rules or measures, the State can use these measures in two different ways. First, the State can use its discretion to implement a measure it wants before 1996. Alternatively, the State may decide not to implement a measure until the area has failed to either meet the 15% ROP requirement or attain the national ambient air quality standards. In that situation, the reductions must be achieved in the year following that in which the failure has been identified by the State.

Besides ROP and contingency plan requirements, section 182(b)(2) of the Act requires States to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above.[1] There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG—i.e., a CTG issued prior to the enactment of the amended Act of 1990; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG.[2]

Section 183 of the amended Act requires EPA to issue post-enactment CTGs for thirteen source categories. CTGs were published by this date for four source categories—Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactors, SOCMI Distillation, Wood Furniture Coating, and Shipbuilding and Ship Repair Coating; however, the CTGs for the remaining source categories have not been completed. To address State requirements regarding post-enactment CTG source categories for which a CTG has not yet been published, the EPA created a CTG document as Appendix E to the General Preamble. In Appendix E, EPA interpreted the Act to allow a State to submit a non-CTG rule by November 15, 1992, or to defer submittal of a RACT rule for sources that the State anticipated would be covered by a post-enactment CTG, based on the list of CTGs EPA expected to issue to meet the requirement in section 183 of the Act. One of the expected CTGs included on this list was to cover VOL storage tanks. Appendix E states that if EPA fails to issue CTGs for any of the post-enactment CTG source categories by November 15, 1993, the responsibility shifts to the State to submit a non-CTG RACT rule for those source categories.

In October 1993, EPA issued a draft CTG for VOL storage tanks. However, EPA decided not to finalize the CTG and, instead, issued in January 1994, a document entitled ''Alternative Control Techniques (ACT) Document: Volatile Organic Liquid Storage in Floating and Fixed Roof Tanks'', to assist states in developing rules for controlling emissions from VOL storage. In addition, EPA has adopted a New Source Performance Standard (NSPS) for VOL storage operations in 40 CFR 60, subpart Kb, which contains the same level of control identified in the draft CTG and ACT. Both the draft CTG and the ACT contain a draft model rule for use by the States in developing the SIP revisions.

To comply with 15% ROP plan, contingency measure, and non-CTG RACT requirements, Indiana has submitted, as a requested revision to the SIP, Rule 326 IAC 8–9 for the control of VOL storage operations in Lake, Porter, Clark, and Floyd Counties. The rule is included as a control measure in the 15% ROP plan for Clark and Floyd Counties and is included as a contingency measure for Lake and Porter Counties' contingency plan. (Rulemaking on the overall Clark and Floyd Counties 15% ROP plan and Lake and Porter Counties contingency plan SIP revisions will be taken in a subsequent Federal Register action).

On May 3, 1995, the Indiana Air Pollution Control Board adopted the VOL storage rule. Public hearings on the rule were held on March 1, 1995, and May 3, 1995, in Indianapolis, Indiana. The rule was signed by the Secretary of State on December 19, 1995, and became effective on January 18, 1996; it was published in the Indiana State Register on February 1, 1996. IDEM formally submitted the VOL storage rule to EPA on November 21, 1995, as a revision to the Indiana SIP for ozone; supplemental documentation to this revision was submitted on February 14, 1996. EPA made a finding of completeness of this submittal in a letter dated February 23, 1996.

The November 21, 1995, and February 14, 1996, submittals include the following rules:

326 IAC 8–9 Volatile Organic Liquid Storage Vessels

(1) Applicability
(2) Exemptions
(3) Definitions
(4) Standards
(5) Testing and procedures
(6) Record keeping and reporting requirements

II. Evaluation of Rule

As previously discussed, Indiana intends that this VOL storage SIP revision submittal will be one of the control measures under 15% ROP plan for Clark and Floyd Counties, and included in the contingency plan for Lake and Porter Counties. A review of what emission reduction this SIP achieves for purposes of the Indiana 15% ROP plan will be addressed when EPA takes rulemaking action on the Clark and Floyd Counties 15% ROP plan and Lake and Porter Counties contingency plan SIPs. (EPA will take

[1] A definition of RACT is cited in a General Preamble-Supplement on CTGs, published at 44 FR at 53761 (September 17, 1979). RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

[2] The EPA publishes CTGs in order to assist the States in determining RACT. The CTGs provide information on available air pollution control techniques and provide recommendations on what the EPA considers the ''presumptive norm'' for RACT.

rulemaking on these plans in a subsequent rulemaking action).

To determine the approvability of the Indiana VOL storage SIP submission, the rule was reviewed for consistency with section 110 and part D of the Act, and with EPA RACT guidance. Because there is no published CTG for VOL storage tanks at this time, EPA is using the draft model rule contained in the draft CTG and the ACT (draft model rule) to determine whether the Indiana rule constitutes RACT. Once the CTG is published, however, State VOL storage rules must achieve the CTG's stringency of control. A summary of the rule and discussion of EPA's analysis follows. For the complete requirements of this SIP revision, interested parties should see the 326 IAC 8–9 rule.

326 IAC 8–9–1 Applicability

This section establishes which VOL storage operations are subject to the rule. Beginning October 1, 1995, stationary vessels used to store VOL that are located in Clark, Floyd, Lake, and Porter Counties are subject to all of the requirements of the rule, except those vessels with a capacity of less than 39,000 gallons, a maximum true vapor pressure of less than 0.75 pounds per square inch absolute (psia), or otherwise exempted under section 2. VOL storage vessels with a capacity less than 39,000 gallons, or a maximum vapor pressure of less than 0.75 psia, however, are subject to certain record keeping and reporting requirements in section 6. These applicability criteria are consistent with applicability criteria contained in the draft model rule, and, therefore, are approvable.

326 IAC 8–9–2 Exemptions

This section exempts the following vessels from the requirements of this rule: (1) vessels at coke oven byproduct plants; (2) pressure vessels designed to operate in excess of 29.4 psia and without emissions to the atmosphere; (3) vessels that are permanently attached to mobile vehicles such as trucks, rail cars, barges, or ships; (4) vessels with a design capacity less than or equal to 420,000 gallons used for petroleum or condensate stored, processed, or treated prior to custody transfer; (5) vessels located at bulk gasoline plants; (6) storage vessels located at gasoline service stations; (7) vessels used to store beverage alcohol; and (8) stationary vessels that are subject to any provision of 40 CFR part 60, subpart Kb, New Source Performance Standard for Volatile Organic Liquid Storage. These exemption provisions are consistent with exemption provisions in the draft model rule and, therefore, are approvable.

326 IAC 8–9–3 Definitions

This section includes the following definitions to apply throughout the Indiana rule: (1) Condensate; (2) Custody transfer; (3) Fill; (4) Gasoline Service Station; (5) Maximum True Vapor Pressure; (6) Petroleum; (7) Petroleum Liquids; (8) Reid Vapor Pressure; (9) Vessel; (10) Volatile Organic Liquid; and (11) Waste. The term, ''bulk gasoline plant,'' which is used in section 2 under the rule, is already defined in section 326 IAC 1–2–7. These definitions are generally consistent with those provided in the ACT's model rule. The definition of maximum true vapor pressure specifies the use of standard reference texts such as certain American Petroleum Institute publications, AP–42, and the Chemical Rubber Company's Handbook of Chemistry and Physics, to determine the maximum true vapor pressure of VOL in a particular vessel at the highest calendar month average ambient temperature in Lake and Porter Counties, which is 73 degrees Fahrenheit, and in Clark and Floyd Counties, which is 77.7 degrees Fahrenheit. This is consistent with the option contained in the draft model rule to use standard reference texts to determine maximum true vapor pressure. The definition of maximum true vapor pressure is approvable.

326 IAC 8–9–4 Standards

Section 4(a) requires that the owner or operator of each vessel with a capacity greater than or equal to 39,000 gallons and which stores VOL with a maximum true vapor pressure greater than or equal to 0.75 psia but less than 11.1 psia shall reduce emissions in accordance with the following control requirements.

Each vessel having a permanently fixed roof is required by section 4(a)(1) to have installed on or before May 1, 1996 either: (A) an internal floating roof meeting the standards for such roofs as specified in section 4(c) of the rule; (B) a closed vent system and control device meeting the standards for such equipment as specified in section 4(d) of the rule; or (C) an equivalent emission control system resulting in equivalent emissions reductions to that obtained by installing an internal floating roof meeting the standards of section 4(c).

Each vessel having an internal floating roof is required by section 4(a)(2) to have installed either: (A) an internal floating roof meeting the standards for such roofs as specified in section 4(c) of the rule at the time of the next schedule vessel cleaning, but not later than May 1, 2006; (B) a closed vent system and control device meeting the standards for such equipment as specified in section 4(d) of the rule, on or before May 1, 1996; or (C) an equivalent emissions control system resulting in equivalent emissions reductions to that obtained by installing an internal floating roof meeting the standards of section 4(c), on or before May 1, 1996.

Each vessel having an external floating roof is required by section 4(a)(3) to be installed with either: (A) an external floating roof meeting the standards for such roofs as specified in section 4(e) of the rule at the time of the next scheduled vessel cleaning, but not later than May 1, 2006; (B) a closed vent system and control device meeting the standards for such equipment as specified in section 4(d) of the rule, on or before May 1, 1996; or (C) an equivalent emissions control system on or before May 1, 1996, resulting in equivalent emissions reductions to that which would be obtained by installing an external floating roof meeting the standards of section 4(e).

Although sections 4(a)(1)(C), 4(a)(2)(C), and 4(a)(3)(C) specify that sources may comply by using an ''equivalent control system'' to the rule's roof and sealing requirements if equivalent VOC reductions are obtained by May 1, 1996, Indiana has indicated that no sources have used that option for compliance. All sources covered under this rule, therefore, are required to meet either the applicable roof and seals requirements under sections 4(a)(1)(A), 4(a)(2)(A), and 4(a)(3)(A), or the applicable closed vent system and control device requirements under sections 4(a)(1)(B), 4(a)(2)(B), and 4(a)(3)(B). Therefore, provisions which would require alternative control methods to be subject to EPA review, which is generally required by EPA for RACT rules, is not necessary.

Section 4(b) requires that each vessel with a capacity of greater than 39,000 gallons that stores VOL with a maximum true vapor pressure greater than or equal to 11.1 psia shall equip each vessel with a closed vent and control device meeting the standards for such equipment as specified in section 4(d) of the rule.

Section 4(c) specifies that internal floating roofs be equipped with one of the following: (A) a foam or liquid-filled seal mounted in contact with the liquid; (B) two seals mounted one above the other so that each forms a continuous closure that completely covers the space between the wall of the vessel and the edge of the internal floating roof; or (C) a mechanical shoe seal that consists of

a metal sheet held vertically against the wall of the vessel by springs or weighted levers and that is connected by braces to the floating roof, with a flexible coated fabric, or envelope, spanning the annular space between the metal sheet and floating roof. Section 4(c) also requires that the internal floating roof rest or float on the liquid surface during storage of VOL, and that certain equipment be used to properly seal the various fittings of the vessel.

Section 4(d) provides that closed vent systems and control devices being used to comply with the rule meet the following specifications. The closed vent system must be designed to collect all VOC vapors and gases discharged from the vessel and operated with no detectable emission, as indicated by an instrument reading of less than 500 parts per million above background and visual inspections in accordance with the methods specified in 40 CFR 60, subpart VV, 60.485(C). The control device must be designed and operated to reduce inlet VOC emissions by 95% or greater. If a flare is used as the control device, it shall meet the specifications described in the general control device requirements in 40 CFR 60.18, General Provisions.

Section 4(e) requires that each external floating roof tank be equipped with a closure device between the wall of the storage vessel and the roof edge. The closure device is to consist of a primary seal and a secondary seal. The primary seal is required to completely cover the annular space between the edge of the floating roof and vessel wall and shall be either a liquid mounted seal or a shoe seal. The secondary seal shall completely cover the annular space between the external floating roof and the wall of the vessel in a continuous fashion. Section 4(e) also requires that the external floating roof rest or float on the liquid surface during storage of VOL, and that certain equipment be used to properly seal the various fittings of the vessel.

The control requirements contained for fixed roof tanks, internal floating roof tanks, external floating roof tanks, and closed vent systems and control devices in section 4 (a) through (e) are generally consistent with the draft model rule, and, therefore, are approvable.

326 IAC 8–9–5 Testing and Procedures

This section provides the test methods which are to be used to determine compliance with the rule, which consists of visual inspection methods for the internal or external floating roof and the various seals required for each type of roof. This section also indicates the various frequencies by which these inspections are to be conducted, depending on the type of seals used. In addition, section 5 specifies the time frame by which any defects found by a visual inspection must be addressed. Furthermore, this section requires that IDEM be notified at least 30 days in advance so that the agency can have the opportunity to have an observer present. As for VOL storage operations which are complying by means of a closed vent system and control device, the owner or operator must submit to IDEM before January 1, 1996, an operating plan containing documentation demonstrating that the control device will achieve the required control efficiency during maximum loading conditions, and a description of the parameter or parameters to be monitored to ensure the control device will be operated in conformance with its design. Affected sources must operate the closed vent system and control device and monitor the control devices' parameters in accordance with the operating plan unless the plan is revised by IDEM. Those sources complying through means of a closed vent system and flare shall meet the requirements specified in the general control device requirements in 40 CFR 60.18(e) and 40 CFR 60.18(f). These testing requirements are generally consistent with test methods expressed in the draft model rule, and, therefore, are approvable.

326 IAC 8–9–6 Recordkeeping and Reporting Requirements

The Indiana rule establishes certain recordkeeping and reporting requirements under section 6 which took effect when the rule took effect in October 1, 1995 (as provided under section 1 of the rule). Section 6(a) requires that records be kept for at least 3 years unless specified otherwise. Section 6(b) requires subject sources to maintain a record for the life of each affected vessel and report to IDEM the vessel's identification number, dimensions, capacity, and a description of the vessel's emission control equipment, or schedule for the installation of such equipment, with a certification that the equipment meets the applicable standards. Sources must also, under section 6(c)and 6(d), keep for at least 3 years records of the visual inspection conducted, any required measurements taken, and action taken to address defects, and report to IDEM within 30 days any defects found and the date and action taken to address defects.

Those sources complying through means of a closed vent system with a control device must, under section 6(e), maintain a record of the operating plan and parameter values monitored. Those sources complying through means of a closed vent system with a flare must furnish a report containing required measurements within 6 months of the initial start-up date, and a semiannual report of all periods recorded under section 40 CFR 60.115 in which the pilot flame was absent.

Section 6(g) requires VOL storage vessels with a design capacity greater than 39,000 gallons storing a VOL with a maximum true vapor pressure greater than or equal to 0.5 psia but less than 0.75 psia to maintain a daily record of the maximum true vapor pressure of the VOL stored in the vessel. Section 6(h) requires vessels with a design capacity greater than 39,000 gallons storing a VOL with a maximum true vapor pressure less than 0.75 psia to maintain a record and notify IDEM within 30 days when the maximum true vapor pressure of the VOL exceeds 0.75 psia. Vessels equipped with a closed vent system and control device are exempt from subsection (g) and (h), as provided under subsection (f).

Section 6(i) contains procedures for determining the maximum true vapor pressure. Section 6(j) requires certain monitoring requirements for vessels storing a waste mixture of indeterminate or variable composition. These record keeping and reporting requirements are consistent with those provided under the draft model rule, and, therefore, are approvable.

III. Final Action

Based upon the analysis above, the EPA finds that Indiana's regulation covering VOL storage operations, 326 IAC 8–9, as submitted on November 21, 1995, and February 14, 1996, is generally consistent with EPA's guidance in the draft model rule for this source category and, therefore, is considered to constitute RACT. EPA, therefore, is approving this rule as a revision to Indiana's ozone SIP.

The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on March 18, 1997 unless, by February 18, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent rulemaking that will

withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on March 18, 1997.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* versus *EPA.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with 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. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

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).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 18, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: November 25, 1996.

Valdas V. Adamkus,

Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.770 is amended by adding paragraph (c)(111) to read as follows:

§52.770 Identification of Plan.

* * * * *

(c) * * *

(111) On November 21, 1995, and February 14, 1996, Indiana submitted a rule for the control of volatile organic compound emissions from volatile organic liquid storage operations in Clark, Floyd, Lake, and Porter Counties.

(i) Incorporation by reference. 326 Indiana Administrative Code 8–9: Volatile Organic Liquid Storage Vessels, Section 1: Applicability, Section 2: Exemptions, Section 3: Definitions, Section 4: Standards, Section 5: Testing and procedures, Section 6: Record keeping and reporting requirements. Adopted by the Indiana Air Pollution Control Board May 3, 1995. Filed with the Secretary of State December 19, 1995. Published at Indiana Register, Volume 19, Number 5, February 1, 1996. Effective January 18, 1996.

[FR Doc. 97–1081 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Parts 52 and 81

[CA–98–1–7196a; FRL–5661–6]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of California; Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements; Monterey Bay Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is, through direct final procedure, approving the redesignation of the Monterey Bay Area from nonattainment to attainment for ozone. Through this direct final action, EPA is also approving for the Monterey Bay Area the maintenance plan, 1990 base year emissions inventory, emission statement rule, volatile organic compound (VOC) reasonably available control technology (RACT) rule 419 and oxides of nitrogen (NO_X) RACT rule 431 as revisions to California's State Implementation Plan (SIP) for ozone. In addition, EPA is determining that the

Monterey Bay Area has attained the ozone National Ambient Air Quality Standard (NAAQS) and, therefore, that certain reasonable further progress (RFP) and attainment demonstration requirements, along with certain other related requirements of Part D of Title 1 of the Clean Air Act (CAA or Act), are not applicable to the Monterey Bay Area for as long as the area continues to attain the ozone NAAQS, and that upon final redesignation of the Monterey Bay Area, the area will be entirely relieved of these requirements.

EPA is publishing this document without prior proposal because the Agency views these actions as noncontroversial and anticipates no adverse comments. However, in the proposed rules section of this Federal Register, EPA proposes these actions should adverse or critical comments be filed. If adverse comments are received, EPA will withdraw this final rule and address these comments in a final rule based on the proposed rule published in this Federal Register. The Agency will not issue a second comment period on these actions.

DATES: This action is effective on March 18, 1997, unless adverse or critical comments are received by February 18, 1997. If the effective date is delayed, a timely notice will be published in the Federal Register.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Plans Development Section (A–2–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

California Air Resources Board, 2020 L Street, Sacramento, CA 94814

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940

FOR FURTHER INFORMATION CONTACT: Julia Barrow, Chief, Plans Development Section (A–2–2), Air & Toxics Division, U.S. Environmental Protection Agency, Region IX, at (415) 744–1207.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The ozone nonattainment designation for the Monterey Bay Area continued by operation of law according to section 107(d)(1)(C)(i) of the Clean Air Act, as amended in 1990; furthermore, the area was classified by operation of law as moderate for ozone under section 181(a)(1). See 56 FR 56694 (Nov. 6, 1991), codified at 40 CFR 81.305.

The District has collected ambient monitoring data that show no violations of the ozone NAAQS (See discussion in Section IV.1. below). Accordingly, on July 14, 1994, California requested redesignation of the area to attainment with respect to the ozone NAAQS and submitted an ozone maintenance SIP for the Monterey Bay Area. The Monterey Bay Unified Air Pollution Control Agency (MBUAPCD or the District), the Association of Monterey Bay Area Governments (AMBAG), and the Council of San Benito County Governments (CSBCG) prepared and adopted the maintenance plan on May 25, 1994, May 11, 1994 and May 5, 1994, respectively. The plan and redesignation request were subsequently submitted to CARB on June 1, 1994, and CARB submitted the plan and redesignation request to EPA on July 14, 1994. On November 14, 1994, CARB submitted a revision to the maintenance plan, adopted by MBUAPCD, AMBAG, and CSBCG on October 19, 1994, October 12, 1994 and October 6, 1994, respectively.

All SIP submittals to EPA must meet certain minimum administrative and technical criteria as set forth in 40 CFR Part 51, Appendix V (the ''completeness'' criteria) in order for the Administrator to review and take action on the submittal. Section 110(k)(1) of the Act describes the mandatory time frame for EPA's determination of completeness and rulemaking action on plan submissions. In accordance with section 110(k)(1)(B) of the Act, the Monterey Bay Area ozone redesignation request and maintenance plan was deemed complete by operation of law on February 14, 1995.

II. Determination Regarding Reasonable Further Progress, Attainment Demonstration and Related Requirements

The EPA is determining that the Monterey Bay Area ozone nonattainment area has attained the NAAQS for ozone. On the basis of this determination, EPA is also determining that certain RFP and attainment demonstration requirements, along with certain other related requirements of Part D of Title 1 of the CAA are not applicable to the Monterey Bay Area for so long as the area continues to attain the ozone NAAQS.

Subpart 2 of Part D of Title 1 contains various air quality planning and SIP submission requirements for ozone nonattainment areas. EPA believes it is reasonable to interpret provisions regarding RFP and attainment demonstrations, along with certain other related provisions, so as to not require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (i.e., attainment of the NAAQS demonstrated with three consecutive years of air quality monitoring data at each monitor). As described below, EPA has previously interpreted the general provisions of subpart 1 of part D of Title 1 (sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or related contingency measures. As explained in a memorandum dated May 10, 1995, from John Seitz to the Regional Air Division Directors, entitled ''Reasonable Further Progress, Attainment Demonstration and Related Requirements for Ozone Nonattainment Areas Meeting the National Ambient Air Quality Standard,'' EPA believes it is appropriate to interpret the more specific RFP, attainment demonstration and related provisions of subpart 2 in the same manner.

First, with respect to RFP, section 171(1) states that, for purposes of Part D of Title 1, RFP ''means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be

required by the Administrator for the purpose of ensuring attainment of the applicable (NAAQS) by the applicable date.'' Thus, whether dealing with the general RFP requirement of section 172(c)(2), or the more specific RFP requirements of subpart 2 for classified ozone nonattainment areas (such as the 15 percent plan requirement of section 182(b)(1)), the stated purpose of RFP is to ensure attainment by the applicable attainment date.[1] If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled and EPA does not believe that the area need submit revisions providing for the further emission reductions described in the RFP provisions of section 182(b)(1).

EPA notes that the Agency took this view with respect to the general RFP requirement of section 172(c)(2) in the General Preamble for the Interpretation of Title 1 of the Clean Air Act Amendments of 1990 (57 FR 13498, (April 16, 1992)), and that the Agency is now extending that interpretation to the specific provisions of subpart 2. In the General Preamble, EPA stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the ''requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.'' (57 FR 13564)[2]

Second, with respect to the attainment demonstration requirements of section 182(b)(1), an analogous rationale leads to the same result. Section 182(b)(1) requires that the plan provide for ''such specific annual reductions in emission * * * as necessary to attain the (NAAQS) by the attainment date applicable under this Act.'' As with RFP requirements, if an area has in fact monitored attainment of the standard, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain section 172(c) requirements provided by EPA in the General Preamble to Title 1, as EPA stated there that no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since ''attainment will have been reached.'' (57 FR 13564; *see also* September 1992 Calcagni memorandum at page 6.) Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under section 175A.[3]

The determination with regard to the applicability of certain RFP and attainment demonstration requirements does not shield an area from future EPA action to require emissions reductions from sources in the area where there is evidence, such as photochemical grid modeling, showing that emissions from sources in the area contribute significantly to nonattainment in, or interfere with maintenance by, other nonattainment areas. EPA has authority under sections 110(a)(2)(A) and 110(a)(2)(D) to require such emissions reductions if necessary and appropriate to deal with transport situations.

III. Redesignation Evaluation Criteria

The 1990 CAA Amendments revised section 107(d)(3)(E) to provide five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment: (1) The area must have attained the applicable NAAQS; (2) the area has met all relevant requirements under section 110 and Part D of the Act; (3) the area has a fully approved SIP under section 110(k) of the Act; (4) the air quality improvement must be permanent and enforceable; and, (5) the area must have a fully approved maintenance plan pursuant to section 175A of the Act. Section 107(d)(3)(D) allows a Governor to initiate the redesignation process for an area to apply for attainment status.

IV. Review of State Submittal

The California redesignation request for the Monterey Bay Area meets the five requirements of section 107(d)(3)(E), noted above. Following is a brief description of how the State has fulfilled each of these requirements.

1. Attainment of the Ozone NAAQS

Attainment of the ozone NAAQS is determined based on the expected number of exceedances in a calendar year. The method for determining attainment of the ozone NAAQS is contained in 40 CFR 50.9 and Appendix H to that Section. The simplest method by which expected exceedances are calculated is by averaging actual exceedances at each monitoring site over a rolling three year period. An area is in attainment of the standard if this average results in expected exceedances for each monitoring site of 1.0 or less per calendar year. Appendix H provides the formula used to estimate the expected number of exceedances for each year.

The State of California's request is based on actual quality-assured ozone air quality data which is relevant to both the maintenance plan and to the redesignation request. This data comes from the District's State and Local Air Monitoring Station (SLAMS) network. The request is based on ambient air ozone monitoring data for calendar years 1988 through 1990. This data clearly shows the expected exceedance rate for the ozone standard of less than 1.0 per year for each of the monitors, including the monitor on which the nonattainment designation was based. Monitoring data also shows that no violations have occurred in the network area through 1995. The District has also committed to continue monitoring in the area in accordance with 40 CFR part 58.

2. Meeting Applicable Requirements: Section 110 and Part D

On December 20, 1983 (48 FR 56215), EPA fully approved California's SIP for the Monterey Bay Area as meeting the requirements of section 110(a)(2) and Part D of the 1977 Act, with the exception of the motor vehicle inspection and maintenance (I/M) program which was signed for final

[1] EPA notes that paragraph (1) of subsection 182(b) is entitled ''PLAN PROVISIONS FOR REASONABLE FURTHER PROGRESS'' and that subparagraph (B) of paragraph 182(c)(2) is entitled ''REASONABLE FURTHER PROGRESS DEMONSTRATION,'' thereby making it clear that both the 15 percent plan requirement of section 182(b)(1) and the 3 percent per year requirement of section 182(c)(2) are specific varieties of RFP requirements.

[2] *see also* ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' from John Calcagni, Director, Air Quality Management Division, to Regional Air Division Directors, September 4, 1992, at page 6 (stating that the ''requirements for reasonable further progress * * * will not apply for redesignations because they only have meaning for areas not attaining the standard'') (hereinafter referred to as ''September 1992 Calcagni memorandum'').

[3] The lack of a requirement to submit the SIP revisions exists only for as long as the area designated nonattainment continues to attain the standard. If EPA subsequently determines that such an area has violated the NAAQS, the basis for the determination that the area need not make the pertinent SIP revision would no longer exist. The EPA would then notify the State of that determination and would also provide notice to the public in the Federal Register. Such a determination would mean that the area would have to address the pertinent SIP requirements within a reasonable amount of time, which EPA would establish taking into account the individual circumstances surrounding the particular SIP submissions at issue. Thus, a determination that an area need not submit one of the SIP submittals amounts to no more than a suspension of the requirement for so long as the area continues to attain the standard. However, if the area continues to attain the standard and submits a request for redesignation to attainment, upon final approval of the redesignation to attainment the area is entirely relieved of these requirements.

approval by the Regional Administrator on September 25, 1996. The 1990 amended Act, however, modified section 110(a)(2) and, under Part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, to meet the requirement that the SIP contain all applicable requirements under the Act, EPA has reviewed the SIP to ensure that it contains all measures that were due under the amended Act prior to or at the time the State submitted its redesignation request, as set forth in EPA policy.[4] As explained in Section II. of this document, the RFP and attainment demonstration requirements are not applicable for areas meeting the ambient air quality standard because these requirements only have meaning for areas not attaining the standard.

All of the SIP requirements must be met by the District and approved into the SIP by EPA by the time the area is redesignated.

A. Section 110 Requirements

Although section 110 was amended in 1990, the Monterey Bay Area SIP meets the requirements of amended section 110(a)(2). A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment EPA approved SIP met these requirements. As to those requirements that were amended, (*see* 57 FR 27936 and 23939 (June 23, 1993)), many are duplicative of other requirements of the Act. EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 110(a)(2). The SIP contains enforceable emission limitations, requires monitoring, compiling, and analyzing of ambient air quality data, requires preconstruction review of new major stationary sources and major modifications to existing ones, provides for adequate funding, staff, and associated resources necessary to implement its requirements, and requires stationary source emissions monitoring and reporting.

B. Part D Requirements

Before the Monterey Bay Area may be redesignated to attainment, it also must have fulfilled the applicable requirements of Part D of the Act. Under Part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of Part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 2 of Part D establishes additional requirements for nonattainment areas classified under table 1 of section 181(a)(1) or table 3 of section 186(a). The Monterey Bay Area was classified under table 1 of section 181(a)(1) as a moderate ozone nonattainment area (See 56 FR 56694, codified at 40 CFR 81.305). Therefore, in order to be redesignated to attainment, the District must meet the applicable requirements of Subpart 1 of Part D—specifically sections 172(c) and 176, as well as the applicable requirements of Subpart 2 of Part D.

B.1. Subpart 1 of Part D—Section 172(c) Provisions

Under section 172(b), the Administrator established that States containing nonattainment areas shall submit a plan or plan revision meeting the applicable requirements of section 172(c) no later than three years after an area is designated as nonattainment, unless EPA establishes an earlier date. As discussed in section II. of this Federal Register document, EPA has determined that the section 172(c)(2) reasonable further progress (RFP) requirement is not applicable for the Monterey Bay Area based on the area's attainment of the ozone NAAQS. Also, the 172(c)(9) contingency measures and additional 172(c)(1) non-RACT reasonable available control measures (RACM) are not applicable, since those measures are specifically related to RFP.

The 172(c)(3) emissions inventory requirement has been met by the submission and approval of the 1990 base year emissions inventory discussed in section V.1. of this Federal Register document.

As for the 172(c)(5) New Source Review (NSR) requirement, the Monterey Bay Area NSR program was approved on July 11, 1996 (61 FR 36501).

The 172(d) requirements for SIP revisions pursuant to section 110(k)(5) have been met and are discussed below in section 2.B3 and further in sections V.3 and 4. (VOC and NO_X RACT rules).

Finally, for purposes of redesignation, the Monterey Bay Area SIP was reviewed to ensure that all requirements of section 110(a)(2), containing general SIP elements were satisfied. The MBUAPCD SIP approved under section 110 of the Act (40 CFR 52.220) and the revisions to the SIP approved in section V. of this Federal Register document satisfy all applicable Part D, Title 1 requirements for moderate area ozone SIPs.

B.2. Subpart 1 of Part D—Section 176(c) Conformity Plan Provisions

Section 176(c) of the CAA requires states to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. of the Federal Transit Act (''transportation conformity''). Section 176 further provides that the conformity revisions to be submitted by the States must be consistent with Federal conformity regulations that the CAA required EPA to promulgate.[5] These conformity rules require that States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A. EPA believes it is reasonable to interpret the conformity requirements as not being applicable requirements for purposes of evaluating the redesignation request under section 107(d). The rationale for this is based on a combination of two

[4] ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' John Calcagni, Director, Air Quality Management Division, September 4, 1992.

''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' John Calcagni, Director, Air Quality Management Division, October 28, 1992.

''State Implementation Plan (SIP) Requirements for Areas Submitted Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Michael H. Shapiro, Acting Assistant Administrator, September 17, 1993.

''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

[5] Congress provided for the State revisions to be submitted one year after the date for promulgation of final EPA conformity regulations. When that date passed without such promulgation, EPA's General Preamble for the Implementation of Title 1 informed States that the conformity regulation would establish a submittal date (see 57 FR 13498, 13557 (April 16, 1992)). EPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62118), and general conformity regulations on November 30, 1993 (58 FR 63214). Pursuant to 40 CFR 51.851 of the general conformity rule, the State of California was required to submit a SIP revisions containing transportation and general conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994, and December 1, 1994, respectively. The conformity rules for California were submitted to EPA, Region 9 by some of the local districts. Because EPA and Department of Transportation (DOT) have already amended the conformity regulation twice and have proposed a third set of amendments, EPA is allowing areas to incorporate all revisions to their conformity SIPs within one year of the publication of the Federal Register on the new regulation amendments. The anticipated submittal date of the new conformity SIP revisions in response to this amendment to the conformity regulations is early 1998.

factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Act continues to apply to areas after redesignation to attainment. Therefore, the State remains obligated to adopt the transportation and general conformity rules even after redesignation and would risk sanctions for failure to do so. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of state-adopted rules. Therefore, a delay in adopting State rules does not relieve an area from the obligation to implement conformity requirements.

Because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if State rules are not yet adopted, EPA believes it is reasonable to view these requirements as not being applicable requirements for purposes of evaluating a redesignation request.

B.3. Subpart 2 of Part D—Section 182(a) and 182(b) Requirements

As a moderate ozone nonattainment area, the Monterey Bay Area must meet the requirements for marginal areas under Subpart 2 of Part D, section 182(a) as well as the requirements for moderate areas contained in section 182(b). As discussed in Section II. of this Federal Register document, EPA has determined that the RFP requirement for a moderate ozone nonattainment area under Subpart 2 of Part D is not applicable to the Monterey Bay Area based on the area's attainment of the ozone NAAQS.

For purposes of redesignation, the Monterey Bay Area must meet only those requirements of sections 182 (a) and (b) which were due prior to or at the time of the submittal of a complete redesignation request. Monterey must meet the section 182(a)(1) requirement for an emission inventory, the section 182(a)(2)(a) requirement for Reasonably Available Control Technology (RACT) rules and the section 182(a)(3)(b) requirement for a rule regarding emission statements for stationary sources. In sections V.1., 2., 3. and 4. of this Federal Register document, EPA is approving revisions to the SIP meeting the requirements mentioned above. EPA approval of these revisions completes the District's requirements to meet all applicable requirements of section 110 and Part D of the Act.

3. Fully Approved SIP Under Section 110(k) of the Act

In order for EPA to take final action approving the redesignation request, the District must have a fully approved SIP under section 110(k), which also meets the applicable requirements of section 110 and Part D. As discussed in Section 2.A. above, EPA approved numerous provisions of the Monterey Bay Area SIP under the pre-amended Act and finds that these provisions meet the requirements of section 110(a)(2). Also, EPA approval of the emissions inventory and emission statement rule (Regulation III, Rule 300, parts 4.4–4.4.3) and the District's amended VOC RACT rule 419 and the NO_X RACT rule 431, as revisions to the SIP as required by sections 182 (a) and (b), fulfills the requirement that the District have a fully approved SIP under section 110(k).

4. Improvement in Air Quality Due to Permanent and Enforceable Measures

Under the pre-amended Act, EPA approved California's SIP control strategy for the Monterey Bay Area nonattainment area, which satisfies the requirement that the rules are permanent and enforceable. The Monterey Bay Area attained the ozone NAAQS in 1990, therefore, emission reductions achieved as a result of those rules are permanent. Since enactment of the 1990 Amendments, the State has made additional submittals as identified in the discussion of the section 182(b) requirements above and in Table 1.A below.

TABLE 1.A

Rule number, title	Adoption	EPA approval
416-Organic Solvents	04/20/94	02/12/96, 61 FR 5288.
417-Storage of Organic Liquids	08/25/93	02/15/95, 60 FR 8565.
418-Transfer of Gasoline into Stationary Storage	08/25/93	02/15/95, 60 FR 8565.
420-Effluent Oil Water Separators	08/25/93	02/09/96, 61 FR 4890.
425-Use of Cutback Asphalt	08/25/93	02/05/96, 61 FR 4215.
426-Architectural Coatings	08/25/93	02/09/96, 61 FR 4890.
427-Steam Drive Crude Oil Production Wells	08/25/93	02/15/95, 60 FR 8565.
430-Leather Processing Operations	05/25/94	10/25/95, 60 FR 54595
433-Organic Solvent Cleaning	06/15/95	02/12/96, 61 FR 5288.
434-Coating of Metal Parts & Products	06/15/95	02/12/96, 61 FR 5288.
1002-Transfer of Gasoline into Vehicle Fuel Tanks	11/23/94	02/09/96, 61 FR 4892.

In addition, EPA finds that a comparison of the Monterey emission inventories by source category (see Table 1.B below), reasonably attributes the improvement in air quality to emission reductions from controls which are permanent, and are enforceable as they have been adopted into the SIP and approved by EPA.

TABLE 1.B

Pollutant	Source category	1979	1987	1990
ROG*(TPD)	Stationary	67	62	50
	Mobile	41	44	46
	Total	108	106	96
NO_X	Stationary	82	34	32
	Mobile	46	60	61
	Total	128	94	93

*ROG (Reactive Organic Gases) mainly differs from VOC in that it includes ethane. Ethane is solely a product of combustion; VOC accounts for 98.5 percent of combustion.

The actual reduction in overall emissions from 1979 to 1990 was 12 tons per day (TPD) of VOC and 35 TPD of NO_X, which reflects growth in emissions from some sources and reductions in overall emissions due to all control measures. EPA finds that the combination of existing EPA-approved SIP and Federal measures contributes to the permanence and enforceability of reductions in ambient ozone levels that have allowed the area to attain the NAAQS.

5. Fully Approved Maintenance Plan Under Section 175A

EPA is approving the State's maintenance plan for the Monterey Bay Area because EPA finds that the District's submittal meets the requirements of section 175A. Section 175A of the Act sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems. Each of the section 175A plan requirements is discussed below.

5.A. Attainment Emissions Inventory

The MBUAPCD adopted comprehensive inventories of VOC, and NO_X emissions from area, stationary, and mobile sources using 1990 as the base year for calculations to demonstrate maintenance of the ozone NAAQS. EPA has determined that 1990 is an appropriate year on which to base attainment level emissions because EPA policy allows States to select any one of the three years in the attainment period as the attainment year inventory.[6]

The latest revised annual and peak ozone season 1990 comprehensive inventories of actual emissions were adopted by the Monterey Bay Unified Air Pollution Control District (the District) on October 19, 1994 and submitted by CARB to EPA on November 15, 1994 as a SIP revision. CARB provided a more detailed clarification of the inventories on March 30, 1995. EPA notified the State of the completeness of the emissions inventories in a letter dated April 18, 1995.

The State submittal contains the detailed inventory data and summaries by county and source category. The District provided the stationary source estimates, and area source emissions for each source category based on emission and activity factors for each county in the nonattainment area. These factors are cited or their sources referenced in *Methods for Assessing Area Source Emissions in California*, California Air Resources Board, September 1991. CARB based on-road mobile source emission and activity estimates on CARB's EMFAC7F and BURDEN7C models, respectively.

The comprehensive base year emissions inventory discussed above has been entered into the Aerometric Information Retrieval System (AIRS). AIRS is EPA's computerized data storage system for air quality and emission source data. EPA, under contract with Radian Corporation, has entered the base year emissions inventory of stationary sources into AIRS and has also prepared computer software to convert the California Emission Data System stationary source data to AIRS/AFS format for entry into AIRS. California is responsible for entering 1990 area and mobile source (AMS) data into AIRS according to a fiscal year 1994 Clean Air Act section 105 air program grant agreement.

5.B. Demonstration of Maintenance

The MBUAPCD developed projected VOC and NO_X emissions inventories based on the 1990 actual inventory for the years 1995, 2000, 2005 and 2010 by applying growth factors in accordance with EPA guidance. The projected inventories, provided in Table 2.A. and 2.B. below, show that the ozone standard will be maintained and that emissions are not expected to exceed the level of the 1990 inventory during the maintenance period.

5.C. Verification of Continued Attainment

The plan demonstrates attainment of the NAAQS for at least 10 years after the area is redesignated. The tables below show the forecasts for ozone precursors VOC (Table 2.A.) and NO_X (Table 2.B.).

TABLE 2.A.—VOC EMISSIONS FOR AVERAGE SUMMER WEEKDAY*

[Tons Per Day]

Source categories	1990	1995	2000	2005	2010
Stationary:					
Fuel Combustion	00.86	00.80	00.86	00.87	00.88
Waste Burning	00.95	01.02	01.09	01.17	01.23
Solvent Use	21.45	20.60	22.29	24.13	25.82
Petroleum Processes, Storage & Transfer	06.07	01.72	02.21	02.22	02.22
Industrial Processes	00.49	00.56	00.58	00.63	00.66
Miscellaneous Processes	19.68	19.48	19.61	14.82	15.05
Banked Emissions	00.24	00.24	00.24	00.24	00.24
Stationary total	49.74	44.42	46.88	44.08	46.10
Mobile:					
On-Road	39.09	20.74	17.75	13.340	09.95
Non-Road	06.88	06.31	05.71	05.86	05.90
Mobile total	45.97	27.05	23.46	19.20	15.85
Total	95.71	71.47	70.34	63.28	61.95

*Anthropogenic sources of ozone precursors.

[6] "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, September 4, 1992.

TABLE 2.B.—NO_X EMISSIONS FOR AVERAGE SUMMER WEEKDAY*

[Tons Per Day]

Source categories	1990	1995	2000	2005	2010
Stationary:					
Fuel Combustion	29.79	26.40	28.18	21.27	27.50
Waste Burning	00.15	00.16	00.17	00.18	00.19
Petro. Processes, Storage & Transfer	00.02	00.02	00.02	00.02	00.02
Industrial Processes	02.33	02.77	02.98	03.25	03.48
Miscellaneous Processes	00.01	00.01	00.01	00.01	00.01
Banked Emissions	00.14	00.14	00.14	00.14	00.14
Stationary total	32.44	29.50	31.50	24.87	26.34
Mobile:					
On-Road	43.13	28.99	27.77	25.54	24.86
Non-Road	17.34	17.46	18.31	18.90	19.37
Mobile total	60.48	46.45	46.08	44.44	44.23
Total	92.92	75.95	77.58	69.31	70.57

*Anthropogenic sources of ozone precursors.

The projections show that the area will continue to demonstrate attainment of the ozone NAAQS with current control measures. The Monterey Bay Area is not subject to additional emission reduction requirements for the CAA (since the area can demonstrate maintenance of the NAAQS for the 10 year maintenance period without additional controls). In addition, the emission inventory projections contained in the maintenance plan show a decrease in VOC emissions and NO_X emissions.

Continued attainment of the ozone NAAQS in the Monterey Bay Area depends, in part, on the State's efforts to track indicators of continued attainment during the maintenance period. MBUAPCD will analyze annually the three most recent consecutive years of ambient air quality monitoring data to verify continued attainment of the national ozone standard, in accordance with 40 CFR part 50, appendix H. The District will submit to EPA an annual report of data collected from the previous calendar year. This information, in conjunction with the reports from the previous two years, will provide adequate information for determining continued compliance with the ozone NAAQS.

5.D. Contingency Plan

The level of VOC and NO_X emissions in the Monterey Bay Area will largely determine its ability to stay in compliance with the ozone NAAQS in the future. Despite best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Therefore, as required pursuant to section 175A, the District has developed a contingency plan, including specific measures with a schedule for implementation in the event of a future ozone air quality problem. The District has chosen three monitored exceedances of the NAAQS at one monitoring site within a consecutive three year period as the trigger for the contingency plan.

At the time of local adoption of the redesignation request and maintenance plan, the District identified several VOC and NO_X stationary source control measures as the contingency measures which would be implemented should the triggering event occur at a monitoring site during the maintenance period. Tables 3.A. and 3.B., below, summarize the contingency control measures. Rules to implement these controls are scheduled for adoption through 1997. However, should the triggering threshold described above occur before adoption, adoption would be scheduled within six months of the triggering event. When contingency measures are triggered, implementation of the measures will occur within 6 to 24 months of rule adoption.

TABLE 3.A.VOC—CONTINGENCY MEASURES

Title	Action needed	VOC reductions (TPD)
Adhesives	Adopt	.39–.4
Architectural Coatings (rule 426)	Revise	.35
Automobile Refinishing	Adopt	1.04–1.12
Cutback Asphalt Paving (rule 425)	Revise	2.15–2.39
Disposal of Organic Wastes/Hazardous Waste Minimization	Adopt	N/A
Fiberglass Fabrication/Polyester Resin Use	Adopt	.02
Fixed & Floating Roof Petroleum Storage Tanks (rule 417)	Revise	.23
Fugitive Emissions from Petroleum Production	Adopt	.06
Furniture Staining	Adopt	.04
Graphic Arts Printing & Coating Operations	Adopt	.06
Landfill Gas Collection Systems	Adopt	1.52–1.63
Marine Coatings	Adopt	.01
Petroleum Production & Separation	Adopt	N/A
Petroleum Sumps, Wastewater Separators & Well Cellars	Adopt	.08
Plastic Coatings	Adopt	N/A
Semiconductor Manufacturing Operations	Adopt	N/A

TABLE 3.A.VOC—CONTINGENCY MEASURES—Continued

Title	Action needed	VOC reductions (TPD)
Spray Booths-Misc. Coating & Cleanup Solvents (rule 429)	Revise	1.55–1.61
Wood Products Coatings	Adopt	.19

TABLE 3.B.—NO_X CONTINGENCY MEASURES

Title	Action needed	NO_x reductions (TPD)
Boilers, Steam Generators	Adopt	3.36–3.4
Kilns	Adopt	3.2–3.32
Stationary Internal Combustion Engines	Adopt	.97

5E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the Act, the District has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional ten year period.

V. Revisions to the SIP

1. 1990 Base Year Inventory

CARB submitted a revised 1990 base year emissions inventory to EPA on March 30, 1995 as required under section 182(a)(1). Table 4 below summarizes the 1990 peak ozone season weekday inventories submitted on March 30, 1995.

1990 BASE YEAR INVENTORY SUMMARY*

[Tons Per Day]

1990 peak ozone season (tpd)	Stationary point source	Stationary area source	Onroad mobile source	Offroad mobile source	Anthropogenic total	Biogenic source
VOC	4.06	51.23	37.08	6.41	98.80	171.00
NO_X	25.38	6.93	41.21	17.53	91.06	.....
CO	34.62	22.62	309.81	68.97	436.01	.....

Section 182(a)(1) of the CAA requires States with ozone nonattainment areas classified marginal and above to submit base year (1990) emission inventories by November 15, 1992, as a revision to the SIP. The inventories are to be comprehensive, accurate, and current inventories of actual emissions from all sources, in accordance with the guidance provided by the EPA Administrator.

The State submitted base year annual and peak season inventories for each of the ozone precursors on November 17, 1992 and subsequently revised those inventories. The latest submittal of revised annual average and peak ozone season average weekday 1990 inventories for VOC, NO_X, and carbon monoxide (CO) were submitted on March 30, 1995 as clarification of the inventories adopted by the MBUAPCD Board on October 19, 1994 and submitted by the State to EPA on November 15, 1994.

2. Emission Statement Rule

The EPA is approving Regulation III, Rule 300, parts 4.4–4.4.3, the Emission Statement (ES) Rule for the Monterey Bay ozone nonattainment area as a revision to the California SIP, in accord with CAA section 182(a)(3)(B)(i) for all ozone nonattainment areas classified marginal and above. The CAA mandates the adoption of a rule which requires owners or operators of each stationary source of VOC or NO_X to provide the State with a statement showing actual emissions of those pollutants. The ES must be in a form prescribed by the EPA Administrator, unless the Administrator accepts an equivalent alternative developed by the State. Section 182(a)(3)(B)(ii) allows States to waive the application of the ES rule for any class or category of stationary sources which emit less than 25 tons per year of VOC or NO_X if the State, in its submissions of base year or periodic inventories, provides an inventory of emissions from such class or category of sources based on the use of emission factors established by the Administrator or other methods acceptable to the Administrator.

On January 7, 1992, EPA approved an equivalent alternate form of ES developed by the State. However, the State failed to submit ES rules for parts of seven ozone nonattainment areas, including the Monterey Bay Area, by the November 15, 1992 CAA deadline. On January 15, 1993, EPA issued a letter to the State finding that the State had failed to meet the CAA deadline for submittal of the ES rule. This action triggered the start of sanctions and Federal Implementation Plan (FIP) clocks. On June 9, 1993, the District adopted the above-referenced rule. The State subsequently submitted the ES rule for the Monterey Bay Area on November 18, 1993. On June 22, 1994, by letter, EPA notified the State of the completeness of the ES rule, thus stopping the sanction clocks. With today's approval of the ES rule, the FIP clock is also halted for the Monterey Bay Area.

The ES rule requires: (1) Emission data from stationary sources of VOC and NO_X, (2) the source owner or operator's certification that the emission data/information is accurate to the best of his/her knowledge, and (3) the data to be reported on a specific form or in a specific format. The rule also waives reporting requirements for facilities with the potential to emit less that 25 tons per year of VOC or NO_X.

3. VOC RACT Rule Correction

Section 182(a)(2) requires ozone nonattainment areas to adopt and correct RACT rules pursuant to pre-

amended Act section 172(b) as interpreted in pre-amended Act guidance.[7] EPA developed a series of Control Technology Guideline (CTG) documents based on the underlying requirements of the Act and which specify the presumptive norms for what is RACT for specific source categories. The CTGs applicable to this rule are entitled ''Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals'' (EPA–450/2–77–026) and ''Control of Volatile Organic Emissions from Bulk Gasoline Plants'' (EPA–450/2–77–035). In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

MBUAPCD's revised Rule 419, Bulk Gasoline Plants and Terminals, was adopted on November 23, 1994 and submitted to EPA by CARB on November 30, 1994. EPA found this rule complete on December 7, 1994. The rule includes the following significant changes from the current SIP version:

- Added definitions section
- Strengthened provisions for bulk terminals
- Added provisions for bulk plants
- Added recordkeeping requirements
- Added test methods

EPA has reviewed this rule and has determined the rule to be consistent with the CAA requirements, and EPA regulations as found in section 110 and Part D of the CAA and 40 CFR part 51, and EPA policy. Thus, EPA is approving, as part of this direct final action, the MBUAPCD VOC RACT Rule 419—Bulk Gasoline Plants and Terminals.

4. NO_X RACT Rule 431

The air quality planning requirements for the reduction of NO_X emissions through RACT are set out in section 182(f) of the CAA.[8] Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X (''major'' as defined in section 302 and section 182 (c), (d), and (e)) as are applied to major stationary sources of VOCs, in moderate or above ozone nonattainment areas.

NO_X emissions contribute to the production of ground level ozone and smog. The MBUAPCD rule 431 controls emissions from utility power boilers. The rule was adopted as part of the District's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone, as well as to satisfy the mandates of the California State Clean Air Act requirements. The rule was submitted in response to the CAA requirements cited above.

However, subsequent to the complete submittal of the NO_X rule pursuant to the CAA, the District applied for an exemption from the NO_X RACT requirements pursuant to Section 182(f) of the CAA.[9] The basis for the Monterey Bay Area's exemption was that the area had achieved the ozone standard, as demonstrated by three years of monitoring data, without having implemented the NO_X measures. While the District had adopted and submitted the measure in response to both the state and federal requirements, the emission reductions obtained by the rules would not occur until full implementation in the future. Subsequently, EPA evaluated the exemption request and published approval for the Monterey Bay Area's petition for a NO_X RACT exemption on April 25, 1995 (60 FR 20233).

The MBUAPCD has identified the reductions obtained from Rule 431 as contributing to future maintenance of the ozone standard.

EPA has evaluated Monterey's rule 431 for consistency with the requirements of the CAA and EPA regulations, as found in section 110, and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for this action, appears in the NO_X Supplement and various EPA policy guidance documents.[10] Among these provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions. However, because the measure is being incorporated into the SIP as a maintenance measure for the area's redesignation plan, and since the District applied for and received a NO_X RACT exemption, the rule is not being evaluated for meeting the RACT emission limits pursuant to section 182(f) of the CAA. Rather, the rule is being incorporated into the SIP as an attainment maintenance measure for ozone, and is being evaluated for SIP enforceability purposes.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations and EPA policy. Therefore, the rule is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

VI. Conclusion

In today's final action, EPA is determining that as a consequence of EPA's determination that the Monterey Bay Area ozone nonattainment area has attained the ozone standard and continues to attain the standard at this time, the requirements of section 182(b)(1) concerning the submission of the 15 percent plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures are not applicable to the area so long as the area does not violate the ozone standard prior to the effective date of this redesignation.

Finally, EPA is approving the Monterey Bay Area ozone maintenance plan as it meets the requirements of section 175A, and the Agency is redesignating the Monterey Bay Area to attainment for ozone because the State of California has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. Additionally, EPA is approving the 1990 emissions inventory, VOC RACT Rule 419 and NO_X RACT Rule 431 corrections, and the Emissions Statement Rule as revisions to the California SIP for the Monterey Bay Area as they meet the requirements of sections 182(a) and (b) of the Act.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements. The ozone SIP is designed to satisfy the requirements

[7] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice'' (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

[8] On November 25, 1992, EPA published a NPRM entitled ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement) which describes the requirements of section 182(f). The November 25, 1992, notice should be referred to for further information on the NO_X requirements and is incorporated into this document by reference.

[9] See ''Guidance for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f)'', issued by EPA's Office of Air Quality Planning and Standards, December 1993 and EPA's NO_X Supplement to the General Preamble, 57 FR 55628, November 25, 1992.

[10] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to appendix D of November 24, 1987 Federal Register Notice'' (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988).

of Part D of the CAA and to provide for attainment and maintenance of the ozone NAAQS. This final redesignation should not be interpreted as authorizing the State of California to delete, alter, or rescind any of the VOC or NO_X emission limitations and restrictions contained in the approved ozone SIP. Changes to the ozone SIP VOC RACT regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted and approved by EPA. Unauthorized relaxations, deletions, and/or changes could result in both a finding of nonimplementation (section 173(b) of the CAA) and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the CAA.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA, and approval of an emissions inventory do not impose any new requirements on small entities. Additionally, the approval of the emission statement rule, which waives reporting requirements for facilities with the potential to emit less than 25 tons per year of VOC or NO_X, does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. SIP approvals under sections 110 and 301(a) and subchapter I, Part D of the CAA do not create any new requirements, but simply approve the requirements that the State is already imposing. Therefore, the Administrator certifies that the approval of the SIP revisions and redesignation will not affect a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base Agency actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of the state implementation plan or plan revisions approved in this action, the State and any affected local or tribal governments have elected to adopt the program provided for under section 175A and 182(a)(1) of the Clean Air Act. Also, EPA's final action approving the emission inventory does not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act. The rules and commitments approved in this action may bind State, local and tribal governments to perform certain actions and also may ultimately lead to the private sector being required to perform certain duties. To the extent that the rules and commitments being approved by this action will impose or lead to the imposition of any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Therefore, EPA has determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Courts of Appeals for the appropriate circuit by March 18, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2) of the Act, 42 U.S.C. 7607(b)(2).

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).

These actions have been classified as Table 2 and Table 3 actions for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by an October 14,1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation and by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from the requirements of section 6 of Executive Order 12866.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental Protection Air pollution control, National Parks, Wilderness Areas.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 15, 1996.

Felicia Marcus,

Regional Administrator.

Subpart F of part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(194)(i)(F)(*5*), (c)(207)(i)(E)(*1*), (c)(209), (c)(213), and (c)(225)(i)(E)(*1*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(194) * * *

(i) * * *

(F) * * *

(*5*) Rule 300—Regulation 3, Part 4, Paragraph 4.4 adopted on June 9, 1993.

* * * * *

(207) * * *

(i) * * *

(E) * * *

(*1*) Rule 419, adopted on November 23, 1994.

* * * * *

(209) Redesignation Request and Ozone Maintenance Plan for the redesignation of the Monterey Bay Unified Air Pollution Control District submitted on July 14, 1994 and November 14, 1994, respectively, by the Governor's designee.

(i) Incorporation by reference.

(A) Maintenance Plan for the redesignation of the Monterey Bay Area adopted on October 19, 1994 by the Monterey Bay Unified Air Pollution Control District, October 12, 1994 by the Association of Monterey Bay Area Governments, and October 6, 1994 by the Council of San Benito County Governments.

* * * * *

(213) Statewide 1990 Base-year Ozone Precursor Emission Inventory for Ozone Nonattainment Areas submitted on March 30, 1995, by the Governor's designee.

(i) Incorporation by reference.

(A) Monterey Bay Area Unified Air Pollution Control District.

(*1*) 1990 Base-year ozone emissions inventory, adopted on October 19, 1994.

* * * * *

(225) * * *

(i) * * *

(E) * * *

(*1*) Rule 431, adopted on August 16, 1995.

* * * * *

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7407, 7501, 7515, 7601.

Subpart B—Designation of Air Quality Control Regions

2. In § 81.305, the table for ''California—Ozone'' is amended by revising the entry ''Monterey Bay Area'' to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA—OZONE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* *	*	*	* *	*
Monterey Bay Area	February 18, 1997	Attainment.		
Monterey County				
San Benito County				
Santa Cruz County				
* *	*	*	* *	*

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 97–876 Filed 1–16–97; 8:45 am]
BILLING CODE 6560–50–W

40 CFR Part 799

[OPPTS–42150B; FRL–5570–2]

RIN 2070–AB94

Testing Consent Order For Phenol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final consent agreement and order; direct final rule.

SUMMARY: Pursuant to section 4 of the Toxic Substances Control Act (TSCA), EPA has issued a testing consent order (Order) that incorporates an enforceable consent agreement (ECA) with AlliedSignal Inc., Aristech Chemical Corporation, The Dow Chemical Company, Dakota Gasification Company, Georgia Gulf Corporation, General Electric Company, GIRSA, Inc., JLM Chemicals, Inc., Kalama Chemical, Inc., Merichem Company, Mitsubishi International Corporation, Mitsui Co. (U.S.A.), Inc., Shell Chemical Company, and Texaco Refining Marketing Inc. (collectively the Companies). The Companies have agreed to perform certain health effects tests on phenol (CAS No. 108–95–2). This notice summarizes the ECA and adds phenol to the list of chemicals subject to testing consent orders and hence subject to export notification requirements.

EFFECTIVE DATE: The effective date of the ECA and Order (including the export notification requirements) is January 17, 1997. The effective date for the addition of phenol to the list of chemicals in 40 CFR 799.5000 subject to testing consent orders, and thus, the effective date of the export notification requirements contained in this notice for those entities not party to the ECA is March 18, 1997.

If EPA receives any adverse comments on the addition of phenol to the list of chemicals contained in 40 CFR 799.5000, which makes the export notification requirements in this notice applicable to all exporters of phenol, EPA will withdraw this rule. Instead, EPA will issue a proposed rule addressing this issue and will provide a 30-day period for public comment. If no adverse comments are received, the rule will become effective as a final rule on the date specified.

ADDRESSES: Each comment must bear the docket control number OPPTS–42150B. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M Street, SW., Room G–099, East Tower, Washington, DC 20460.

Persons submitting information any portion of which they believe is entitled to treatment as confidential business information (CBI) by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will treat the information as non-confidential and may make it available to the public without further notice to the submitter. Three sanitized copies of any comments

containing information claimed as CBI must also be submitted and will be placed in the public record for this action.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt-ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS–42150B. No CBI should be submitted through e-mail. Electronic comments on this direct final rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit VII of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. ET–543B, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov. For specific information regarding this direct final rule or the ECA and Order, contact Keith J. Cronin, Project Manager, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–8157; fax: (202) 260–1096; e-mail: cronin.keith@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This notice announces the ECA and Order for phenol and amends 40 CFR 799.5000 by adding phenol to the list of chemical substances and mixtures subject to testing consent orders and export notification requirements.

I. Introduction

TSCA section 12(b)(1) requires persons who export or intend to export a chemical substance for which the submission of data is required under section 4 of TSCA to notify EPA of such export or intent to export. Section 799.5000 of title 40 of the Code of Federal Regulations contains a list of chemical substances and mixtures that are subject to testing consent orders and for which export notification is required under 40 CFR 799.19. This notice adds phenol to the list contained in 40 CFR 799.5000, thus making all persons who export or intend to export phenol subject to the export notification requirements contained in 40 CFR part 707 (see Unit VI of this document). EPA is amending 40 CFR 799.5000 by direct final rulemaking. However, EPA does not expect adverse comments on this rule because the burden of compliance with the export notification requirements (set forth at Unit VIII. A. of this notice) is minimal.

II. Chemical-Specific Background

At the request of EPA, the Interagency Testing Committee (ITC) received a subset of chemicals included on EPA's Integrated Risk Information System (IRIS) data base for which the Agency believed there is inadequate data. The ITC designated six chemicals included in IRIS (acrylic acid addressed in a separate rulemaking at 57 FR 7656, March 4, 1992), acetophenone, phenol, N,N-dimethylaniline, ethyl acetate, and 2,6-dimethylphenol for priority consideration as candidates for chemical fate, health effects, and environmental effects testing. The reasons for these recommendations by the ITC are further discussed in the Federal Register of March 6, 1991 (56 FR 9534), and in the chemical specific sections of the November 22, 1993 (58 FR 61654) Federal Register notice.

On July 17, 1992, EPA published a Federal Register notice (57 FR 31714) announcing an ''open season''. The open season was a time during which industry and other interested parties could submit to EPA proposals for enforceable consent agreements (ECAs) to test substances for which the Agency had not issued final test rules. In that notice, EPA indicated that it would review the submissions and select candidates for negotiation of ECAs pursuant to 40 CFR 790.22. EPA also indicated that it would, at a future date, publish a Federal Register notice soliciting persons interested in participating in or monitoring negotiations for the development of ECAs on the chemical substances selected.

After evaluating the testing proposals submitted during the open season (57 FR 31714), EPA issued a Federal Register notice on March 30, 1993 (58 FR 16669), which identified a three tier priority ranking of the testing proposals received from manufacturers, solicited parties interested in monitoring or participating in ECA negotiations of tier I chemicals to identify themselves to EPA, and extended the opportunity for manufacturers to supplement their test proposals for tier I, tier II, tier III and unranked chemicals.

In response to the March 30, 1993, notice EPA received, among other items, a request for removing carbon disulfide from the open season program, a testing proposal for brominated flame retardants, and a request for adding phenol to tier I.

On November 22, 1993 (58 FR 61654), EPA proposed a test rule under section 4(a) of TSCA that would require manufacturers and processors of five chemicals (phenol, acetophenone, N,N-dimethylaniline, ethyl acetate, and 2,6-dimethylphenol) to conduct testing for certain chemical fate, health and environmental effects. In addition, in this proposed rulemaking, EPA also invited manufacturers and/or processors of these chemical substances to participate in consent agreement negotiations for the chemicals proposed for testing to develop and submit consent agreement proposals to EPA.

In evaluating the ITC's testing recommendations for phenol in the proposed test rule, EPA considered the information provided by the ITC, the on-line IRIS data base, and supplemental information developed by EPA. In developing the testing requirements, EPA has also considered the status of phenol under the Clean Air Act amendments of 1990. These considerations have influenced the testing routes of administration selected.

EPA believes that phenol is used in a wide variety of industrial and consumer activities. The annual production volume is estimated to exceed 3.5 billion pounds. Approximately 320,000 workers may be exposed to phenol. In addition, phenol is used in numerous consumer products indicating a potential for exposure to consumers.

In the November 22, 1993 proposal, EPA proposed that phenol be tested, by the inhalation route of administration, for subchronic toxicity, toxicokinetics, neurotoxicity (acute and subchronic), and reproductive toxicity. In addition, EPA proposed that toxicokinetics testing by the oral route of administration and both reproductive and developmental toxicity testing be conducted by gavage.

EPA also proposed, in the Hazardous Air Pollutants (HAPS) test rule (61 FR 33178, June 26, 1996) (FRL–4869–1) that phenol be tested for acute toxicity and immunotoxicity in addition to the testing proposed earlier (58 FR 61654). On the basis of information provided by the Phenol Panel, EPA requested that manufacturers conduct a 14-day inhalation study so that inhalation risks of phenol exposure could be extrapolated from the oral test data and pharmacokinetics data that the Panel members had agreed to conduct, rather than the acute study. The inhalation study is necessary to determine portal-of-entry effects from inhalation

exposure which can only be obtained from a well conducted inhalation study. The pharmacokinetics data can be used to calculate the inhalation exposures that correspond to the doses used in the oral studies for the systemic effects, thus permitting an estimation of the inhalation doses that would be required to produce the responses observed in the oral studies. The Panel provided EPA with test data which are sufficient to characterize the immunotoxicity of phenol.

III. Enforceable Consent Agreement Negotiations

In response to EPA's proposed rule and offer to negotiate an ECA, The Chemical Manufacturer's Association (CMA) Phenol Panel submitted a proposal for a testing program (Ref. 1).

EPA held a public meeting to negotiate an ECA for phenol on October 26, 1995. This meeting was attended by representatives of the Companies and other interested parties. During the public meeting, consensus was reached on the ECA, and on the tests to be included in the ECA. On September 6, 1996, EPA received the ECA signed by the Companies. On January 9, 1997, EPA signed the ECA and accompanying Order.

IV. Proposed Test Rule

EPA has decided not to finalize the proposed test rules for phenol (58 FR 61654, November 22, 1993; 61 FR 33178, June 26, 1996). EPA has instead reached agreement with the Companies that the testing requirements for phenol in both proposed rules, will be met by implementing the ECA and Order, and that the issuance of the ECA and Order constitutes final EPA action for purposes of 5 U.S.C. 704. Should EPA decide in the future that it requires additional data on phenol, the EPA will initiate a separate action.

V. Testing Program

Table 1 describes the required testing, test standards, and reporting requirements under the ECA for phenol. This testing program will allow EPA to characterize further the potential health hazards resulting from exposure to phenol.

Table 1.—Required Testing, Test Standards and Reporting Requirements for Phenol

Description of test	Test standard (40 CFR citation)	Deadline for final report[1] (months)	Interim reports required[2] (number)
Respiratory toxicity:			
1. 14-day, inhalation.	Appendix I	12	1
Reproductive toxicity:			
1. Reproductive toxicity, drinking water.	798.4700 (40 CFR) (Appendix II)	29	4
Neurotoxicity:			
1. Subchronic neurotoxicity, functional observational battery, motor activity, neuropathology, drinking water.	91–154617 (National Technical Information Service) (Appendix III)	21	3
2. Developmental neurotoxicity,[3] drinking water.	91–154617 (National Technical Information Service) (Appendix III)	[4]21	3

[1] Number of months after the effective date of the testing consent order.
[2] Interim reports are required every 6 months from the effective date until the final report is submitted. This column shows the number of interim reports required for each test.
[3] If the Agency determines that the results of the neuropathology study are not negative, then this required testing must be performed.
[4] Figure indicates the reporting deadline, in months, calculated from the date the notification to the test sponsor by certified letter or **Federal Register** notice that the Agency has determined this required testing must be performed.

VI. Export Notification

Upon publication of this notice, the ECA and Order subject any of the Companies who export or intend to export phenol, of any purity, to the export notification requirements of section 12(b) of TSCA. Upon the effective date of the rule, any other persons who export or intend to export phenol, of any purity, will be subject to the export notification requirements of section 12(b) of TSCA. The listing of a chemical substance or mixture at 40 CFR 799.5000 serves as notification to persons who export or intend to export such chemical substance or mixture that the substance or mixture is the subject of an ECA and Order and that 40 CFR part 707 applies.

VII. Public Record

EPA has established a record for this ECA and Order under docket number OPPTS–42150B, which is available for inspection Monday through Friday, excluding legal holidays, in Rm. NE–B607, 401 M St., SW., Washington, DC, 20460 from noon to 4 p.m. Information claimed as Confidential Business Information (CBI), while part of the record, is not available for public review.

Electronic comments can be sent directly to EPA at: oppt-ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

A. Supporting Documentation

This record contains the basic information considered in developing this ECA and Order and includes the following information.

(1) Testing Consent Order for Phenol, with incorporated Enforceable Consent

Agreement and associated testing protocols attached as appendices.

(2) Federal Register notices pertaining to this notice, the Testing Consent Order and the Enforceable Consent Agreement, consisting of:

(a) Notice of Proposed Rulemaking for Acetophenone, Phenol, N,N-dimethylaniline, ethyl acetate, and 2,6-dimethylphenol (58 FR 61654; November 22, 1993).

(b) Notice of Opportunity to Initiate Negotiations for TSCA Section 4 Testing Consent Agreements (57 FR 31714; July 17, 1992).

(c) Notice of Testing Consent Agreement Development for Listed Chemical Substances; Solicitation for Interested Parties (58 FR 43893; August 18, 1993).

(3) Communications consisting of:

(a) Written letters.

(b) Meeting summaries.

(4) Reports—published and unpublished factual materials.

B. References

1. The Phenol Regulatory Task Group of the Chemical Manufacturers Association. Letter from Gordon D. Strickland to EPA. Enforceable Testing Consent Agreement Proposal for Phenol. Washington, DC. (February 22, 1994).

VIII. Regulatory Requirements

A. Regulatory Assessment Requirements

For regulatory assessment purposes, the ECA and Order for phenol announced in this notice do not constitute a rule as defined by sections 3 (d) and (e) of Executive Order 12866 (58 FR 51735, October 4, 1993) or section 601(2) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The Order incorporates the ECA and the ECA is an agreement between and among EPA and the Companies. This notice, however, is a rule because it amends 40 CFR 799.5000, thereby subjecting all persons who export or intend to export phenol to export notification requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA has determined that few, if any, entities which currently export phenol, or are likely to export phenol in the future, are small as defined by 40 CFR 704.3. Furthermore, the exporter is required only to include the following information in the notice to EPA: The name of the chemical substance (i.e., in this case, phenol); the name and address of the exporter; the country (ies) of import; the date(s) of export or intended export; and the section of TSCA under which EPA has taken action (i.e., in this case, TSCA section 4). The cost of compliance with these routine administrative requirements is minimal. Therefore, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by UMRA, that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

This rule will not result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. As described above, the export notification procedure is a routine administrative act and the cost of compliance is minimal. The requirements of section 203 of UMRA which relate to regulatory requirements that may significantly or uniquely affect small governments also do not apply to today's rule because the rule affects only the private sector, i.e., those who export or intend to export phenol.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this rule is not a ''significant regulatory action'' subject to review by the Office of Management and Budget (OMB), nor does it involve special considerations of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

An agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid control number assigned by OMB. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The information collection requirements related to this action have already been approved by OMB pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, under OMB control number 2070–0033 (EPA ICR No. 1139) for implementation of the ECA and Order, and OMB control number 2070–0030 (EPA ICR No. 0795) for compliance with export notification requirements. This action does not impose any burdens requiring additional OMB approval.

The public reporting burden for the collection of information relating to the ECA and Order is estimated to average 388 hours per response. This estimate includes the time for reviewing the test protocols attached to the ECA, generating and analyzing the test results, and submitting the results to EPA. The public reporting burden for the collection of information relating to the export notification requirements is estimated to average 0.55 hours per response.

B. Submission to Congress and the General Accounting Office

This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). Pursuant to 5 U.S.C. 801(a)(1)(A), EPA submitted this action to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to its publication in today's Federal Register.

List of Subjects in 40 CFR Part 799

Environmental Protection, Chemicals, Chemical export, Hazardous substances, Health effects, Laboratories, Reporting and recordkeeping requirements, Testing.

Dated: January 9, 1997.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, title 40 of the Code of Federal Regulations, chapter I, subchapter R, part 799 is amended as follows:

PART 799—[AMENDED]

1. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5000 is amended by adding phenol to the table in CAS number order, effective March 18, 1997, to read as follows:

§ 799.5000 Testing consent orders for substances and mixtures with Chemical Abstract Service Registry Numbers.

CAS Number	Substance or mixture name	Testing	FR publication date
*	* * *	*	*
108–95–2	Phenol	Health Effects	January 17, 1997
*	* * *	*	*

[FR Doc. 97–1263 Filed 1–16–97; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–64; RM–8747]

Radio Broadcasting Services; Boulder and Lafayette, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Chananel 234C from Boulder to Lafayette, Colorado, and modifies the license of Salem Media of Colorado, Inc. for Station KRKS-FM to specify operation on Channel 234C at Lafayette, as requested, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. *See* 61 FR 15022, April 4, 1996. The allotment of Channel 234C to Lafayette will provide that community with its first local aural transmission facility without depriving Boulder of local transmission service. Coordinates used for Channel 234C at Lafayette, Colorado are 39–40–35 and 105–29–09. With this action, the proceeding is terminated.

EFFECTIVE DATE: February 24, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of theCommission's Report and Order, MM Docket No. 96–64, adopted January 3, 1997, and released January 10, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado is amended by removing Channel 234C at Boulder and adding Lafayette, Channel 234C.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–1097 Filed 1–16–97; 8:45 am]
BILLING CODE 6712–01–F

DEPARTMENT OF DEFENSE

48 CFR Parts 203, 215, and 252

[DFARS Case 96–D310]

Defense Federal Acquisition Regulation Supplement; Procurement Integrity

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to reflect amendments to certain statutory procurement integrity restrictions.

DATES: Effective date: January 17, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Pelkey, (703) 602-0131.

SUPPLEMENTARY INFORMATION:

A. Background

Section 4304 of the Clinger-Cohen Act of 1996 (Pub. L. 104–106) amended the procurement integrity provisions of Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) and repealed 10 U.S.C. 2397–2397c, which addressed post-Federal employment of certain former Department of Defense employees. This final rule removes regulations implementing the repealed statutes and conforms DFARS 203.104 to the FAR revisions published as Item I of Federal Acquisition Circular 90–45 (62 FR 226, January 2, 1997).

A proposed rule with request for public comments was published on September 6, 1996 (61 FR 47100). One comment was received, which recommended no changes to the proposed rule.

B. Regulatory Flexibility Act

The Department of Defense certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to ''major defense contractors'' (i.e., contractors with DoD contracts exceeding $10 million per Government fiscal year), and affects only the ability of such contractors to provide compensation to certain former DoD employees.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies because the rule eliminates the information collection and reporting requirements of DFARS 203.170–2 and the associated clause at 252.203–7000. The requirements that are eliminated were approved by the Office of Management and Budget (OMB) under OMB Clearance number 0704–0277.

List of Subjects in 48 CFR Parts 203, 215, and 252

Government Procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 203, 215, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 203, 215, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

203.104–4 [Removed]

2. Section 203.104–4 is removed.

203.104–5 [Amended]

3. Section 203.104–5 is amended by redesignating paragraph (e)(4) as (d)(4); and revising, in newly redesignated paragraph (d)(4), the reference ''FAR 3.104–5(e)(4)'' to read ''FAR 3.104–5(d)(4)''.

203.170 through 203.170–4 [Removed]

4. Sections 203.170 through 203.170–4 are removed.

PART 215—CONTRACTING BY NEGOTIATION

5. Section 215.608 is amended by revising the last sentence of paragraph (b) to read as follows:

215.608 Proposal evaluation.

* * * * *

(b) * * * Determinations based on violations or possible violations of Section 27 of the OFPP Act shall be made as specified in FAR 3.104.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.203–7000 [Removed and reserved]

6. Section 252.203–7000 is removed and reserved.

[FR Doc. 97–1037 Filed 1–16–97; 8:45 am]
BILLING CODE 5000–04–M

48 CFR Parts 215, 219, 225, 226, 227, 233, and 252

[DFARS Case 96–D306]

Defense Federal Acquisition Regulation Supplement; Elimination of Certifications

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove particular certification requirements for contractors and offerors that are not specifically imposed by statute.

EFFECTIVE DATE: January 17, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Mutty, PDUSD (A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062, Telephone (703) 602–0131. Telefax (703) 602–0350. Please cite DFARS Case 96–D306 in all correspondence related to this case.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS Parts 215, 219, 225, 226, 227, 233, and 252 to remove particular certification requirements for contractors and offerors. The rule implements Section 4301(b) of the Clinger-Cohen Act of 1996 (Pub. L. 104–106). Section 4301(b) requires the head of each executive agency, that has agency procurement regulations containing one or more certification requirements for contractors and offerors that are not specifically imposed by statute, to issue for public comment a proposal to remove from the agency regulations those certification requirements that are not specifically imposed by statute. The head of the agency can omit such a certification from its proposal only if: (1) the senior procurement executive for the executive agency provides the head of the executive agency with a written justification for the requirement and a determination that there is no less burdensome means for administering and enforcing the particular regulation that contains the certification requirement; and (2) the head of the executive agency approves in writing the retention of such certification requirement. A proposed rule was published in the Federal Register on September 6, 1996 (61 FR 47101). Eighteen comments were received from four respondents. All comments were considered in the development of the final rule.

In response to the public comments, DFARS 215.873(d) was revised to replace ''furnishes any certification'' with ''identifies any such data'' to avoid any potential misinterpretation that a certification not specifically required by statute or regulation is permitted. Additionally, the language at DFARS 252.236–7006(c) was revised to more clearly define the requirement for offerors to indicate that proposed items, subject to cost limitations, include an appropriate apportionment of all costs, direct and indirect, overhead, and profit.

Several certifications for contractors and offerors associated with Foreign Contracting had been proposed for elimination. However, upon consideration of public comments received in response to the proposed rule, these certifications are being proposed for retention, because the self-policing discipline of a certification requirement is important to enforcing a national policy grounded in vital economic and security interests. The Government believes that elimination of these certification requirements would have created a need for offerors to submit more detailed information regarding the origin of offered products. Therefore, the certification is viewed as a less burdensome alternative. Interested parties are invited to submit comments on the retention of these certification requirements. Please cite Holding File 96–708–02, Regulatory Reform—Certifications DFARS, in correspondence. Comments should be limited to the retention of the following certifications for contractors and offerors that were proposed for elimination but have been retained as a result of the analysis of public comments:

DFARS Cite	Clause/provision No.	Title
225.109	252.225–7000	Buy American Act—Balance of Payments Program Certificate.
225.408	252.225–7006	Buy American Act—Trade Agreements—Balance of Payments Program Certificate.
225.408	252.225–7035	Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.

B. Regulatory Flexibility Act

This final rule is expected to have a significant beneficial impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because it reduces the number of certifications that offerors and contractors must provide to the Government. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and may be obtained from the address specified herein. A copy of the FRFA has been submitted to the Chief Council for Advocacy of the Small Business Administration. The analysis is summarized as follows:

The objective and legal basis for this rule is Section 4301(b) of the Clinger-Cohen Act of 1996 (Pub. L. 104–106). The rule implements Section 4301(b) by amending the DFARS to remove certain certification requirements for contractors and offerors that are not specifically imposed by statute. There were no public comments received in response to the initial regulatory flexibility analysis. Certifications relating to the Buy American Act, Trade Agreements Act, and North American Free Trade Agreement Implementation Act were originally proposed for elimination. However, upon consideration of public comments received in response to the proposed rule, these certifications were retained. The rule will apply to all large and small entities that are interested in receiving Government contracts. The number of small entities to which the rule will apply is estimated to be 20,378. This rule does not impose any reporting, recordkeeping, or other compliance requirements. Flexible compliance was considered but determined inappropriate because the rule eliminates, rather than imposes, certification burdens on large and small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose any new recordkeeping, information collection requirements, or collections of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 215, 219, 225, 226, 227, 233, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 215, 219, 225, 226, 227, 233, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 215, 219, 225, 226, 227, 233, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

2. Section 215.873 is amended by revising paragraph (d) to read as follows:

215.873 Estimated data prices.

* * * * *

(d) The contracting officer shall ensure that the contract does not include a requirement for data that the contractor has delivered or is obligated to deliver to the Government under another contract or subcontract, and that the successful offeror identifies any such data required by the solicitation. However, where duplicate data are desired, the contract price shall include the costs of duplication, but not of preparation, of such data.

PART 219—SMALL BUSINESS PROGRAMS

3. Section 219.301 is amended by revising paragraph (b) to read as follows:

219.301 Representation by the offeror.

* * * * *

(b) The contracting officer shall protest an offeror's representation that it is a small disadvantaged business concern when—

(i) There is conflicting evidence;

(ii) The offeror represents that the Small Business Administration previously determined the concern to be non-disadvantaged; or

(iii) The offeror represents its ownership as other than Black American, Hispanic American, Native American (including Indian tribes and Native Hawaiian organizations), Asian Pacific American, or subcontinent Asian American, unless the offeror represents that—

(A) It currently is in the Section 8(a) program; or

(B) Within the 6 months preceding submission of its offer, the offeror was determined by the Small Business Administration to be socially and economically disadvantaged, and no circumstances have changed to vary that determination.

4. Section 219.302–70 is amended by revising paragraphs (d) and (e) to read as follows:

§ 219.302–70 Protesting a small disadvantaged business representation.

* * * * *

(d) Upon receipt of a timely protest, the contracting officer shall withhold award and forward the protest to the SBA Office of Program Eligibility, Office of Minority Small Business and Capitol Ownership Development, 409 3rd Street, SW., Washington, DC 20416. Send SBA—

(1) The protest;

(2) The date the protest was received and a determination of timeliness; and

(3) The date of bid opening or date on which notification of apparent successful offeror was sent to unsuccessful offerors.

(e) Do not withhold award when—

(1) The contracting officer makes a written determination that award must be made to protect the public interest; or

(2) The offeror represents that, within the 6 months preceding submission of its offer, the SBA has determined the concern to be socially and economically disadvantaged, and no circumstances have changed to vary that determination.

* * * * *

PART 225—FOREIGN ACQUISITION

5. Section 225.603 is amended by revising paragraph (1)(iii)(C)*(2)* to read as follows:

§ 225.603 Procedures.

(1) * * *

(iii) * * *

(C) * * *

(2) The supplies so purchased will be delivered to the Government or incorporated in Government-owned property or in an end product to be furnished to the Government, and the duty will be paid if such supplies or any portion are used for other than the performance of the Government contract or disposed of other than for the benefit of the Government in accordance with the contract terms; and

* * * * *

PART 226—OTHER SOCIOECONOMIC PROGRAMS

6. Section 226.7005 is amended by revising the introductory text of paragraph (b) and paragraph (b)(1) to read as follows:

§ 226.7005 Eligibility as an HBCU or MI.

* * * * *

(b) The contracting officer shall accept an offeror's HBCU or MI status under the provision at 252.226–7001, unless—

(1) Another offeror challenges the status; or

* * * * *

§ 226.7008 [Amended]

7. Section 226.7008 is amended in paragraph (b) by removing the word ''Certification'' and inserting the word ''Status'' in its place.

PART 227—PATENTS, DATA, AND COPYRIGHTS

§ 227.7004 [Amended]

8. Section 227.7004 is amended in paragraph (a)(6) by removing the word ''certification'' and inserting the word ''declaration'' in its place.

227.7103–6 [Amended]

9. Section 227.7103–6 is amended in paragraph (e)(3) by removing the word

''Certification'' and inserting the word ''Declaration'' in its place.

227.7104 [Amended]

10. Section 227.7104 is amended in paragraph (e)(5) by removing the word ''Certification'' and inserting the word ''Declaration'' in its place.

PART 233—PROTESTS, DISPUTES, AND APPEALS

Subpart 233.70 [Removed]

11. Subpart 233.70 is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

12. Section 252.212–7001 is amended by revising the clause date to read ''(JAN 1997)''; and in paragraph (b) by removing the entry ''252.233–7000 Certification of Claims and Requests for Adjustment or Relief (10 U.S.C. 2410)''.

13. Section 252.216–7000 is amended by revising the clause date to read (''JAN 1997)''; by removing paragraph (c)(4); and by revising paragraph (e)(1) to read as follows:

252.216–7000 Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products.

* * * * *

(e) * * *

(1) The Contractor may, after that time, deliver any items that were completed or in the process of manufacture at the time of receipt of the cancellation notice, provided the Contractor notifies the Contracting Officer of such items within 10 days after the Contractor receives the cancellation notice.

* * * * *

252.216–7001 [Amended]

14. Section 252.216–7001 is amended by revising the clause date to read ''(JAN 1997)''; in the introductory text of paragraph (f)(2) by removing the words ''and certifying''; and in the first sentence of paragraph (f)(4) by removing the word ''certified''.

15. Section 252.217–7005 is amended by revising the clause date to read ''(JAN 1997)''; and by revising paragraph (e)(6) to read as follows:

252.217–7005 Inspection and Manner of Doing Work.

* * * * *

(e) * * *

(6) Furnish the Contracting Officer or designated representative with a copy of the ''gas-free'' or ''safe-for-hotwork'' certificate, provided by a Marine Chemist or Coast Guard authorized person in accordance with Occupational Safety and Health Administration regulations (29 CFR 1915.14) before any hot work is done on a tank;

* * * * *

16. Section 252.219–7000 is amended by revising the clause date to read ''(JAN 1997)''; and by revising the introductory text of paragraph (c) to read as follows:

252.219–7000 Small Disadvantaged Business Concern Representation (DoD Contracts).

* * * * *

(c) Complete the following—

* * * * *

17. Section 252.225–7009 is amended by revising the clause date to read ''(JAN 1997)''; and by revising paragraphs (i)(9) and (i)(10) to read as follows:

252.225–7009 Duty-Free Entry—Qualifying Country End Products and Supplies.

* * * * *

(i) * * *

(9) List of items purchased;

(10) An agreement by the Contractor that duty shall be paid by the Contractor to the extent that such supplies, or any portion (if not scrap or salvage), are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer;

* * * * *

18. Section 252.225–7010 is amended by revising the clause date to read ''(JAN 1997)''; and by revising paragraph (c)(10) to read as follows:

252.225–7010 Duty-Free Entry—Additional Provisions.

* * * * *

(c) * * *

(10) An agreement by the Contractor that duty shall be paid by the Contractor to the extent that such supplies, or any portion (if not scrap or salvage), are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

* * * * *

19. Section 252.225–7018 is amended by revising the clause date to read ''(JAN 1997)''; and by revising paragraph (e) to read as follows:

252.225–7018 Notice of Prohibition of Certain Contracts with Foreign Entities for the Conduct of Ballistic Missile Defense RDT&E.

* * * * *

(e) The offeror (_____) is (_____) is not a U.S. firm.

(End of provision)

20.–21. Section 252.225–7037 is amended by revising the clause date to read ''(JAN 1997)''; and by revising paragraphs (i)(9) and (i)(10) to read as follows:

252.225–7037 Duty-Free Entry—NAFTA Country End Products and Supplies.

* * * * *

(i) * * *

(9) List of items purchased;

(10) An agreement by the Contractor that duty shall be paid by the Contractor to the extent that such supplies, or any portion (if not scrap or salvage), are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer; and

* * * * *

22. Section 252.226–7001 is amended by revising the section title, clause title and date, and paragraph (b) to read as follows:

252.226–7001 Historically Black College or University and Minority Institution Status.

* * * * *

HISTORICALLY BLACK COLLEGE OR UNIVERSITY AND MINORITY INSTITUTION STATUS (JAN 1997)

* * * * *

(b) *Status.*

If applicable, the offeror shall check the appropriate space below:

_____A historically black college or university

_____A minority institution

(End of provision)

23. Section 252.227–7036 is revised to read as follows:

252.227–7036 Declaration of Technical Data Conformity.

As prescribed at 227.7103–6(e)(3) or 227.7104(e)(5), use the following clause:

DECLARATION OF TECHNICAL DATA CONFORMITY (JAN 1997)

All technical data delivered under this contract shall be accompanied by the following written declaration: The Contractor, _____, hereby declares that, to the best of its knowledge and belief, the technical data delivered herewith under Contract No. _____ is complete, accurate, and complies with all requirements of the contract.

Date _____

Name and Title of Authorized Official _____

(End of clause)

252.233–700 [Removed].

24. Section 252.233–7000 is removed.

25. Section 252.236–7003 is amended by revising the clause date to read ''(JAN 1997)''; and by revising paragraphs (c)(1) and (c)(2) and the introductory text of paragraph (c)(3) to read as follows:

252.236–7003 Payment for Mobilization and Preparatory Work.

* * * * *

(c) * * *

(1) An account of the Contractor's actual expenditures;

(2) Supporting documentation, including receipted bills or copies of payrolls and freight bills; and

(3) The Contractor's documentation—

* * * * *

26. Section 252.236–7006 is amended by revising the clause date to read ''(JAN 1997)''; and by revising paragraph (c) to read as follows:

252.236–7006 Cost Limitation.

* * * * *

(c) Prices stated in offers for items subject to cost limitations shall include an appropriate apportionment of all costs, direct and indirect, overhead, and profit.

* * * * *

252.239–7007 [Amended].

27. Section 252.239–7007 is amended by revising the clause date to read ''(JAN 1997)''; and in paragraph (d)(1) by removing the word ''certified''.

252.247–7001 [Amended].

28. Section 252.247–7001 is amended by revising the clause date to read ''(JAN 1997)''; and in paragraph (g) by removing the word ''certification'' and inserting the word ''statement'' in its place.

[FR Doc. 97–1036 Filed 1–16–97; 8:45 am]

BILLING CODE 5000–04–M

48 CFR Part 225

[DFARS Case 96–D030]

Defense Federal Acquisition Regulation Supplement; Metalworking Machinery—Trade Agreements

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to reflect the expiration of certain statutory restrictions on the acquisition of machine tools.

EFFECTIVE DATE: January 17, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131. Telefax (703) 602–0350. Please cite DFARS Case 96–D030 in all correspondence related to this issue.

SUPPLEMENTARY INFORMATION:

A. Background

10 U.S.C. 2534 (a)(4)(B) restricted the acquisition of non-domestic machine tools in certain Federal Supply Classes for metalworking machinery. This restriction ceased to be effective on October 1, 1996. On November 15, 1996 (61 FR 58488), the DFARS was amended to remove language that implemented 10 U.S.C. 2534(a)(4)(B), at 225.7004, 252.225–7017, and 225.7040. This final rule makes a related amendment at DFARS 225.403–70. The rule removes the exception to application of the trade agreements acts for those machine tools for which acquisition was previously, but is no longer, restricted by 10 U.S.C. 2534(a)(4)(B).

B. Regulatory Flexibility Act

This final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 96–D030 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not contain any information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 225 is amended as follows:

1. The authority citation for 48 CFR Part 225 continues to read as follows:

AUTHORITY: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

225.403–70 [Amended]

2. Section 225.403–70 is amended by removing the entry ''34 Metalworking machinery (except 3408, 3410–3419, 3426, 3433, 3441–3443, 3446, 3448, 3449, 3460, 3461)'' and inserting in its place the entry ''34 Metalworking machinery''.

[FR Doc. 97–1040 Filed 1–6–97; 8:45 am]

BILLING CODE 5000–04–M

48 CFR Part 225

[DFARS Case 96–D319]

Defense Federal Acquisition Regulation Supplement; Authority To Waive Foreign Purchase Restrictions

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 810 of the National Defense Authorization Act of Fiscal Year 1997 (Public Law 104–201). Section 810 adds new authority to waive the restrictions on foreign purchases at 10 U.S.C. 2534.

DATES: *Effective date:* January 17, 1997.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before March 18, 1997, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 96–D319 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements Section 810 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201). Section 810 adds new authority to waive the restrictions on foreign purchases at 10 U.S.C. 2534, applicable to buses, chemical weapons antidote, air circuit breakers, ball and roller bearings, totally enclosed lifeboat survival systems, and anchor and mooring chain, if application of the restrictions would impede the reciprocal procurement of defense items under a memorandum of understanding. However, this waiver authority will not be effective with regard to the additional restrictions on the acquisition of anchor and mooring chain, noncommercial ball and roller bearings, and totally enclosed lifeboat survival systems, contained in defense appropriations acts (and implemented at DFARS 225.7012, 225.7019, and 225.7022, respectively).

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because there are no known small business manufacturers of buses, air circuit breakers, or the restricted chemical weapons antidote; acquisition of anchor and mooring chain, noncommercial ball and roller bearings, and totally enclosed lifeboat survival systems is presently restricted to domestic sources by defense

appropriations acts; and the restrictions of 10 U.S.C. 2534 do not apply to purchases of commercial items incorporating ball or roller bearings. An Initial Regulatory Flexibility Analysis has, therefore, not been prepared. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 96–D319 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this interim rule does not contain any information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This action is necessary to implement Section 810 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201). Section 810 adds new authority to waive the restrictions on foreign purchases at 10 U.S.C. 2534, and was effective upon enactment on September 23, 1996. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 225 is amended as follows:

1. The authority citation for 48 CFR Part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.7005 is amended by revising paragraph (a)(3) to read as follows:

225.7005 Waiver of certain restrictions.

* * * * *

(a) * * *

(3) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

* * * * *

3. Section 225.7019–3 is amended by revising paragraph (a)(1)(iv) to read as follows:

225.7019–3 Waiver.

(a) * * *

(1) * * *

(iv) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country;

* * * * *

[FR Doc. 97–1038 Filed 1–16–97; 8:45 am]

BILLING CODE 5000–04–M

48 CFR Parts 225 and 252

[DFARS Case 96–D021]

Defense Federal Acquisition Regulation Supplement; Contingent Fees—Foreign Military Sales

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to conform to changes adopted in the Federal Acquisition Regulation (FAR), pertaining to elimination of requirements for Government review of a prospective contractor's contingent fee arrangements.

DATES: *Effective date:* January 17, 1997.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before March 18, 1997, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 96–D021 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS 225.73, 252.212–7001, and 252.225–7027 to conform to the FAR revisions published as Item I of Federal Acquisition Circular 90–40 (61 FR 39188, July 26, 1996), which removed requirements for prospective contractors to provide certain information to the Government regarding contingent fee arrangements. This interim rule makes the associated DFARS changes related to contingent fees under contracts for foreign military sales.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule removes requirements for contracting officer review of contingent fee arrangements under foreign military sales contracts, but does not change the policy pertaining to the allowability of contingent fees under these contracts. An Initial Regulatory Flexibility Analysis has, therefore, not been prepared. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 96–D021 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this interim rule does not contain any information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501, et seq.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This interim rule conforms the DFARS to changes already adopted in the FAR. Federal Acquisition Circular 90–40 (FAR Case 93–009) eliminated the clause at FAR 52.203–4, Contingent Fee Representation and Agreement; the

Standard Form 119, Statement of Contingent or Other Fees; and the associated requirements in FAR Subpart 3.4 relating to review and evaluation of contingent fees. This interim rule makes the associated DFARS changes related to contingent fees for foreign military sales. Immediate publication of an interim rule is necessary because compliance with the existing requirements of DFARS 225.7302 and 225.7303 is no longer feasible. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 225 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

225.7302 [Amended]

2. Section 225.7302 is amended by removing paragraph (a)(1), and by redesignating paragraphs (a)(2) through (a)(5) as paragraphs (a)(1) through (a)(4).

3. Section 225.7303–4 is revised to read as follows:

225.7303–4 Contingent fees.

(a) Contingent fees are allowable under defense contracts provided that the fees are paid to a bona fide employee or a bona fide established commercial or selling agency maintained by the prospective contractor for the purpose of securing business (see FAR part 31 and FAR subpart 3.4). For FMS, it is extremely difficult for DoD to verify the services, or the value of the services. Therefore, the cost of allowable contingent fees (as defined in FAR subpart 3.4) is limited to $50,000.

(b) Under DoD 5105.38–M, Security Assistance Management Manual, Letters of Offer and Acceptance for requirements for the governments of Australia, Taiwan, Egypt, Greece, Israel, Japan, Jordan, Republic of Korea, Kuwait, Pakistan, Philippines, Saudi Arabia, Turkey, Thailand, or Venezuela (Air Force) must provide that all U.S. Government contracts resulting from the Letters of Offer prohibit the payment of contingent fees unless the payments have been identified and payment approved in writing by the foreign customer before contract award. (See 225.7308(a).)

4. Section 225.7308 is amended by revising paragraph (a) to read as follows:

225.7308 Contract clauses.

(a) Use the clause at 252.225–7027, Restriction on Contingent Fees for Foreign Military Sales, in all solicitations and contracts for foreign military sales.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 252.212–7001 is amended by revising the clause date to read ''(JAN 1997)'', and by removing the entry ''252.225–7027 Limitation on Sales Commissions and Fees (12 U.S.C. 2779)'' and inserting in its place the entry ''252.225–7027 Restriction on Contingent Fees for Foreign Military Sales (22 U.S.C. 2779)''.

6. Section 252.225–7027 is revised to read as follows:

252.225–7027 Restriction on Contingent Fees for Foreign Military Sales.

As prescribed in 225.7308(a), use the following clause. Insert in paragraph (b) of the clause the name(s) of any foreign country customer(s) listed in 225.7303–4(b).

Restriction on Contingent Fees for Foreign Military Sales (Jan 1997)

Contingent fees, as defined in the Covenant Against Contingent Fees clause of this contract, are not an allowable cost, and the contract price (including any subcontracts) shall not include any direct or indirect cost of contingent fees for Contractor (or subcontractor) sales representatives for solicitation or promotion or otherwise to secure the conclusion of the sale of any of the supplies or services called for by this contract, unless—

(a) The amount of contingent fee per foreign military sale does not exceed $50,000; and

(b) For sales to the Government(s) of _____, the contingent fees have been identified and payment approved in writing by the named Government(s) before contract award.

(End of clause)

[FR Doc. 97–1039 Filed 1–16–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–283]

Organization and Delegation of Powers and Duties, Delegations of Authority to the Maritime Administrator

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation (Secretary) hereby delegates to the Maritime Administrator authority of the Secretary of Transportation under sections 1008, 1009, and 1013 of Public Law 104–324. This amendment adds a new paragraph 1.66(x) to reflect this delegation of authority.

EFFECTIVE DATE: This rule becomes effective January 21, 1997.

FOR FURTHER INFORMATION CONTACT: Richard Weaver, Chief, Division of Management and Organization, Maritime Administration, MAR–318, Room 7301, 400 Seventh Street, S.W., Washington, DC 20590, (202) 366–2811 or Gwyneth Radloff, Office of General Counsel (C–50), Department of Transportation, Room 10424, 400 Seventh Street, SW, Washington, DC 20590, (202) 366–9305.

SUPPLEMENTARY INFORMATION: Under sections 1008, 1009, and 1013 of Public Law 104–324 , the Secretary of Transportation (Secretary) may convey the right, title, and interest of the United States Government in certain specified vessels, equipment, and materials to specified recipients or for specified purposes. This amendment to 49 CFR Part 1 delegates the Secretary's authorities related to the above responsibilities to the Maritime Administrator.

Since this amendment relates to departmental management, organization, procedure, and practice, notice and comment are unnecessary, and the rule may become effective in fewer than 30 days after publication in the Federal Register.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organizations and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. Section 1.66 is amended by inserting a new paragraph (x), to read as follows:

§ 1.66 Delegation to Maritime Administrator.

* * * * *

(x) Carry out the responsibilities and exercise the authorities of the Secretary of Transportation under sections 1008, 1009, and 1013 of Public Law 104–324;

* * * * *

Issued at Washington, DC this 31st day of December 1996.

Federico Peña,

Secretary of Transportation.

[FR Doc. 97–1252 Filed 1–16–97; 8:45 am]

BILLING CODE 4910–62–P

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS–118; Amendment 192–80]

RIN 2137–AB97

Excess Flow Valve—Performance Standards

AGENCY: Research and Special Programs Administration, (RSPA), DOT.

ACTION: Final rule; response to petition for reconsideration.

SUMMARY: This action concerns a petition from the American Gas Association (AGA) to reconsider and clarify certain provisions of the excess flow valve (EFV) performance standards regulations. AGA's request to clarify the rule by deleting language in the regulation concerning sizing of the EFV and locating the EFV beyond the hard surface is granted because some operators are apparently misinterpreting this language. AGA's request to delete the recommended installation standards from the performance standards rule and include them in the notification rulemaking is denied because such standards are applicable to an EFV's safe and reliable operation. AGA's request to allow an operator to determine how to identify the presence of an EFV in the service line is denied because the final rule already allows the operator this flexibility.

EFFECTIVE DATE: February 18, 1997.

FOR FURTHER INFORMATION CONTACT: Mike Israni (202) 366–4571, regarding this final rule or the Dockets Unit, (202) 366–5046, regarding copies of this final rule or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

On June 20, 1996 (61 FR 31449), RSPA published regulations (49 CFR 192.381) prescribing performance standards for EFVs used to protect single-residence service lines. In a petition for reconsideration and request for clarification dated July 17, 1996, AGA asked RSPA to reconsider several provisions of this final rule on EFV performance standards. On July 30, 1996, OPS and AGA met to discuss the issues in the petition.

AGA Petition for Reconsideration

I. AGA contended that the marking requirement (§ 192.381(c)) and recommendations concerning where to locate the EFV (§ 192.381(d)) and whether to install an EFV in certain circumstances (§ 192.381(e)) are installation standards and should not have been included in the final rule on EFV performance standards. AGA maintained that these requirements should have been included in RSPA's notice of proposed rulemaking on EFV customer notification (61 FR 33476; June 27, 1996), and subject to notice and comment.

Response: RSPA disagrees that the marking requirement and the recommendations on locating and installing an EFV are misplaced and were not subject to notice and comment. RSPA established the EFV performance standards as minimum requirements for an EFV to perform safely and reliably when installed in a gas piping system. The marking requirement and the recommendations on locating and installing an EFV were included in the rule because RSPA considers them integral to an EFV's performance.

RSPA recommended the circumstances in which an operator should not install an EFV and where the operator should locate the EFV to address concerns raised during the EFV rulemaking process. Because these recommendations addressed comments that were made during the EFV rulemaking process, although not specifically proposed, RSPA considered them to be within the scope of the EFV rulemaking. To address commenters' concern about placing an EFV in a system where contaminants could cause a malfunction, RSPA included a recommendation that operators consider this factor when installing an EFV. Similarly, to address concerns about protecting the maximum length of service line, as well as comments about logistical and economic difficulties in installing or removing an EFV beneath a hard surface, RSPA recommended that an operator locate the EFV beyond the hard surface and as near the gas supply main as practical. Both recommended standards affect an EFV's operation and reliability, and are better suited to the performance standards rule than the notification rulemaking. The proposed notification rule proposes to require operators to notify customers about the availability, safety benefits, and cost associated with EFV installation, issues not related to an EFV's operation.

The requirement to identify the presence of an EFV in a service line by marking or other means is intended to alert personnel servicing the line to its presence. Although not technically a performance standard, the requirement is better placed in the performance standards rule because it helps to ensure that a service line with an EFV is properly serviced.

Accordingly, for the reasons discussed, RSPA does not adopt AGA's suggestion to amend the final rule by deleting these sections. However, AGA's additional concerns about the recommendation to locate an EFV beyond the hard surface are addressed in section III of this document.

II. AGA requested RSPA to clarify the requirement to mark, or otherwise identify, the presence of an EFV in a service line (§ 192.381(c)). AGA expressed concern that marking would notify the public of the valve's existence to the detriment of the public's safety. AGA suggested that RSPA amend this requirement to allow each operator to determine the method to identify the presence of an EFV in the service line.

Response: By requiring an operator to mark or otherwise identify the presence of an EFV in a service line, the final rule intended for each operator to determine how to identify the presence of an EFV to personnel servicing the line. The language in the rule left to the operator's discretion whether to identify the EFV's presence by marking the line, by indicating on maps and records, or by using some other method. When, during the meeting, OPS explained that this language was not intended to limit an operator, AGA agreed that further clarifying language was not needed. Thus, we do not see any necessity for modifying the rule.

III. The final rule (§ 192.381 (d)) recommended that an operator locate an EFV beyond the hard surface and as near as practical to the fitting connecting the service line to its source of gas supply. In its petition AGA said that the language specifying that an EFV *should be located beyond the hard surface* could increase the costs of installation and reduce the safety benefits of EFVs. AGA explained that

under the three most common installation and replacement methods (trenching, boring, insertion), an additional excavation or cutting and resealing of the pipe would be needed to accommodate the requirement. Furthermore, the effect of this requirement would be to install the EFV further from the service line than necessary.

Response: RSPA intended in the final rule that if an EFV were installed in a service line, it would be located as near the gas supply main as practical. RSPA further recommended that the EFV be located beyond the hard surface to alleviate concerns raised during the rulemaking process that installing or removing an EFV under a hard surface would result in increased installation or removal costs. To avoid any confusion for the operator about where best to locate an EFV, RSPA is deleting the language ''beyond the hard surface'' from the rule.

RSPA continues to believe that if an EFV is installed, it is placed as near the source of gas supply as practical to ensure the EFV protects the maximum length of service line. Therefore, we are further amending the section to clarify the original intent of the rule by changing ''should locate'' to ''shall locate the EFV as near as practical to the fitting connecting the service line to its source of gas supply.'' The clarification continues to allow the operator to decide if such an installation is practical.

IV. AGA argued in its petition that the language requiring that the EFV be ''sized to close at * * *'' (§ 192.381(a)(3)(I)), has caused confusion among operators. AGA explained that because sizing is usually done by an engineer, not the manufacturer, an operator could not ensure that the manufacturer had sized the valve correctly. AGA recommended RSPA delete this language or clarify who bears responsibility for ensuring the EFV is correctly sized.

Response: In RSPA's experience, the language concerning sizing should not cause confusion. Nonetheless, to preclude this possibility, RSPA is deleting the language ''[b]e sized to * * *'' from § 192.381(a)(3)(I).

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

The Office of Management and Budget (OMB) does not consider this final rule to be a significant regulatory action under section 3(f) of Executive Order 12866. Therefore, OMB did not review this final rule. Also, DOT does not consider this final rule to be significant under its regulatory policies and procedures (44 FR 11034; February 26, 1979). Because this final rule merely clarifies an existing rule, the economic impact is too minimal to warrant an evaluation of costs and benefits. However, an economic evaluation of the original final rule is available for review in the docket.

Executive Order 12612

We analyzed this final rule under the principles and criteria in Executive Order 12612 (''Federalism''). The final rule does not have sufficient federalism impacts to warrant preparation of a federalism assessment.

Regulatory Flexibility Act

I certify, under Section 605 of the Regulatory Flexibility Act, that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule does not modify the paperwork burden that operators already have. Therefore, a paperwork evaluation is unnecessary.

List of Subjects in 49 CFR Part 192

Natural gas, Pipeline safety, Reporting and record keeping requirements.

RSPA amends 49 CFR part 192 as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; 49 CFR 1.53.

2. Section 192.381 is amended by revising paragraphs (a)(3)(i), and (d) to read as follows:

§ 192.381 Service lines: Excess flow valve performance standards.

(a) * * *

(3) At 10 psig:

(i) Close at, or not more than 50 percent above, the rated closure flow rate specified by the manufacturer; and

* * * * *

(d) An operator shall locate an excess flow valve as near as practical to the fitting connecting the service line to its source of gas supply.

* * * * *

Issued in Washington, DC, on January 14, 1997.

Kelley S. Coyner,

Deputy Administrator.

[FR Doc. 97–1249 Filed 1–16–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 961105310–6374–02; I.D. 102396A]

RIN 0648–AJ31

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 17

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Framework Adjustment 17 and to correct the regulations implementing Amendment 7 to the Northeast Multispecies Fishery Management Plan (FMP). Framework 17 restores unused days-at-sea (DAS) to vessels enrolled in the DAS effort-control call-in system that fished less than one-sixth of their Amendment 7 DAS allocation during the months of May and June 1996. The intent of this rule is to provide vessels with their full Amendment 7 allocation of DAS and to correct an inadvertent omission in a previous rule.

EFFECTIVE DATE: January 14, 1997.

ADDRESSES: Copies of Amendment 7 to the Northeast Multispecies Fishery Management Plan (Amendment 7), its regulatory impact review (RIR) and the final regulatory flexibility analysis (RFA) contained within the RIR, its final supplemental environmental impact statement, and Framework Adjustment 17 documents are available upon request from Christopher B. Kellogg, Acting Executive Director, New England Fishery Management Council (Council), 5 Broadway, Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, NMFS, Fishery Policy Analyst, 508–281–9252.

SUPPLEMENTARY INFORMATION: Amendment 7 to the FMP (61 FR 27710, May 31, 1996) became effective on July 1, 1996, and implemented reductions in DAS for vessels already under the effort-control system. During the developmental stages of Amendment 7, it became clear that the New England Fishery Management Council (Council) would be unable to submit the amendment in time for it to be implemented before the May 1 start of the new fishing year. To address this situation, the Council agreed to prorate DAS to adjust for the gap between the

start of the fishing year and the implementation date of the revised allocations. However, because this had the unintended effect of assessing a prorated number of DAS, regardless of whether the DAS were actually used, and because the call-in system is in place to assess actual DAS used, the Council opted, through Framework 17, to use the actual method for those vessels subject to the call-in system in May and June. Further details concerning justification for and development of Framework Adjustment 17 were provided in the notice of proposed rulemaking (61 FR 58365, November 14, 1996) and are not repeated here.

This framework restores unused DAS (up to one-sixth of the full-year allocation) to vessels enrolled in the call-in system in May and June 1996, and that did not record more than one-sixth of their full-year allocation. Since these vessels (vessels holding a 1996 Amendment 5 multispecies permit in the Individual, Fleet, or Combination Vessel categories) had the opportunity to request a change in permit category, provided that the application was completed and sent to the Regional Administrator by August 15, 1996, the restoration of DAS will be calculated based on the permit category held by the vessel on August 16, 1996.

This rule also adds surf clam and ocean quahog dredge gear to the definition of exempted gear with respect to the NE multispecies fishery (i.e., gear that is deemed not capable of catching multispecies). This gear was inadvertently excluded from the definition in the final rule for Amendment 7, which created an inconsistency with the final Amendment 7 document.

Comments and Responses

Comment: Associated Fisheries of Maine, Maine Fishermen's Wives Association, Atlantic Trawlers Fishing, Inc., Senators Olympia J. Snowe and William S. Cohen, and one individual submitted written comments in support of Framework 17. The commenters asserted that the proposed rule to Amendment 7 did not explain how DAS would be prorated and, consequently, was interpreted by many to mean that DAS would be prorated only for those vessels that were not under the call-in system previous to Amendment 7. Because of this interpretation, one commenter stated that many vessels reserved their DAS in May and June for periods of time throughout the year that are traditionally more profitable to fish. Several others stated that it would create a financial hardship if their unused DAS were not restored.

Response: With the approval of Framework Adjustment 17, DAS will automatically be restored to vessels enrolled in the call-in system that fished less than one-sixth of their Amendment 7 allocation during the months of May and June 1996.

Classification

In addition to the restoration of unused DAS for which prior notice and opportunity for public comment was provided, this rule corrects a provision for which full prior notice and opportunity for comment were provided during the development and implementation of Amendment 7. Therefore, the Assistant Administrator for Fisheries, NOAA (AA), under 5 U.S.C. 553(b)(B), finds that additional prior notice and opportunity for public comment is unnecessary.

Under 5 U.S.C. 553(d)(1), both provisions of this rule are not subject to a delay in effectiveness because they relieve restrictions on the fishing industry.

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The reasons were published in the notice of proposed rulemaking for Framework Adjustment 17. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 13, 1997.

Charles Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.2, the definition for ''Exempted gear'' is revised to read as follows:

§ 648.2 Definitions.

* * * * *

Exempted gear, with respect to the NE multispecies fishery, means gear that is deemed to be not capable of catching NE multispecies and includes: Pelagic hook and line, pelagic longline, spears, rakes, diving gear, cast nets, tongs, harpoons, weirs, dipnets, stop nets, pound nets, pelagic gillnets, pots and traps, purse seines, shrimp trawls (with a properly configured grate as defined under this part), surf clam and ocean quahog dredges, and midwater trawls.

* * * * *

3. In § 648.82, paragraphs (b)(1)(i), (b)(2)(i), (b)(5)(i), and (b)(7)(i) are revised, and paragraph (j) is added to read as follows:

§ 648.82 Effort-control program for limited access vessels.

* * * * *

(b) * * *

(1) * * *

(i) *DAS allocation*. A vessel fishing under the Individual DAS category shall be allocated 65 percent of its initial 1994 allocation baseline, as established under Amendment 5 to the NE Multispecies FMP, multiplied by the proration factor of 0.833 for the 1996 fishing year, unless a vessel qualifies for a restoration of DAS under paragraph (j) of this section, and 50 percent of its initial allocation baseline for the 1997 fishing year and beyond, as calculated under paragraph (d)(1) of this section.

* * * * *

(2) * * *

(i) *DAS allocation*. A vessel fishing under the Fleet DAS category shall be allocated 116 DAS (139 DAS multiplied by the proration factor of 0.833) for the 1996 fishing year, unless a vessel qualifies for a restoration of DAS under paragraph (j) of this section, and 88 DAS for the 1997 fishing year and beyond.

* * * * *

(5) * * *

(i) *DAS allocation*. A vessel fishing under the Combination Vessel category shall be allocated 65 percent of its initial 1994 allocation baseline, as established under Amendment 5 to the NE Multispecies FMP, multiplied by the proration factor of 0.833 for the 1996 fishing year, unless a vessel qualifies for a restoration of DAS under paragraph (j) of this section, and 50 percent of its initial allocation baseline for the 1997 fishing year and beyond, as calculated under paragraph (d)(1) of this section.

* * * * *

(7) * * *

(i) *DAS allocation*. A vessel fishing under the Large Mesh Fleet DAS category shall be allocated 129 DAS (155 DAS multiplied by the proration factor of 0.833) for the 1996 fishing year,

unless a vessel qualifies for a restoration of DAS under paragraph (j) of this section, and 120 DAS for the 1997 fishing year, and beyond. To be eligible to fish under the Large Mesh Fleet DAS category, a vessel while fishing under this category must fish with gillnet gear with a minimum mesh size of 7–inch (17.78–cm) diamond mesh or trawl gear with a minimum mesh size of 8–inch (20.32–cm) diamond mesh, as described under § 648.80(a)(2)(ii), (b)(2)(ii), and (c)(2)(ii).

* * * * *

(j) *Restoration of unused DAS*. Vessels that held valid 1996 Amendment 5 NE multispecies permits in the Individual, Fleet or Combination Vessel categories are eligible for restoration of unused DAS if DAS fished during May and June 1996 was less than one-sixth of their 1996 Amendment 7 allocation. Restoration of DAS will be based on the NE multispecies permit category held on August 16, 1996. These vessels will be automatically credited with DAS equal to the difference between the proration reduction and their DAS fished during May and June 1996, as recorded in the NMFS call-in system specified at § 648.10(c) (or on other verifiable evidence of days spent fishing for multispecies). If the number of DAS fished during this time period exceeded the proration reduction amount, those days will not be subtracted from a vessel's 1996 allocation.

[FR Doc. 97–1204 Filed 1–14–97; 4:13 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 12
Friday, January 17, 1997

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.

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–0958]

Bank Holding Companies and Change in Bank Control (Regulation Y); Review of Restrictions in the Board's Section 20 Orders

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed conditions to board orders.

SUMMARY: The Board has conducted a comprehensive review of the prudential limitations established in its decisions under the Bank Holding Company Act and section 20 of the Glass-Steagall Act permitting a nonbank subsidiary of a bank holding company to underwrite and deal in securities. The Board is seeking comment on modifications to these limitations that the Board believes will allow section 20 subsidiaries to operate more efficiently and serve their customers more effectively. These modifications would allow section 20 subsidiaries to operate more readily in conjunction with an affiliated bank, thereby maximizing synergies, enhancing services, and possibly reducing costs.

DATES: Comments should be received on or before March 10, 1997.

ADDRESSES: Comments, which should refer to Docket No. R–0958, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected In room MP–500 between 9:00 a.m. and 5:00 p.m., except as provided in Section 261.8 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Gregory Baer, Managing Senior Counsel (202) 452–3236, Thomas Corsi, Senior Attorney (202) 452–3275, Legal Division; Michael J. Schoenfeld, Senior Securities Regulation Analyst (202) 452–2781, Division of Banking Supervision and Regulation; for the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202) 452–3544.

SUPPLEMENTARY INFORMATION:

Background

Section 20 of the Glass-Steagall Act provides that a member bank of the Federal Reserve System may not be affiliated with a company that is ''engaged principally'' in underwriting and dealing in securities.[1] Beginning in 1987, the Board has issued a series of orders authorizing bank holding companies to establish ''section 20 subsidiaries'' to engage in underwriting and dealing in securities not eligible for underwriting and dealing by a member bank.[2] In those orders, the Board established a series of prudential restrictions as conditions for approval under the Bank Holding Company Act. The restrictions are designed to prevent securities underwriting and dealing risk from being passed from a section 20 subsidiary to an affiliated insured depository institution, and thus to the federal safety net, and to mitigate the potential for conflicts of interest, unfair competition, and other adverse effects that may arise from the conduct of bank-ineligible securities activities.

The Board's original section 20 order in 1987 contained twenty restrictions, and the Board's subsequent order in 1989 allowing underwriting and dealing in all debt and equity securities contained more stringent restrictions, numbering twenty-eight in all. The restrictions contained in these orders are not imposed on any nonbank subsidiary of a bank holding company other than a section 20 subsidiary.

Although the restrictions imposed in the Board's section 20 orders are commonly known as ''firewalls,'' the term is something of a misnomer. While some of the most important restrictions are intended to prevent an outbreak of trouble at a section 20 subsidiary from spreading to an affiliated depository institution, many serve other purposes. For example, some of the ''firewalls'' are procedural, and others are directed towards consumer protection or preventing unfair competition.

Taken together, the section 20 firewalls are a very conservative regime designed to isolate a section 20 subsidiary from any affiliated depository institution or bank holding company. The firewalls have prevented bank holding companies from reaping possible synergy gains from the operation of an investment bank. The reasons the Board chose such a conservative regime are rooted in the time they were adopted.

First, when the Board approved establishment of the initial section 20 subsidiaries in 1987, it had little experience supervising investment banks in the United States. Because affiliation between banks and securities underwriters and dealers was long considered impractical or illegal, bank holding companies had not operated such entities since enactment of the Glass-Steagall Act in 1933. Moreover, pre-Glass-Steagall affiliations were considered, rightly or wrongly, to have caused losses to the banking industry and investors.[3] Thus, affiliation of banks and investment banks presented unknown risks that were considered substantial.

Second, although the Board recognized in 1987 that supervision and regulation of broker-dealers by the Securities and Exchange Commission provided significant protections, the Board had little experience with how

[1] 12 U.S.C. 377.

[2] *See, e.g., J.P. Morgan & Co., The Chase Manhattan Corp., Bankers Trust New York Corp., Citicorp, and Security Pacific Corp.*, 75 Federal Reserve Bulletin 192 (1989) (hereafter, *1989 Order*); *Citicorp, J.P. Morgan & Co., and Bankers Trust New York Corp.*, 73 Federal Reserve Bulletin 473 (1987) (hereafter, *1987 Order*); *see also Canadian Imperial Bank of Commerce, The Royal Bank of Canada, Barclays PLC and Barclays Bank PLC*, 76 Federal Reserve Bulletin 158 (1990) (applying earlier orders to section 20 subsidiaries of foreign banks) (hereafter, *1990 Order*).

[3] Recent research indicates that this belief may have been inaccurate. *See, e.g.*, George J. Benston, The Separation of Commercial and Investment Banking: The Glass-Steagall Act Revisited and Reconsidered 41 (1990) (''The evidence from the pre-Glass-Steagall period is totally inconsistent with the belief that banks' securities activities or investments caused them to fail or caused the financial system to collapse.'').

these protections operated in general or would operate within a bank holding company in particular.

Third, significant protections that currently exist with respect to section 20 subsidiaries were not present in 1987. Most significantly, section 23B of the Federal Reserve Act was under consideration but had not been adopted at the time of the Board's *1987 Order.* As noted below, many of the firewalls duplicate or overlap the restrictions of section 23B, which requires inter-affiliate transactions to be on arm's length terms, prohibits representing that a bank is responsible for a section 20 affiliate's obligations, and prohibits a bank from purchasing certain products from a section 20 affiliate.[4] Similarly, risk-based capital standards did not exist in 1987. Because those standards address some of the risks present in a bank's affiliation with an investment bank, they too overlap with some of the firewalls. Also, the Interagency Statement on Retail Sales of Nondeposit Investment Products was not adopted until 1994. The Interagency Statement is now the primary means by which the federal banking agencies seek to ensure that retail banking customers are not misled about the nature of the products that they are purchasing.

Introduction

In recognition that its concerns about affiliation could abate, the Board stated at the time it adopted the firewalls that it would continue to review their appropriateness in the light of its experience in supervising section 20 subsidiaries. The Board has now undertaken a comprehensive review of the restrictions imposed in its section 20 orders, and is proposing to eliminate most of them, and incorporate the rest in a statement of operating standards that the Board believes are appropriate for section 20 subsidiaries.

The risks of securities underwriting and dealing have in the Board's experience proven to be manageable in a bank holding company framework, and bank holding companies and banks have successfully undertaken and managed activities posing similar risks for which no firewalls were erected. Finally, many of the firewalls are duplicated, or at least addressed in some way, by other statutes or regulations that are more narrowly tailored to addressing the perceived risk or conflict. Thus, in many cases where the Board is proposing to eliminate a firewall, another restriction will remain.

The Board believes that the proposed changes will allow section 20 subsidiaries to operate more efficiently and serve their customers more effectively, consistent with the safety and soundness of affiliated banks. The most important changes being proposed by the Board address the firewalls regarding funding of a section 20 subsidiary by an affiliated bank, credit enhancements provided by a bank to issuers of securities underwritten by a section 20 affiliate, and loans provided by a bank to customers purchasing products of a section 20 affiliate. These changes would allow section 20 subsidiaries to operate more readily in conjunction with an affiliated bank, thereby maximizing synergies, enhancing services, and possibly reducing costs.

The Board is proposing to retain those restrictions that address issues of bank safety and soundness, significant conflicts of interest, or other concerns that are not addressed by other statutes or regulations. With respect to safety and soundness, the Board believes that it is essential that any bank holding company operating a section 20 subsidiary ensure that its subsidiary banks are well capitalized. Accordingly, the Board is proposing to reserve the discretion to reimpose the funding, credit extension, and credit enhancement firewalls in the event that an affiliated bank or thrift becomes less than well capitalized and the bank holding company does not promptly restore it to the well-capitalized level.

The Board proposes to incorporate in a statement of operating standards the practices that it believes a bank holding company and its section 20 subsidiary should follow in order to ensure safety and soundness and avoid conflicts of interest. For each of the existing firewalls, the Board seeks comment on whether that firewall, either alone or as part of a larger framework of restrictions, is necessary to ensure that underwriting and dealing in bank-ineligible securities is conducted in a safe and sound manner, and not subject to significant conflicts of interests, and should therefore be included as an operating standard.

The Board also seeks comment on whether adjustments to the proposed operating standards are necessary to address issues unique to foreign banks. In its *1990 Order,* the Board adopted a modified series of firewalls for foreign banks. The Board intends for the proposed operating standards to apply to both domestic and foreign banking organizations operating a section 20 subsidiary.

Discussion

Set forth below are: (1) each of the firewalls established in the Board's *1989 Order,* including any amendments subsequently made to that firewall;[5] (2) a description of whether the firewall was included in the *1987 Order* and the *1990 Order;* and (3) a request for comments on the firewall.

I. Capital Adequacy Conditions

Firewall 1(a) (Deduction of investment in Subsidiary From Bank Holding Company Capital)

Text of 1989 Order. In determining compliance with the Board's Capital Adequacy Guidelines, each Applicant shall deduct from its consolidated primary capital any investment it makes in the underwriting subsidiary that is treated as capital in the underwriting subsidiary. In accordance with the risk-based component of the Board's Capital Guidelines, Applicant shall deduct 50 percent of the amount of any investment in the underwriting subsidiary from Tier 1 capital and 50 percent from Tier 2 capital. In calculating primary capital and risk-based capital ratios, Applicant should also exclude the underwriting subsidiary's assets from the holding company's consolidated assets.

1987 and 1990 Order. The *1987 Order* provided for a similar capital deduction under an earlier set of capital standards. The *1990 Order* requires compliance with internationally accepted risk-based capital requirements after deduction of any investment in the section 20 subsidiary that is treated as capital in that subsidiary.

Request for Comment. The Board proposes to eliminate this restriction. The purpose of this firewall was to ensure that a bank holding company maintained sufficient resources to support its federally insured depository institutions and other banking operations by deducting any exposure to its section 20 subsidiary from its regulatory capital. The Board has viewed the deduction as reinforcement for the important requirement that any bank holding company that seeks to establish a section 20 subsidiary, and the insured depository institutions controlled by that bank holding company, be strongly capitalized.

In practice, however, the deconsolidation requirement has created regulatory burden without strengthening the capital of the organization. The deconsolidation requirement is inconsistent with GAAP and has therefore created confusion and imposed costs by requiring bank

[4] 12 U.S.C. 371c–1.

[5] Footnotes to the orders are omitted.

holding companies to prepare statements on two bases. Meanwhile, the deduction does not strengthen the capital of any insured depository institution affiliate of the section 20 subsidiary or the section 20 subsidiary itself, which is already subject to SEC-imposed capital requirements. Elimination of the deduction would not create or expose any incentive for a bank holding company to take capital necessary to support a depository institution and reinvest it in a section 20 subsidiary. Finally, the Board has recently adopted a system for analyzing market risk that will better measure the capital adequacy of a banking organization.

Moreover, based on its experience supervising section 20 subsidiaries over the past nine years, the Board does not believe that the activities of a section 20 subsidiary are so uniquely risky as to merit a capital treatment different from other nonbank affiliates, which are not subject to a deduction requirement.

Firewall 1(b) (Deduction of Extensions of Credit From Holding Company Capital)

Text of 1989 Order. Applicant shall also deduct from its regulatory capital any credit it or a nonbank subsidiary extends directly or indirectly to the underwriting subsidiary unless the extension of credit is fully secured by U.S. Treasury securities or other marketable securities and is collateralized in the same manner and to the same extent as would be required under section 23A(c) of the Federal Reserve Act if the extension of credit were made by a member bank. In the case of the risk-based component of the Board's Capital Guidelines, the deductions for unsecured or not fully-secured or inadequately collateralized loans shall be taken 50 percent from Tier 1 and 50 percent from Tier 2 as described above. Notwithstanding these adjustments, Applicant should continue to maintain adequate capital on a fully consolidated basis.

1987 and 1990 Order. This restriction was not included in the *1987 Order.* A similar deduction was required under the *1990 Order.*

Request for Comment. The Board proposes to eliminate the deduction required by this firewall for the same reasons as Firewall 1(a),[6] but retain the requirement that a bank holding company maintain adequate capital on a fully consolidated basis as a condition for operating a section 20 subsidiary.

Firewall 2 (Prior Approval Requirement for Investments in Subsidiary)

Text of 1989 Order. No Applicant nor any of its nonbank subsidiaries shall, directly or indirectly, provide any funds to, or for the benefit of, an underwriting subsidiary, whether in the form of capital, secured or unsecured extensions of credit, or transfer of assets, without prior notice to and approval by the Board.

1987 and 1990 Order. This restriction was not included in the *1987 Order.* The same restriction was included in the *1990 Order.*

Board Action. The Board is repealing this restriction, which requires prior notice and Board approval before a bank holding company or its nonbank subsidiaries may advance funds to its section 20 subsidiary. As the firewall is procedural, the Board is not seeking comment on the change, which will be effective immediately.

The prior approval requirement, which is applied only to investments in a section 20 subsidiary, was intended to ensure that resources needed to support a bank holding company's insured subsidiaries were not diverted to the underwriting subsidiary. However, in practice, bank holding companies require sufficient funding flexibility to accommodate business growth over a multi-year period, and the Board has thus been faced with the choice of allowing them this flexibility by approving open-ended funding plans or micromanaging the funding of section 20 subsidiaries. The Board has opted for the former course, relying on supervisory tools that allow the Board to institute corrective action should it determine that excessive bank holding company resources are being diverted to a section 20 subsidiary. The normal supervisory process, which includes annual inspections, off-site monitoring, and review of annual reports, has proven sufficient to determine whether a bank holding company is disadvantaging its insured depository institution subsidiaries by making imprudent investments in a nonbank subsidiary. The Board therefore believes that the prior approval firewall can be eliminated, especially as section 23A of the Federal Reserve Act will continue to limit any transfer of funds from an insured depository institution affiliate.[7]

Firewall 3 (Requirement of Capital Plan)

Text of 1989 Order. Before commencing the new activities, each Applicant must submit to the Board acceptable plans to raise additional capital as required by this Order or demonstrate that it is strongly capitalized and will remain so after making the capital adjustments authorized or required by this Order. An Applicant may not commence the proposed activities until it has received a Board determination that the capital plan satisfies the requirements of this Order and has raised the additional capital required under the plan.

1987 and 1990 Order. This restriction was not included in the *1987 Order* or the *1990 Order.*

Request for Comment. The Board analyzes the capital adequacy, financial condition, and business plan of each applicant before approving its application to engage in underwriting and dealing pursuant to section 20. The Board has authority, independent of this firewall, to require an applicant to raise additional capital whenever appropriate. The Board proposes to eliminate this firewall as superfluous.

Firewall 4 (Capital Adequacy Requirement)

Text of 1989 Order. The underwriting subsidiary shall maintain at all times capital adequate to support its activity and cover reasonably expected expenses and losses in accordance with industry norms.

1987 and 1990 Order. Same.

Request for comment. The Board seeks comment on whether to retain this firewall, which has been understood to require section 20 subsidiaries to maintain capital levels consistent with industry norms for independent investment banks. The purpose of this capital requirement was to prevent a section 20 subsidiary from operating below industry capital standards by trading on the reputation of its affiliated bank. The requirement thus seeks to prevent section 20 subsidiaries from being able to leverage themselves more than, and gain a competitive advantage over, their independent competitors, and to serve as a buffer to protect the affiliated bank.

This restriction has proven confusing and controversial, as ''industry norms'' are difficult to determine. Although the SEC imposes capital and ''haircut'' requirements on all broker-dealers, including section 20 subsidiaries, these levels cannot be considered industry norms.[8] Most investment banks,

[6] The Board's Capital Guidelines may continue to require certain deductions from regulatory capital independent of this restriction, and those deductions would be unaffected.

[7] 12 U.S.C. 371c.

[8] 17 CFR 240.15c3–1. The SEC capital rule is intended to allow prompt liquidation of a broker-dealer in order to satisfy the claims of its creditors, and broker-dealers failing to meet SEC capital requirements are immediately liquidated. Thus,

particularly significant underwriters, maintain capital greatly in excess of SEC minimums, and Federal Reserve examiners have accordingly expected section 20 subsidiaries to maintain capital before haircuts that is at least 100 percent greater capital than SEC haircut requirements. Some section 20 subsidiaries have complained that their competitors maintain a lesser amount of capital. They also argue that whereas SEC capital requirements allow all capital to be concentrated in the broker-dealer and dedicated to meeting capital requirements, a bank holding company must meet capital requirements at the bank and holding company levels as well.

Moreover, the Board already measures bank holding company capital on a consolidated basis, including the capital and assets of the section 20 subsidiary. Therefore, the Board believes that it may be unnecessary to impose a separate capital requirement on the bank holding company's section 20 subsidiary. The Board notes that such capital requirements have not been generally imposed on other holding company subsidiaries.

II. Credit Extensions to Customers of the Underwriting Subsidiary

The purpose of Firewalls 5–12 is to prevent a bank or bank holding company from exposing itself to loss in order to benefit the underwriting or dealing activities of its affiliate. They are the firewalls most directly linked to the hazards of commercial and investment banking affiliation that motivated the authors of the Glass-Steagall Act. The Board has noted that preserving the soundness and impartiality of credit is one of its major concerns under the banking laws.

However, as financial intermediation has evolved, corporate customers frequently seek to obtain a variety of funding mechanisms from one organization. By prohibiting banks from providing routine credit enhancements in tandem with a section 20 affiliate, the existing firewalls hamper the ability of bank holding companies to serve as full-service financial services providers and reduce options for customers. For example, existing corporate customers of a bank may wish to issue commercial paper or issue debt in some other form. Although the bank may refer the customer to its section 20 affiliate, the bank is prohibited from providing credit enhancements even though it may be the institution best suited to perform a credit analysis—and, with smaller customers, perhaps the only institution willing to perform a credit analysis.

Furthermore, these restrictions do not apply to credit extensions or credit enhancements extended in conjunction with underwriting of bank-eligible securities by a section 20 affiliate, and there has not been significant abuse in this area.[9] As with bank-eligible securities, even in the absence of these firewalls, protections for the bank would remain; those protections are discussed below in the context of each firewall. Finally, as noted above, the Board is proposing to reserve its authority to impose the funding, credit extension, and credit enhancement firewalls in the event that an affiliated bank or thrift becomes less than well capitalized and the bank holding company does not promptly restore it to the well-capitalized level.

Firewall 5 (Restriction on Credit Enhancement)

Text of 1989 Order. No Applicant or subsidiary shall directly or indirectly extend credit, issue or enter into a stand-by letter of credit, asset purchase agreement, indemnity, guarantee, insurance or other facility that might be viewed as enhancing the creditworthiness or marketability of an ineligible securities issue underwritten or distributed by the underwriting subsidiary.

1987 and 1990 Order. The *1987 Order* was substantially the same, and the *1990 Order* applied the same restrictions to U.S. affiliates and branches and agencies of foreign banks.

Request for Comment. The Board proposes to eliminate the credit enhancement firewall, as it believes that other protections adequately serve its purposes, and its burden on section 20 subsidiaries and their customers therefore cannot be justified. First, a bank would be required to hold capital against all credit enhancements extended to customers of its section 20 affiliate. Notably, at the time the firewalls were adopted, the existing regulatory capital regime did not take account of off-balance-sheet obligations. Thus, a bank exposing itself to loss by issuing a standby letter of credit, guarantee, or other credit enhancement would not have been required to hold capital against that exposure. Under the current risk-based capital system, a bank would be required to hold capital against the credit equivalent amount of such an obligation.[10]

Second, the amount of credit that a bank could extend to an issuer of securities underwritten by a section 20 affiliate would also be limited by loan-to-one borrower rules. For example, national banks may only lend an amount equal to 15 percent of their capital on an uncollateralized basis and an additional 10 percent of their capital on a collateralized basis, and credit enhancements generally would be aggregated along with all other credit extended to an issuer in measuring compliance with these limits.[11]

Third, the proposed operating standards include the existing firewalls emphasizing the importance of credit standards and documentation. Such controls should ensure that any credit enhancement is extended consistent with the internal procedures of the bank, that independent credit judgment is exercised, and that documentation is maintained that would allow examiners to assess compliance with these policies. A credit that would generally fail to meet the bank's credit standards should not be extended because the credit would directly or indirectly benefit a section 20 affiliate.

Finally, section 23B of the Federal Reserve Act would require that all credit enhancements extended to an issuer whose securities are being underwritten by a section 20 affiliate be on an arm's-length basis. Thus, for example, a bank could not offer such credit enhancements below market prices, or to customers who were poor credit risks, in order to generate underwriting business for a section 20 affiliate. Similarly, section 106 of the Bank Holding Company Act Amendments of 1970 would prohibit a bank from offering discounted credit enhancements on the condition that an issuer obtain investment banking services from a section 20 affiliate.

Firewall 6 (Restriction on Funding Purchases of Securities)

Text of 1989 Order. No Applicant or subsidiary (other than the underwriting subsidiary) shall knowingly extend credit to a customer directly or indirectly secured by, or for the purpose of purchasing, any ineligible security that an affiliated underwriting subsidiary underwrites during the period of the underwriting or for 30 days thereafter, or to purchase from the underwriting subsidiary any ineligible security in which the underwriting

healthy broker-dealers do not operate near SEC minimum requirements.

[9] Furthermore, since 1981, national banks have been allowed to credit enhance their own private placements of bank-ineligible securities. The Board is not aware of any unmanageable losses having arisen from this activity.

[10] *See, e.g.*, 12 CFR 208, Appendix A.III.D (risk-based capital standards for state member banks).

[11] 12 U.S.C. 84; 12 CFR 32.2.

subsidiary makes a market. This limitation extends to all customers of Applicant and its subsidiaries, including broker-dealers and unaffiliated banks, but does not include lending to a broker-dealer for the purchase of securities where an affiliated bank is the clearing bank for such broker-dealer.

1987 and 1990 Order. The *1987 Order* did not extend the restriction for 30 days after the underwriting period, but was otherwise substantially the same. The 1990 Order applied the same restrictions to U.S. affiliates and branches and agencies of foreign banks, and also prohibited the section 20 subsidiary from arranging for an extension of credit by the foreign bank or its subsidiaries.

Request for Comment. Firewall 6 addresses what the Board believes to be one of the most important potential conflicts of interests arising from the affiliation of commercial and investment banking: the possibility that a bank would extend credit below market rates in order to induce customers to purchase securities underwritten by its section 20 affiliate or that it holds in inventory. The primary concerns are threefold: that such extensions of credit may not be repaid, thereby harming the bank; that customers will be induced by easy credit into purchasing risky securities, thereby harming the customer; and that a section 20 affiliate could reap a competitive advantage over competitors who do not have a federally subsidized affiliate to provide credit to their customers.

Section 11(d) of the Securities Exchange Act of 1934 addresses some of the same concerns as Firewall 6. Section 11(d) prohibits a broker-dealer (including a section 20 affiliate) that is acting as an underwriter from extending or arranging for credit to customers purchasing the newly issued securities during the underwriting period. Thus, a section 20 subsidiary acting as underwriter would be prohibited from arranging for an affiliated bank to make loans to customers for purchases during an underwriting period. Still, section 11(d) would not apply in the absence of arranging and, unlike Firewall 6, would not cover loans to purchase a security in which a section 20 affiliate makes a market or purchases from parties other than the section 20 affiliate.

Section 23B of the Federal Reserve Act, and in some cases section 23A of the Federal Reserve Act, would address many of these remaining concerns and overlap the restrictions of section 11(d). Section 23B would apply to loans to fund purchases by customers of securities from a section 20 affiliate during the existence of the underwriting or selling syndicate, and to any loan to purchase a security from the inventory of the section 20 affiliate, including securities in which the section 20 affiliate makes a market.[12] Section 23B requires that inter-affiliate transactions be on market terms. To the extent that the bank extended credit knowing that the proceeds would be transferred to an affiliate, section 23A would also apply.[13] Section 23A limits transactions with any one affiliate to 10 percent of the bank's capital, and transactions with all affiliates to 20 percent of capital, and also requires that collateral be pledged to a bank for any extension of credit.

The Board seeks comment on whether these protections are sufficient to address the conflicts of interests that motivated creation of Firewall 6.

Firewall 7 (Restriction on Extensions of Credit for Repayment of Underwritten Securities)

Text of 1989 Order. No Applicant or any of its subsidiaries may, directly or indirectly, extend credit to issuers of the ineligible securities underwritten by an affiliated underwriting subsidiary for the purpose of the payment of principal, interest or dividends on such securities. To assure compliance with the foregoing, any credit lines extended to an issuer by any bank holding company or any subsidiary shall provide for substantially different timing, terms, conditions and maturities from the ineligible securities being underwritten. It would be clear, for example, that a credit has substantially different terms and timing if it is for a documented special purpose (other than the payment of principal, interest or dividends) or there is substantial participation by other lenders.

1987 and 1990 Order. The *1987 Order* did not prohibit extensions of credit for the payment of dividends but was otherwise substantially the same. The *1990 Order* applied the same restrictions to U.S. affiliates and branches and agencies of foreign banks, and also included an arranging restriction.

Request for Comment. The Board proposes to eliminate this restriction. The Board stated in 1987 that it was adopting this firewall in order to prevent a bank from making unwise loans to improve the financial condition of companies whose securities were underwritten or dealt in by the section 20 affiliate, either to assist in the marketing of the securities or to prevent the customers of the section 20 affiliate from incurring losses on securities sold by the subsidiary. However, the firewall has proven burdensome and has had unintended effects. For example, banks face compliance problems renewing a company's revolving line of credit if a section 20 subsidiary has underwritten an offering by that company since the credit was first extended; the bank must either recruit other lenders to participate in the renewal or amend the line of credit in order to specify its purpose. As a result, companies seeking the best short-term funding options sometimes find it easier to move from the bank credit market to the commercial paper market than the reverse.

In addition, other restrictions would apply in the absence of the firewall. Section 23B of the Federal Reserve Act would generally apply to extensions of credit for the purpose of payment of principal, interest or dividends that are currently covered by Firewall 7. In addition, the conflict of interest addressed by Firewall 7 appears more tenuous than those addressed by the prior two credit firewalls, as most of the funds extended do not flow to the section 20 affiliate. Thus, the Board believes that section 23B, together with the capital requirements discussed above, should be sufficient protection against this conflict of interest.

Firewall 8 (Procedures for Extensions of Credit)

Text of 1989 Order. Each Applicant shall adopt appropriate procedures, including maintenance of necessary documentary records, to assure that any extension of credit by it or any of its subsidiaries to issuers of ineligible securities underwritten or dealt in by an underwriting subsidiary are on an arm's length basis for purposes other than payment of principal, interest, or dividends on the issuer's ineligible securities being underwritten or dealt in by the underwriting subsidiary. An extension of credit is considered to be on an arm's length basis if the terms and conditions are substantially the same as those prevailing at the time for comparable transactions with issuers whose securities are not underwritten or dealt in by the underwriting subsidiary.

1987 and 1990 Order. The *1987 Order* did not restrict extensions of credit for the payment of dividends but was otherwise substantially the same. The *1990 Order* applied the same restrictions to U.S. affiliates and branches and agencies of foreign banks.

[12] Section 23B applies to ''any transaction or series of transactions with a third party * * * if an affiliate is a participant in such transaction or series of transactions.'' 12 U.S.C. 371c-1(a)(2)(E).

[13] 12 U.S.C. 371c(a)(2).

Request for Comment. The Board proposes to eliminate this firewall. Section 23B, enacted since this firewall was initially adopted, requires extensions of credit by a bank in conjunction with an issuance of securities underwritten by a section 20 affiliate to be on arm's-length terms. The federal banking agencies examine for compliance with section 23B, and require any bank that does not maintain those procedures necessary to ensure compliance to adopt them immediately.

Although the firewall also includes extensions of credit by nonbank subsidiaries, those extensions of credit do not directly implicate the federal safety net. In amending section 23A and adopting section 23B in 1987, Congress did not apply their restrictions to the parent bank holding company or any other nonbank lender. Moreover, the bank holding company will remain subject to capital requirements.

Firewall 9 (Restriction on Thrifts)

Text of 1989 Order. In any transaction involving an underwriting subsidiary, Applicants' thrift subsidiaries shall observe the limitations of sections 23A and 23B of the Federal Reserve Act as if the thrifts were banks.

1987 and 1990 Order. The *1987 Order* did not include this restriction. The *1990 Order* was the same.

Request for Comment. This condition became superfluous when the Home Owners' Loan Act was amended to apply sections 23A and 23B of the Federal Reserve Act to a thrift as if were a member bank [14]. The Board proposes to eliminate it.

Firewall 10 (Restriction on Industrial Revenue Bonds)

Text of 1989 Order. The requirements relating to credit extensions to issuers noted in paragraphs 5–9 above shall also apply to extensions of credit to parties that are major users of projects that are financed by industrial revenue bonds.

1987 and 1990 Order. Same.

Request for Comment. As the Board is proposing to eliminate the incorporated restrictions, the Board is proposing to eliminate this restriction as well.

Firewall 11 (Loan Documentation and Exposure Limits)

Text of 1989 Order. Applicants shall cause their subsidiary banks and thrifts to adopt policies and procedures, including appropriate limits on exposure, to govern their participation in financing transactions underwritten or arranged by an underwriting subsidiary as set forth in this Order. The Reserve Banks shall ensure that these policies and procedures are in place at Applicants' subsidiary banks and thrifts and Applicants shall assure that loan documentation is available for review by Reserve Banks to ensure that an independent and thorough credit evaluation has been undertaken in connection with bank or thrift participation in such financing packages and that such lending complies with the requirements of this Order and section 23B of the Federal Reserve Act.

1987 and 1990 Order. This restriction was not included in the *1987 Order.* The *1990 Order* applied the same restriction to U.S. affiliates and branches and agencies of a foreign bank.

Request for Comment. The Board is proposing to include this restriction in slightly amended form in its operating standards for all section 20 subsidiaries.

Firewall 12 (Procedures for Limiting Exposure to One Customer)

Text of 1989 Order. Applicants should also establish appropriate policies, procedures, and limitations regarding exposure of the holding company on a consolidated basis to any single customer whose securities are underwritten or dealt in by the underwriting subsidiary.

1987 and 1990 Order. This restriction was not included in the *1987 Order.* The *1990 Order* applied the same restriction to U.S. affiliates and branches and agencies of foreign banks.

Request for Comment. The Board is seeking comment on whether to include this restriction in its operating standards for section 20 subsidiaries. The firewall restricts the ability of a holding company to expose itself to one issuer in support of its section 20 subsidiary. However, the need for internal limits and the appropriate sophistication of those limits varies greatly from company to company, and might be better addressed through the examination process.

III. Limitations to Maintain Separateness of an Underwriting Affiliate's Activity

Firewall 13 (Interlocks Restriction)

Text of 1989 Order (as amended). [15] Directors, officers or employees of a bank or thrift shall not serve as a majority of the board of directors or the chief executive officer of an affiliated section 20 subsidiary, and directors, officers or employees of a section 20 subsidiary shall not serve as a majority of the board of directors or the chief executive officer of an affiliated bank or thrift. The underwriting subsidiary will have separate offices from any affiliated bank or thrift.

1987 and 1990 Order. The *1987 Order* is the same. The *1990 Order* applies the same restriction to the U.S. bank and thrift subsidiaries and branches and agencies of foreign banks.

Request for Comment. The Board recently amended the interlocks restriction, and is not proposing further changes to that restriction. However, Firewall 13 also contains a requirement that a section 20 subsidiary have separate offices from any affiliated bank, thrift, branch or agency. The purpose of this restriction was to ensure that customers of a section 20 subsidiary clearly understand that they are not dealing with a bank or thrift affiliate, and that the products they are purchasing are not federally insured or bank guaranteed.

The Board is proposing to eliminate the separate office requirement. First, in the Board's experience, maintaining separate offices for functions that do not involve retail customers—for example, back-office functions—serves no purpose and represents a needless expense. Second, for sales to retail customers, the Board proposes to rely on the Interagency Statement on Retail Sales of Nondeposit Investment Products, which largely duplicates this restriction. According to the Interagency Statement, sales or recommendations of nondeposit investment products on the premises of a depository institution—including sales by a section 20 affiliate—should be conducted in a physical location distinct from the area where retail deposits are taken.

IV. Disclosure by the Underwriting Subsidiary

Firewall 14 (Customer Disclosures)

Text of 1989 Order. An underwriting subsidiary will provide each of its customers with a special disclosure statement describing the difference between the underwriting subsidiary and its bank and thrift affiliates and pointing out that an affiliated bank or thrift could be a lender to an issuer and referring the customer to the disclosure documents for details. In addition, the statement shall state that securities sold, offered, or recommended by the underwriting subsidiary are not deposits, are not insured by the Federal Deposit Insurance Corporation, are not guaranteed by an affiliated bank or thrift, and are not otherwise an obligation or responsibility of such a bank or thrift (unless such is the case). The underwriting subsidiary should also disclose any material lending

[14] 12 U.S.C. 1468(a)(1).

[15] 61 FR 57679, 57683 (1996).

relationship between the issuer and a bank or lending affiliate of the underwriting subsidiary as required under the securities laws and in every case whether the proceeds of the issue will be used to repay outstanding indebtedness to affiliates.

1987 and 1990 Order. The *1987 Order* required a less detailed but similar disclosure. The *1990 Order* extended the same restriction to U.S. bank and thrift affiliates and branches and agencies of foreign banks.

Request for Comment. The Board continues to believe that customer disclosures are important to ensuring that customers of a section 20 subsidiary clearly understand that its products are not federally insured or otherwise guaranteed by an affiliated bank. Indeed, the Board relied on disclosures in concluding that it was appropriate to eliminate firewalls on cross-marketing and employee interlocks. In order to ease the burden of compliance, though, the Board is proposing to amend the disclosure firewall to follow the Interagency Statement on Retail Sales of Nondeposit Investment Products that applies to sales by bank employees or on bank premises. A section 20 subsidiary would be required to provide each of its retail customers the same disclosures that the Interagency Statement mandates for retail customers of banks, even when it was operating off bank premises. This would narrow the firewall by no longer requiring disclosures to institutional customers (who should be aware of whether a product is federally insured or bank guaranteed) but broaden the firewall to require an acknowledgement of the disclosure by retail customers.

V. Marketing Activities on Behalf of an Underwriting Subsidiary

Firewall 15 (Restriction on Advertising Bank Connection)

Text of 1989 Order. No underwriting subsidiary nor any affiliated bank or thrift institution will engage in advertising or enter into an agreement stating or suggesting that an affiliated bank or thrift is responsible in any way for the underwriting subsidiary's obligations as required under section 23B of the Federal Reserve Act.

1987 and 1990 Order. The *1987 Order* did not contain the reference to section 23B of the Federal Reserve Act, but was otherwise identical. The *1990 Order* extended the same restriction to bank and thrift affiliates and branches and agencies of a foreign bank.

Request for Comment. This restriction has been superseded by section 23B(c) of the Federal Reserve Act, and the Board is proposing to eliminate it.

Firewall 16 (Cross-marketing and Agency Activities by Banks)

Text of 1989 Order. Reserved. [16]

1987 and 1990 Order. Same.

VI. Investment Advice by Bank/Thrift Affiliates

Firewall 17

Text of 1989 Order. An affiliated bank or thrift institution may not express an opinion on the value or the advisability of the purchase or the sale of ineligible securities underwritten or dealt in by an affiliated underwriting subsidiary unless the bank or thrift notifies the customer that the underwriting subsidiary is underwriting, making a market, distributing or dealing in the security.

1987 and 1990 Order. The *1987 Order* was substantially the same. The *1990 Order* applied the same restrictions to U.S. affiliates and branches and agencies of foreign banks.

Request for Comment. The Board proposes to retain this restriction. An SEC rule (Rule 10b–10) and NASD rule (Rule 2250) require a broker-dealer to disclose to a customer that it is a market maker in a security before selling or recommending that security. These restrictions are based on the conflict of interest between the broker-dealer's duty to advise its customers and its financial interest in selling its security. The firewall extends this restriction to an affiliated bank based on the concern that it would have a similar financial incentive to give advice that would benefit its affiliate. A disclosure to the customer appears to be a sufficient means of addressing that conflict. Accordingly, the proposal retains this requirement, combining it with another disclosure standard.

Nonetheless, the Board is concerned with the difficulty of complying with, and examining for compliance with, this standard, particularly with respect to large bank holding companies operating around the world. The Board seeks comment on whether a bank or thrift should only be prohibited from expressing an opinion without disclosure if it knows of its affiliate's role in the transaction. The Board also seeks comment on whether, with this knowledge requirement or without it, this standard is enforceable.

Firewall 18 (Restriction on Fiduciary Purchases During Underwriting Period or From Market Maker)

Text of 1989 Order. No Applicant nor any of its bank, thrift, or trust or investment advisory subsidiaries shall purchase, as a trustee or in any other fiduciary capacity, for accounts over which they have investment discretion ineligible securities (a) underwritten by the underwriting subsidiary as lead underwriter or syndicate member during the period of any underwriting or selling syndicate, and for a period of 60 days after the termination thereof, and (b) from the underwriting subsidiary if it makes a market in that security, unless, in either case, such purchase is specifically authorized under the instrument creating the fiduciary relationship, by court order, or by the law of the jurisdiction under which the trust is administered.

1987 and 1990 Order. The *1987 Order* did not restrict purchases of securities in which the section 20 subsidiary makes a market but was otherwise the same. The *1990 Order* applied the same restrictions to U.S. affiliates and branches and agencies of foreign banks.

Request for Comment. The Board proposes to eliminate this restriction. Section 23B(b)(1)(B) of the Federal Reserve Act largely duplicates the restrictions of Firewall 18 when a bank or thrift is making the purchase. [17] Section 23B prohibits a bank from purchasing, as principal or fiduciary, any security for which a section 20 affiliate is a principal underwriter during the existence of the underwriting or selling syndicate, unless such a purchase has been approved by a majority of the bank's board of directors who are not officers of any bank or any affiliate. If the purchase is as fiduciary, the purchase must be permitted by the instrument creating the fiduciary relationship, court order, or state law.

Firewall 18 is broader than section 23B in that it applies for 60 days after the underwriting period. The Board does not believe that it should reimpose a restriction that Congress decided was unnecessary, and is not aware of any compelling reason to do so.

Firewall 18 is also broader than section 23B in that the firewall applies when a bank holding company or its nonbank subsidiary acting as fiduciary purchases the securities. However, if the purchases are fiduciary, the Board believes that other protections remain. For example, if the purchase were on behalf of a pension plan, then the company would be subject to ERISA.[18] If the purchase were on behalf of a mutual fund, then sections 10 and 17 of

[16] This firewall was rescinded. 61 FR 57679, 57683 (1996).

[17] In its 1987 order, the Board noted that section 23B was pending as proposed legislation, and appears to have created the firewall in anticipation of that legislation.

[18] 29 U.S.C. 1002(21), 1104.

the Investment Company Act of 1940 restrict the ability of the mutual fund to purchase securities from an affiliate of the investment advisor. [19]

VII. Extensions of Credit and Purchases and Sales of Assets

Firewall 19 (Restrictions on Purchases as Principal During Underwriting Period or From Market Maker)

Text of 1989 Order (as amended). No Applicant nor any of its subsidiaries, other than the underwriting subsidiary, shall purchase, as principal, ineligible securities that are underwritten by the underwriting subsidiary during the period of the underwriting and for 60 days after the close of the underwriting period, or shall purchase from the underwriting subsidiary any ineligible security in which the underwriting subsidiary makes a market.

In the case of ineligible securities that are being issued in a simultaneous cross-border underwriting in which the underwriting subsidiary and a foreign affiliate or affiliates are participating, such securities may be purchased or sold pursuant to an inter-syndicate agreement for the period of the underwriting where the purchase or sale results from *bona fide* indications of interest from customers. Such purchases or sales shall not be made for the purpose of providing liquidity or capital support to the underwriting subsidiary or otherwise to evade the requirements of this Order. An underwriting subsidiary shall maintain documentation on such transactions.[20]

1987 and 1990 Order. The *1987 Order* was the same. The *1990 Order* was substantially the same.

Request for Comment. The Board proposes to eliminate this restriction, which precludes bank and nonbank subsidiaries of a bank holding company subsidiary from obtaining attractive issues underwritten or dealt in by a section 20 affiliate. As with Firewall 18, section 23B prohibits a bank from purchasing, as principal or fiduciary, any security for which a section 20 affiliate is a principal underwriter during the existence of the underwriting or selling syndicate, unless such a purchase has been approved by a majority of the bank's board of directors who are not officers of the bank or any affiliate. Since 1989, the Board has authorized bank holding companies engaged in private placement activities to place up to 50 percent of an issue of securities with their nonbank affiliates, [21] and no supervisory concerns have arisen from this practice.

Furthermore, if the bank purchases the security as principal directly from the section 20 affiliate, section 23A would apply. The bank would also be required to hold capital against these exposures. Finally, member banks are limited to purchasing only investment securities.[22]

Firewall 20 (Restriction on Underwriting and Dealing in Affiliates' Securities)

Text of 1989 Order (as amended). [23] An underwriting subsidiary may not underwrite or deal in any ineligible securities issued by its affiliates or representing interest in, or secured by, obligations originated or sponsored by its affiliates (except for grantor trusts or special purpose corporations created to facilitate underwriting of securities backed by residential mortgages originated by a non-affiliated lender). An underwriting subsidiary may underwrite or deal in ineligible securities issued by (or representing interests in, or secured by, obligations of) affiliates provided the securities are (1) rated by an unaffiliated, nationally recognized statistical rating organization, or (2) issued or guaranteed by FNMA, FHLMC or GNMA (or represent interests in securities issued or guaranteed by FNMA, FHLMC, or GNMA).

1987 and 1990 Order. Same.

Request for Comment. The Board proposes to eliminate this restriction, which prohibits a section 20 affiliate from underwriting securities issued by an affiliated bank. The purpose of the restriction was to address the conflicts of interest presented because a section 20 subsidiary may have an incentive to overstate the quality of the securities being issued by its affiliate.

However, Rule 2720 of the National Association of Securities Dealers already imposes substantially the same restriction. Rule 2720, to which section 20 subsidiaries are subject, provides that if a member of the NASD proposes to underwrite, participate as a member of the underwriting syndicate or selling group, or otherwise assist in the distribution of a public offering of its own or an affiliate's securities, then the price or yield of the issue must be set by a qualified independent underwriter who shall also participate in the preparation of the registration statement and prospectus, offering circular, or similar document, exercising due diligence.

Furthermore, the Board previously has granted waivers from Firewall 20 to allow section 20 subsidiaries to underwrite equity securities issued by affiliates.[24] In granting these waivers the Board relied in each case on the fact that there were independent sources, such as third-party underwriters acting as syndicate managers, judging the creditworthiness and pricing of the securities offered.

Firewall 21(a) (Prohibition on Extensions of Credit to Section 20 Subsidiary)

Text of 1989 Order. Applicants shall assure that no bank or thrift subsidiary shall, directly or indirectly, extend credit in any manner to an affiliated underwriting subsidiary or a subsidiary thereof; or issue a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, for the benefit of the underwriting subsidiary or a subsidiary thereof.

1987 and 1990 Order. This restriction was not contained in the *1987 Order.*

The *1990 Order* applied the same restrictions to U.S. bank and thrift subsidiaries and branches and agencies of foreign banks.

Request for Comment. The Board proposes to eliminate this restriction except insofar as it applies to intra-day extensions of credit for clearing purposes. The purpose of the restriction was to prevent any bank funding of a section 20 affiliate.

Because this firewall was not applied under the *1987 Order,* bank subsidiaries of the fourteen companies operating under that order have therefore been free to, and have in fact, funded their section 20 affiliates. In nine years of supervising companies operating under the 1987 Order, the Board has not encountered significant problems arising from such funding.

Such transactions are subject to sections 23A or 23B of the Federal Reserve Act, which address potential conflicts of interest. Thus, even if the firewall were repealed, a bank would not be able to expose more than 10 percent of its capital to the section 20 affiliate directly, would have to deal with the section 20 affiliate on arm's-length (market) terms, could not purchase low-quality assets from the affiliate, and could not purchase securities underwritten by a section 20

[19] 15 U.S.C. 80a–10, 80a–17.

[20] *1990 Order* at 158, 164–65, 172 (1990).

[21] *J.P. Morgan & Co.,* 76 Federal Reserve Bulletin 26, 28 (1990).

[22] 12 U.S.C. 24(Seventh), 335.

[23] 75 Federal Reserve Bulletin 751 (1989).

[24] *See* Letter, dated May 2, 1996, from Jennifer J. Johnson, Deputy Secretary of the Board to Thomas A. Plant; Letter, dated January 6, 1994, from Jennifer J. Johnson, Associate Secretary of the Board to Kevin Barnard, Esq.

affiliate during the existence of the underwriting or selling syndicate unless the bank's board of directors approves.[25]

One issue arises with respect to whether intra-day extensions of credit should continue to be restricted. The Board proposes to include an operating standard prohibiting intra-day extensions of credit for clearing purposes unless they are (1) On market terms consistent with section 23B of the Federal Reserve Act, and (2) fully secured. In effect, the Board would be requiring that (1) The bank apply the same internal exposure limits and collateral requirements in clearing for a section 20 affiliate that it applies to third parties, and (2) even if its general policy does not require the bank to be fully secured in clearing, the bank be fully secured in clearing for its section 20 affiliate. The Board seeks comment on whether the latter requirement is feasible.

Firewall 21(b)

Text of 1989 Order. This prohibition shall not apply to an extension of credit by a bank or thrift to an underwriting subsidiary that is incidental to the provision of clearing services by the bank or thrift to the underwriting subsidiary with respect to securities of the United States or its agencies, or securities on which the principal and interest are fully guaranteed by the United States or its agencies, if the extension of credit is fully secured by such securities, is on market terms, and is repaid on the same calendar day. If the intra-day clearing of such securities cannot be completed because of a *bona fide* fail or operational problem incidental to the clearing process that is beyond the control of the bank or thrift and the underwriting subsidiary, the bank or thrift may continue the intra-day extension of credit overnight provided the extension of credit is fully secured as to principal and interest as described above, is on market terms, and is repaid as early as possible on the next business day.

1987 and 1990 Orders. No exception was necessary in the *1987 Order.* The *1990 Order* contained the same exception.

Request for Comment. If Firewall 21(a) were eliminated, the Board would propose to eliminate Firewall 21(b) as moot.

Firewall 22 (Financial Assets Restriction)

Text of 1989 Order (as amended).[26] No bank or thrift (or U.S. branch or agency of a foreign bank) shall, directly or indirectly, for its own account, purchase financial assets of an affiliated underwriting subsidiary or a subsidiary thereof or sell such assets to the underwriting subsidiary or subsidiary thereof. This limitation shall not apply to the purchase and sale of assets having a readily identifiable and publicly available market quotation and purchased at that market quotation for purposes of section 23A of the Federal Reserve Act, 12 U.S.C. 371c(d)(6), provided that those assets are not subject to a repurchase or reverse repurchase agreement between the underwriting subsidiary and its bank or thrift affiliate.

1987 and 1990 Orders. The *1990 Order* is the same. The *1987 Order* did not include a financial assets restriction.

Request for Comment. The Board proposes to eliminate this firewall, which is designed to prevent a bank from using purchases and sales as a means of funding a section 20 affiliate. Section 23B of the Federal Reserve Act would still require that all such purchases be made on arm's-length terms, and section 23A would impose quantitative limits. Section 23A(a)(3) also generally prohibits a bank from purchasing a low-quality asset from an affiliate. A ''low-quality asset'' is defined to include: (A) An asset classified as ''substandard'', ''doubtful'', or ''loss'' or treated as ''other loans especially mentioned'' in the section 20 affiliate's most recent report of examination or inspection; (B) an asset in a non-accrual status; (C) an asset on which principal or interest payments are more than thirty days past due; or (D) an asset whose terms have been renegotiated or compromised due to the deteriorating financial condition of the obligor.[27] Moreover, the National Bank Act limits the type of investment securities that a national bank may hold, generally to investment grade securities.

Elimination of this restriction would allow repurchase and reverse repurchase agreements as a funding vehicle between a section 20 subsidiary and its affiliated banks. Such agreements would have to be consistent with sections 23A and 23B, however.

VIII. Limitations on Transfers of Information

Firewall 23 (Disclosure of Nonpublic Information)

Text of 1989 Order. No bank or thrift shall disclose to an underwriting subsidiary, nor shall an underwriting subsidiary disclose to an affiliated bank or thrift, any nonpublic customer information (including an evaluation of the creditworthiness of an issuer or other customer of that bank or thrift, or underwriting subsidiary) without the consent of that customer.

1987 and 1990 Order. The *1987 Order* was substantially the same. The *1990 Order* applied the same restrictions to U.S. bank and thrift subsidiaries and branches and agencies of foreign banks.

Request for Comment. The Board proposes to include this restriction in its operating standards, as it constitutes an important customer protection.

IX. Reports

Firewall 24 (Reports to Federal Reserve)

Text of 1989 Order. Applicants shall submit quarterly to the appropriate Federal Reserve Bank FOCUS reports filed with the NASD or other self-regulatory organizations, and detailed information breaking down the underwriting subsidiaries' business with respect to eligible and ineligible securities, in order to permit monitoring of the underwriting subsidiaries' compliance with the provisions of this Order.

1987 and 1990 Order. Same.

Request for Comment. The Board proposes to retain this requirement in modified form as one of the operating standards.

X. Transfer of Activities and Formation of Subsidiaries of an Underwriting Subsidiary To Engage in Underwriting and Dealing

Firewall 25 (Scope of Order)

Text of 1989 Order. The Board's approval of the proposed underwriting and dealing activities extends only to the subsidiaries described above for which approval has been sought in the instant applications. The activities may not be conducted by Applicants in any other subsidiary without prior Board

[25] The Board is proposing to impose a new operating standard that applies sections 23A and 23B to U.S. branches and agencies of foreign banks for this purpose. Currently, branches and agencies are not covered by these requirements, most notably the collateral requirement of section 23A. This exemption has not given section 20 affiliates of foreign banks any material competitive advantage over their domestic counterparts; generally, *all* lending has been prohibited by Firewall 21(a). However, if that firewall were removed in reliance on sections 23A and 23B, foreign banks would have a competitive advantage unless those provisions were applied to their branches and agencies, as their branches and agencies could fund a section 20 affiliate without requiring collateral. With respect to foreign banks operating under the *1990 Order,* the proposal represents relief from a restriction. Although this proposal would impose new requirements on foreign banks operating under the *1987 Order,* the Board specifically reserved its right to impose new restrictions should circumstances change to make such requirements appropriate. *See Sanwa Bank, Ltd.,* 76 Federal Reserve Bulletin 568, 570 (1990).

[26] 61 FR 57679, 57683 (1996).

[27] 12 U.S.C. 371c (a)(3), (b)(10).

review. Pursuant to Regulation Y, no corporate reorganization of any underwriting subsidiary, such as the establishment of subsidiaries of the underwriting subsidiary to conduct the activities, may be consummated without prior Board approval.

1987 and 1990 Order. Same.

Request for Comment. The Board proposes to eliminate this firewall. Each order approving section 20 activities can make plain the scope and organizational structure of the activities approved.

XI. Limitations on Reciprocal Arrangements and Discriminatory Treatment

Firewall 26 (Prohibition on Reciprocity Arrangements)

Text of 1989 Order. No Applicant nor any of its subsidiaries may, directly or indirectly, enter into any reciprocal arrangement. A reciprocal arrangement means any agreement, understanding, or other arrangement under which one bank holding company (or subsidiary thereof) agrees to engage in a transaction with, or on behalf of, another bank holding company (or subsidiary thereof), in exchange for the agreement of the second bank holding company (or any subsidiary thereof) to engage in a transaction with, or on behalf of, the first bank holding company (or any subsidiary thereof) for the purpose of evading any requirement of this Order or any prohibition on transactions between, or for the benefit of, affiliates of banks established pursuant to federal banking law or regulation.

1987 and 1990 Order. The *1990 Order* is the same, but the restriction is not included in the *1987 Order.*

Request for Comment. The Board proposes to eliminate this firewall. Anti-competitive reciprocity arrangements are prohibited by the antitrust laws, and reciprocity arrangements involving a bank are subject to a special *per se* prohibition in section 106 of the Bank Holding Company Act Amendments of 1970.[28] The Board could also rely on the examination process to identify any evasions of the proposed operating standards that do not run afoul of a statutory prohibition.

Firewall 27 (Prohibition on Discriminatory Treatment)

Text of 1989 Order. No bank or thrift affiliate of an underwriting subsidiary shall, directly or indirectly:

(a) acting alone or with others, extend or deny credit or services (including clearing services), or vary the terms or conditions thereof, if the effect of such action would be to treat an unaffiliated securities firm less favorably than its affiliated underwriting subsidiary, unless the bank or thrift demonstrates that the extension or denial is based on objective criteria and is consistent with sound business practices; or

(b) extend or deny credit or services or vary the terms or conditions thereof with the intent of creating a competitive advantage for an underwriting subsidiary of an affiliated bank holding company.

1987 and 1990 Order. This restriction is not contained in the *1987 Order.* The *1990 Order* applied the same restrictions to U.S. affiliates and branches and agencies of foreign banks.

Request for Comment. This firewall addresses a potential conflict of interest that arises when a bank is dealing with competitors of its section 20 affiliate. The firewall prohibits the bank from denying services to such competitors or charging them higher prices than it would charge its affiliate. The Board is proposing to eliminate the firewall because other laws adequately address the potential conflict.

First, the Board notes that whereas securities firms had been restricted by section 8(a) of the Securities Exchange Act of 1934 in the types of lenders from which they could obtain loans secured by securities collateral—generally, to banks and other broker-dealers—section 8(a) was recently repealed, and such restriction thereby eliminated.[29] Thus, the possibility that a bank would be able to enforce unfavorable credit terms on a competitor of a section 20 affiliate is remote.

Second, section 106 of the Bank Holding Company Act Amendments of 1970 prohibits a bank from, among other things, restricting availability of, or offering discounts on, its products on the condition that the customer not obtain products from any competitor of the bank or its affiliates.

XII. Requirement for Supervisory Review Before Commencement of Activities

Firewall 28 (Infrastructure Review)

Text of 1989 Order. An Applicant may not commence the proposed debt and equity securities underwriting and dealing activities until the Board has determined that the Applicant has established policies and procedures to ensure compliance with the requirements of this Order, including computer, audit and accounting systems, internal risk management controls and the necessary operational and managerial infrastructure. In this regard, the Board will review in one year whether Applicants may commence underwriting and dealing in equity securities based on a determination by the Board that they have established the managerial and operational infrastructure and other policies and procedures necessary to comply with the requirements of this Order.

1987 and 1990 Order. The *1987 Order* does not contain this restriction. The *1990 Order* contains the same restriction.

Request for Comment. The purpose of this restriction is to ensure that a bank holding company has the necessary systems, internal controls, and infrastructure to operate a section 20 subsidiary. The Board believes that these systems are vital to the successful operation of a section 20 subsidiary. However, because the Board and not the section 20 subsidiary performs the review, the Board intends to require an infrastructure review in the context of each application rather than including it as an ''operating standard'' for section 20 subsidiaries.

The Board generally will continue to conduct an inspection prior to allowing commencement of underwriting and dealing in corporate debt or equity securities pursuant to the *1989 Order.* In special cases such as an acquisition, the inspection will occur as soon as practicable after consummation. Although the existing firewall suggests that a review of the infrastructure for equity securities activities might not occur for a year after approval of an application, the Board has substantially modified and shortened the pre-approval inspection period for equity securities activities. Such inspections now frequently begin shortly after the filing of an application, and may be completed before the application is considered by the Board. Thus, the pre-commencement examination generally does not create a substantial delay beyond the application processing period.

List of Subjects 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding Companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Board proposes to amend 12 CFR Part 225 as follows:

[28] 12 U.S.C. 1972(1).

[29] 15 U.S.C. 78h(a) (1995); National Securities Markets Improvement Act of 1996, Pub. L. 104–290 (1996).

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for Part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331–3351, 3908, and 3909.

2. An undesignated center heading and § 225.200 would be added to read as follows:

Conditions to Orders

§ 225.200 Conditions to Board's section 20 Orders.

(a) *Introduction.* Section 20 of the Glass-Steagall Act and section 4(c)(8) of the Bank Holding Company Act allow subsidiaries of bank holding companies to engage to a limited extent in underwriting and dealing in securities in which a member bank could not engage. Pursuant to the Securities Act of 1933 and the Securities Exchange Act of 1934, these so-called section 20 subsidiaries are required to register with the SEC as broker-dealers and are subject to all the financial reporting, anti-fraud and financial responsibility rules applicable to broker-dealers. In addition, member banks are restricted in their transactions with section 20 affiliates by sections 23A and 23B of the Federal Reserve Act. The Board expects a section 20 subsidiary, like any other subsidiary of a bank holding company, to be operated prudently. Doing so would include observing corporate formalities (such as the maintenance of separate accounting and corporate records), maintaining adequate capital, and instituting appropriate risk management, including independent trading and exposure limits consistent with parent company guidelines. However, given the unique risks of affiliation between a section 20 subsidiary and a depository institution, the Board particularly expects the bank holding company to ensure that its subsidiary banks are well capitalized, and requires adherence to the following operating standards as a condition to each order approving establishment of a section 20 subsidiary.

(b) *Conditions.*—(1) *Capital.* (i) The bank holding company or foreign bank shall maintain adequate capital on a fully consolidated basis.

(ii) In the event that a bank or thrift affiliate of a section 20 subsidiary shall become less than well capitalized (as defined in section 38 of the Federal Deposit Insurance Act), and the bank holding company or foreign bank shall fail to restore it promptly to the well capitalized level, the Board may reimpose the funding, credit extension and credit enhancement firewalls contained in its 1989 order allowing underwriting and dealing in bank-ineligible securities.[1]

(2) *Internal controls.* (i) Each bank holding company or foreign bank shall cause its subsidiary banks, thrifts, and U.S. branches and agencies to adopt policies and procedures, including appropriate limits on exposure, to govern their participation in transactions underwritten or arranged by a section 20 affiliate.

(ii) Each bank holding company or foreign bank shall ensure that an independent and thorough credit evaluation has been undertaken in connection with bank, thrift, or U.S. branch or agency participation in such financing transactions, and that adequate documentation of that evaluation is maintained for review by examiners of its appropriate Federal banking agency and the Federal Reserve.

(3) *Interlocks restriction.* Directors, officers or employees of a bank holding company's or foreign bank's U.S. bank or thrift subsidiaries, branches or agencies shall not serve as a majority of the board of directors or the chief executive officer of an affiliated section 20 subsidiary, and directors, officers or employees of a section 20 subsidiary shall not serve as a majority of the board of directors or the chief executive officer[2] of an affiliated U.S. bank or thrift subsidiary, branch or agency, except that the manager of a branch or agency may act as a director of the underwriting subsidiary.

(4) *Customer disclosure.* A section 20 subsidiary shall provide each of its retail customers the disclosures, and obtain the customer acknowledgement, required by the Interagency Statement on Retail Sales of Nondeposit Investment Products, even when the section 20 subsidiary is dealing with the customer off bank premises. An affiliated bank or thrift institution may not express an opinion on the value or the advisability of the purchase or the sale of ineligible securities underwritten or dealt in by an affiliated underwriting subsidiary unless the bank or thrift notifies the customer that the underwriting subsidiary is underwriting, making a market, distributing or dealing in the security.

(5) *Credit for clearing purposes.* Any intra-day extension of credit for purposes of clearing securities that is extended to a section 20 subsidiary by an affiliated bank, thrift, branch or agency shall be:

(i) On market terms consistent with section 23B of the Federal Reserve Act; and

(ii) Fully secured.

(6) *Confidentiality of customer information.* A section 20 subsidiary and its affiliated banks, thrifts, branches or agencies shall not share with each other any nonpublic customer information without the consent of that customer.

(7) *Reporting requirement.* Each bank holding company or foreign bank shall submit quarterly to the appropriate Federal Reserve Bank FOCUS reports filed with the NASD or other self-regulatory organizations, and information necessary to monitor compliance with these operating standards and section 20 of the Glass-Steagall Act, on forms provided by the Board.

(8) *Foreign banks.* A foreign bank shall ensure that any extension of credit by its U.S. branch or agency to a section 20 affiliate, and any purchase by such branch or agency, as principal or fiduciary, of securities for which a section 20 affiliate is a principal underwriter, conforms to sections 23A and 23B of the Federal Reserve Act, and that its branches and agencies not advertise nor suggest that they are responsible for the obligations of a section 20 affiliate, consistent with section 23B(c) of the Federal Reserve Act.

(c) *Establishment of additional limitations.* Based upon the supervisory process and experience with the activities, the Board may establish additional limitations on the conduct of these activities to ensure that the section 20 subsidiaries' activities are consistent with safety and soundness, conflict of interest and other considerations relevant under the Bank Holding Company Act.

By order of the Board of Governors of the Federal Reserve System, January 10, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–1010 Filed 1–16–97; 8:45 am]

BILLING CODE 6210–01–P

[1] Firewalls 5–8, 19, 21 and 22 of *J.P. Morgan & Co., The Chase Manhattan Corp., Bankers Trust New York Corp., Citicorp, and Security Pacific Corp.*, 75 Federal Reserve Bulletin 192, 214–16 (1989) and, for foreign banks, *Canadian Imperial Bank of Commerce, The Royal Bank of Canada, Barclays PLC and Barclays Bank PLC*, 76 Federal Reserve Bulletin 158, (1990). The Federal Reserve Bulletin is available for sale from Publication Services—Mail Stop 127, Board of Governors of the Federal Reserve System, Washington, DC 20551.

[2] For purposes of this standard, the manager of a U.S. branch or agency of a foreign bank normally will be considered to be the chief executive officer of the branch or agency.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–38159; File No. S7–27–96]

RIN 3235–AH04

Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; extension of the comment period.

SUMMARY: The Securities and Exchange Commission (''Commission'') is extending from December 27, 1996, until March 31, 1997, the comment period for Securities Exchange Act Release No. 37850 (October 22, 1996), 61 FR 55593 (October 28, 1996). In the release the Commission proposed amendments to the broker-dealer books and records rules.

DATES: Comments on the release should be submitted on or before March 31, 1997.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549, and should refer to File No. S7–27–96. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. The file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying at the Commission's public reference room, 450 Fifth St., N.W., Washington D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director at (202) 942–0131; Peter R. Geraghty, Assistant Director at (202) 942–0177; Matthew G. McGuire, Attorney at (202) 942–7103; or Michael E. Greene, Attorney at (202) 942–4169; Office of Risk Management and Control, Division of Market Regulation, Mail Stop 5–1, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On October 22, 1996, the Commission proposed amendments to Rules 17a–3[1] and 17a–4,[2], the broker-dealer books and records rules. The proposed amendments clarify, modify, and expand recordkeeping requirements with respect to purchase and sale documents, customer records, associated person records, customer complaints, and certain other matters. In addition, the proposed amendments specify certain types of books and records that broker-dealers must make available in their local offices. The Commission is proposing amendments to the books and records rules in response to certain concerns raised by members of the North American Securities Administrators Association. The proposed amendments are intended to obligate broker-dealers to make and retain certain additional records that would be available to state regulators during examination and enforcement proceedings. The Commission originally requested that comments on the proposed rulemaking be received by December 27, 1996.

Based on requests from prospective commenters, including NASD Regulation, Inc. and the New York Stock Exchange, and the Commission's desire to consider the views of all interested persons on the subject, the Commission believes that an extension of the comment period is appropriate. Therefore, the comment period for responding to Securities Exchange Act Release No. 37850 is extended from December 27, 1996, until March 31, 1997.

Dated: January 13, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1221 Filed 1–16–97; 8:45 am]

BILLING CODE 8010–01–P

[1] 17 CFR 240.17a–3.

[2] 17 CFR 240.17a–4.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–251520–96]

RIN 1545–AU70

Classification of Certain Transactions Involving Computer Programs; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking (REG–251520–96) which was published in the Federal Register on Wednesday, November 13, 1996 (61 FR 58152).

The notice of proposed rulemaking relates to the tax treatment of certain transactions involving the transfer of computer programs.

FOR FURTHER INFORMATION CONTACT: William H. Morris (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is subject to these corrections is under section 861 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–251520–96) contains errors that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of proposed rulemaking (REG–251520–96) which is the subject of FR Doc. 96–29055 is corrected as follows:

§ 1.861–18 [Corrected]

1. On page 58157, column 2, § 1.861–18, paragraph (h), paragraph (ii)(B) of *Example 10.*, line 2, the language ''circumstances, P is properly treated as the'' is corrected to read ''circumstances, Corp E is properly treated as the''.

2. On page 58157, column 2, § 1.861–18, paragraph (h), paragraph (i) of *Example 12.*, line 8, the language ''fee, Corp C receives the right to receive'' is corrected to read ''fee, Corp E receives the right to receive''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 97–1127 Filed 1–16–97; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NJ25–1b–-159; FRL–5662–2]

Approval and Promulgation of Implementation Plans; Reasonably Available Control Technology for Oxides of Nitrogen for Specific Sources in the State of New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve twenty-two State Implementation Plan (SIP) revisions submitted by the State of New Jersey related to development of reasonably available control

technologies for oxides of nitrogen from various sources in the State. In the Final Rules Section of this Federal Register, EPA is approving the State's SIP revisions, as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments must be received on or before February 18, 1997.

ADDRESSES: All comments should be addressed to: Ronald Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007–1866.

Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Quality Planning, 401 East State Street, CN418, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Ted Gardella, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this Federal Register.

Dated: November 29, 1996.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 97–1072 Filed 1–16–97; 8:25 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[CO–001–0008(b); FRL–5661–1]

Approval and Promulgation of Air Quality Implementation Plans; Colorado: Enhanced Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Colorado on September 29, 1995, for the purpose of meeting Federal requirements for a final approval of the Denver-Boulder urbanized area enhanced motor vehicle inspection and maintenance (I/M) program. The SIP revision was submitted by the State to satisfy the State's commitment to limit dealership self-testing as required by EPA's I/M Rule (40 CFR part 51, subpart S). This rulemaking proposes to convert EPA's original November 8, 1994 conditional approval (59 FR 55584) to a full approval for this program. In the Final rules section of this Federal Register, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received during the 30-day comment period set forth below will be addressed in a subsequent final rule based on this proposed rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by February 18, 1997.

ADDRESSES: Comments may be mailed to Richard R. Long, Director, Air Programs, USEPA Region VIII (P2–A), 999 18th Street—Suite 500, Denver, Colorado 80202–2466. Copies of the documents relevant to this action are available for public inspection during normal business hours at the above address. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Scott P. Lee, at (303) 312–6736 or via e-mail at lee.scott@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the EPA Region VIII address above.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the rules section of this Federal Register.

Dated: November 26, 1996.

Kerrigan Clough,

Acting Regional Administrator, Region VIII.

[FR Doc. 96–1074 Filed 1–16–97; 8:25 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[FL–68–2–9640b; FRL–5661–9]

Approval and Promulgation of Implementation Plans; Florida: Approval of Revisions to State of Florida State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Florida for the purpose of allowing the State agency to utilize exclusionary rules via general permits for the purpose of limiting potential to emit air pollutants for certain source categories to less than the title V permitting major source thresholds. In the final rules section of this Federal Register, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by February 18, 1997.

ADDRESSES: Written comments on this action should be addressed to Scott Miller at the Environmental Protection Agency, Region 4 Air Planning Branch, 100 Alabama Street, SW., Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal

business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file FL–68–2–9640. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Environmental Protection Agency, Region 4 Air Planning Branch, 100 Alabama Street, SW., Atlanta, Georgia 30303. Scott Miller, 404/562–9120

Florida Department of Environmental Protection, Division of Air Resources Management, 2600 Blair Stone Road, MS 5500, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Scott Miller at 404/562–9120.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this Federal Register.

Dated: August 29, 1996.

R.F. McGhee,

Acting Regional Administrator.

[FR Doc. 97–1076 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[IN64–1b; FRL–5662–6]

Indiana State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision request submitted by the State of Indiana on November 21, 1995, for a rule to control Non-Methane Organic Compounds emissions from municipal solid waste landfills in Clark, Floyd, Lake, and Porter Counties. This rule is part of the State's 15 percent (%) Rate of Progress (ROP) plan to control Volatile Organic Compound (VOC) emissions in Clark and Floyd Counties, and is included in the VOC contingency plan for Lake and Porter Counties. In the final rules section of this Federal Register, the EPA is approving this action as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received on or before February 18, 1997.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR18–J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR18–J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6061.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this Federal Register.

Dated: November 25, 1996.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 97–1082 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[IN63–1b; FRL–5662–9]

Indiana State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision request submitted by the State of Indiana on November 21, 1995, and February 14, 1996, which consist of rules for the control of volatile organic liquid (VOL) storage operations in Clark, Floyd, Lake, and Porter Counties. This rule is part of the State's 15 percent (%) Rate of Progress (ROP) plan control strategies for Volatile Organic Compounds (VOC) emissions in Clark, Floyd, Lake, and Porter Counties. In addition, this rule is intended to satisfy Clean Air Act (Act) requirements to adopt VOC Reasonably Available Control Technology (RACT) rules for non-Control Techniques Guidelines (CTG) source categories in Clark, Floyd, Lake, and Porter Counties. In the final rules section of this Federal Register, the EPA is approving this action as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received on or before February 18, 1997.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR18–J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR18–J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6082.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this Federal Register.

Dated: November 25, 1996.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 97–1083 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[CA–98–1–7196b; FRL–5661–7]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of California; Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements; Monterey Bay Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPR).

SUMMARY: In the Final Rules section of this Federal Register, EPA is approving as revisions to the California State Implementation Plan (SIP) for the Monterey ozone nonattainment area, the maintenance plan, emission inventory, emission statement rule and volatile organic compounds (VOC) and oxides of nitrogen (NOx) reasonably available control technology (RACT) rules. EPA is also making the determination that the Monterey Bay Area has attained the ozone National Ambient Air Quality Standards (NAAQS) and a determination regarding the applicability of the Reasonable Further Progress (RFP) and attainment demonstration and related requirements based on the area's attainment of the ozone NAAQS. Finally, EPA is redesignating the Monterey Bay Area from nonattainment to attainment for the ozone NAAQS. A detailed rationale for this action is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments concerning any part of the rule, EPA will withdraw the direct final rule and address the comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this action must be received by February 18, 1997.

ADDRESSES: Written comments should be mailed to: David P. Howekamp, Director, Air Toxics Division (A–1), United States Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the redesignation request, State submittals and the EPA's technical support document (TSD) are available for public review at the above address and at the California Air Resources Board, 2020 L Street, Sacramento, CA 95814, or the Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: Julia Barrow, Chief, Plans Development Section (A–2–2), Air Planning Branch, United States Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California, 94105, (415) 744–1207.

SUPPLEMENTARY INFORMATION: This document concerns the Monterey Bay Unified Air Pollution Control District SIP revisions and redesignation to attainment for ozone. For further information, please see the information provided in the Direct Final action located in the Final Rules section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 15, 1996.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–877 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–W

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2800, 2920, 4100, 4300, 4700, 5460, 5510, 8200, 8340, 8350, 8360, 8370, 8560, 9210, and 9260

[WO–130–1820–00 24 1A]

RIN 1004–AC30

Law Enforcement—Criminal

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed regulations, extension of comment period.

SUMMARY: On November 7, 1996, the Bureau of Land Management (''BLM'') published a document in the Federal Register announcing a proposed rule to revise and consolidate many of the regulations which instruct the public regarding BLM criminal law enforcement (61 FR 57605). The 60-day comment period for the proposed rule expired on January 6, 1997. After receiving requests for more time to comment, BLM extended the comment period for 30 days (61 FR 66008, December 16, 1996). Once again, BLM has received requests for an extension of the comment period. BLM is therefore extending the comment period for an additional 30 days.

DATES: Submit comments by March 7, 1997.

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., NW., Washington, DC.;

(b) Mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW., Washington, DC 20240; or

(c) Send comments through the Internet to WOComment@wo.blm.gov. Please include ''attn: AC30'', and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, please contact us directly at (202) 452–5030.

You will be able to review comments at BLM's Regulatory Affairs Group office, Room 401, 1620 L Street, N.W., Washington, D.C., during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Erica Petacchi, (202) 452–5084, or Dennis McLane, (208) 387–5126.

Dated: January 13, 1997.

Annetta Cheek,

Regulatory Affairs Group Manager.

[FR Doc. 97–1248 Filed 1–16–97; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 97–21] [FCC 97–11]

Changes to the Board of Directors of the National Exchange Carrier Association, Inc.

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed rulemaking and notice of inquiry.

SUMMARY: On January 10, 1997, the Commission adopted a Notice of Proposed Rulemaking (NPRM) and an accompanying Notice of Inquiry (NOI) to amend the Commission's rules consistent with proposals to permit the National Exchange Carrier Association (NECA) to change the size and composition of its Board of Directors. In the NPRM, the Commission tentatively concludes that the composition of NECA's Board of Directors must be altered to make the Board more representative of all segments of the telecommunications industry before NECA may be appointed as the temporary administrator of the new universal service support mechanisms, pursuant to the Universal Service proceeding in CC Docket 96–45. In the

Notice of Inquiry (NOI), the Commission seeks comment on how the Commission might amend its rules to remove any regulatory barriers that otherwise may prevent NECA from satisfying the Joint Board's criteria for a neutral third party permanent administrator for the new universal service support mechanisms. The NOI also seeks comment as to what, if any, additional reforms the Commission should adopt with respect to the administration of the current access tariff and pool revenue distribution programs and whether, in connection with any such proposed reforms, interested parties, in addition to NECA, should be entitled to participate in a selection process to serve as the administrator of those programs. The Commission seeks comment on the NPRM and NOI.

DATES: NPRM comments should be filed on or before January 27, 1997 and NPRM reply comments should be filed on or before February 3, 1997. NOI comments should be filed on or before March 3, 1997 and NOI reply comments should be filed on or before April 3, 1997.

ADDRESSES: Interested parties must file an original and four copies of their comments with the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street, NW., Washington, DC 20554. Comments should reference CC Docket No. 96–. Parties should send one copy of their comments to the Commission's copy contractor, International Transcription Service, Room 140, 2100 M Street, NW., Washington, DC 20037. After filing, comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, NW., Washington, DC 20554.

Parties are also asked to submit comments on diskette. Diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Sheryl Todd, Common Carrier Bureau, 2100 M Street, NW., Room 8611, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette in an IBM compatible format using WordPerfect 5.1 for Windows software in a ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding, and date of submission. The diskette should be accompanied by a cover letter.

FOR FURTHER INFORMATION CONTACT: Sheryl Todd at 202–530–6040.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking and Notice of Inquiry adopted and released on January 10, 1997 (FCC 97–11). The full text of this NPRM and NOI is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, Washington, DC 20554.

Summary of Notice of Proposed Rulemaking

1. On October 18, 1996, NECA requested that the Commission amend section 69.602 of the Commission's rules to permit NECA to modify the size and composition of its Board of Directors to reflect the interests of competitive local exchange carriers (LECs), interexchange carriers, wireless carriers, and non-carriers such as schools, libraries, rural healthcare providers, and the states.

2. On March 8, 1996, the Commission initiated a rulemaking in CC Docket 96–45, pursuant to section 254 of the Communications Act of 1934 (Communications Act), as amended by the Telecommunications Act of 1996 (1996 Act), to reform our system of universal service support. On November 8, 1996, the Federal-State Joint Board (Joint Board) on Universal Service released a Recommended Decision regarding numerous universal service issues. The Joint Board recommended that NECA be appointed as the temporary fund administrator of the universal service support mechanisms for schools, libraries and health care providers in order to provide supported telecommunications services to these entities as quickly as possible. The Joint Board also recommended that, prior to appointing NECA as temporary administrator, the ''Commission permit NECA to add significant, meaningful representation'' for non-incumbent LEC interests to the NECA Board of Directors.

3. NECA is an association of incumbent LECs. Along with administering the interstate access tariff and revenue distributions processes, NECA currently administers the existing universal service fund, the Lifeline Assistance program, the long term support (LTS) program and the interstate Telecommunications Relay Services (TRS) fund. The universal service fund, the Lifeline Assistance program, and the LTS program were designed to promote affordable telephone service throughout the nation. The TRS fund is the cost recovery mechanism that reimburses eligible TRS providers for interstate TRS minutes of use. NECA presently has a 15-member Board of Directors that consists of five directors from outside of the LEC industry, two directors representing Bell Operating Companies (BOCs), two directors representing other LECs having operating revenues in excess of $40 million, and six directors representing LECs having annual operating of less than $40 million.

4. Under NECA's proposal, three directors would represent carrier participants such as interexchange carriers, wireless carriers, and competitive LECs, and three would represent non-carriers, such as schools, libraries, rural health care providers, and states. Under NECA's proposal, the new Board members would participate in NECA's administration of the current universal service, Lifeline Assistance, and LTS programs, as well as Board oversight of auditing, finance, and general corporate matters. Access tariffs and pool revenue distribution, however, would continue to be the responsibility of the access charge committees, consisting of current members of NECA's Board. We find that for NECA to act on this proposal, § 69.602 of the Commission's rules would require amendment in order to create a fourth category or subset of six new directors, with three of those directors representing non-incumbent LEC participants, such as interexchange carriers, wireless carriers, and competitive LECs, and three directors representing support beneficiaries of universal service policies or other non-carriers, potentially including schools, libraries, rural health care providers, and states.

5. In this Notice of Proposed Rulemaking (NPRM), we address NECA's request and the Joint Board's recommendations and seek comment on how the Commission should amend its rules so that NECA can reform its Board of Directors in a manner that will enable it to become eligible to serve as the temporary administrator of the universal service support mechanisms. We tentatively conclude that, in order to be eligible to serve as the temporary administrator, NECA's Board of Directors must become more representative of the telecommunications industry as a whole. Accordingly, in order to meet the implementation schedule recommended by the Joint Board in its Recommended Decision and consistent with the recommendation that the Commission appoint NECA as temporary administrator of the new universal service support mechanisms, this NPRM proposes to amend § 69.602 of the Commission's rules so that NECA may modify the size and composition of its Board of Directors to make the Board more representative of the telecommunications industry. We also

seek comment on whether other part 69 rule sections should be modified in conjunction with the proposed rule changes to § 69.602.

Notice of Inquiry

6. In the Recommended Decision released on November 8, 1996, the Joint Board recommended that the permanent administrator of the new universal service support mechanisms, including its Board of Directors: (1) Be neutral and impartial; (2) not advocate specific positions to the Commission in non-administration-related proceedings; (3) not be aligned or associated with any particular industry segment; and (4) not have a direct financial interest in the support mechanisms established by the Commission. In declining to recommend NECA for the position of permanent administrator, the Joint Board emphasized the importance of the permanent administrator's ability to maintain an ''appearance of impartiality'' and questioned NECA's ability to do this in light of its current membership and governance. The Joint Board specifically cited commenters' concerns that NECA's ability to appear to be a neutral arbitrator among contributing carriers, its current membership of incumbent LECs, and the advocacy role it has assumed in several Commission proceedings created an appearance to non-LECs of NECA's bias favoring incumbent LECs. The Joint Board further stated that ''[i]f changes to its membership and governance render NECA a neutral, third-party, NECA should be eligible to compete in the advisory board's selection process'' for choosing a permanent administrator.

7. In this NOI, we seek comment as to how the Commission might amend subpart G of its part 69 rules to remove any regulatory barriers that otherwise may prevent NECA from making itself a neutral, third party and satisfying the four criteria identified by the Joint Board. We also seek comment on whether, and if so how, the Commission should streamline its rules to enable NECA to change the composition of its Board without unnecessary regulatory oversight. Alternatively, the Commission could repeal the rules currently contained in part 69 constraining NECA's structure and functions so that NECA could make whatever organizational changes it deems necessary without Commission endorsement or sanction. If the Commission's oversight function of NECA's structure and functions were diminished in this fashion, we seek additional comment with respect to whether the interests of NECA's current membership, as well as other carriers, could be adversely affected by how NECA might administer tariffs and access charges.

8. In the Recommended Decision, the Joint Board also recommended that the qualified applicant have the capacity to process large amounts of data and bill large number of carriers. Accordingly, we seek comment on whether existing Commission rules prevent NECA from satisfying these criteria, and if so, how such rules should be amended.

9. Finally, we seek comment as to what, if any, additional reforms the Commission should adopt with respect to the administration of the current access tariff and pool revenue distribution programs and whether, in connection with any such proposed reforms, interested parties, in addition to NECA, should be entitled to participate in a selection process to serve as the administrator of one or more of those programs. As noted above, NECA currently administers the CL and TS access tariff pools, the existing universal service fund, the Lifeline Assistance program, the LTS program, and the TRS fund. Consistent with the de-regulatory and pro-competitive spirit of the 1996 Act, we seek comment regarding whether additional amendments to the Commission's part 69 rules are needed with respect to the administration of these programs and whether the administration of one or more of the programs should be subject to a competitive bidding process. In light of the Commission's recent reappointment of NECA to an additional four-year term as administrator of the TRS fund and given that NECA's reappointment to that fund was unopposed, we do not seek comment at this time on NECA's role as TRS administrator. Accordingly, we seek comment on whether administration of the CL and TS access tariff pools, the Lifeline Assistance program, and the LTS program should remain the exclusive province of NECA or whether other interested parties should be entitled to participate in a selection process to serve as the administrator of those programs. We request from those commenters advocating other parties' participation in the selection process suggestions on how such participation could be effectuated and what changes to our rules would be necessary to effectuate these changes.

Procedural Matters

10. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.

11. We invite comment on the proposals and tentative conclusions set forth above. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file NPRM comments on or before January 27, 1997 and NPRM reply comments on or before February 3, 1997. Interested parties may file NOI comments on or before March 3, 1997 and NOI reply comments on or before April 3, 1997. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy, you must file an original plus eleven copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554. Five courtesy copies should also be sent to Tejal Mehta at 2100 M Street, NW., Room 8611, Washington, DC 20554. Parties should also file one copy of any document filed in this docket with the Commission's copy contractor, International Transcription Services, Inc. (ITS), 2100 M Street, NW., Suite 140, Washington, DC 20037. ITS's telephone number is 202–857–3800. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, NW., Washington, DC 20554. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. For further information concerning this proceeding, contact Sheryl Todd, Accounting and Audits Division, Common Carrier Bureau at 202–530–6001.

Initial Regulatory Flexibility Analysis

12. Section 603 of the Regulatory Flexibility Act (RFA), as amended, requires an Initial Regulatory Flexibility Analysis in notice and comment rulemaking proceedings, unless the head of the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The NPRM portion of this proceeding applies only to NECA and concerns the proposal to amend the Commission's rules to modify the size and composition of NECA's current Board of Directors to make the Board more representative of the telecommunications industry as a whole.

13. For the purposes of this NPRM, the RFA defines a ''small business'' to be the same as a ''small business

concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' includes a small organization, which is defined as a non-profit enterprise that is not independently owned and operated and is not dominant in its field. NECA is a non-profit, quasi-governmental association that was initially created to administer the Commission's interstate access tariff and revenue distribution processes. Therefore, NECA is not a small organization within the meaning of the RFA. Furthermore, these proposals do not apply to other ''small business concerns'' since they propose to modify the composition of NECA's Board of Directors. For this reason, we tentatively conclude that these proposals would not have a significant economic impact on a substantial number of small entities.

14. We therefore certify, pursuant to Section 605(b) of the RFA, that these proposals would not have a significant economic impact on a substantial number of small entities. We seek comment on this tentative conclusion. The Commission shall publish this certification in the Federal Register, and shall provide a copy of this NPRM, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

15. Accordingly, It is ordered that, pursuant to §§ 1, 4(i), 201–205, 218–220, 254 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201–05, 218–20, 254 and 403, notice is hereby given of proposed amendments to Part 69 of the Commission's rules, 47 CFR part 69, as described in this notice of proposed rulemaking.

16. Accordingly, it is ordered that, pursuant to sections 1, 4(i), 201–205, 218–220, 254 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201–05, 218–20, 254 and 403, notice is hereby given of proposals described in this notice of inquiry.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–1133 Filed 1–16–97; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 96–248, RM–8950]

Radio Broadcasting Services; Dickson, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Redwood Broadcasting, Inc., seeking the allotment of Channel 278C3 to Dickson, Oklahoma, as the community's first local aural transmission service. Channel 278C3 can be allotted to Dickson in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 34–11–14 North Latitude and 96–59–03 West Longitude.

DATES: Comments must be filed on or before February 3, 1997, and reply comments on or before February 18, 1997.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Ronald G. London, Esq., Pepper & Corazzini, L.L.P., 1776 K Street, NW., Suite 200, Washington, D.C. 20006 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 96–248, adopted December 6, 1996, and released December 13, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–1094 Filed 1–16–97; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–264, RM–8977]

Radio Broadcasting Services; Roxton, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Northeast Texas Broadcasters requesting the allotment of Channel 257A to Roxton, Texas, as the community's first local FM service. Channel 257A can be allotted to Roxton in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.2 kilometers (7.6 miles) north to avoid short-spacing conflicts with the licensed operation of Station KPLX(FM), Channel 258C, Fort Worth, Texas, and to a construction permit for a station operating on Channel 257C3 at Linden, Texas, at coordinates 33–39–17 NL; 95–44–54 WL.

DATES: Comments must be filed on or before March 3, 1997, and reply comments on or before March 18, 1997.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William J. Pennington, III, Post Office Box 403, Westfield, Massachusetts 10186 (Counsel for petitioners).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 96–264, adopted December 27, 1996, and released January 10, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may

also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–1096 Filed 1–16–97; 8:45 am]

BILLING CODE 6712–01–F

Notices

Federal Register
Vol. 62, No. 12
Friday, January 17, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 96–099–1]

Availability of Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact has been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to allow the field testing of genetically engineered organisms. The environmental assessment provides a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: A copy of the environmental assessment and finding of no significant impact is available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect the document are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Evaluation, BSS, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. For a copy of the environmental assessment and finding of no significant impact, contact Mr. Clayton Givens at (301) 734–7612; e-mail: cgivens@aphis.usda.gov. Please refer to the permit number listed below when ordering the document.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained or a notification acknowledged before a regulated article may be introduced into the United States. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, and release into the environment of a regulated article.

In the course of reviewing the permit application, the Animal and Plant Health Inspection Service (APHIS) assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued a permit for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessment and finding of no significant impact, which is based on data submitted by the applicant and on a review of other relevant literature, provides the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field test.

An environmental assessment and finding of no significant impact has been prepared by APHIS relative to the issuance of a permit to allow the field testing of the following genetically engineered organisms:

PERMIT NUMBER	PERMITTEE	DATE ISSUED	ORGANISMS	FIELD TEST LOCATION
96–256–01	Sanford Scientific, Inc.	11–20–96	Geranium plants genetically engineered to express resistance to plant pathogenic bacteria and fungi.	California.

The environmental assessment and finding of no significant impact has been prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA)(42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 13th day of January 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–1225 Filed 1–16–97; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

Clearwater National Forest, Idaho County, Idaho Spruce Moose and Moose Lake Right-of-way

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: On October 30, 1995, the Powell Ranger District, Clearwater National Forest, began public scoping for the Spruce Moose project, a proposed salvage timber sale and private land access request. During 1996, the environmental effects of the proposed action were analyzed. During the course of this analysis, it was determined that potential effects on steelhead trout (proposed for listing under the Endangered Species Act), Bull

Trout (listing under ESA is warranted, but precluded), spring chinook and westslope cutthroat trout (both Sensitive Species) may be significant enough to require an Environmental Impact Statement.

During the summer of 1996, additional field information was gathered and used to update the proposed action as follows.

The Clearwater National Forest is planning to prepare an environmental impact statement (EIS) to disclose the environmental effects of a proposal to harvest 2.4 million board feet of timber, construct 4.1 miles of new forest roads, and reconstruct 0.4 miles of existing forest road. Included in the proposed road construction is a request from Plum Creek Timber Company for easements across one mile of National Forest System Land to access privately owned timberland. A joint sediment reduction plan to repair existing sediment sources on existing roads is also included in the proposal.

The Spruce Moose Planning Area is located northeast of the Powell Ranger Station, Powell Ranger District, Clearwater National Forest, Idaho County, Idaho. Proposed activities are located in the Spruce Creek drainage. The proposal's actions are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25).

The purposes of the project are (1) to design and implement vegetation treatments using ecosystem management principles within the forest stands that are at high risk of change in the next decade, (2) to design and implement a cost share road system with Plum Creek Timber Company to provide a single road system that serves both landowners, and (3) to restore and maintain aquatic ecosystem structure and function to provide historic habitat conditions for aquatic species.

This project level EIS will tier to the Clearwater National Forest Land and Resources Management Plan (Forest Plan) and Final EIS (September, 1987), which provides overall guidance of all land management activities on the Clearwater National Forest.

Analysis will be conducted in compliance with the Clearwater Forest Plan lawsuit settlement agreement between the Forest Service and the Sierra Club, et al (signed September 13, 1993).

DATES: Comments in response to this Notice of Intent concerning the scope of the analysis should be received in writing on or before March 3, 1997 to receive timely consideration in the preparation of the Draft EIS. The Draft EIS will be filed with the Environmental Protection Agency in March, 1997. The Final EIS and the Record of Decision are expected to be issued in December, 1997.

ADDRESSES: Send written comments and suggestions on the proposed action or requests for a map of the proposed action or to be placed on the project mailing list to Margaret Gorski, District Ranger, Powell Ranger District, Clearwater National Forest, Lolo, Montana 59847.

RESPONSIBLE OFFICIAL: The Forest Supervisor, Clearwater National Forest, will be the responsible official and decide on the harvest and road construction alternatives and whether to issue access easements to Plum Creek Timber Company.

FOR FURTHER INFORMATION CONTACT: District Ranger, Powell Ranger District, Clearwater National Forest, (208) 942–3113.

SUPPLEMENTARY INFORMATION: Plum Creek Timber Company (PCTC) requested right-of-way access across National Forest System land in Sections 20 and 30, T38N, R17E, Boise Meridian. The purpose of this request was for Plum Creek Timber Company to access the private land in Sections 19 and 29 for their use and enjoyment.

Access to non-Federal inholdings in governed by Section 1323(a) of the Alaska National Interest Lands Conservation Act (ANILCA). Implementing direction for this authority is found in regulation at 36 CFR 251.110.

The Forest Service and Plum Creek Timber Company are cooperators in a jointly constructed and maintained road system on the Powell Ranger District. The purpose of this joint road system is to serve the access needs of both cooperators with a single network of permanent roads within the checkerboard land ownership portion of the Powell Ranger District.

In 1995, the Powell District conducted an Integrated Resource Analysis for a portion of the Spruce Creek watershed and proposed management actions which were linked to Plum Creek Timber Company's proposed road and request for access. This was documented in an Integrated Resource Assessment and Position Statement.

On October 10, 1995, Plum Creek Timber Company updated its request for access to include an easement across 200 feet of section 26, T38N, R16E to access private land in Section 25. This new request was included in the proposed action to properly assess the cumulative effects of road construction and timber harvest on National Forest resources.

Preliminary issues include the effects on timber growth and yield, effects on old growth and snag habitat, effects on elk habitat security, and effects on water quality and fish habitat. These issues will be refined and developed in detail as scoping proceeds. Comments on the issues and suggestions for additional issues are welcome in response to this Notice of Intent.

Preliminary scoping and public involvement began on October 30, 1995, when an Integrated Resource Analysis and Position Statement was mailed to about 100 individuals asking for comment. The interdisciplinary team worked with the comments from this early scoping effort to identify preliminary issues and to refine the proposed action.

The interdisciplinary team will be working to develop a range of alternatives to the proposed action and to assess the environmental effects of the alternatives. One of the alternatives will be the ''No Action'' alternative. Other alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purposes, as well as to respond to the environmental issues and other resource values. Comments concerning the range of alternatives or possible environmental effects would be useful to the team in completing their analysis.

It is anticipated that the environmental analysis and preparation of the draft and final environmental impact statements will take about one year. The draft environmental impact statement can be expected in March, 1997 and a final environmental impact statement can be expected in December, 1997.

A 45 day comment period will be provided for the public to make comments on the draft environmental impact statement. This comment period will be in addition to scoping and will begin when the Environmental Protection Agency's Notice of Availability of the Draft EIS appears in the Federal Register. A Record of Decision will be prepared and filed with the final environmental impact statement. A forty-five day appeal period will be applicable.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. To be most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or

the merits of the alternatives discussed (see Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC* 435 US 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel,* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

I am the responsible official for this environmental impact statement. My address is Clearwater National Forest, 12730 Highway 12, Orofino, ID 83544.

Dated: December 31, 1997.

James L. Caswell,

Forest Supervisor, Clearwater National Forest.

[FR Doc. 97–1186 Filed 1–16–97; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: February 18, 1997.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On September 27 and November 22, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 F.R. 50805 and 59401) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Head Harness, Skull Cap
4240–01–390–3057

Services

Grounds Maintenance, Camp Lejeune, Main Gate and Holcomb Boulevard, Jacksonville, North Carolina

Janitorial/Custodial, VA Connecticut Healthcare System, Newington Campus, Newington, Connecticut

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–1244 Filed 1–16–97; 8:45 am]

BILLING CODE 6353–01–P

Procurement list; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee has received a proposal to add to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 18, 1997.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action will result in authorizing small entities to furnish the commodity to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity has been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Paper, Tabulating Machine

7530–00–800–0996
(Requirements for the Burlington, New Jersey Depot only)
NPA: Alabama Industries for the Blind, Talladega, Alabama
Arizona Industries for the Blind, Phoenix, Arizona
Lighthouse for the Blind, St. Louis, Missouri
Blind Work Association, Binghamton, New York
Tarrant County Association for the Blind, Fort Worth, Texas
The Lighthouse for the Blind, Inc., Seattle, Washington

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–1245 Filed 1–16–97; 8:45 am]

BILLING CODE 6353–01–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 18, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Potpourri

M.R. 400

M.R. 401

M.R. 403

NPA: Wichita Industries and Services for the Blind, Inc., Wichita, Kansas

Bucket, Plastic

M.R. 997

NPA: The Lighthouse for the Blind, Inc., Seattle, Washington

Service

Facilities Services Support, Air Base Ground Defense Training Campus, Camp Bullis, Texas

NPA: Physically Challenged Service Industries, Inc., San Antonio, Texas

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–1247 Filed 1–16–97; 8:45 am]

BILLING CODE 6353–01–P

Proposed Additions to the Procurement List; Correction

In the document appearing on page 1427, F.R. Doc. 97–657, in the issue of January 10, 1997, in the first column, the service listed as Storage and Distribution of Uniform Accessories (Vendor Parts Accessories), Defense Personnel Support Center, Philadelphia, Pennsylvania was inadvertently re-published and should be deleted from the document. This service was initially published October 11, 1996, as Distribution of Belts and Belt Buckles, Defense Personnel Support Center, Philadelphia, Pennsylvania.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–1246 Filed 1–16–97; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the California Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission will convene at 6 p.m. and recess at 9 p.m. on Friday, January 31, 1997, and reconvene on Saturday, February 1, 1997, at 10 a.m. and adjourn at 4:00 p.m., at the Travelodge Hotel-Harbor Island, 1960 Harbor Island Drive, San Diego, California 92101. The individual subcommittees will meet on Friday to discuss the progress of projects. The subcommittees will report to the full Committee at the Saturday, February 1 meeting.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Fernando Hernandez, 310–696–0104, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 9, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–1128 Filed 1–16–97; 8:45 am]

BILLING CODE 6335–01–P

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: Survey of Program Dynamics—Bridge Survey.

Form Number(s): SPD–1(L), 1(L)SP, 2(L), 3.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 26,875 hours.

Number of Respondents: 35,000.

Avg. Hours Per Response: 45 minutes—interview; 11 minutes—reinterview.

Needs and Uses: With the August 22, 1996 signing of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193), the Bureau of the Census is required to conduct the Survey of Program Dynamics (SPD) using as the sample households from the 1992 and 1993 Survey of Income and Program Participation (SIPP). The SPD will be a large, longitudinal, nationally-representative study that measures features of the welfare programs, including both programs that are being reformed and those that remain unchanged. The SPD will also measure other important social, economic, demographic and family changes that reflect the effectiveness of the welfare reforms.

A sample of respondents originally in the 1992 and 1993 SIPP panels will be interviewed once a year from 1997–2001, and perhaps longer depending on funding. Separate OMB clearance requests will be submitted for a 1997 pretest and the 1998–2001 surveys. Prior to conducting the pretest of the initial SPD questionnaire, the Bureau of the Census will conduct a bridge survey (the subject of this request) during April-June 1997 using the March 1997 Current Population Survey (CPS) questionnaire, which contains annual retrospective questions on work experience, earnings, program participation, and health insurance coverage. A portion of the bridge survey panel, approximately 10 percent, will be reinterviewed for quality control purposes.

This bridge survey and data already gathered in the 1992 and 1993 SIPP panels will provide baseline data for approximately 35,000 households for the period prior to the implementation of the welfare reform activities. With the pretest in the fall of 1997, the full survey implementation in the spring of 1998, and annually thereafter through 2001, the data gathered for the 10-year period (1992–2001) will aid in assessing short to medium-term consequences or outcomes of the welfare legislation. We plan to utilize a financial incentive program in the bridge survey as an attempt to attain a higher response rate. Some households that complete an interview will receive a small monetary gift for their cooperation in the survey. We will observe how this financial incentive affects response rates.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 42 U.S.C., Section 614 (Pub. L. 104–193, Sect. 414).

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.

Dated: January 8, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–1177 Filed 1–16–97; 8:45 am]

BILLING CODE 3510–07–P

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: Quarterly Survey of the Finances of Public Employee Retirement Systems.

Form Number(s): F–10.

Agency Approval Number: 0607–0143.

Type of Request: Extension of a currently approved collection.

Burden: 416 hours.

Number of Respondents: 104.

Avg. Hours Per Response: 1 hour.

Needs and Uses: This survey provides, on a quarterly basis, nationwide data on the cash and security holdings of the 104 largest public-employee retirement systems. These 104 systems control billions of asset dollars and represent 80 percent of the total assets of all public employee retirement systems. The Census Bureau conducts this survey at the request of the Council of Economic Advisors and the Federal Reserve Board. Economists from these agencies, the Department of Treasury, the Bureau of Economic Analysis, and others use these data to monitor and analyze investment trends and to formulate governmental economic policies and investment decisions.

Affected Public: State, local or tribal government.

Frequency: Quarterly.

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.

Dated: January 8, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–1178 Filed 1–16–97; 8:45 am]

BILLING CODE 3510–07–P

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: 1997 Economic Census of the Outlying Areas Including Puerto Rico, Guam, Northern Mariana Islands and the U.S. Virgin Islands.

Form Number(s): OA–9819, 9820, 9873, 9883.

Agency Approval Number: None.

Type of Request: New Collection.

Burden: 49,500 hours.

Number of Respondents: 54,000.

Average Hours Per Response: .917 hours.

Needs and Uses: The 1997 Economic Census of the Outlying Areas will be conducted as part of the 1997 Economic Censuses required by Title 13, U.S.C. and is the primary source of dependable facts about each of the outlying areas economy, and features the only recognized source of data at a geographic level equivalent to U.S.

counties. Outlying areas economic census statistics serve to benchmark estimates of net income and gross product, and provide essential information for government (Federal and local), business, and the general public. The 1997 Economic Census of the Outlying Areas will cover the following sectors: retail and wholesale trades, certain services industries, construction, and manufactures. The information collected in the 1997 Economic Census of the Outlying Areas will produce basic statistics by kind of business for a number of establishments, sales, payroll, and employment. It also will yield a variety of industry-specific statistics, including value of shipments, sales by commodity and merchandise lines, and number of hotel rooms. The 1997 Economic Census of the Outlying Areas will be conducted using mailout/mailback procedures. As in the 1992 census, only one form covering all economic activity within the scope of the census is used for each area. Since administrative records for the outlying areas sometimes have classification deficiencies, the use of one form eliminates time spent by the respondent requesting a sector-appropriate form.

Affected Public: Businesses or other for-profit, individuals or households.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 USC, Sections 131 and 224.

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 & 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, NW Executive Office Building, Washington, DC 20503.

Dated: January 13, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–1179 Filed 1–16–97; 8:45 am]

BILLING CODE 3510–07–M

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: Patent and Trademark Office (PTO).

Title: Practitioner Records Maintenance and Disclosure Before the Patent and Trademark Office.

Agency Approval Number: 0651–0017.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Burden: 3,278 hours.

Number of Respondents: 350 for record keeping maintenance, and 85 for violation reporting.

Avg. Hours Per Response: 9 hours for record keeping maintenance, and 1½ hours for violation reporting.

Needs and Uses: Information is required to insure compliance with the Patent and Trademark Office (PTO) Code of Responsibility which requires that registered attorneys and agents maintain complete records of clients, and report violations of the Code and evidence of such violations to the PTO. The Code further mandates that attorneys and agents cooperate with the Director of the Office of Enrollment and Discipline in connection with any investigation.

Affected Public: Individuals.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maya A. Bernstein, (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Maya A. Bernstein, OMB Desk Officer, room 10236, New Executive Office building, Washington, D.C. 20503.

Dated: January 8, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–1190 Filed 1–16–97; 8:45 a.m.]

BILLING CODE 3510 16–P

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 of 1995, Public Law 104–13.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Tagged Groundfish Research Program.

Agency Form Number: N/A.

OMB Number: 0648–0276.

Type of Review: Renewal of an existing collection.

Burden: 336.

Number of Respondents: 1,167 (4,201 responses).

Avg Hours Per Response: 5 minutes.

Needs and Uses: Tagging groundfish for subsequent tracking and recovery is an important tool for managing fishery resources. Information is collected from fishermen and others who have recovered a tagged fish. The information provided through this program provides essential research data on groundfish/sablefish life histories and migration patterns. The information is used to determine growth rates, differences by area, sex, size, etc.

Affected Public: Individuals, businesses or other for-profit organizations, federal government, state, local or tribal government.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Adele Morris, (202) 395–7340.

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 5327, 14th and Constitution Avenue, N.W., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Adele Morris, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 13, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–1191 Filed 1–16–97: 8:45 am]

BILLING CODE 3510–22–P

Foreign-Trade Zones Board

[Docket 1–97]

Foreign-Trade Zone 149; Freeport, Texas; Proposed Foreign-Trade Subzone, Phillips Petroleum Company, (Oil Refinery Complex), Brazoria County, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Port Freeport, grantee of FTZ

149, requesting special-purpose subzone status for the oil refinery complex of Phillips Petroleum Company, located at sites in Brazoria County, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 2, 1997.

The refinery complex (2,095 acres, 1,300 employees) consists of 5 sites and connecting pipelines in Brazoria County, Texas: *Site 1* (1315 acres)—main refinery and petrochemical complex (200,000 BPD) located at Texas State Highway 35 at Farm Market Road 524, south of Sweeney; *Site 2* (160 acres)—Freeport I Terminal and storage facility (1.6 million barrel storage capacity) located at County Road 731, some 28 miles southeast of the refinery; *Site 3* (183 acres)—six crude oil storage tanks (2.4 million barrel capacity) at Jones Creek Terminal, located at 6215 State Highway 36, some 17 miles southeast of the refinery; *Site 4* (34 acres)—San Bernard Terminal and storage facility (207,000 barrel capacity), located at County Road 378, 5 miles southeast of the refinery; *Site 5* (403 acres)—Clemens Terminal underground LPG storage (12.8 million barrel capacity), located at County Road 314, 15 miles east of the refinery.

The refinery is used to produce fuels and petrochemical feedstocks. Fuels produced include gasoline, jet fuel, distillates, residual fuels and naphthas. Petrochemical feedstocks and refinery by-products include methane, ethane, propane, propylene, ethylene, butylene, butadiene, butane, benzene, toluene, xylene, carbon black oil and sulfur. Some 95 percent of the crude oil (60 percent of inputs), and some feedstocks and motor fuel blendstocks are sourced abroad.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the finished product duty rate (nonprivileged foreign status—NPF) on certain petrochemical feedstocks and refinery by-products (duty-free) instead of the duty rates that would otherwise apply to the foreign-sourced crude oil. The duty rates on crude oil range from 5.25¢/barrel to 10.5¢/barrel. Under the FTZ Act, certain merchandise in FTZ status is exempt from ad valorem inventory-type taxes. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 18, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 2 1997).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, Suite 1160, 500 Dallas, Houston, Texas 77002

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: January 7, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–1259 Filed 1–16–97; 8:45 am]

BILLING CODE 3510–25–P

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with December anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke one antidumping finding and one antidumping duty order in part.

EFFECTIVE DATE: January 17, 1997.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 353.22(a) and 355.22(a) (1994), for administrative reviews of various antidumping and countervailing duty orders and findings with December anniversary dates. The Department also received timely requests to revoke in part the antidumping finding on elemental sulphur from Canada and the antidumping duty order on certain welded stainless steel pipe from Taiwan.

Initiation of Reviews

In accordance with sections 19 CFR 353.22(c) and 355.22(c), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. The Department is not initiating an administrative review of any exporters and/or producers who were not named in a review request because such exporters and/or producers were not specified as required under section 353.22(a) (19 CFR 353.22(a)). We intend to issue the final results of these reviews not later than December 31, 1997.

	Period to be reviewed
Antidumping Duty Proceedings	
CANADA: Elemental Sulphur	
A–122–047	12/1/95–11/30/96
Mobile Oil Canada, Ltd.	
JAPAN: Light Scattering Instruments [1]	
A–588–813	11/1/95–10/31/96
Otsuka Electronics	
JAPAN: Polychloroprene Rubber	
A–588–046	12/1/95–11/30/96
Denki Kagujo, K.K.	
Denki/Hoei Sangyo Co., Ltd.	
Mitsui Bussan, K.K.	
Showa Neoprene, K.K.	
Showa/Hoei Sangyo Co., Ltd.	
Suzugo Corporation	
Tosoh Corporation (formerly Toyo Soda)	
Tosoh/Hoeii Sangyo Co., Ltd.	
MEXICO: Porcelain-on-Steel Cookware	
A–201–504	12/1/95–11/30/96
Cinsa, S.A. de C.V.	
Esmaltaciones de Norte America, S.A. de C.V.	
TAIWAN: Welded Stainless Steel Pipes	
A–583–815	12/1/95–11/30/96
Ta Chen Stainless Steel Pipe Co., Ltd.	

	Period to be reviewed
THE PEOPLE'S REPUBLIC OF CHINA: Cased Pencils [2]	
A–570–827	12/1/95–11/30/96
Anhui Stationery Company, Ltd.	
China First Pencil Company, Ltd.	
Shanghai Three Star Stationery Company, Ltd.	
Guagdong Stationery & Sporting Goods	
Beijing Pencil Factory	
Dalian Pencil Factory	
Donghua Pencil Factory	
Harvin Pencil Factory	
Jiangsu Pencil Factory	
Jinan Pencil Factory	
Juihai Pencil Factory	
Julong Pencil Factory	
Quindao Pencil Factory	
Shenyiang Pencil Factory	
Songnan Pencil Factory	
China First Pencil Company, Ltd.	
Shanghai Three Star Stationery Com.	
Shanghai Foreign Trade Corporation	
Guandong Stationery & Sporting Goods I/E Corporation	
Shanghai Lansheng Co., Ltd. (aka Stationery & Sporting Goods I/E Corporation	
Shanghai Machinery & Equipment I/E Corporation	
Tianjin Pencil Factory	
Xinbang Joint Venture Pencil Factory	
AEMPAC Systems (Hong Kong)	
Anhui I/E Group Corporation	
Anhui Light Industrial Products I/E Corp.	
Anhui Provincial I/E Corporation	
Applause Products	
Atico International	
Atico Overseas	
Beijing Light Industrial Products I/E Corporation	
CS Container Line (Hong Kong)	
Cargo Service (Hong Kong)	
Cargo Systems	
Changzhou Foreign Economic Technical & Trading Company	
Changzhou Foreign Trade Group	
Chiangshu Foreign Trading	
China Fujian Foreign Trade Center	
China National Light Industrial Products I/E Corporation (all branches)	
China North Industries Tianjin Corporation	
Dalian Light Industrial Products I/E Corp.	
China Shenzhen SEZ Foreign Trade	
EI Ocean (Hong Kong)	
Far East Enterprises	
Fuji Industrial (Hong Kong)	
Gansu Provincial Machinery	
Golden Way Trading Company	
Guangzhou Foreign Trade Group	
Hianan Provincial Foreign Trade	
Haiwang Enterprises Company, Ltd.	
Han Maritime	
Jin Hai Jei Air International Forwarding	
Heilongiang Light Industrial Products I/E Corporation	
Ideal Consolidators (Hong Kong)	
Ideal Ocean Lines (Hong Kong)	
Inteks Transport International	
Jacky Maeder (Hong Kong)	
Jiangsu Light Industrial Products I/E Group Corporation	
Jilin Provincial Machinery & Equipment I/E Corporation	
King Sun (Hong Kong)	
Kwok Luen Plastic Manufacturing	
Lailon Enterprises (Hong Kong)	
LEP Guangzhou Delegation Office	
LEP Transport International	
Liaoning Light Industrial Products I/E Corp.	
Licken Industrial (Hong Kong)	
Maritime International	
Onan Shipping (Hong Kong)	
Orwave	
Panalpina	
Panalpina (Hong Kong)	
Perpetual Product Development	
Po Shing Industrial	
Premier Shipping	
Qingdao Light Industrial Products I/E Corporation	
Regent C&C Shanghai Office	
Regent Express	
Shandong Light Industrial Products I/E Corporation	
Shantou Light Industrial Products I/E Corporation	
Shantou Stationery & Sporting Goods I/E Corporation	
Shanxi Light Industrial Products I/E Corporation	
Shenyiang Light Industrial Products I/E Corporation	
Shum Yip (Shenzen) Industry & Trade Development Corporation	
Translink Transportation	
Sichuan Light Industrial Products I/E Corporation	
Sui Jun International (Hong Kong)	
THI (Hong Kong)	
The Merton Company, Ltd. (Hong Kong)	
Tianjin Beifing Corporation	
Tianjin Stationery & Sporting Goods I/E Corporation	
Tony Trading (Hong Kong)	
Trade Power (Taiwan)	
Trinity Mark Industries	
Tru Blue Products	
UT Consolidators (Hong Kong)	
Wah Luen Stationery Supplies	
Y.K. Shipping International	
Yangjiang Light Industrial Products I/E Corporation	
Zhenjiang Foreign Trade Corporation	
THE PEOPLE'S REPUBLIC OF CHINA: Porcelain-on-Steel Cooking Ware [3]	
A–570–506	12/1/95–11/30/96
Clover Enamelware Enterprise/ Lucky Enamelware Factory Limited	

Countervailing Duty Proceedings

None.

[1] Inadvertently omitted from previous initiation notice.

[2] All other exporters of certain cased pencils from the People's Republic of China are conditionally covered by this review.

[3] All other exporters of porcelain-on-steel cooking ware from the People's Republic of China are conditionally covered by this review.

If requested within 30 days of the date of publication of this notice, the Department will determine whether antidumping duties have been absorbed by an exporter or producer subject to any of these reviews if the subject merchandise is sold in the United States through an importer which is affiliated with such exporter or producer.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1).

Dated: January 15, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary for Group III.

[FR Doc. 97–1397 Filed 1–16–97; 9:06 am]

BILLING CODE 3510–DS–M

[A–834–805]

Notice of Final Determination of Sales at Less Than Fair Value: Beryllium Metal and High Beryllium Alloys From the Republic of Kazakstan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 17, 1997.

FOR FURTHER INFORMATION CONTACT: Dorothy Tomaszewski at (202) 482–0631, or Erik Warga at (202) 482–0922, Office of Antidumping Investigations, Import Administration, International

Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230.

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 Rounds Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department regulations are to the current regulations, as amended by the interim regulations, published in the Federal Register on May 11, 1995 (60 FR 25130).

Final Determination

We determine that beryllium metal and high beryllium alloys (''beryllium'') from the Republic of Kazakstan (''Kazakstan'') are being sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Tariff Act of 1930, as amended (''the Act''). The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the preliminary determination on August 21, 1996 (61 FR 44293, August 28, 1996 (''preliminary determination'')), the following events have occurred:

In October 1996, we verified the respondents' questionnaire responses. Additional publicly available information on surrogate values was submitted by petitioner and respondents on November 15, 1996, and November 22, 1996. Petitioner and respondents submitted case briefs on November 29, 1996 and rebuttal briefs on December 6, 1996. A public hearing was held on December 9, 1996. At the Department's request, additional information was filed by petitioner and respondents on December 10, 1996, and December 12, 1996. On December 19, 1996, and December 23, 1996, the Department received surrogate factor data from the Foreign Commercial Service Office in Lima, Peru.

Scope of Investigation

The scope of this investigation is beryllium metal and high beryllium alloys with a beryllium content equal to or greater than 30 percent by weight, whether in ingot, billet, powder, block, lump, chunk, blank, or other semifinished form. These are intermediate or semifinished products that require further machining, casting and/or fabricating into sheet, extrusions, forgings or other shapes in order to meet the specifications of the end user. Beryllium and high beryllium alloys within the scope of this investigation are classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') 8112.11.6000, 8112.11.3000, 7601.20.9075, and 7601.20.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is July 1, 1995, through December 31, 1995.

Separate Rates

Respondents made no claim for receiving a separate rate. Therefore, lacking any information to support a conclusion that a separate rate is appropriate, the Department assigned a single Kazakstan-wide rate to all producers and exporters.

Fair Value Comparisons

To determine whether sales of beryllium from Kazakstan to the United States were made at less than fair value, we compared Export Price (''EP'') to the Normal Value (''NV''), as specified in the ''Export Price'' and ''Normal Value'' sections of this notice.

Export Price

We calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation. Although respondents have a U.S. subsidiary, Beryllium Metals International Ltd. (''BMI''), calculation of constructed export price (''CEP'') under section 772(b) is not otherwise warranted for purposes of the final determination based on the facts of this investigation. It has been the Department's longstanding and well-recognized practice that a transaction will be considered an export price sale, despite the involvement of an affiliate in the United States where: (1) The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the physical inventory of the related selling agent; (2) this was the customary commercial channel for sales of this merchandise between the parties involved; and (3) the related selling agent in the United States acted only as a processor of documentation and a communication link with the unrelated buyer. (*See, e.g., Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany* (61 FR 38166, 38175, July 23, 1996)). Verification findings confirm that the merchandise is not taken into the physical inventory of the U.S. subsidiary. Because there has only been one sale, we conclude that there is no ''customary commercial channel.'' Therefore, we are continuing to disregard this criterion for purposes of this final determination. Finally, verification findings confirmed the limits on BMI's authority to finalize sales and that BMI is acting solely as a processor of documentation and communications link (*see* November 8, 1996, verification report at page 6). Therefore, we conclude that the sale in question is properly characterized as an EP sale.

We calculated EP based on packed, CIF U.S. port prices to unaffiliated purchasers in the United States, as appropriate, based on the same methodologies in the preliminary determination with the following exceptions: we made minor corrections to certain movement charges pursuant to verification findings.

Normal Value

When the Department is investigating imports from a non-market economy (''NME''), section 773(c)(1) of the Act directs us to base NV on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. Therefore, as in the preliminary determination, we calculated NV based on factors of production reported by the Kazak Joint-Stock Company of Ulba Metallurgical Plant (''Ulba''), the sole Kazakstani producer of subject merchandise.

To calculate NV, the verified per-unit factor quantities were first multiplied by Peru values; the resulting products were then summed. We then added amounts for overhead, general expenses (including interest) (''SG&A''), profit, and, packing expenses incident to placing the merchandise in condition packed and ready for shipment to the United States.

We made adjustments to the reported factors of production to reflect actual production experience for 1991 and 1993, based on verification findings.

Valuation of Factors

As in our preliminary determination, we have relied on Peru as the primary surrogate country in accordance with section 773(c)(4) of the Act. Accordingly, we have continued to calculate NV using Peru prices for the Kazakstani producer's factors of

production. We have obtained and relied on publicly-available information wherever possible.

Except as noted below, we applied surrogate values to the factors of production in the same manner as in our preliminary determination. For a complete discussion of surrogate values, *see* the *Calculation Memorandum*, dated January 10, 1996. Surrogate overhead was based on the experience of a silicomanganese producer in Brazil; SG&A and profit were based on the experience of an aluminum producer in Peru; and packing expenses were based on 1995 Peru import statistics data.

Kazakstan-Wide Rate

Kazakstan identified what we believe to be the only Kazakstani exporter, Kazak Joint-Stock Company of Atomic Energy and Industry (''KATEP''), and producer, Ulba, that sold beryllium to the United States during the POI. Both have responded in this investigation. We compared the respondents' sales data with U.S. import statistics for time periods including the POI and found no indication of unreported sales. Accordingly, we have based the Kazakstan-wide rate on the weighted-average of the margins calculated in this proceeding, excluding zero or de minimis margins, if any.

Verification

As provided in section 776(b) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

Interested Party Comments

Comment 1: Use of Respondents' Verified Data

Petitioner argues that the discrepancies uncovered at verification between the factor information submitted and the factor information verified, as well as the discovery of information never reported, would support a decision by the Department to reject respondents' data in favor of basing the final determination on facts otherwise available (*i.e.*, the information submitted in the petition).

Respondents assert that the Department has no basis for rejecting its sales and factors of production information on the record. According to respondents, all sales and production data were submitted in a timely manner to the Department and verified. While its reported factor data was modified during verification, respondents argue that these revisions should not be rejected as ''untimely'' because the revisions were a result of adjusting reported standard factor input information to reflect actual factor input information. Finally, respondents argue that even if its revised factor information was deemed untimely, the verified data should nevertheless be used as ''facts otherwise available.''

DOC Position

Certain minor discrepancies in respondents' reported sales and factors of production data were discovered during verification. While the Department is always concerned over such discrepancies, we did not identify any attempt to mislead the Department or to distort information on the record, nor does the record indicate that respondents did not cooperate to the best of their ability. Accordingly, such errors will be corrected individually by the Department using revised information and do not warrant an overall application of adverse facts available for the final determination. (*See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products from Korea; Final Results of Antidumping Duty Administrative Review* 61 FR 18558 (April 26, 1996).) The details of these errors and steps taken to correct them are set forth in the January 10, 1997, *Final Determination Calculation Memorandum.*

Comment 2: Selection of Appropriate Surrogate Country

Petitioner argues that the Department should select Brazil as the primary surrogate country because (1) Brazil is comparable to Kazakstan in economic development and (2) Brazil is one of the few sources of the primary factor input required in the production of beryllium, beryl ore.

Respondents counter that, since the preliminary determination, no new information has been placed on the record to justify the change in the surrogate country for Kazakstan from Peru to Brazil.

DOC Position

We agree with respondents and continue to use Peru as the primary surrogate country for purposes of valuating Kazakstan's factors of production. Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) Are at a level of economic development comparable to that of the NME and (2) are significant producers of comparable merchandise. As noted in the preliminary determination, Peru is at a level of economic development comparable to Kazakstan in terms of per-capita gross national product (''GNP'') levels and distribution of the labor force in the varying sectors of the economy. Brazil's 1993 per-capita annual income was $2930 versus $1560 for Kazakstan and $1490 for Peru. Even though Brazil is endowed with the primary material input (beryl ore) used to produce beryllium, Brazil does not produce beryllium.

As discussed in the preliminary determination, none of the potential surrogate countries produces merchandise comparable to the subject merchandise. Indeed, Kazakstan and the United States are the only known producers of beryllium. Absent information on a market economy country which produces beryllium and is at a level of economic development comparable to that of Kazakstan, the Department continues to use Peru as the primary surrogate country based on its comparable level of economic development for purposes of the final determination.

Comment 3: Use of 1995 Surrogate Country Factor Data

Respondents argue that the Department must determine whether the factor values based on the 1995 UN data are broadly consistent with other measures of market value to ensure that the factor values used in the final margin calculation constitute a reasonable representation of the costs that a NME producer would face if it were to produce in a market economy. In particular, respondents identify five Peru values used in the preliminary determination which they allege to be unreasonable when compared to various broader benchmarks.

Petitioner notes that if the Department were to perform such an exercise, this analysis should be applied in a consistent manner for all direct material factors.

DOC Position

For the final determination, we have used Peru import statistics based on 1995 UN trade data as the primary source of surrogate factor values. The Department's analysis indicates, however, that several factor values derived from the 1995 Peru import statistics appear to be not reasonable. For example, the unit value based on 1995 Peru import statistics for one material factor is over twenty times the weighted-average unit value based on import statistics from the five countries identified by the Department as

appropriate surrogates for Kazakstan (*see* preliminary determination).

In order to assess whether material factor values derived from the 1995 Peru import statistics are reasonable for the purpose of approximating the factor costs in Kazakstan, we compared all 1995 Peru material values to the weighted-average unit value based on import statistics from all five appropriate surrogate countries (*see* June 10, 1996, *Memorandum from David Mueller, Director, Office of Policy, to Gary Taverman, Division I Director, Office of Antidumping Investigations*). Where differences between the unit value figures appeared unreasonable, we resorted to the weighted-average based on the five surrogate countries' data. (*See* January 10, 1996, *Calculation Memorandum* for further details).

Comment 4: Time Period for Factors of Production

Respondents state that Ulba produced the subject merchandise through 1991 and had several months of production of subject merchandise in 1993; however, Ulba ceased production of subject merchandise at the end of 1993. Respondents note that the factors of production used in 1991 differ from those used in 1993. Under these circumstances, respondents argue that the Department should use 1991 factor input data to calculate normal value because 1991 data reflects input usages applied for an entire year of uninterrupted production and, therefore, better reflects actual production experience. Respondents also contend that 1991 data be used because it is closest to the year that the subject merchandise sold during the POI was produced. In contrast, respondents argue, 1993 factor data (the last calendar year in which there was significant production) is an unreliable indicator of respondents' production process because the Kazakstani production facility was in the process of shutting down; therefore, the 1993 usages were unusually high when compared to usage rates during previous years.

Petitioner argues that the Department should use the 1993 data because these factor quantities best reflect the factors that respondents would have used if they had produced beryllium during the POI. Petitioner asserts that contemporaneity is an important factor in determining which year's factors to use. According to petitioner, the fact that production data for 1993 reflects higher usage levels in comparison to 1991 is not a result of irregular production for that year; rather, it is the particular chemistry of inputs used in any particular year that will affect input usage. Therefore, petitioner maintains that the factors of production should be based on the production information closest in time to the POI—1993.

DOC Position

The subject merchandise sold to the United States during the POI was produced long before the POI (although the actual time period of production is unknown). Not only is it unclear when the merchandise imported during the POI was produced, there is no evidence of which factors were used. Therefore, we must choose between the two years for which we have factor information, both of which are long removed from the period of production.

Where necessary information is not available on the record, and where a respondent has cooperated to the best of its ability, Section 776 of the Act directs the Department to use non-adverse facts available in place of unavailable information. In these circumstances, we do find it significant that the 1993 period is closer in time to the POI. Therefore, we determine that the use of 1993 factor input data is appropriate in calculating normal value.

Comment 5: Overhead and SG&A

Petitioner contends that its production experience as a beryllium producer is the only reasonable basis on which to value factory overhead and SG&A for a beryllium producer. In support of this argument, petitioner notes that (1) no data exists for either factory overhead or SG&A from a Peru producer of subject merchandise and (2) the Department determined that there is no other product comparable to beryllium in terms of production processes or inputs. Given these circumstances, petitioner asserts that the only market-economy producer of beryllium available for valuing these costs is the U.S. producer (*i.e.*, petitioner).

Additionally, petitioner argues that its overhead costs do not account for expenses incurred for certain materials used by respondents, although the Department believed these expenses were included in the petitioner's overhead rate for the preliminary determination. Finally, petitioner contends that the Department should adjust petitioner's reported overhead rate to account for capacity and utilization.

Respondents counter that the information on the record concerning petitioner's calculation of its overhead and SG&A rates confirms that the factory overhead and SG&A rates that petitioner reported are unreasonably high. According to respondents, it appears that petitioner's calculation of its overhead and SG&A rates included line item expenses irrelevant to the production of subject merchandise. In the event that the Department decides to use petitioner's information, respondents recommend that the Department consider (1) the clerical error noted by petitioner in calculating its overhead rate and (2) the respondents' revised calculation of the SG&A rate based on petitioner's financial data for 1994 and 1995.

DOC Position

In evaluating appropriate surrogate factor rates for SG&A and overhead, it is important to note that information does not exist on overhead and SG&A figures from a beryllium producer in a country that is economically comparable to Kazakstan. As discussed above and in the preliminary determination, the only known beryllium producer in the world, other than the Kazakstani producer, is the U.S. petitioner. The Department's regulations provide clear instructions that U.S. surrogate values are to serve only as a last resort (*see* 19 CFR 353.52(b)). This is true even when such values are not available from an industry producing the same merchandise (*see* 19 CFR 353.52(b)(1)).

Given that the only source of industry-specific overhead and SG&A rates is the petitioner, we considered the economic comparability of the surrogate country to Kazakstan an important criterion for selecting appropriate surrogate factor data to approximate Kazakstan's overhead and SG&A rates. While the specific processes differ, the complexity and duration of the production processes for different light metals are comparable and thus, unlikely to generate differences in overhead and SG&A between the beryllium industry and other light metals industries. Therefore, in this case, we determine that overhead and SG&A figures based on production experience of a light metal industry (*e.g.*, aluminum, silicomanganese) in an appropriate surrogate country are a reasonable approximation of Kazakstan's overhead and SG&A costs incurred in the production of beryllium. For SG&A and profit, we applied ratios based on financial data from a Peru aluminum producer. Absent detailed overhead data from Peru, we applied an overhead ratio based on financial data from a silicomanganese producer in Brazil for the final determination. While Brazil, as noted earlier, is not among the five countries most similar to Kazakstan in terms of economic development, we determine that it is comparable, and far

more similar to Kazakstan than is the United States. Moreover, the regulations, at 19 CFR 353.52(b)(2), indicate that even a foreign country which is not a level of economic development comparable to the home market country is preferable to the United States as a source of surrogate value information.

Comment 6: Basket-Product-Category Import Statistics

Petitioner contends that the Department should apply product-specific world-market prices to value beryllium-containing material inputs rather than data on Peru imports under broad basket categories. Because there is no beryllium producer or beryllium industry in Peru, petitioner notes that it is highly unlikely that Peru import statistics used to value beryllium-containing material inputs in the preliminary determination contain any imports of beryllium-containing materials. Instead, petitioner recommends the use of world market prices based on U.S. import statistics which provide more representative values available for the beryllium-containing inputs.

Respondents counter that the Department should reject petitioner's alternative source of data to calculate surrogate values for beryllium-containing materials. According to respondents, the Department's policy and practice provide no justification to abandon data obtained from the primary surrogate country because some alternative country (*i.e.,* the United States) offers more product-specific price information. Further, with respect to the U.S. Geological Survey (''USGS'') data used to value beryl ore in the preliminary determination, respondents maintain that petitioner did not provide any reason to question the accuracy of this data source. Therefore, respondents recommend continued use of USGS data for valuing beryl ore in the final determination.

DOC Position

We agree, in part, with petitioner. For those beryllium-containing inputs for which we used UN import statistics based on basket product-categories in the preliminary determination, we used for the final determination 1995 import statistics from the European Union with more product-specific categories as data which more accurately reflects the values for these inputs.

With respect to the USGS value for beryl ore, the unit value based on USGS data is specific to the particular material input used in the production process. Further, there is no information on the record to dispute the validity of this data. Therefore, we continued to rely on the USGS data for valuing beryl ore in the final determination.

Comment 7: Incorrect Surrogate Values for Certain Material Inputs

Petitioner contends that the Department incorrectly valued a certain material input using import data for a different material. For the final determination, petitioner urges the Department to use 1994 U.S. data specific to the material input in question to value the material input.

DOC Position

We agree, in part, with petitioner. Verification findings indicated that two varying types of the material in question were used in the production of beryllium from Kazakstan. It was possible to identify product categories that correspond to each type of material input. Given that data corresponding to the materials from the primary surrogate country is available for consideration, the use of U.S. data suggested by petitioner was not required. Therefore, for the final determination, we are valuing the two material inputs based on 1995 Peru import data with corresponding product categories.

Comment 8: Adjustment to the Surrogate Labor Rate

Petitioner contends that the surrogate labor rate used in the preliminary determination was understated and should be adjusted to account for (1) normal hours and days worked in Peru; (2) salary bonuses mandated by law in Peru; and (3) a skilled level of labor, as used in the beryllium industry in Kazakstan.

DOC Position

We agree with petitioner and have adjusted the labor rate used at the preliminary determination to account for (1) normal hours and days worked in Peru and (2) annual salary bonuses mandated by law. As noted in Price Waterhouse's publication, *Doing Business in Peru,* eight hours is a normal work day in Peru with a work week not exceeding 48.11 hours. In order to avoid overstating the number of hours worked per day, we based our calculation of number of hours worked per day on a six-day work week to reflect an eight-hour work day. Additionally, annual salary bonuses mandated by Peruvian law were not reflected in the labor rate used in the preliminary determination. Therefore, we are also adjusting the labor rate in the final determination to reflect this portion of labor cost.

However, we continued to use the International Labor Organization's (''ILO'') earnings per day rate as the base for the labor rate because it is a labor rate for manufacturing specific to the non-ferrous basic metal industry in Peru. The Price Waterhouse ''skilled'' average monthly wages in Peru, recommended by petitioner as a preferable rate to the ILO rate because it is a skilled labor rate, is not specific to any industry. Further, it is not clear whether the average monthly wages are gross or net of employee contributions; it is clear from information on the record that the ILO rate reflects gross earnings (*i.e.,* employee's contributions are included in this earnings figure). Therefore, we continued to use the ILO rate as the base labor rate for the final determination.

Comment 9: Circumstance-of-Sale Adjustments

Petitioner contends that the Department is required by the Act to adjust normal value to account for differences in circumstances of sale. In particular, petitioner argues that imputed credit expenses and the value of a price markup between the Kazakstani producer and its U.S. subsidiary should be added to NV.

Respondents counter that verification findings show that payment for the reported sale was received from the U.S. customer in advance of the payment terms agreed to in the sales contract; therefore, there is no basis on which to calculate imputed credit expenses for the reported U.S. sales transactions. Additionally, respondents assert that petitioner's request to adjust NV to account for an alleged commission payment should also be denied because there is no evidence on the record that a commission was made at arm's length.

DOC Position

We agree with respondents. Section 773 (a) (6) (C) of the Act allows NV to be increased or decreased for differences in circumstances of sale as long as ''it has been established to the satisfaction of the administering authority'' that such adjustments are warranted. (*See, also Notice of Final Determination: Bicycles from the PRC,* 61 FR 19031, 19032 (April 30, 1996)).

An adjustment to NV for imputed credit expense is not warranted in this case. Because such expenses are usually included in the financial statements used as the basis for calculating SG&A, it is assumed any credit expense is captured in the SG&A figure calculated under the factors of production methodology, unless demonstrated otherwise. (*See, Sulfanilic Acid from the*

PRC: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 61 FR 53702, 53709 (1996) and *Final Determination of Sales at Less Than Fair Value: Helical Spring Lock Washers from the PRC,* 58 FR 48833, 48839 (1993)).

Further, the price markup reflected in sales invoice documentation between the Kazakstani producer and its U.S. subsidiary is considered an intra-company transfer and does not warrant any adjustment to NV. As respondents correctly note, the Department generally allows adjustments only for commission payments to unaffiliated parties; however, in this case, the Kazakstani producer and the U.S. subsidiary are considered to be affiliated parties for purposes of this investigation. (*See, also, Federal Mogul Corp.* v. *United States,* 918 F. Supp. 386, 413–414 (CIT 1996)). Therefore, no adjustment to NV for commissions is warranted because the record does not provide any information to suggest that any commission payment from the Kazakstani producer to its U.S. subsidiary was made at arm's length.

Comment 10: U.S. Sales Transactions in the Final Margin Calculation

Petitioner asserts that all U.S. sales transactions involving Kazakstani beryllium invoiced and shipped during the POI should be included in the final margin calculation. In particular, petitioner argues that the Department should continue to consider the sale of certain off-specification beryllium as part of the reported U.S. sale transaction because verification findings confirmed that the price adjustments at issue were post-sale price adjustments, rather than new sales occurring outside the POI. In support of this argument, petitioner notes that respondents stated for the record that the date of sale was unaffected by any modifications to the sale contract after shipment. Finally, petitioner argues that the Department should include the unreported U.S. sales transaction discovered at verification.

Respondents assert that the sale of the off-specification material did not meet the specifications of the sales contract within the POI but was only shipped at the same time as the POI contract's merchandise. According to respondents, because of the lengthy negotiations following the shipment of the off-specification merchandise, the final sale (and agreement to price) of this merchandise was not formally concluded until after the POI.

Additionally, respondents argue that the unreported U.S. sale discovered at verification constitutes a sample shipment of insignificant quantity of merchandise outside of the scope of the investigation (*i.e.*, not characterized as ingot, billet, powder, lump, chunk, blank, or other semi-finished form). Therefore, respondents recommend the Department to disregard this sale for purposes of the final margin calculation.

DOC Position

We agree with petitioner and continue to include the reported sales of off-specification merchandise with post-sale price adjustments in the final margin calculation. Verification findings indicated that the merchandise in question was sold pursuant to the sales contract and invoice issued during the POI.

With respect to the unreported sale discovered at verification, respondents are correct in characterizing this sale as a transaction of insignificant quantity. Therefore, we have excluded this transaction from the final margin calculation.

Comment 11: Verified International Freight and Customs Expenses

For the final determination, petitioner asserts that the Department should adjust export price for (1) line item expenses omitted from reported international freight charge and (2) under-reported Customs duties payments.

DOC Position

We agree with petitioner and used the verified international freight and Customs duties charges in the final margin calculation.

Comment 12: Inflation Adjustment for Non-Contemporaneous Data

Respondents maintain that in the preliminary determination the Department erred in converting 1994 values to 1995 values by multiplying U.S. dollar-denominated prices by foreign currency inflation rates without adjusting for changes in the value of the foreign currency relative to the U.S. dollar. Respondents argue that, where appropriate, the Department should account for both foreign currency inflation and exchange rate fluctuations.

DOC Position

We agree with respondents and, where appropriate, adjusted factor values to account for both foreign currency inflation and exchange rate fluctuations between the U.S. dollar and the foreign currency.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) and 735(c)(4)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of beryllium from Kazakstan, that are entered, or withdrawn from warehouse for consumption, on or after August 28, 1996 (the date of publication of the preliminary determination in the Federal Register). The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the export price as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Ulba Metallurgical Plant/KATEP	16.56
Kazakstan-Wide Rate	16.56

The Kazakstan-Wide rate applies to all entries of subject merchandise except for entries from exporters that are identified individually above.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: January 10, 1997.

Robert LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–1258 Filed 1–16–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–812]

Dynamic Random Access Memory Semiconductors From the Republic of Korea; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Results of Antidumping Duty Administrative Review.

SUMMARY: On October 2, 1996, the Department of Commerce (the Department) published the amended final results of its administrative review of the antidumping duty order on dynamic random access memory semiconductors (DRAMs) from the Republic of Korea (61 FR 20216). Subsequent to the publication of the final results of review on May 6, 1996, the petitioner, Micron Technology, Inc. (Micron), and one respondent in this review (LG Semicon Co., Ltd. (LGS)), filed suit with the Court of International Trade (CIT) with respect to the Department's methodology used in calculating LGS'' dumping margin. No suit was filed by any parties to this proceeding with respect to the dumping calculations pertaining to the other respondent in this review, Hyundai Electronics Industries, Co., Ltd. (Hyundai). We published an amended final results of review on October 2, 1996, correcting four ministerial errors with respect to sales of subject merchandise by Hyundai. We have corrected one clerical error introduced into the calculations for Hyundai as a result of the amended final results of review. This error was present in our amended final results of review. The review covers the period October 29, 1992, through April 30, 1994. We are publishing this amendment to the amended final results of review in accordance with 19 CFR 353.28(c).

EFFECTIVE DATE: January 17, 1997.

FOR FURTHER INFORMATION CONTACT: Roy F. Unger, Jr. or Thomas F. Futtner, Office of AD/CVD Enforcement, Group II, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone at (202) 482–0651 or (202) 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Background

The review covers two manufacturers/exporters of DRAMs from the Republic of Korea (Korea): Hyundai and LGS, during the period of October 29, 1992 through April 30, 1994. The Department published the preliminary results of review on September 11, 1995 (60 FR 47149), the final results of review on May 6, 1996 (61 FR 20216), and the amended final results of review on October 2, 1996 (61 FR 51410).

Applicable Statute and Regulations

The Department has conducted this administrative review in accordance with section 751 of the Tariff Action 1930, as amended (the Tariff Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations refer to the provisions as they existed on December 31, 1994.

Scope of Review

Imports covered by the review are shipments of DRAMs of one megabit and above from the Republic of Korea (Korea). For purposes of this review, DRAMs are all one megabit and above, whether assembled or unassembled. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die and cut die. Processed wafers produced in Korea, but packaged, or assembled into memory modules in a third country, are included in the scope; wafers produced in a third country and assembled or packaged in Korea are not included in the scope of this review.

The scope of this review includes memory modules. A memory module is a collection of DRAMs, the sole function of which is memory. Modules include single in-line processing modules (SIPs), single in-line memory modules (SIMMs), or other collections of DRAMs, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules which contain additional items which alter the function of the module to something other than memory, such as video graphics adapter (VGA) boards and cards, are not included in the scope.

The scope of this review also includes video random access memory semiconductors (VRAMs), as well as any future packaging and assembling of DRAMs.

The scope of this review also includes removable memory modules placed on motherboards, with or without a central processing unit (CPU), unless the importer of motherboards certifies with the Customs Service that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation. The scope of this review does not include DRAMs or memory modules that are reimported for repair or replacement.

The DRAMs subject to this review are classifiable under subheadings 8542.11.0001, 8542.11.0024, 8542.11.0026, and 8542.11.0034 of the Harmonized Tariff Schedule of the United States (HTSUS). Also included in the scope are those removable Korean DRAMs contained on or within products classifiable under subheadings 8471.91.0000 and 8473.30.4000 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review remains dispositive.

The period of review (POR) covers from October 29, 1992 through April 30, 1994 for all respondents.

Ministerial Error in Amended Final Results of Review

After reviewing an allegation of a ministerial error submitted by Hyundai, the Department determined that it should correct this the following clerical error pertaining to Hyundai.

In the amended final results of review we made corrections to our calculations of constructed value (CV). In so doing, we mistakenly deducted U.S. packing expenses incurred in Korea from the United States price in our margin calculations for U.S. sales compared to CV. We have corrected the amended final results of review to deduct the correct expense for U.S. repacking from United States price for Hyundai.

Amended Final Results of Review

Upon correction of the ministerial error listed above, the Department has determined that the following margin exists for the periods of October 29, 1992 through April 30, 1994:

Manufacturer/exporter:	*Percent margin*
October 29, 1992 through April 30, 1994: Hyundai Electronics Industries	0.10

The Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions concerning each respondent directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for Hyundai will be zero percent; (2) for previously

reviewed or investigated companies not listed above, 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 this review, a prior review, or in the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and, (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 3.85%, the all others rate established in the LTFV investigation. Samsung Electronics Co., Ltd. (Samsung), formerly a respondent in this administrative review, was excluded from the antidumping duty order on DRAMs from Korea on February 8, 1996. *See Final Court Decision and Partial Amended Final Determination: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea,* 61 FR 4765 (February 8, 1996).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as the final 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.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: January 8, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–1256 Filed 1–16–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–475–811]

Certain Grain-Oriented Electrical Steel from Italy: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On July 11, 1996, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain grain-oriented electrical steel from Italy (61 FR 36551). The review covers one manufacturer/exporter of the subject merchandise to the United States and the period February 9, 1994, through July 31, 1995. We gave interested parties an opportunity to comment on our preliminary results. No comments were received, and we have not changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: January 17, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Decker or Robin Gray, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 1996, the Department published in the Federal Register (61 FR 36551) the preliminary results of the administrative review of the antidumping duty order on certain grain-oriented electrical steel from Italy (59 FR 41431, August 12, 1994). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute

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).

Scope of the Review

The product covered by this review is grain-oriented silicon electrical steel, which is a flat-rolled alloy steel product containing by weight at least 0.6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, of a thickness of no more than 0.560 millimeters, in coils of any width, or in straight lengths which are of a width measuring at least 10 times the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7225.10.0030, 7225.30.7000, 7225.40.7000, 7225.50.8000, 7225.90.0000, 7226.10.1030, 7226.10.5015, 7226.10.5056, 7226.91.7000, 7226.91.8000, 7226.92.5000, 7226.92.7050, 7226.92.8050, 7226.99.0000, 7228.30.8050, 7228.60.6000, and 7229.90.1000. Although the HTS subheadings are provided for convenience and customs purposes, our written descriptions of the scope of these proceedings are dispositive.

This review covers one manufacturer/exporter of grain-oriented electrical steel, Acciai Speciali Terni S.p.A. (''AST''), and the period February 9, 1994, through July 31, 1995.

Final Results of Review

As a result of this review, we have determined that the following margin exists for the period February 9, 1994, through July 31, 1995:

Manufacturer/exporter	Margin (percent)
Acciai Speciali Terni S.p.A.	60.79

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements shall be effective, upon publication of this notice of final results of administrative review, for all shipments of the subject merchandise from Italy that are entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for AST will be the rate established above; (2) for previously investigated companies not listed above, 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 this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters of this merchandise will continue to be 60.79 percent, the all others rate established in the final results of the less than fair value investigation (59 FR 41431, August 12, 1994).

The deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final 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.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act and 19 CFR 353.22.

Dated: January 7, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–1257 Filed 1–16–97; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[ID 100996A]

RIN 0648–AI63

Fisheries of the Exclusive Economic Zone Off Alaska; Amendments 44/44; Definition of Overfishing

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

ACTION: Approval of fishery management plan amendments.

SUMMARY: NMFS announces the approval of Amendments 44/44 to the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs). These amendments revise definitions of acceptable biological catch (ABC) and overfishing levels (OFLs) for groundfish species or species groups. This action is necessary to ensure that conservation and management measures continue to be based upon the best scientific information available and is intended to advance the North Pacific Fishery Management Council's (Council's) ability to achieve, on a continuing basis, the optimum yield from fisheries under its authority.

EFFECTIVE DATE: January 9, 1997.

ADDRESSES: Copies of Amendments 44/44 and the environmental assessment and related economic analaysis prepared for the proposed action are available from the North Pacific Fishery Management Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501–2252; telephone 907–271–2809.

FOR FURTHER INFORMATION CONTACT: James Hale, 907–586–7228.

SUPPLEMENTARY INFORMATION: In response to the national standards established in the Magnuson Fishery Conservation and Management Act and advisory guidelines codified at 50 CFR part 600, subpart D, the Council developed an objective and measurable definition of overfishing and, in 1991, implemented that definition under Amendments 16 and 21 to the FMPs (56 FR 2700, January 24, 1991). In the years since implementation of that definition, fishery scientists have had the opportunity to evaluate the efficacy of current definitions of ABC and overfishing. In light of that experience and with increased understanding of the reference fishing mortality rates used to define ABCs and overfishing, fishery scientists have raised several concerns about the present definitions and the extent to which they reflect and account for levels of uncertainty about fish populations. Consequently, NMFS' Overfishing Definitions Review Panel and the Council's Scientific and Statistical Committee recommended redefining ABC and overfishing to facilitate more conservative, risk-averse management measures when stock size and mortality rates are not fully known.

Amendments 44/44 revise the definitions of OFL and ABC consistent with these recommendations.

A Notice of Availability of Amendments 44/44, which describes the proposed amendments and solicited comments from the public until December 10, 1996, was published in the Federal Register (October 17, 1996; 61 FR 54145). One comment was received in support of the amendments. After review under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS determined that Amendments 44/44 are consistent with the Magnuson-Stevens Act and other applicable laws and approved Amendments 44/44 on January 9, 1997. Additional information on this action is contained in the October 17, 1996, Notice of Availability (61 FR 54145).

No regulatory changes are necessary to implement these FMP amendments.

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

Dated: January 10, 1997.

Bruce Morehead,

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

[FR Doc. 97–1154 Filed 1–16–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 010997B]

Endangered Species; Permits

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

ACTION: Notice of receipt of application for a research permit (P625).

SUMMARY: Notice is hereby given that Sarah V. Mitchell of NOAA Gray's Reef National Marine Sanctuary (P625) has applied in due form for a scientific research permit to take listed loggerhead sea turtles.

DATES: Written comments or requests for a public hearing on this application must be received on or before February 18, 1997.

ADDRESSES: The application and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401); and

Director, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–893–3141).

Written comments, or requests for a public hearing on this application should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: Sarah V. Mitchell, NOAA Gray's Reef National

Marine Sanctuary (P625), requests a research permit under the authority of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227).

The applicant requests a five-year research permit to take up to 25 listed loggerhead sea turtles each year in the waters within and adjacent to the Gray's Reef National Marine Sanctuary and on Wassaw, Ossabaw, Sapelo, or Blackbeard Islands on the Georgia coast. The turtles would be taken for examination, tagging, testing, observation, collection of biological information, rehabilitation if necessary, and release. Turtles would be acquired by takes from the wild and also from sources authorized to incidentally capture. Animals would be tagged with flipper (inconel), and PIT (passive inductive transponder) tags, radio, sonic, or satellite telemeters. Biological information would be collected in the form of blood samples. All information gathered would augment an extensive sea turtle database used to study population trends, migrations, habitat, and diving behavior.

Those individuals requesting a hearing should set out the specific reasons why a hearing on this particular application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: January 13, 1997.

Robert C. Ziobro,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–1152 Filed 1–16–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 011097A]

Endangered Species; Permits

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

ACTION: Receipt of an application for modification 1 to scientific research permit 994 (P497D).

SUMMARY: Notice is hereby given that the Idaho Cooperative Fish and Wildlife Research Unit at Moscow, ID (ICFWRU) has applied in due form for a modification to a permit that authorizes a take of threatened species for the purpose of scientific research.

DATES: Written comments or requests for a public hearing on this application must be received on or before February 18, 1997.

ADDRESSES: The application and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Written comments or requests for a public hearing should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: ICFWRU requests a modification to a permit under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

Permit 994 currently authorizes ICFWRU (P497D) takes of adult, threatened, Snake River spring/summer and fall chinook salmon (*Oncorhynchus tshawytscha*) associated with a study designed to assess the passage success of migrating adult salmonids at the four dams and reservoirs in the lower Columbia River in the Pacific Northwest, evaluate fish responses to specific flow and spill conditions, and evaluate measures to improve passage. For modification 1, ICFWRU proposes to include adult sockeye salmon in the study, a percentage of which will be adult, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*). Adult sockeye salmon are proposed to be captured, anesthetized, fitted with radio transmitters and identifier tags, allowed to recover from the anesthetic, and released. Once returned to the river, the movement and migration timing of each fish will be recorded at fixed-site and mobile receiver stations as the fish migrate upstream. Primary benefits of the study will be the ability to identify areas in the fishways that are problematic for adult passage and to determine the proportion of salmonids that pass the upstream dams and enter tributaries to spawn, enter hatcheries, are taken in fisheries, or are losses between the dams. Modification 1 is requested for the duration of the permit. Permit 994 expires on December 31, 2000.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on this application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: January 13, 1997.

Robert C. Ziobro,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–1153 Filed 1–16–97; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange: Proposed Amendments Relating to the Delivery Procedures, Quality Standards and Quality Price Differentials, and Speculative Position Limit Specifications for the Live Cattle Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule change.

SUMMARY: The Chicago Mercantile Exchange (CME) has submitted proposed amendments to its live cattle futures contract. The primary proposed amendments will: (1) Modify the par yield grade and weight range specifications and the sources and calculation methods for establishing price differentials for non-par quality grades, yield grades, and carcass-weights; (2) extend the delivery period for live-graded deliveries by five business days; (3) change the last trading day of expiring contract months; and (4) increase to 600 from 300 contracts the spot month speculative position limit applicable on those days preceding the last five trading days, with the existing limit of 300 contracts being retained during the last five trading days of the contract month.

In accordance with section 5a(a)(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Acting Director of the Division of Economic Analysis (Division) of the Commodity Futures Trading Commission (Commission) has determined, on behalf of the Commission, that the proposed amendments are of major economic significance. On behalf of the Commission, the Division is requesting comment on this proposal.

DATES: Comments must be received on or before February 18, 1997.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the proposed changes in quality standards, delivery procedures, and the speculative position limits for the CME live cattle futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Fred Linse of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW, Washington, DC 20581, telephone 202–418–5273, or electronic mail: flinse@cftc.gov.

SUPPLEMENTARY INFORMATION: Under the current terms of the live cattle futures contract, a par delivery unit consists of 40,000 pounds of steers. At the buyer's option, steers may be delivered either to a CME-approved livestock yard, for grading by United States Department of Agriculture (USDA) personnel on a live basis, or to a CME-approved slaughter plant, for grading by USDA personnel on a carcass basis. The par delivery lot is composed of 55% USDA Choice, and 45% USDA Select quality grade steers or carcasses, with a yield grade of 1, 2, 3, or 4. No more than one yield grade 4 steer or carcass is permitted in a par delivery unit.

For live-graded delivery, the average weight of the live steers in a par delivery unit must fall between 1,050 and 1,250 pounds, with no individual steer weighing more than 100 pounds above or below the average weight of the delivery unit. For carcass-graded delivery, no individual carcass may weigh less than 600 pounds nor more than 900 pounds. The hot yield of a par delivery unit is 63 percent.

The futures contract's existing terms also provide for the delivery at specified price differentials for delivery units of live steers or steer carcasses that deviate from the above-specified par delivery standards. In particular, each additional Choice grade steer or carcass above the 55 percent minimum level in a delivery unit is deliverable at a price differential calculated by subtracting the ''Select 1–3 Boxed Beef Cut-Out Value'' from the ''Choice 1–3 Boxed Beef Cut-Out Value,'' which are published on the delivery day by the USDA Market News Service on the National Carlot Meat Report, and multiplying this difference by 63 percent. Similarly, each additional Select grade steer or carcass in excess of the 45 percent maximum level in a delivery unit is deliverable at a price differential calculated by subtracting the ''Choice 1–3 Boxed Beef Cut-Out Value'' from the ''Select 1–3 Boxed Beef Cut-Out Value,'' that are published by the USDA Market News Service on the delivery day, and multiplying this difference by 63 percent. In addition, any carcass grading below USDA Select is deliverable at a discount of 25% of the settlement price using the average live weight of the steers included in the delivery unit. Carcasses grading USDA Prime are considered to be USDA Choice for purposes of calculating the value of delivery units. Each additional yield grade 4 carcass above the par allowable number of one is deliverable at a discount of $20 per hundredweight, or 25% of the settlement price, whichever is greater, on a live weight basis. Any carcass with a yield grade of 5 is deliverable at a discount of $30 per hundredweight, or 40 percent of the settlement price, whichever is greater, on a live weight basis.

Live steers that weigh 100 to 200 pounds above or below the delivery unit's average weight are deliverable at a discount of three cents per pound. Individual steers that weigh more than 200 pounds over or under the delivery unit's average weight, or that weigh less than 1,000 pounds or greater than 1,300 pounds, are not deliverable on the futures contract. Steer carcasses that weigh less than 600 pounds or more than 900 pounds are deliverable at a discount of 20 percent of the settlement price.

Delivery may be made on any business day of the contract month beginning with the seventh business day following the first Friday of the contract month, plus the first two business days in the succeeding calendar month.

The primary proposed amendments will:

(1) Change the par yield grade specification to USDA yield grade 3 steers or carcasses, from the existing par specification of USDA yield grade 1, 2, 3, or 4 steers or carcasses;

(2) Change the weight requirement for live-graded delivery units deliverable at par by specifying an average steer weight range of 1,100 pounds to 1,300 pounds (from the existing 1,050 pounds to 1,250 pounds range), and an individual steer weight range of 1,050 pounds to 1,350 pounds (from the existing 1,000 pounds to 1,300 pounds range);

(3) Remove the existing limitation on the number of yield grade 4 steers permitted in live-graded delivery units and allow the delivery of yield grade 5 steers in such units;

(4) Modify the sources and calculation procedures for determining price differentials for quality grade, yield grade, and carcass weight as described in proposed rule 1504.A below:

* * * * *

A. Sources and Calculation of Adjustment Factors Quality grade adjustments for all delivery units will make use of the live weight equivalent of the Choice-Select boxed beef spread calculated from information reported by USDA (in $/cwt.) for the day of tender in the National Carlot Meat Report. This is referred to hereafter as the Live-Equivalent Choice-Select Spread (LECSS) and is computed by subtracting the ''Select 1–3 Boxed Beef Cut-Out Value'' from the ''Choice 1–3 Boxed Beef Cut-Out Value'' and multiplying that result by 0.0063. Boxed Beef Cut-Out Values from the 550/700 pound category are used for live-graded delivery units with an average live weight less than 1,111 pounds and for carcass-graded delivery units with an average carcass weight less than 700 pounds. Boxed Beef Cut-Out Values from the 700/850 pound category are used for live-graded delivery units with an average live weight greater than or equal to 1,111 pounds and for carcass-graded delivery units with an average carcass weight greater than or equal to 700 pounds.

The National Carlot Meat Report for the day of tender shall also serve as the source of information for calculating the condemned liver factor used in carcass-graded deliveries. The condemned liver factor shall equal the reported liver value (in $/cwt.) from the ''By-Product Value Calculation'' multiplied by −0.01.

In addition, quality grade, yield grade and carcass weight adjustments will make use of factors calculated from values reported by USDA (in $/cwt.) in the National Carcass Premiums and Discounts for Slaughter Steers and Heifers report. The Prime, Standard, Yield Grade 1, Yield Grade 2, Yield Grade 4, Yield Grade 5, and 900–950 lbs. factors are calculated by multiplying the reported simple average for the corresponding category by 0.0063. If a quality grade or yield grade is broken into subcategories on this report, then the factor for that quality or yield grade shall be the simple average of all reported averages for the subcategories in that category multiplied by 0.0063. The most recently issued report with respect to the day a Certificate is tendered shall be used to calculate the factors for that delivery unit. When a Certificate is tendered on the same day that a new report is issued,

that new report shall be used in factor calculation regardless of the time of day that the report is released.

The sub-Standard factor shall equal −25% of the tender-day settlement price.

Should the USDA determine that an error exists in any of the reports used to calculate adjustment factors and subsequently issues a corrected report, that corrected report shall be used in place of the original.

* * * * *

All live steers or steer carcasses in a delivery unit shall receive a quality grade adjustment computed from the Live-Equivalent Choice-Select Spread (LECSS) factors and other factors described in proposed Rule 1504.A. Per pound quality grade adjustments shall be as follows:

USDA Prime: +0.45 × LECSS + Prime factor
USDA Choice: +0.45 × LECSS
USDA Select: −0.55 × LECSS
USDA Standard: +0.45 × LECSS + Standard factor
Below USDA Standard: +0.45 × LECSS + Standard factor + sub-Standard factor

The per animal quality grade adjustment shall be calculated by multiplying the per pound quality grade adjustment by the average live weight of the delivery unit. Carcasses deemed ungradeable with respect to quality grade by the USDA shall receive a per pound quality grade discount equal to 25% of the settlement price. In addition, carcasses weighing between 900 and 950 pounds will be deliverable at a price differential that is based on the adjustment factors described in proposed Rule 1504.A (rather than at the existing discount equal to 20% of the settlement price);

(5) Expand the delivery period to include the first seven business days of the calendar month following the delivery month (from the first two business days of such months);

(6) Change the last trading day of expiring contract months to the last business day of such months (from the last business day immediately preceding the last five business days of the contract month); and

(7) Increase to 600 from 300 contracts the speculative position limit applicable during that part of the spot month which begins on the first business day following the first Friday of the contract month and ends on the business preceding the last five trading days of the expiring contract month. The existing spot-month speculative position limit of 300 contracts would remain applicable during the last five trading days of the expiring contract month.

The CME intends to apply the proposed amendments to all newly listed contract months following receipt of Commission approval.

In support of the proposed amendments, the Exchange states that ''[t]hese changes are in the best interests of both the Live Cattle contract and the cattle feeding industry as a whole, particularly as the cash market continues to move toward increased usage of value-based marketing methods.'' In addition, the Exchange believes the proposal will increase deliverable supplies by permitting wider variations from the par quality specifications at market-based price differentials. The Exchange believes the proposed increase in the spot month speculative position limit preceding the last five trading days is supported by the increased deliverable supplies associated with the proposed amendments as well as other contract changes that were implemented in 1995.

The Commission is requesting comments specifically with respect to (1) the extent to which the proposed amendments reflect prevailing cash market practices; (2) the extent to which the proposed price differentials for the delivery of differing qualities of live steers or steer carcasses reflect commercial price differences; and (3) the impact of the proposed amendments on the level of economically deliverable supplies at the contract's delivery points during the delivery months traded under the futures contract.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, at the above address. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the same address or by telephone at (202) 418–5105.

The materials submitted by the CME in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the above address in accordance with CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, at the above address by the specified date.

Issued in Washington, DC, on January 8, 1997.

Blake Imel,

Acting Director, Division of Economic Analysis.

[FR Doc. 97–1241 Filed 1–16–97; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER96–2575–000 and ER96–2858–000]

The Cleveland Electric Illuminating Company; Notice of Filing

January 13, 1997.

Take notice that on December 30, 1996, The Cleveland Electric Illuminating Company (CEI) pursuant to Section 205 of the Federal Power Act and Part 35 of the FERC's Regulations thereunder, submitted for filing addenda to electric power service agreements between CEI and Wabash Valley Power Association, Inc.; Morgan Stanley Capital Group, Inc.; Duke/Louis Dreyfus L.L.C.; and Citizens Lehman Power Sales. CEI requests an effective date of the agreements of January 1, 1997.

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 January 24, 1997. 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. 97–1170 Filed 1–16–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–183–000]

MIGC, Inc.; Notice of Application

January 13, 1997.

Take notice that on January 6, 1997, MIGC, Inc. (MIGC), Suite 230, 12200 N. Pecos Street, Denver, Colorado 80234, filed in Docket No. CP97–183–000 an

application pursuant to Section 7(c) of the Natural Gas Act for authorization to install and operate a compressor, a back-up compressor, and related appurtenant facilities at the Hilight Processing Plant in Campbell County, Wyoming, and to increase the Maximum Authorized Operating Pressure (MAOP) on a 71-mile segment of its 16-inch mainline, all as more fully set forth in the application on file with the Commission and open to public inspection.

MIGC states that the compression facilities, each compressor with a rating of 1350 horsepower, and uprating of the MAOP from 1060 psig to 1250 psig are required to satisfy a need for additional capacity on MIGC's mainline and that the proposal would double the throughput on a 75.4 mile section of MIGC's system running south from the Hilight Processing Plant to interconnections with Colorado Interstate Gas Company and KN Energy, Inc. It is asserted that the proposal would increase the existing firm capacity from 45,000 Mcf of natural gas per day to 90,000 Mcf per day. MIGC estimates the cost of the proposal at $2.62 million.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 3, 1997, file with the Federal Energy Regulatory Commission, 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'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 MIGC to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1168 Filed 1–16–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER96–1823–001 and ER97–544–000]

Minnesota Power & Light Company; Notice of Filing

January 13, 1997.

Take notice that on December 12, 1996, Minnesota Power & Light Company (MP) tendered for filing a report of short term transactions that occurred during the quarter ending September 30, 1996, under MP's WCS–2 Tariff which was accepted for filing by the Commission in Docket No. ER96–1823–000. Also, the amended filing included a copy of the umbrella service agreements under which such transactions were made.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 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 January 24, 1997. 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. 97–1169 Filed 1–16–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–182–000]

Mississippi River Transmission Corporation; Notice of Request Under Blanket Authorization

January 13, 1997

Take notice that on January 3, 1997, Mississippi River Transmission Corporation (MRT), 525 Milam, P.O. Box 21734, Shreveport, Louisiana 71151–0001, filed in Docket No. CP97–182–000 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 pipeline facilities and a delivery tap to be located in St. Louis County, Missouri, under MRT's blanket certificate issued in Docket No. CP82–489–000, pursuant to Section 7(c) 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.

MRT proposes to abandon in place: (1) Line A–123, which consists of 14,377 feet of 10-inch pipe and a 2-inch delivery tap, certificated in Docket No. G–863, located in St. Louis County, Missouri and (2) A 7,401-foot portion of 10-inch pipe on Line A–97, certificated in Docket No. C–291, located in St. Louis County, Missouri. MRT states that the subject pipeline laterals are deteriorated, require high maintenance, and are bare-coated.

MRT asserts that historically, these lines have been used to deliver natural gas to Laclede Gas Company (Laclede). However, MRT states Laclede installed 2,150 feet of 2-inch pipe to an existing MRT tap, which has eliminated MRT's requirement or need to use Line A–123 and the designated portion of Line A–97. MRT advises this proposed abandonment will not affect their ability to serve Laclede or any other customer on its system.

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. 97–1167 Filed 1–16–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–3104–000]

Montana Power Company; Notice of Filing

January 13, 1997.

Take notice that on January 2, 1997, Montana Power Company tendered for filing an amendment to its original filing in the above-referenced docket.

A copy of the filing was served upon Public Utility District #1 of Benton County.

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 January 21, 1997. 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. 97–1171 Filed 1–16–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–765–000]

Revelation Energy Resources Corporation; Notice of Filing

January 13, 1997.

Take notice that on January 7, 1997, Revelation Energy Resources Corporation tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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 January 21, 1997. 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. 97–1172 Filed 1–16–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG97–7–000]

TransColorado Gas Transmission Company; Notice of Filing

January 13, 1997.

Take notice that on January 6, 1997, TransColorado Gas Transmission Company (TransColorado) filed standards of conduct under section 161.3(j) of the Commission's Regulations, 18 CFR § 161.3(j).

TransColorado states that copies of this filing have been mailed to all shippers on TransColorado's system and affected state regulatory commissions.

Any person desiring to be heard or to protect 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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before January 28, 1997. 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. 97–1173 Filed 1–16–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–159–000]

Transwestern Pipeline Company; Notice of Application

January 13, 1997.

Take notice that on December 18, 1996, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas, 77251–1188, pursuant to Section 7(c) of the Natural Gas Act (NGA), filed an application with the Commission in Docket No. CP97–159–000 for a certificate of public convenience and necessity to operate two compressor units at their design horsepower level, in order to increase operational efficiency and capacity on that portion of Transwestern's system described as its ''Panhandle Lateral'', all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

Specifically, Transwestern proposes to increase the horsepower of each of the compressor units at its P1 and P2 Compressor Stations in Roosevelt County, New Mexico and Deaf Smith County, Texas, respectively, to a design capacity level of 4,700 horsepower (HP). Each compressor station currently has one Solar turbine operating at a 3,500 ISO HP equivalent, the current certificated capacity level. The increase in horsepower will be achieved by straightening the inlet guide vanes at the P1 and P2 compressor stations. Transwestern estimates the cost of straightening the inlet guide vanes is approximately $22,600 which would be financed with internally generated funds.

Any person desiring to be heard or to make any protest with reference to said application should, on or before February 3, 1997, 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 385.211 and 385.214) 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 the request should be granted. 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 Transwestern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1166 Filed 1–16–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–2–76–000]

Wyoming Interstate Company, Ltd.; Notice on Technical Conference

January 13, 1997.

On November 29, 1996, the Commission issued an order [1] in the captioned docket requiring, among other things, a technical conference on Wyoming Interstate Company, Ltd.'s proposed increase in the Fuel Gas and Unaccounted-for Gas percentage component of its transportation rates. The conference will be held at 10:00 a.m., on January 28, 1997, at 888 First Street, N.E., Washington, D.C., in a room to be designated at that time.

Any questions concerning the conference should be directed to John M. Robinson, (202) 208–0808, or Yolanda Hart-Harris, (202) 208–0069.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1165 Filed 1–16–97; 8:45 am]

BILLING CODE 6717–01–M

Notice of Application Filed with the Commission

January 13, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Filing:* Request for Extension of Time to Commence Project Construction.

b. *Applicant:* Yakima-Tieton Irrigation District.

c. *Project No:* The proposed Tieton Dam Hydroelectric Project, FERC No. 3701-025, is to be located at the Bureau of Reclamation's Tieton Dam and Reservoir on the Tieton River, in Yakima County, Washington.

d. *Date Filed:* December 5, 1996.

e. *Pursuant to:* Public Law 104–244.

f. *Applicant Contact:* Donald H. Clarke, Counsel for Licensee, Wilkinson, Barker, Knauer & Quinn, 1735 New York Avenue, N.W., Washington, D.C. 20006, (202) 783–4141.

g. *FERC Contract:* Mr. Lynn R. Miles, (202) 219–2671.

h. *Comment Date:* February 28, 1997.

i. *Description of the Request:* The licensee for the subject project has requested that the deadline for commencement of construction at its project be extended. The deadline to commence project construction for FERC Project No. 3701 would be extended to May 31, 1999. The deadline for completion of construction would be extended to May 31, 2001.

j. *This notice also consists of the following standard paragraph:* B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1163 Filed 1–16–97; 8:45 am]

BILLING CODE 6717–01–M

[1] 77 FERC ¶ 61,220 (1995).

Notice of Application Filed With the Commission

January 13, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Filing:* Request for Extension of Time To Commence and Complete Project Construction.

b. *Project No.:* FERC No. 4204–020, White River Lock & Dam No. 1, located on the White River near the City of Batesville, Independence County, Arkansas. Licensee: City of Batesville, AR.

c. *Project No.:* FERC No. 4659–022, White River Lock & Dam No. 3, located on the White River in the City of Marcella, Stone County, Arkansas. Licensee: Independence County, AR.

d. *Project No.:* FERC No. 4660–024, White River Lock & Dam No. 2, located on the White River in the Cities of Locust Grove and Batesville, Independence County, Arkansas. Licensee: Independence County, AR.

e. *Date Filed:* November 26, 1996.

f. *Pursuant to:* Public Law 104–241.

g. *Applicants Contact:* Donald H. Clarke, Counsel for Licensee, Wilkinson, Barker, Knauer & Quinn, 1735 New York Avenue N.W., Washington, D.C. 20006, (202) 783–4141.

h. *FERC Contact:* Mr. Lynn R. Miles, (202) 219–2671.

i. *Comment Date:* February 28, 1997.

j. *Description of the Request:* The licensees for the subject projects have requested that the deadlines for commencement of construction at each project be extended. The deadline to commence project construction for FERC Project Nos. 4204 and 4659 would be extended to February 27, 2000. The deadline to commence project construction for FERC Project No. 4660 would be extended to November 7, 1999. The deadline for completion of construction for FERC Project Nos. 4204 and 4659 would be extended to February 27, 2002. The deadline for completion of construction for FERC Project Nos. 4660 would be extended to November 7, 2001.

k. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to

intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Representative Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1164 Filed 1–16–97; 8:45 am]

BILLING CODE 6717–01–M

Notice of Application

January 13, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Original License for Major Project.

b. *Project No.:* 11243–002.

c. *Date filed:* January 6, 1997.

d. *Applicant:* Whitewater Engineering Corporation.

e. *Name of Project:* Power Creek Hydroelectric Project.

f. *Location:* On Power Creek, near the town of Cordova, in Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Thom Fischer, Whitewater Engineering Corporation, 1050 Larrabee Avenue, Suite 104–107, Bellingham, WA 98225, (360) 738–9999.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Description of Project:* The proposed run-of-river project would consist of: (1) A 20-foot-high concrete and earthfill diversion structure on Power Creek; (2) a 5,900-foot-long tunnel and pipeline system; (3) a powerhouse containing three generating units with a total installed capacity of 6 MW; (4) a tailrace returning water to Power Creek; (5) a 7.2-mile-long underground transmission line; (6) 2.5 miles of access roads; and (7) appurtenant facilities.

k. With this notice, we are initiating consultation with the *State Historic Preservation Officer (SHPO),* as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Lois D. Cashell,

Secretary.

[FR Doc. 97–1174 Filed 1–16–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5476–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed January 06, 1997 Through January 10, 1997 Pursuant to 40 CFR 1506.9.

EIS No. 970004, Draft EIS, FTA, NJ, Newark-Elizabeth Rail Link (NERL) Study Corridor, Transportation Improvements, Light Rail Transit (LRT), Essex and Union Counties, NJ, Due: March 04, 1997, Contact: Steve F. Faust (212) 264–8162.

EIS No. 970005, Draft EIS, AFS, WI, Oconto River Seed Orchard Pest Management Plan, Implementation, Nicolet National Forest, Oconto County, WI, Due: March 03, 1997, Contact: Dennis Weber (503) 326–7171.

EIS No. 970006, Draft EIS, BLM, WY, Greybull Valley Irrigation District Dam and Reservoir Project, Issuance of Right-of-Way Permit and COE Section 404 Permit, Park County, WY, Due: March 03, 1997, Contact: Don Ogaard (307) 347–5100.

EIS No. 970007, Draft EIS, FHW, VA, VA–17-George Washington Highway, Improvements between VA–104—Dominion Boulevard and the North Carolina State Line, City of Chesapeake, VA, Due: March 03, 1997, Contact: Roberto Fonseca-Martine (804) 281–5100.

EIS No. 970008, Draft EIS, COE, NY, NJ, Newark Bay Confined Disposal Facility (NBCDF), Construction, Dredged Material Disposal Site, NY and NJ, Due: March 03, 1997, Contact: Marc Helman (212) 264–3912.

Dated: January 14, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–1253 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–5476–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 30, 1996 Through January 03, 1997 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 05, 1996 (65 FR 15251).

Draft EISs

ERP No. D–COE–G30014–LA Rating LO, Westwego to Harvey Canal Hurricane Protection Project, Implementation, Lake Cataouatche Area, Jefferson Parish, LA.

Summary: EPA had no objections to the project as proposed. ERP No. D–DOE–L09811–00 Rating EC2, Wildlife Mitigation Program Standards and Guidelines, Implementation, Columbia River Basin, WA, OR, ID, MT, UT, WY and NV.

Summary: EPA requested that the final document include more background information and specific wildlife mitigation techniques relating to the preferred alternative.

ERP No. DS–USN–D11024–PA Rating EC2, Former Naval Hospital Philadelphia, Pennsylvania Disposal and Reuse, New Information concerning Additional Alternatives, Implementation, City of Philadelphia, PA.

Summary: EPA expressed concern regarding asbestos, lead-based paint and the proposed parking facility. EPA requested that these issues be clarified in the final document.

Final EISs

ERP No. F–AFS–K65169–CA Snowy Trail Off-Highway Vehicle Re-Route, Smith Fork Parcel of Los Padres National Forest, Approval and Implementation, Mount Pinos Ranger District, Ventura County, CA.

1*Summary:* Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–BOP–D80024–VA Lee County, Virginia Federal Correctional Institution, Construction and Operation, Site Selection near the Town of Pennington Gap, Lee County, VA.

Summary: EPA had no objections to the action as proposed. ERP No. F–COE–C36073–NJ Absecon Island Interim Feasibility Study, Storm Damage Reduction, Brigantic Inlet to Great Egg Harbor Inlet, Atlantic County, NJ.

Summary: EPA had no objections to the implementation of the proposed project. Based on our review of the final EIS our concerns have been adequately addressed.

ERP No. F–COE–E36174–FL Programmatic EIS—Florida's Everglades, Stormwater Treatment Areas Construction Project, NPDES and COE Section 404 Permits, Implementation, Lake Okeechobee, Palm Beach and Hendry Counties, FL.

Summary: EPA supports the general intent of the Programmatic EIS, and looks forward to working with the Corps as the project proceeds.

ERP No. F–COE–K36117–CA Kaweah River Basin Investigation Feasibility Study, Flood Protection of Terminus Dam, Increase Storage Space in Lake Kaweah for Irrigation of Water Supply, Construction, Modification and Operation, San Joaquin Valley, Tulare and King Counties, CA.

Summary: EPA expressed objections to the Corps' decision to pursue the National Economic Development Plan alternative, rather than the Locally Preferred Plan (LPP) alternative. EPA stated that the LPP alternative would best address the adverse impacts to recreation and fisheries while meeting the flood protection and water supply project purposes. EPA urged the Corps to address the long-term sedimentation issues through alternative methods.

ERP No. F–DOE–A06178–00 Programmatic EIS-Stockpile Stewardship and Management Project, Reduced Nuclear Weapons Stockpile in the Absence of Underground Testing, Eight Sites: Oak Ridge Reservation (ORR), Savannah River Site (SRS), Kansas City Plant (KCP) Pantex Plant, Los Alamos Nat'l Lab., Lawrence Livermore Nat'l Lab., Sandia Nat'l and Nevada Test.

Summary: EPA's previous environmental concerns have been adequately addressed, therefore, the EPA has no objections to the project as proposed.

ERP No. F–DOE–A06180–00 Adoption—Naval Spent Nuclear Fuel Container System Management, Loading, Handling and Dry Storage, Transportation and Storage, Handling and Transportation of certain Associated Radioactive Waste, Implementation, United States.

Summary: EPA's previous environmental comments have been adequately addressed, therefore, the EPA has no objections to the project as proposed.

ERP No. F–DOE–K11068–NV Nevada Test Site (NTS) and Off-Site Locations, Implementation, at the Following Sites: Tonopah Test Range; Portions of the Nellis Air Force Range (NAFR) Complex; the Central Nevada Test Area and Shoal Area Project, Nye County, NV.

Summary: While most previous issues have been resolved EPA continues to be concerned regarding pollution prevention, polychlorinated bipheryls and Native American Tribal consultations. EPA requested that these issues be clarified in the Record of Decisions.

ERP No. F–FHW–K40217–CA Arden Garden Connector Project, Arden Way in North Sacramento to Garden Highway in South Natomas across the Natomas East Main Drainage Canal, Funding, Sacramento County, CA.

Summary: FHWA addressed all of EPA's comments on the draft EIS.

ERP No. F–FRC–C05145–NY Felts Mills Hydroelectric Project (FERC No. 4715–006), Issuance of Original License, Construction, Operation and Maintenance, Site Specific, Black River, Jefferson County, NY.

Summary: EPA's earlier concerns with the draft EIS have been adequately addressed. However, EPA may submit additional comments as part of the Clean Water Act Section 404 permit process.

ERP No. F–IBR–K39039–NV Southern Nevada Water Authority Treatment and Transmission Facility, Construction and Operation, Issuance of Permits, Right-of-Way Grants and Modification of existing Water Delivery/Service Contracts, Clark County, NV.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–IBR–K50009–CA American River Bridge Crossing Project, Construction and Roadway Improvement, Funding, Right-of-Way Approval, Coast Guard Bridge Permit and COE Section 404 Permit, City of Folsom, Sacramento County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. FS-FHW-G40127–TX TX–161 Construction, Updated Information on I–20 to TX–183, Funding, Coast Guard Section 10 Permit and Possible COE Section 404 Permit, Cities of Grand Prairie and Irving, Dallas County, TX.

Summary: EPA had no objections to the action as proposed.

Dated: January 14, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–1254 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5677–7]

Environmental Laboratory Advisory Board; Meeting Date and Agenda

AGENCY: Environmental Protection Agency.

ACTION: Notice of open meeting.

SUMMARY: The Environmental Laboratory Advisory Board (ELAB) will convene an open meeting on February 6, 1997, from 9:00 am to 5:00 pm. The meeting will be held in the Bethesda Hyatt Regency at 1 Bethesda Metro Center (the corner of Wisconsin Avenue and Old Georgetown Road) in Bethesda, MD. Additional information on directions can be obtained from the hotel by calling (301) 657–1234.

The agenda will include discussions of the fact findings of several subcommittees, i.e. the Third Party Subcommittee; the Good Laboratory Practices (GLP) Subcommittee; the Performance Based Methods Subcommittee; and the Proficiency Testing Subcommittee. In addition, the National Environmental Laboratory Accreditation Conference (NELAC) will respond to a previous ELAB recommendation regarding the establishment of an ad hoc committee on the proposed national database; the process to discuss nominees for the next ELAB term to serve from July 1997–July 1999 will also be discussed. Finally, your comments and activities from the Interim meeting will be addressed.

The public is encouraged to attend. Time will be allotted for public comment. Written comments are encouraged and should be directed to Ms. Jeanne Mourrain; Designated

Federal Official; USEPA; NERL (MD–75); Research Triangle Park, NC 27711. If questions arise, please contact Ms. Mourrain at 919/541–1120, fax 919/541–4101, or E-mail ''MOURRAIN.JEANNE@EPAMAIL.EPA.GOV''.

Dated: January 13, 1997.

Larry Weinstock,

Acting Director, Office of Radiation and Indoor Air.

[FR Doc. 97–1269 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5677–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et, seq.*). 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.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740, please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1037.05; Oral and Written Purchase Orders; was approved 12/31/96; OMB No. 2030–0007; expires 12/31/99.

EPA ICR No. 0909.05; Information Requirements for Construction Grants Delegation to States; was approved 12/20/96; OMB No. 2040–0095; expires 12/31/99.

EPA ICR No. 1362.03; National Emission Standards for Coke Oven Batteries, 40 CFR Part 63, Subpart L; was approved 12/18/96; OMB No. 2060–0253; expires 12/31/99.

EPA ICR No. 1780.01; Voluntary Cover Sheet for TSCA Submissions; was approved 12/18/96; OMB No. 2070–0156; expires 12/31/99.

EPA ICR No. 0276.08; Application for Experimental Purposes Only; was approved 11/29/96; OMB No. 2070–0040; expires 11/30/99.

EPA ICR No. 0997.05; NSPS for Petroleum Dry Cleaners; was approved 11/22/96; OMB No. 2060–0079; expires 11/30/99.

EPA ICR No. 1150.04; NSPS for Polymer Manufacturing Industry—Subpart DDD; was approved 11/22/96; OMB No. 2060–0145; expires 11/30/99.

EPA ICR No. 1130.05; NSPS for Information Requirements for Grain Elevators—Subpart DD; was approved 11/22/96; OMB No. 2060–0082; expires 11/30/99.

EPA ICR No. 1715.02; TSCA Section 402 and Section 404 Training and Certification, Accreditation, and Standards for Lead-Based Paint Activities; was approved 11/13/96; OMB No. 2070–0155; expires 11/30/99.

Extension of Expiration Date

EPA ICR No. 1204.05; Submission of Unreasonable Adverse Effects Information under Section 6(A)(2) of FIFRA; OMB No. 2070–0039; expiration date was extended to 02/28/97.

Dated: January 8, 1997.

Joseph Retzer.

Director, Regulatory Information Division,

[FR Doc. 97–1265 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5677–8]

Release of Volume 1, Framework For Environmental Health Risk Management—January 29, 1997—Commission on Risk Assessment and Risk Management

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Commission on Risk Assessment and Risk Management, established as an Advisory Committee under Section 303 of the Clean Air Act Amendments of 1990, will release Volume 1, *Framework for Environmental Health Risk Management*, of its two-volume final report on January 29. It is anticipated that Volume 2 will be released at the end of February. A public meeting will be held on January 29, 1997; from 10:00 a.m. to 11:30 a.m. in Room 2322 at the Rayburn House Office Building located on Independence Avenue and South Capitol Street, SW, Washington, DC. Federal Register, Vol. 61, No. 251, page 68745, dated December 30, 1996 issued a notice of the January 29th meeting; however, the location was not yet determined.

If you are unable to attend, but wish to receive a copy of the final report, either fax your request to 202–233–9540, mail your request to the Commission on Risk Assessment and Risk Management, 529 14th Street, NW, Room 452, Washington, DC 20045, or obtain via the internet at http;//www.riskworld.com. Be sure to indicate your complete mailing address and a phone number where you can be reached. *If you have already requested a copy of the draft report, it is not necessary to send another request.* Everyone who requested a draft report will be sent Volume 1 immediately following the public meeting and Volume 2 when it becomes available.

If you need additional information, please call 202–233–9537. The report will not be available prior to January 29, 1997.

Dated: January 13, 1997.

Gail Charnley,

Executive Director, Commission on Risk Assessment and Risk Management.

[FR Doc. 97–1268 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5644–7]

Proposed Settlement Under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended (''CERCLA''), 42 U.S.C. 9601 et seq., In the Matter of the Torch Lake Superfund Site, Houghton, MI

AGENCY: Environmental Protection Agency.

ACTION: Notice of a proposed administrative settlement and request for public comment.

SUMMARY: The Environmental Protection Agency (''EPA'') is hereby giving notice that it proposes to enter into an administrative prospective purchaser settlement relating to the Mason Sands of the Torch Lake Superfund Site located in Houghton County, Michigan. The proposed settlement is with Quincy Development Corporation (''Quincy'') and Lakeshore Estates Associates, Inc. (''Lakeshore''), and will resolve their prospective liability, pursuant to Sections 106 and 107(a) of CERCLA, for injunctive relief and for past response costs incurred in connection with 197 acres of the Torch Lake Site known as the Mason Sands. This notice is an invitation to file written comments on the proposed administrative settlement.

DATES: Comments must be provided on or before February 18, 1997.

ADDRESSES: Comments should be addressed to Beth Reiner, Office of Superfund, Mail Code SR–6J, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, and

should refer to: In the Matter of Torch Lake Superfund Site.

FOR FURTHER INFORMATION CONTACT: Beth Reiner, Office of Superfund, Mail Code SR–6J, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, 312/353–6576.

SUPPLEMENTARY INFORMATION: The Torch Lake Superfund Site is located on the Upper Peninsula of Michigan in Houghton County. Copper milling and smelting operations occurred at the site for over 100 years. By the late 1960s milling operations in the Torch Lake area had ceased. In 1984 the Site was proposed for the National Priorities List (NPL) and in 1986 the Site was placed on the NPL. The Risk Assessment concluded there was no unacceptable risk to human health from the stampsands. However, the benthic community in the sediment of Torch Lake had been adversely affected and was not recovering. Two Records of Decision (ROD) were issued for the Site. The ROD for Operable Units (OU) I and III, which addressed all land covered with stampsands, was issued on 9/30/92 and called for deed restrictions, soil cover and vegetation of stampsands. The OU II ROD, which addressed only Torch Lake itself, was issued on 3/31/94 and called for no action on Torch Lake itself.

Quincy Development Corp. (QDC) was identified by U.S. EPA as a Potentially Responsible Party (PRP) for cleanup costs at the Site. They are the current owner of approximately 390 acres of OUI land. Lakeshore Estates Associates, Inc. (Lakeshore), a developer, is interested in purchasing approximately 197 acres of land currently owned by QDC which is part of the Torch Lake Superfund Site.

In consideration of and in exchange for the United States' Covenant Not to Sue in the Prospective Purchaser Agreement, Lakeshore agrees to:

(1) Provide roads from the public roadway to the borrow areas on Lakeshore's property and a road from the borrow areas to the isthmus in Torch Lake (where the Mason Sands almost connect to the eastern shore of Torch Lake) and/or any other roads required to allow U.S. EPA to access Lakeshore's property in order to excavate soils and truck them off Lakeshore's property;

(2) Clear of trees and brush a minimum of 25 acres of land to allow U.S. EPA to excavate the soils (to a depth of approximately 6 to 8 feet) for use as cover material as required by the Record of Decision;

(3) Grant U.S. EPA and its representatives access (for an estimated 3 years from the start of the remedial action) to the roads and borrow areas on Lakeshore's property to remove up to 241,000 cubic yards of soil; and

(4) Maintain the soil cover and vegetation over the stampsands on property Lakeshore will purchase from Quincy.

The Superfund liability associated with the QDC land currently prevents the beneficial re-use of the property. In the absence of an agreement which resolves this liability, no redevelopment is

The Environmental Protection Agency will receive written comments relating to this agreement for thirty days from the date of publication of this notice.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*

William E. Muno,

Director, Superfund Division.

[FR Doc. 97–1267 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5678–9]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity to Comment Regarding the City of Sedalia, Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding the city of Sedalia, Missouri.

SUMMARY: The EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act (''Act''). The EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. The EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. The EPA provides the public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(A).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of this public notice.

On November 22, 1996, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following Complaint:

In the Matter of the City of Sedalia, Missouri, EPA Docket No. VII–97–W–0003.

The Complaint proposes a penalty of Sixty-Five Thousand Dollars ($65,000) for failure to comply with the Pretreatment implementation requirements of its National Pollutant Discharge Elimination System (NPDES) permit.

FOR FURTHER INFORMATION CONTACT:

Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by the city of Sedalia, Missouri, is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this notice.

Dated: December 18, 1996.

Dennis Grams,

Regional Administrator.

[FR Doc. 97–1266 Filed 1–16–97; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will

meet in open session at 10:00 a.m. on Tuesday, January 21, 1997, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Proposal to Rescind Statement of Policy on Money Laundering.

Memorandum and resolution re: Proposal to Rescind Statement of Policy on the Sale of U.S. Government Guaranteed Loans and Sale Premiums.

Memorandum and resolution re: Revision of 12 C.F.R. Part 304: Forms, Instructions and Reports.

Discussion Agenda

Memorandum re: Proposed Memorandum of Understanding between the FDIC and FICO Regarding the Collection of Assessments.

Memorandum and resolution re: Notice of Proposed Rulemaking and Request for Comment—12 C.F.R. Part 328—Advertisement of Membership.

Memorandum and resolution re: Interim Rule to Amend Part 337 of FDIC's Regulations.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Jerry L. Langley, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: January 14, 1997.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 97–1347 Filed 1–15–97; 11:26 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the Federal Register.

Agreement No.: 217–011563.

Title: NOL/HMM Space Charter Agreement

Parties:

Neptune Orient Lines, Ltd.

Hyundai Merchant Marine Co., Ltd.

Synopsis: The proposed Agreement authorizes HMM to charter space to NOL on its vessels in the trade between all ports and points in the Far East and South East Asia, and ports and points on the U.S. Pacific Coast including Alaska.

By order of the Federal Maritime Commission.

Dated: January 13, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–1135 Filed 1–16–97; 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 January 31, 1997.

A. Federal Reserve Bank of Cleveland (R. Chris Moore, Senior Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Barbara E. Dunlap, Rushden, Northants, United Kingdom NN10; to acquire an additional 35 percent, for a total of 44.52 percent, of the voting shares of New Richmond Bancorporation, New Richmond, Ohio, and thereby indirectly acquire New Richmond National Bank, New Richmond, Ohio.

Board of Governors of the Federal Reserve System, January 13, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–1184 Filed 1–16–97; 8:45 am]

BILLING CODE 6210–01–F

Change in Bank Control Notices; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 96-33160) published on pages 68756 and 68757 of the issue for Monday, December 30, 1996.

Under the Federal Reserve Bank of San Francisco heading, the entry for TRP Acquisition Corporation, Burr Ridge, Illinois, is revised to read as follows:

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. TRP Acquisition Corporation, Burr Ridge, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Trans Pacific Bancorp, San Francisco, California, and thereby indirectly acquire Trans Pacific National Bank, San Francisco, California.

In connection TRP Acquisition Corporation, also has applied to acquire at least 19.9 percent of the voting shares of Trans Pacific Bancorp, San Francisco, California, and thereby indirectly acquire Trans Pacific National Bank, San Francisco, California.

Comments on this application must be received by January 24, 1997.

Board of Governors of the Federal Reserve System, January 13, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–1185 Filed 1–16–97; 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 February 10, 1997.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Cumberland Bancorp, Inc., Carthage, Tennessee; to acquire 100 percent of the voting shares of First Federal Bancshares, Inc., Memphis, Tennessee, and thereby indirectly acquire First Federal Bank, FSB, Memphis, Tennessee, and First Federal Bank, FSB, Nashville, Tennessee. These institutions will convert to bank charters.

B. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Farmers National Bancorp, Inc., Geneseo, Illinois, and thereby indirectly acquire Farmers National Bank of Geneseo, Geneseo, Illinois.

Board of Governors of the Federal Reserve System, January 13, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–1183 Filed 1–16–97; 8:45 am]

BILLING CODE 6210–01–F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, January 22, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 15, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–1342 Filed 1–15–97; 11:25 am]

BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

Revised Jurisdictional Thresholds for Section 8 of the Clayton Act

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission announces the revised thresholds for interlocking directorates required by the 1990 amendment of section 8 of the Clayton Act. Section 8 prohibits, with certain exceptions, one person from serving as a director or officer of two competing corporations if two thresholds are met. Competitor corporations are covered by section 8 if each one has capital, surplus, and undivided profits aggregating more than $10,000,000, with the exception that no corporation is covered if the competitive sales of either corporation are less than $1,000,000. Section 8(a)(5) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product. The new thresholds, which take effect immediately, are $13,813,000 for section 8(a)(1), and $1,381,300 for section 8(a)(2)(A).

EFFECTIVE DATE: January 17, 1997.

FOR FURTHER INFORMATION CONTACT: James Mongoven, Bureau of Competition, Office of Policy and Evaluation, (202) 326–2879.

(Authority: 15 U.S.C. § 19(a)(5))

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97–1237 Filed 1–16–97; 8:45 am]

BILLING CODE 6750–01–M

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 120996 AND 122096

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Gerald F. Cerce, BEC Group, Inc., Foster Grant Group, L.P., et al	97–0424	12/09/96
New York Life Insurance Company, John W. Titus, Snowstate Restaurant Corp. & Franklin Restaurant Corp	97–0477	12/09/96
Hollingsworth & Vose Company, Exide Corporation, Evanite Fiber Corporation	97–0495	12/09/96
Gespa S.A., Tarmac PLC, Tarmac Minerals, Inc	97–0508	12/09/96
HA–LO Industries, Inc., Linden D. Nelson, Creative Concepts In Advertising, Inc	97–0533	12/09/96
Linden D. Nelson, HA–LO Industries, Inc., HA–LO Industries, Inc	97–0535	12/09/96
Union Bank of Switzerland, Ernst Ohnell, Communications Supply Corporation	97–0539	12/09/96
Universal Outdoor Holdings, Inc., Merrill Lynch Capital Appreciation Partnership, B–XXVII, Revere Holding Corp	97–0540	12/09/96
Seacor Holdings, Inc., Waveland Marine Service, Inc., Waveland Marine Service, Inc	97–0542	12/09/96
Bob Marbut, Gannett Co., Inc., Combined Communications Corporation of Oklahoma, Inc	97–0544	12/09/96
The Horne Family Voting Trust, Rosecliff Ames Partners, Ames Holdings, Inc	97–0547	12/09/96
CAT Limited (a Bermuda company) Enterprise Reinsurance Corporation, Enterprise Reinsurance Corporation	97–0550	12/09/96
John L. Morris, Mako Marine International, Inc., Mako Marine International, Inc	97–0551	12/09/96
General Electric Company, Enterprise Reinsurance Corporation, Enterprise Reinsurance Corporation	97–0552	12/09/96
Central Parking Corporation, SLC Holdings, L.L.C., Civic Parking, L.L.C	97–0554	12/09/96
Menasha Corporation, Poly Hi Solidur, Inc. (Newco), Poly Hi Solidur, Inc. (Newco)	97–0555	12/09/96
Golder, Thoma, Cressey, Rauner Fund IV, L.P., Kwik Wash Laundries, Inc., Kwik Wash Laundries, Inc	97–0560	12/09/96
Performance Contracting Group, Inc., National Service Industries, Inc., North Bros., Inc	97–0564	12/09/96
The Progressive Corporation, Midland Financial Group, Inc., Midland Financial Group, Inc	97–0565	12/09/96
Louis J. Appell Residuary Trust, Bridge Associates II, WHMA(AM) and WHMA(FM)	97–0567	12/09/96
Metropolitan Life Insurance Company, Aldrich, Eastman, & Waltch, Inc Aldrich, Eastman, & Waltch, Inc.,	97–0569	12/09/96
Joaquin Viso and Olga Lizardi (Husband and Wife), SmithKline Beecham plc, SB Pharmco Puerto Rico, Inc	97–0571	12/09/96
Gulf South Medical Supply, Inc., North American Fund II, L.P., Gateway HealthCare Corporation	97–0573	12/09/96
Insurance Partners, L.P., Superior National Insurance Group, Inc., Superior National Insurance Group, Inc.	97–0574	12/09/96
Crestar Financial Corporation, Great Western Financial Corporation, Great Western Bank	97–0575	12/09/96
The Deaconess Associations, Inc., Mark Waters, Elk Valley Professional Affiliates, Inc	97–0584	12/09/96
Union Bank of Switzerland, Metrocall, Inc., Metrocall, Inc	97–0600	12/09/96
Reilly Family Limited Partnership, Outdoor Advertising Company, Outdoor East, L.P	97–0158	12/10/96
Kellogg Company, Philip Morris Companies, Inc., Kraft Foods, Inc	97–0476	12/10/96
Pearson PLC, The Seagram Company Ltd. (a Canadian company), The Putnam Berkley Group, Inc	97–0519	12/10/96
Philip Environmental Inc., Luntz Corporation, Luntz Corporation	97–0538	12/10/96
MCN Corporation, Main Pass Gas Gathering Company, Main Pass Gas Gathering Company	97–0576	12/10/96
Paul Fred Ricart, Jr., Robert A. Layman, Jr., Bobby Layman Chevrolet, Inc	97–0578	12/10/96
Weatern Resources, Inc., Westinghouse Electric Corporation, Westinghouse Security Systems, Inc	97–0588	12/10/96
Tencor Instruments, Uniphase Corporation, Ultrapointe Corporation	97–0590	12/10/96
Proffitt's, Inc., G.R. Herberger's Inc., G.R. Herberger's, Inc	97–0591	12/10/96
Claneil Enterprises, Inc., Scandipharm, Inc., Scandipharm, Inc	97–0592	12/10/96
Bruckmann, Rosser, Sherrill & Co., L.P., Specialty Foods Acquisition Corporation, Specialty Foods Acquisition Corporation	97–0596	12/10/96
IMCO Recycling, Inc., EnviroSource, Inc., IMSAMET, Inc	97–0603	12/10/96
Caritas Christi, Daughters of Charity National Health System, Inc., Carney Hospital, et al	97–0604	12/10/96
Rhett Calvin Ricart, Robert A. Layman, Jr., Bobby Layman Chevrolet, Inc.	97–0608	12/10/96
American International Group, Inc., CH–Twenty, Inc., CH–Twenty, Inc	97–0614	12/10/96
Hyundai Electronics Industries Co., Ltd., General Wireless, Inc., General Wireless, Inc	97–0620	12/10/96
Linde AG, The Pro-Quip Corporation, The Pro-Quipp Corporation	97–0624	12/10/96
McCown De Leeuw & Co. III, Unilever NV, Conopco Inc	97–0628	12/10/96
MBNA Corporation, First Western BanCorp, Inc., First Western Bank, N.A. and First Western Bank, f.s.b	97–0629	12/10/96
Dimeling, Schreiber & Park, Burlington Motor Holdings, Inc., a Debtor-in-possession, Burlington Motor Holdings, Inc	97–0636	12/10/96
Phillip Frost, M.D., BBI Healthcare Corporation, BBI Healthcare Corporation	97–0421	12/11/96
Jane Hsaio, Ph.D, BBI Healthcare Corporation, BBI Healthcare Corporation	97–0422	12/11/96
Robert E. Martini, BBI Healthcare Corporation, BBI Healthcare Corporation	97–0433	12/11/96
Bergen Brunswig Corporation, IVAX Corporation, IVAX Corporation	97–0441	12/11/96
IVAX Corporation, Bergen Brunswig Corporation, Bergen Brunswig Corporation	97–0442	12/11/96
Textron, Inc., Klockner-Werke, AG, Kautex North America, Inc. & Kautex Corporation	97–0515	12/11/96
Hellman & Friedman Capital Partners II, L.P., Franklin Resources, Inc, Franklin Resources, Inc	97–0563	12/11/96
General Electric Company, NEFF Corporation, NEFF Corporation	97–0470	12/12/96
Rosen's Diversified, Inc., Paul J. Weiss, Skylark Meats, Inc. and Mid-America Transportation, Inc	97–0496	12/12/96
Rosen's Diversified, Inc., Reynold G. Hochstein, Skylark Meats, Inc. and Mid-America Transportation, Inc	97–0498	12/12/96
Saint Barnabas Corporation, Trico Health Care, Inc., West Hudson Hospital Association; West Hudson Foundation	97–0514	12/12/96
Warren A. Hood, Jr., U.S. Industries, Inc., QPF Corporation	97–0516	12/12/96
PhyCor, Inc., Straub Clinic & Hospital, Inc., Straub Clinic & Hospital, Inc	97–0530	12/12/96
Ralph Milo, Cooperative Tradeka Corporation, C.G. America Corporation	97–0536	12/12/96
Gannett, Co., Inc., Bob Marbut, Argyle Television, Inc	97–0543	12/12/96
Philip Environmental, Inc., Pechiney S.A., PPC (ISW), Inc	97–0582	12/12/96
STERIS Corporation, Bristol-Myers Squibb Company, E.R. Squibb & Sons, Inc	97–0593	12/12/96
J.W. Childs Equity Partners, L.P., Central Tractor Farm & Country, Inc., Central Tractor Farm & Country, Inc	97–0619	12/12/96
Bell Industries, Inc., Milgray Electronics, Inc., Milgray Electronics, Inc	97–0642	12/12/96
The Clorox Company, McKesson Corporation, Armor All Products Corporation	97–0644	12/12/96

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 120996 AND 122096—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Golder, Thoma, Cressey, Rauner Fund, IV, L.P., Brim Inc., Brim Inc	97–0531	12/13/96
Atlantic Richfield Company, Mobil Corporation, Mobil Alaska Pipeline Company	97–0545	12/13/96
DI Industries, Loews Corporation, Diamond M. Onshore, Inc	97–0556	12/13/96
Atlantic Equity Partners, L.P., Quality Foods, L.P., Quality Foods, L.P	97–0558	12/13/96
Burger Bros., Inc., Holiday Companies, Holiday Sports, Inc. and Holiday Stationstores, Inc	97–0562	12/13/96
Front Royal, Inc., Trirock Limited Partnership, Rockwood Casualty Insurance Co	97–0566	12/13/96
Dynatech Corp., Texlon Corporation, Itronix Corporation	97–0581	12/13/96
PIC Insurance Group, Inc., Front Royal Inc., Front Royal Inc	97–0606	12/13/96
Front Royal, Inc., PIC Insurance Group, Inc., Rockwood Casualty Insurance Company	97–0611	12/13/96
Orgill, Inc., Beacon Holding Corporation, Beacon Holding Corporation	97–0615	12/13/96
ING Groep, N.V., TransCare Corporation, TransCare Corporation	97–0633	12/13/96
Primark Corporation, Bowne & Co., Inc., Baseline Financial Services, Inc	97–0634	12/13/96
Nabors Industries, Inc., ADCOR-Nicklos Drilling Company, ADCOR-Nicklos Drilling Company	97–0639	12/13/96
VEBA AG, Burris Chemical, Inc., Burris Chemical, Inc	97–0641	12/13/96
Republic Industries, Inc., R. Todd Neilson, Chapter 11 Trustee, New-Val Ford Inc., Val-New Lincoln Mercury Inc	97–0659	12/13/96
Suiza Foods Corporation, James N. Bahan, Model Dairy, Inc	97–0413	12/14/96
Suiza Foods Corporation, Thomas E. Bahan, Model Dairy, Inc	97–0420	12/14/96
Jitney-Jungle Stores of America, Inc., McCarty-Holman Co., Inc., McCarty-Holman Co., Inc	97–0831	12/16/96
HIG Investment Group, L.P., Ronald L. Koonsman, National Cellular, Inc.; Telephone Warehouse, Inc	97–0694	12/16/96
JPE, Inc., Pebra GmbH Paul Braun I.K. (a German company), Pebra Inc	97–0462	12/17/96
Teleport Communications Group, Inc., Ralph J. Roberts, Comcast CAP of Philadelphia, Inc	97–0548	12/17/96
Orkla, A.S., Frank W. Kulesza, PolyOrganix, Inc	97–0580	12/17/96
First Reserve Fund VII, Limited Partnership, Teleo Ventures, Inc., Teleo Ventures, Inc	97–0597	12/17/96
Laidlaw Inc., Robert Ramsey, SW General, Inc	97–0618	12/17/96
Ciba-Geigy Ltd., Sandoz Ltd., Sandoz Ltd	96–1399	12/17/96
Sandoz Ltd., Ciba-Geigy Ltd., Ciba-Geigy Ltd	96–1402	12/17/96
Torstar Corporation, Sumner M. Redstone, American Teaching Aids, Inc	97–0630	12/17/96
Carlo Salvi, Gensia, Inc., Gensia, Inc	97–0635	12/17/96
Brooks Fiber Properties, Inc., World-Net Access, Inc., World-Net Access, Inc	97–0643	12/17/96
Calgon Carbon Corporation, Florida Progress Corporation, Advanced Separation Technologies, Inc	97–0646	12/17/96
BASF AG, Sandoz Ltd., a Swiss company, Sandoz Agro, Inc	97–0647	12/17/96
Baxter International Inc., Immuno International AG, Immuno International AG	96–2926	12/18/96
Sisters of Mercy of the Amer., Regional Comm. Cincinnati, The Sisters of the Humility of Mary, Humility of Mary Health Care System	97–0483	12/18/96
Dr. Ing. h.c. F. Porsche AG, PPF Holding AG, PPF Holding AG	97–0549	12/18/96
Federal Express Corporation, UAL Corporation, United Air Lines, Inc. (Used DC10 Aircraft)	97–0653	12/18/96
Dovenmuehle Mortgage Company, L.P., Royal Bank of Scotland Group plc, Citizens Financial Group, Inc	97–0658	12/18/96
National Data Corporation, Blue Cross & Blue Shield of Virginia, Health Communication Services, Inc.; Health Communication	97–0660	12/18/96
Tessenderlo Chemie S.A., CI Holdings Corp., Chelsea Industries, Inc., Chelfab, Inc	97–0661	12/18/96
EQUUS II Incorporated, BankAmerica Corporation, Sun Sportswear, Inc	97–0668	12/18/96
OMI Corp., Wilco AS, Wilomi, Inc	97–0669	12/18/96
OMI Corp., Awilco ASA, Wilomi, Inc	97–0670	12/18/96
Watsco, Inc., Inter-City Products Corporation (a Canadian company), Inter-City Products Corporation (USA, CDS Holdings Inc	97–0671	12/18/96
Alco Standard Corporation, Thomas E. Wallace, Mon-Wal, Inc	97–0672	12/18/96
BMI–MI, Inc., Lobdell Holdings, Inc., Lobdell Holdings, Inc	97–0675	12/18/96
Pioneer Financial Services, Inc., Secura Insurance, Secura Life Insurance Company	97–0676	12/18/96
Heidelberger Zement AG, Cimenteries C.B.R. S.A., Cimenteries C.B.R. S.A	97–0677	12/18/96
The Greenbrier Companies, The Greenbrier Companies, Greenbrier Transportation Limited Partnership	97–0683	12/18/96
Bayer AG, Pharmacia & Upjohn, Inc., Oxford Veterinary Laboratories, Inc	97–0435	12/19/96
MCN Corporation, Lyondell Petrochemical Company, Lyondell Petrochemical Company	97–0466	12/19/96
John Rutledge Partners II, L.P., H&C Holding Corporation, H&C Holding Corporation	97–0583	12/19/96
BankAmerica Corporation, EXOR Group, Duo-Tang, Inc	97–0708	12/19/96
Hicks, Muse, Tate & Furst Equity Fund III, L.P., Jupiter/Smith TV Investors of Michigan, L.P., Jupiter/Smith TV Investors of Michigan, L.P	97–0503	12/20/96
Hicks, Muse, Tate & Furst Equity Fund III, L.P., Jupiter/Smith TV Investors of Rochester, L.P., Jupiter/Smith TV Investors of Rochester, L.P	97–0504	12/20/96
Hicks, Muse, Tate & Furst Equity Fund III, L.P., Jupiter/Smith TV Investors of Salinas/Monterey, L.P., Jupiter/Smith TV Investors of Salinas/Monterey, L.P	97–0505	12/20/96
Barry Baker, Sinclair Broadcast Group, Inc., Sinclair Broadcast Group, Inc	97–0513	12/20/96
Boston Ventures Limited Partnership IV, Sinclair Broadcast Group, Inc., Sinclair Broadcast Group, Inc	97–0521	12/20/96
Boston Ventures Limited Partnership IVA, Sinclair Broadcasting Group, Inc., Sinclair Broadcasting Group, Inc	97–0522	12/20/96
WinStar Communications, Inc., WinStar Communications, Inc., Milliwave Limited Partnership	97–0553	12/20/96
Global DirectMail Corp., Paul G. Mandel, Alliance Peripheral Systems, Inc	97–0640	12/20/96
Ira Leon Rennert, Costain Group PLC, a British company, Costain Coal, Inc	97–0681	12/20/96
Connective Therapeutics, Inc., SmithKline Beecham plc, SmithKline Beecham Corporation, SmithKline Beecham	97–0688	12/20/96

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 120996 AND 122096—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
George L. Argyros, Specialty Foods Acquisition Corporation, WFB Holdings, Inc. and Specialty Foods Finance Corp	97–0700	12/20/96

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580. (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97–1236 Filed 1–16–97; 8:45 am]

BILLING CODE 6750–01–M

[File No. 942–3311]

Jeanette L. Douglass; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, Douglass, an officer of Computer Business Services, Inc. (CBSI), from misrepresenting the earnings or success rate of CBSI investors, the existence of a market for CBSI's products or services, and the amount of time it would take investors to recoup their investments. The order also bars Douglass from making any representation about the performance, benefits, efficacy, or success rate of any product or service unless she possesses reliable evidence to substantiate the claims. The agreement settles allegations that potential earnings and profit claims made by CBSI were false and misleading.

DATES: Comments must be received on or before March 18, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: C. Steven Baker, Federal Trade Commission, Chicago Regional Office, 55 East Monroe Street, Suite 1860, Chicago, IL 60603. (312) 353–8156.

Catherine R. Fuller, Federal Trade Commission, Chicago Regional Office, 55 East Monroe Street, Suite 1860, Chicago, IL 60603. (312) 353–5576.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for December 12, 1996), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Jeanette L. Douglass.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns earnings and success claims made regarding business ventures promoted by respondent. The Commission's complaint charges that respondent, in concert with Computer Business Services, Inc. (''CBSI''), made false and unsubstantiated claims that consumers who purchase or use CBSI's business ventures ordinarily succeed and earn substantial income. In fact, the complaint alleges, the vast majority of consumers never even recoup their initial investment. The complaint also alleges that respondent falsely represented that endorsements appearing in CBSI's advertisements reflect the actual experiences of its customers and that those endorsements reflect the typical or ordinary experience of purchasers of CBSI's business ventures. Further, the complaint alleges that respondent represented that consumers can successfully utilize automatic telephone dialing systems to market their businesses but failed to disclose that federal law prohibits the use of such systems in the unattended mode to initiate a call to any residential telephone line in certain circumstances.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future. The proposed order extends to all business ventures and to all products or services that are part of any business venture.

Part I of the proposed consent order prohibits the respondent from misrepresenting the earnings or success of its purchasers, the existence of a market for the products or services promoted by respondent, or the amount of time within which a prospective purchaser can reasonably expect to recoup his or her investment. Part II of the proposed order prohibits the respondent from misrepresenting the performance, benefits, efficacy or success rate of any product or service that is a part of such business venture, unless at the time such representation is made the respondent possesses and relies upon competent and reliable evidence that substantiates the representation. Part III of the proposed order prohibits the respondent from misrepresenting that a user testimonial or endorsement is typical or ordinary and from using, publishing or referring to any user testimonial or endorsement unless respondent has good reason to believe that at the time of such use, publication or reference, the person or

organization named subscribes to the facts and opinions stated therein. Part IV of the proposed order requires respondent to disclose, in close proximity to any representation regarding the use or potential use of an automatic telephone dialing system, that federal law prohibits the use of an automatic telephone dialing system to initiate a telephone call to any residential telephone line using an artificial or prerecorded voice to transmit an unsolicited advertisement for commercial purposes without the prior express consent of the called party unless a live operator introduces the message.

The remaining parts of the proposed consent order require the respondent to maintain materials relied upon to substantiate claims covered by the order, to distribute copies of the order to each of its operating divisions and to certain company officials, to notify the Commission of any changes in corporate structure that might affect compliance with the Order, and to file one or more compliance reports.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 97–1238 Filed 1–16–97; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3689]

Fresenius AG, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order requires, among other things, the California-based subsidiary of Fresenius AG to divest its Lewisberry, Pennsylvania hemodialysis concentrate production facility to Di-Chem, Inc., of Maple Grove, Minnesota, or to another Commission-approved acquirer, if the Di-Chem deal falls through.

DATES: Complaint and Order issued October 15, 1996.[1]

FOR FURTHER INFORMATION CONTACT: Howard Morse, FTC/S–3627, Washington, DC 20580, (202) 326–2949.

SUPPLEMENTARY INFORMATION: On Thursday, August 1, 1996, there was published in the Federal Register, 61 FR 40220, a proposed consent agreement with analysis In the Matter of Fresenius AG, et al. for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 97–1232 Filed 1–16–97; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3687]

Koninklijke Ahold nv, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order requires, among other things, a Georgia-based supermarket chain to divest a total of 30 supermarkets or supermarket properties, within 30 days, to Commission-approved acquirers. If the transactions are not completed as required, the Commission may appoint a trustee to divest the properties.

DATES: Complaint and Order issued September 30, 1996.[1]

FOR FURTHER INFORMATION CONTACT: Marimichael Skubel, Federal Trade Commission, 6th and Pennsylvania Avenue, NW., Room S–2105, Washington, DC 20580, (202) 326–2611.

SUPPLEMENTARY INFORMATION: On Thursday, July 25, 1996, there was published in the Federal Register, 61 FR 38741, a proposed consent agreement with analysis In the Matter of Koninklijke Ahold nv, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 97–1231 Filed 1–16–97; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3678]

The Loewen Group Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order requires, among other things, a Kentucky-based company to divest a funeral home in Castlewood, Virginia, within nine months, to a Commission-approved acquirer. If the transaction is not completed as required, the Commission may appoint a trustee to divest the property.

DATES: Complaint and Order issued July 29, 1996.[1]

FOR FURTHER INFORMATION CONTACT: Thomas Carter or Gary Kennedy, Dallas Regional Office, Federal Trade Commission, 1999 Bryan St., Suite 2150, Dallas, TX 75201. (214) 979–0907.

SUPPLEMENTARY INFORMATION: On Wednesday, May 22, 1996, there was published in the Federal Register, 61 FR 25672, a proposed consent agreement with analysis In the Matter of The Loewen Group Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

[1] Copies of the Complaint, the Decision and Order, and Commissioner Starek's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC. 20580.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 97–1229 Filed 1–16–97; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3677]

The Loewen Group Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order requires, among other things, a Kentucky-based company to divest one of its three funeral homes in Brownsville, Texas and either a large funeral home in San Benito, Texas, or two smaller funeral homes in Harlingen, Texas, within 12 months, to Commission-approved acquirers. If the transactions are not completed as required, the Commission may appoint a trustee to divest the properties.

DATES: Complaint and Order issued July 29, 1996.[1].

FOR FURTHER INFORMATION CONTACT: Thomas Carter, Dallas Regional Office, Federal Trade Commission, 1999 Bryan St., Suite 2150, Dallas, TX 75201. (214) 979–0907.

SUPPLEMENTARY INFORMATION: On Wednesday, May 22, 1996, there was published in the Federal Register, 61 FR 25677, a proposed consent agreement with analysis In the Matter of The Loewen Group Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 97–1230 Filed 1–16–97; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3676]

The May Department Stores Co.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order requires, among other things, a Missouri-based company to cease unwarranted collection activity on certain acquired credit card accounts, to correct the inaccurate or obsolete credit data it sent to credit reporting agencies concerning these accounts, and to take steps to ensure that the information maintained and reported with respect to the acquired accounts is accurate. In addition, the consent order prohibits the respondent from sending credit cards to consumers, except: in response to an oral or written request or application for the credit card; or as a renewal of, or substitute for, an accepted credit card.

DATES: Complaint and Order issued July 9, 1996.[1]

FOR FURTHER INFORMATION CONTACT: Christopher W. Keller, FTC/S–4429, Washington, DC 20580. (202) 326–3159.

SUPPLEMENTARY INFORMATION: On Tuesday, April 30, 1996, there was published in the Federal Register, 61 FR 19064, a proposed consent agreement with analysis In the Matter of The May Department Stores Company, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 82 Stat. 146, 147; 15 U.S.C. 45, 1601, *et seq.*)

Donald S. Clark,

Secretary.

[FR Doc. 97–1234 Filed 1–16–97; 8:45 am]

BILLING CODE 6750–01–M

[Docket No. C–3688]

Syncronys Softcorp, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, the California-based computer software manufacturer and three of its officers from making performance claims regarding their software programs or any substantially similar product unless the claims are true and substantiated. The consent order also prohibits the respondents from making any claims that a product intended to improve computer performance is licensed, endorsed, authorized, or certified by any person or organization, unless those claims are true.

DATES: Complaint and Order issued October 7, 1996.[1]

FOR FURTHER INFORMATION CONTACT: Michael Bloom or Robin Eichen, Federal Trade Commission, New York Regional Office, 150 William St., Suite 1300, New York, N.Y. 10038. (212) 264–1201.

SUPPLEMENTARY INFORMATION: On Thursday, July 25, 1996, there was published in the Federal Register, 61 FR 38747, a proposed consent agreement with analysis in the Matter of Syncronys Softcorp, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, D.C. 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 97–1233 Filed 1–16–97; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH); Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH).

Time and Date: 8 a.m.–5 p.m., February 4–5, 1997.

Place: Terrace Garden Hotel, Magnolia Room, Terrace Meeting Level Access, 3405 Lenox Road, NE, Atlanta, Georgia 30326.

Status: The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Purpose: The Safety and Occupational Health Study Section will review, discuss and evaluate grant applications in response to NIOSH's standard grants review and funding cycles pertaining to research issues in occupational safety and health and allied areas.

It is the intent of NIOSH to support broad based research endeavors in keeping with the Institute's program goals which will lead to improved understanding and appreciation of the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects which will lead to improvements in the delivery of occupational safety and health services and the prevention of work-related injury and illness.

Research funded will examine and evaluate current and emerging problems in occupational safety and health in a variety of settings for health and injured workers.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Pervis C. Major, Ph.D., Scientific Review Administrator, Office of Extramural Coordination and Special Projects, Office of the Director, NIOSH, 1095 Willowdale Road, Morgantown, West Virginia 26505. Telephone 304/285–5979.

Dated: January 13, 1997.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–1208 Filed 1–16–97; 8:45 am]

BILLING CODE 4163–19–P

Food and Drug Administration

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 56 FR 29484, June 27, 1991, as amended most recently in pertinent part 60 FR 53379, October 13, 1995) is amended to reflect an organizational change in the Office of Testing and Research and the Office of Pharmaceutical Science, Center for Drug Evaluation and Research (CDER), in the Food and Drug Administration (FDA).

CDER believes this organizational change will improve operations management and strengthen the existing research and testing structure to more effectively accomplish the Center's mission.

Under section HF–B, Organization:

1. Delete the subparagraphs under the Chemistry Policy Staff (HFNS1), Office of Pharmaceutical Science and insert the following new subparagraphs under Product Quality Support Staff (HFNS1), reading as follows:

Product Quality Support Staff (HFNS1). Manages and facilitates the development, review, coordination, dissemination, organization, and implementation of new chemistry manufacturing policies, procedures, and guidelines related to chemistry and microbiology reviews of new and generic drug applications.

Performs assessments of environmental impact of actions within the drug approval system which may significantly affect the quality of the human environment.

Performs quality assurance and quality control functions for chemistry reviews of both new and generic drug applications.

Provides support for the operations of quality expert working groups or committees focused on the chemistry manufacturing control technical aspects of the drug review process.

Provides necessary training for chemists, as appropriate.

Develops and implements policies and procedures in support of compendial operations and directs appropriate programs related to compendial initiatives.

2. Delete the subparagraphs under the Formulation Research Staff (HFNS2), Office of Pharmaceutical Science (HFNS) in its entirety.

3. Delete the subparagraphs under the Office Testing and Research (HFNSD) in its entirety and insert new subparagraphs reading as follows:

Office of Testing and Research (HFNSD). Conducts research and develops scientific standards on the composition, quality, safety, and effectiveness of human drug products.

Directs the FDA insulin certification program.

Directs large scale drug quality surveillance activities for the Center as required by regulations.

Conducts and coordinates basic and applied research.

Provides scientific training for new employees through the development and coordination of Staff College programs.

Sponsors cooperative university-based and industry-linked education programs for postdoctoral traineeships and sabbatical programs. Initiates and coordinates the holding of scientific workshops.

In coordination with the Office of the Commissioner, educates the public on Center and Agency policy and activities.

4. Insert the following new subparagraphs under the Regulatory Research and Analysis Staff (HFNSD–1), *Office of Testing and Research (HFNSD)* reading as follows:

Regulatory Research and Analysis Staff (HFNSD–1). Serves as the scientific and regulatory liaison to the FDA National Center for Toxicological Research, the National Institute of Environmental Health Sciences National Toxicology Program and other Federal agencies. Coordinates Center-sponsored and Center-related research and communicates scientific information to the Office of Review Management, the Pharmacology/Toxicology Coordinating Committee and the Center's review divisions.

Establishes and maintains a computerized toxicology knowledge database using data derived from Center files in areas such as carcinogenicity, reproductive toxicity, developmental toxicity and genotoxicity. Application of this resource includes regulatory review support, international harmonization,

and the development of Center regulatory policy and guidance.

Evaluates the potential application of computer-based toxicology predictive modeling systems for pharmaceuticals. Utilizes toxicology information in Center databases to enhance the predictive power of modeling systems for pharmaceuticals.

5. Insert the following new subparagraphs under the Laboratory of Clinical Pharmacology (HFNSD–2), *Office of Testing and Research (HFNSD)* reading as follows:

Laboratory of Clinical Pharmacology (HFNSD–2). Serves as the Center's principal resource for laboratory research which is related to the discipline of clinical pharmacology.

Develops preclinical model systems which assist in expediting the initiation of early clinical trials.

Collaborates with the Office of Clinical Pharmacology and Biopharmaceutics and other Center components on appropriate research.

Collaborates in joint projects with other Government agencies.

6. Prior Delegations of Authority. Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to positions of the affected organizations in effect prior to this date shall continue in effect in them or their successors.

Dated: December 27, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–1201 Filed 1–16–97; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 35, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443–1129.

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.

Proposed Project: Area Health Education Centers (AHEC) and Health Education Training Centers (HETC): Managed Care Inventory Project—New—Section 746(a) of the Public Health Service Act authorizes Federal assistance to schools of medicine (allopathic and osteopathic) which have cooperative arrangements with one or more public or nonprofit private area health education centers (AHECs) for the planning, development and operation of area health education center programs. Section 746(f) of the PHS Act authorizes Federal assistance to schools of allopathic and osteopathic medicine, or parent institutions on behalf of such schools, or a consortium of such schools to plan, develop, establish, maintain or operate HETCs. The support is designed to improve the supply, distribution, quality, and efficiency of (a) personnel providing health services in the State of Florida or along the border between the United States and Mexico and (b) personnel providing, in other urban and rural areas of the U.S., health services to any population group, including Hispanic individuals and recent refugees, that have demonstrated serious health care needs. Program support is also used to encourage health promotion and disease prevention through public education.

A telephone survey is proposed of federally funded AHEC and HETC programs to determine the variety and extent of managed care training activities that are ongoing or planned within the next two years. The survey results will be used to formulate recommendations for managed care training, and to help guide the AHEC/HETCs in planning and directing training programs and clinical experience in managed care. The burden estimates are as follows:

Type of center	No. of respondents	Responses per respondent	Hours per response	Total burden hours
AHECs	36	1	2 hrs	72 hrs.
HETCs	10	1	2 hrs	20 hrs.
Total	46	1	2 hrs	92 hrs.

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 14, 1997.

J. Henry Montes,

Director, Office of Policy and Information Coordination.

[FR Doc. 97–1260 Filed 1–16–97; 8:45 am]

BILLING CODE 4160–15–P

National Vaccine Injury Compensation Program: Revised Amount of the Average Cost of a Health Insurance Policy

The Health Resources and Services Administration is publishing an updated monetary amount of the average cost of a health insurance policy as it relates to the National Vaccine Injury Compensation Program (VICP).

Subtitle 2 of Title XXI of the Public Health Service Act, as enacted by the National Childhood Vaccine Injury Act of 1986 and as amended, governs the VICP. The VICP, administered by the Secretary of Health and Human Services (the Secretary), provides that a proceeding for compensation for a vaccine-related injury or death shall be initiated by service upon the Secretary and the filing of a petition with the United States Court of Federal Claims. In some cases, the injured individual may receive compensation for future lost earnings, less appropriate taxes and

the ''average cost of a health insurance policy, as determined by the Secretary.''

Section 100.2 of the VICP's implementing regulations (42 CFR part 100) provides that revised amounts of an average cost of a health insurance policy, as determined by the Secretary, are to be published from time to time in a notice in the Federal Register. The previously published amount of an average cost of a health insurance policy was $202.46 per month (60 FR 32533, June 22, 1995); this amount was based on data from a survey by the Health Insurance Association of America, updated by a formula using changes in the medical care component of the Consumer Price Index (CPI) (All Urban Consumers, U.S. City average) for the period July 1, 1993, through December 31, 1994.

The Secretary announces that for the 12-month period, January 1, 1995, through December 31, 1995, the medical care component of the CPI increased 3.9 percent. According to the regulatory formula (§ 100.2), 2 percent is added to the actual CPI change for each year. Therefore, the adjusted CPI change results in an increase of 5.9 percent for this 12-month period. Applied to the baseline amount of $202.46, this results in the amount of $214.41.

The medical care component of the CPI change for the 6-month period, January 1, 1996, through June 30, 1996, was 1.8 percent. According to the regulatory formula, one-half of the annual adjustment, or 1.00 percent, is added to the actual CPI change for this 6-month period. Therefore, according to the current regulatory formula, the adjusted CPI change results in an increase of 2.8 percent for this 6-month period. Applied to the $214.41 amount, this results in a new amount of $220.41.

Therefore, the Secretary announces that the revised average cost of a health insurance policy under the VICP is $220.41 per month. In accordance with § 100.2, the revised amount was effective upon its delivery by the Secretary to the United States Court of Federal Claims (formerly known as the United States Claims Court). Such notice was delivered to the Court on December 13, 1996.

Dated: January 10, 1997.

Ciro V. Sumaya,

Administrator.

[FR Doc. 97–1203 Filed 1–16–97; 8:45 am]

BILLING CODE 4160–15–P

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, the SAMHSA Reports Clearance Officer on (301) 443–8005.

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.

Proposed Project: Access to Community Care and Effective Services and Supports (ACCESS) evaluation study—Revision—The Center for Mental Health Services (CMHS) will seek OMB approval to continue an evaluation study that is assessing service systems integration (SI) approaches for homeless persons with serious mental illnesses. The evaluation study will collect data through interviews with homeless persons with serious mental illness and providers of services to homeless persons. SI sites will be contrasted with comparison sites to assess the impact of SI. The evaluation will describe approaches to SI, processes by which SI takes place, factors that influence SI, and the impact that SI has on homeless persons with serious mental illness. The estimated annualized burden is shown below.

	Number of respondents (5 Years)	Number of responses per respondent	Average burden per response	Total burden hours (5 Years)	Total annualized burden hours
Clients (homeless persons)	7,200	2.6	.98	18,702	3,742
Service providers	1,159	111.6	.11	13,587	2,717

Send comments to Beatrice Rouse, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 12, 1997.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Administration.

[FR Doc. 97–1209 Filed 1–16–97; 8:45 am]

BILLING CODE 4162–20–P

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, the SAMHSA Reports Clearance Officer on (301) 443–8005.

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.

Proposed Project: The Annual Census of Patient Characteristics in State and County Mental Hospital Inpatient Services—Revision—The Census is a

complete enumeration of all State and county mental hospitals and collects aggregate information by age, gender, and diagnosis for each State on the number of additions during the year and resident patients who are physically present for 24 hours per day in the inpatient service at the end of the reporting year. First conducted in 1840, the Census has provided information throughout the years that is not available from any other sources. The Census is the primary means within the Center for Mental Health Services for assessing deinstitutionalization practices of State and county mental hospitals. The annual burden estimate is as follows:

	No. of respondents	No. of responses per respondent	Average burden per response	Total annual burden
State Statisticians and Superintendents of State Mental Hospitals	58	1	2 hrs	116 hrs.

Send comments to Beatrice Rouse, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 14, 1997.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 97–1261 Filed 1–16–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4124–N–21]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street S.W, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR Part 581 and section 501 of the Steward B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR Part 381.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the Federal Register, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: COE: Mr. Bob Swieconek, Army Corps of Engineers, Civilian Facilities Pulaski Building, Room 4224, 20 Massachusetts Avenue, NW., Washington, DC 20314–1000; (202) 761–1753; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–2059; Navy: Mr. John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; Energy: Ms. Marsha Penhaker,

Department of Energy, Facilities Planning and Acquisition Branch, FM–30, Room 6H–058, Washington, DC 20585; (202) 586–1191; Interior: Ms. Lola D. Knight, Property Management Specialist, Department of the Interior, 1849 C Street, NW., Mail Stop 5512–MIB, Washington, DC 20240; (202) 208–4080; (These are not toll-free numbers).

Dated: January 10, 1997.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 01/17/97

Suitable/Available Properties

Buildings (by State)

Colorado

Weather Service Forecast Ofc.
Limon Co: Lincoln, CO 80828–
Landholding Agency: GSA
Property Number: 549640019
Status: Excess
Comment: 2650 sq. ft., needs repair, most recent use—office, existing easements
GSA Number: 7–C–CO–640.

Mississippi

Old Greenville Depot
Greenville Co: Washington, MS 38701–
Landholding Agency: GSA
Property Number: 549640020
Status: Excess
Comment: 3365 sq. ft. bldg., 3.442 acres, most recent use—office, garage and mooring site for Coast Guard, periodic flooding, wetlands
GSA Number: 4–U–MS–551.

Virginia

Young Property
Rt. 2, Box 547
Galax Co: Grayson, VA 24333–
Landholding Agency: Interior
Property Number: 619640007
Status: Unutilized
Comment: 1113 sq. ft. residence, guest cottage, shop building, storage shed, off-site use only.

Walker Property
Rt. 2, Box 553
Galax Co: Grayson, VA 24333–
Landholding Agency: Interior
Property Number: 619640008
Status: Unutilized
Comment: 1200 sq. ft. residence, feed shed, workshop, haybarn, storage shed, spring house, off-site use only.

Nichols Property
Rt. 2, Box 554
Galax Co: Grayson, VA 24333–
Landholding Agency: Interior
Property Number: 619640009
Status: Unutilized
Comment: 1520 sq. ft. residence, off-site use only.

Golding Property
Rt. 2, Box 555
Galax Co: Grayson, VA 24333–
Landholding Agency: Interior
Property Number: 619640010
Status: Unutilized
Comment: 2224 sq. ft. residence, needs repair, barn rental cottage, shed, off-site use only.

Suitable/Unavailable Properties

Buildings (by State)

Ohio

Bldg.—Berlin Lake
7400 Bedell Road
Berlin Center Co: Mahoning OH 44401–9797
Landholding Agency: COE
Property Number: 319640001
Status: Unutilized
Comment: 1420 sq. ft., 2-story brick w/garage and basement, most recent use—residential, secured w/alternate access.

Pennsylvania

Govt. Dwelling
Younghiogheny River Lake
Confluence Co: Fayette, PA 15424–9103
Landholding Agency: COE
Property Number: 319640002
Status: Unutilized
Comment: 1421 sq. ft., 2-story brick w/basement, most recent use—residental.

Unsuitable Properties

Buildings (by State)

California

Bldgs. 7010, 7013
Naval Air Weapons Station, Point Mugu Co: Ventura, CA 93042–5001
Landholding Agency: Navy
Property Number: 779640045
Status: Unutilized
Reason: Extensive deterioration.

Hawaii

Bldg. 4
Iroquois Point Housing
Ewa Beach Co: Honolulu, HI 96706–
Landholding Agency: Navy
Property Number: 779640046
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 682
Naval Submarine Base
Pearl Harbor Co: Honolulu, HI 96860–6500
Landholding Agency: Navy
Property Number: 779640047
Status: Unutilized
Reason: Extensive deterioration.

Illinois

Bldg. 305
Argonne National Laboratory
Argonne CO: DuPage, IL 60439–
Landholding Agency: Energy
Property Number: 419640007
Status: Unutilized
Reason: Extensive deterioration.

New York

Bldgs. 501, 502
Scotia Storage Depot
Scotia, NY 12302–
Landholding Agency: GSA
Property Number: 549640021
Status: Excess
Reason: Extensive deterioration.
GSA Number: 1–G–NY–554E.

North Carolina

Swain Green House
Gashes Creek Rd.
Asheville Co: Buncombe NC 28803–
Landholding Agency: Interior
Property Number: 619640006
Status: Unutilized
Reason: Extensive deterioration.

Virginia

Matthews Property
Rt. 2
Galax Co: Grayson, VA 24333–
Landholding Agency: Interior
Property Number: 619640005
Status: Unutilized
Reason: Extensive deterioration.

[FR Doc. 97–1026 Filed 1–16–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary; Alaska Land Managers Forum

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior hereby gives notice of a public meeting of the Alaska Land Managers Forum to be held at 10 a.m. on January 30, 1997. The Department is holding this meeting to receive and discuss proposed work program topics on recreation and tourism.

DATES: The meeting will be held on January 30, 1997, at 10 a.m.

ADDRESSES: The meeting will be held at the U.S. Federal Building and Courthouse, 709 West 9th, Room 541A, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Ronald B. McCoy at (907) 271–5485 or Sally Rue at (907) 465–4084.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), and 41 CFR 101–6.1015(b).

The Alaska Land Managers Forum is a Federal Advisory Committee consisting of representatives of land management agencies of the Departments of Agriculture and the Interior and the State of Alaska, and Alaska Natives.

Dated: January 14, 1997.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 97–1387 Filed 1–16–97; 8:45 am]

BILLING CODE 4310–10–M

Fish and Wildlife Service

Letters of Authorization to Take Marine Mammals

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of Letters of Authorization to take marine mammals incidental to oil and gas industry activities.

SUMMARY: In accordance with section 101(a)(5) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service implementing regulations (50 CFR 18.27(f)(3)), notice is hereby given that Letters of Authorization to take polar bears and Pacific walrus incidental to oil and gas industry exploration, development, and production activities have been issued to the following companies:

Company	Activity	Date issued
Northern Geophysical of America, Inc. Exploration.	.....	Oct. 31, 1996.
Western Atlas International, Inc.	Exploration ..	Oct. 31, 1996.
BP Exploration (Alaska) Inc.	Exploration ..	Nov. 7, 1996.
BP Exploration (Alaska) Inc.	Production ...	Dec. 10, 1996.
BP Exploration (Alaska) Inc.	Exploration ..	Dec. 11, 1996.
BP Exploration (Alaska) Inc.	Development	Dec. 20, 1996.
ARCO Alaska, Inc.	Exploration ..	Dec. 24, 1996.
Western Atlas International, Inc.	Exploration ..	Dec. 24, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Bridges at the U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 786–3810.

SUPPLEMENTARY INFORMATION: Letters of Authorization were issued in accordance with U.S. Fish and Wildlife Service Federal Rules and Regulations ''Marine Mammals; Incidental Take During Specified Activities'' (58 FR 60402; November 16, 1993); modified and extended (60 FR 42805; August 17, 1995).

Dated: January 3, 1997.

Robyn Thorson,

Deputy Regional Director.

[FR Doc. 97–1131 Filed 1–16–97; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[NM–952–07–1420–00]

Notice of Filing of Plat of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below will be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on February 7, 1996.

New Mexico Principal Meridian, New Mexico

T. 27 N., R. 18 W., accepted August 16, 1996, and T. 28 N., R. 18 W., Accepted August 16, 1996, for Group 870 NM., and T. 22 N., R. 21 W., NM, Accepted September 25, 1996, for Group 871 NM, and a Protraction Diagram for T. 4 N., R. 3 W., accepted October 10, 1996.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

The above-listed plats represent dependent resurveys, surveys, and subdivisions.

These plats will be in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: January 7, 1997.

John P. Bennett,

Chief Cadastral Surveyor for New Mexico.

[FR Doc. 97–1155 Filed 1–16–97; 8:45 am]

BILLING CODE 4310–FB–M

[ID–990–1020–01]

Upper Snake River Districts Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council meeting location and time.

SUMMARY: In accordance with Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM) council meeting of the Upper Snake River Districts Resource Advisory Council will be held as indicated below. The meeting will involve a discussion on healthy rangeland standards and guidelines, and the Upper Columbia Basin EIS. All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will have a time allocated for hearing public comments. The public comment period for the Council meeting is listed below. Depending on the number of persons wishing to comment, and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Debra Kovar at the Shoshone Resource Area Office, P.O. Box 2–B, Shoshone, ID, 83352, (208) 886–7201.

DATE AND TIME: Date is January 29, 1997, starts at 1:00 p.m. at the Health & Welfare Regional Office, 601 Pole Line Road, Twin Falls, Idaho, Public comments from 1:00 p.m.–1:30 p.m.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the public lands.

FOR FURTHER INFORMATION: Contact Debra Kovar, Shoshone Resource Area Office, P.O. Box 2–B, Shoshone, ID 83352, (208) 886–7201.

Dated: January 10, 1997.

Gary Bliss,

Acting District Manager.

[FR Doc. 97–1156 Filed 1–16–97; 8:45 am]

BILLING CODE 4310–GG–M

[OR–050–1020–00: GP7–0067]

Notice of Meeting of John Day-Snake Resource Advisory Council

AGENCY: Bureau of Land Management, Prineville District.

ACTION: Meeting of John Day-Snake Resource Advisory Council: Pendleton, Oregon; February 27, 1997.

SUMMARY: A meeting of the John Day-Snake Resource Advisory Council will be held on February 27, 1997 from 8:00 am to 5:00 pm, at the Red Lion Inn, 304 SE Nye Ave, Pendleton, Oregon. Public comments will be received from 1:00 pm to 2:00 pm on February 27, 1997. Topics to be discussed include the Interior Columbia Basin Ecosystem Management Project, Standards for Rangeland Health and Guidelines for Livestock Grazing on public lands, and Council Work Plan for 1997.

FOR FURTHER INFORMATION CONTACT: James L. Hancock, Bureau of Land Management, Prineville District Office, 3050 NE Third Street, Prineville, Oregon 97754, or call 541–416–6700.

James L. Hancock,

District Manager.

[FR Doc. 97–1188 Filed 1–16–97; 8:45 am]

BILLING CODE 4310–33–M

[NM–030–1430–01]

Emergency Restriction on Use of Trails on Public Land, Catron County, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Emergency Use Restriction.

SUMMARY: Notice is hereby given that the Las Cruces District is implementing an emergency use restriction on two vehicle trails leading into private property. Effective immediately, the use of motorized vehicles on the following described vehicle trails is restricted to the period from August 15 through November 30 of each year. Motorized vehicles are prohibited from using the trails each year during the period from December 1 through August 14.

The use restriction is implemented to prevent damage to the adjacent and nearby private property. The need for the emergency restriction was based on recurring incidents of property damage and vandalism to improvements on the private property accessed by the vehicle trails. The authority for this emergency restriction is 43 CFR 8364.1: Closure and Restriction Orders. The first vehicle trail begins on the north boundary of U.S. Highway 60, within the public land in section 22 and ends on the south boundary of section 15, all in T. 1 N., R. 17 W., NMPM. The second vehicle trail begins on the north boundary of U.S. Highway 60, within public land in the NW¼ of section 22 and ends on the boundary between sections 16 and 21, all in T. 1 N., R. 17 W., NMPM.

The use restriction is not intended to affect valid existing rights or other public land uses on the subject land or rights-of-way of any private landowners. This order is not intended to affect uses or restrictions on New Mexico State-owned land. Persons that are exempt from this restriction are Mr. Robert Wellborn, 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 order is effective immediately 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 order are punishable by fines not to exceed $1,000 and/or imprisonment not to exceed 1 year.

This use restriction will be evaluated in an environmental assessment to be completed by the Socorro Resource Area in the near future. Copies of the restriction order and maps showing the location of the trails are available from the Socorro Resource Area Office, 198 Neel Avenue, NW., Socorro, New Mexico 87801.

Dated: January 10, 1997.

Richard T. Watts,

Acting District Manager.

[FR Doc. 97–1207 Filed 1–16–97; 8:45 am]

BILLING CODE 4310–VC–P

[NM–930–1310–01; NMNM 83040]

New Mexico: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease NMNM 83040 for lands in Eddy County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from January 1, 1996, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this Federal Register notice.

The Lessee has met all the requirements for reinstatement of the lease as set out in Sections 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective January 1, 1996, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Gloria S. Baca, BLM, New Mexico State Office, (505) 438–7566.

Dated: January 10, 1997.

Gloria S. Baca,

Land Law Examiner.

[FR Doc. 97–1189 Filed 1–16–97; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Revision of The National List of Plant Species That Occur in Wetlands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and request for comments.

SUMMARY: The U.S. Fish and Wildlife Service seeks public input and comment on a revised National List of Plant Species That Occur in Wetlands (Reed 1988) (hereafter, ''National list''). The revised National list conforms to Kartesz (1994). A wetland indicator was assigned to each species that expresses the fidelity to wetlands by region and sub-region. The National list was originally developed as an appendix to Cowardin et al.(1979). The National list has also been used to determine the presence of hydrophytic vegetation in the Clean Water Act Section 404 wetland regulatory program and in implementing the swampbuster provisions of the Food Security Act.

DATES: Comments on the revised National list must be received by April 15, 1997.

ADDRESSES: Copies of the revised National list including its regional subdivisions are available on February 15, 1997, from the Fish and Wildlife Service, National Wetlands Inventory, Suite 101, Monroe Building, 9720 Executive Center Drive, St. Petersburg, FL 33702–2440. Electronic copies of the

above lists are available for downloading from the World Wide Web at http://www.nwi.fws.gov/ecology.htm. Written comments may be submitted to the Fish and Wildlife Service, National Wetlands Inventory, Suite 101, Monroe Building , 9720 Executive Center Drive, St. Petersburg, FL 33702–2440, faxed to (813) 570–5409, or electronically transmitted to: ecology@wetlands.nwi.fws.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Porter B. Reed, Jr., Fish and Wildlife Service, at (813) 570–5425, Dr. Russell Theriot, U.S. Army Corps of Engineers, at (601) 634–2733, Mr. William Sipple, Environmental Protection Agency, at (202) 260–6066, or Dr.Norman Melvin, Natural Resources Conservation Service, at (301) 497–5933.

SUPPLEMENTARY INFORMATION: The 1996 National list is a revision of Reed (1988). The revised National list is provided to encourage additional public review and comments on the draft regional wetland indicator assignments. The National list was produced under the guidance of National and Regional Interagency Review Panels composed of representatives of the Fish and Wildlife Service, U.S. Army Corps of Engineers, Environmental Protection Agency, and the Natural Resources Conservation Service. The National Panel provides guidance and direction for the development and maintenance of the National list. The wetland ecologist of the National Wetlands Inventory, Fish and Wildlife Service, coordinates the activities of the National Panel.

The National Panel meets as necessary to review Regional Interagency Review Panel progress and to set future direction and goals. The Regional Panels solicit and obtain information from their agency personnel, regional reviewers, and from published literature. This information is used by the Regional Panels to assign regional wetland indicators. The Regional Panels are coordinated by a Fish and Wildlife Service representative, usually the Regional Wetland Inventory Coordinator. The Regional Panels also meet as necessary to consider and assess all new submissions recommending changes to the National list that relate to their respective regions.

In 1996, the cooperating agencies responsible for the development and continued enhancement of the National list signed an ''Agreement for Coordination in the Refinement of the National list of Vascular Plant Species That Occur in Wetlands.'' The National list is a combination of the Regional lists into a single list and will be released as a Fish and Wildlife Service publication available to the other agencies and the public. The production of new National lists will occur every 5 years. If changes to the Regional lists become necessary outside the 5-year cycle, those changes will be made in compliance with these procedures.

The National list will remain dynamic and the submission of well documented review comments based on field experience is encouraged. All scientific plant names included in a submission must be contained in the 1994 Synonymized Checklist or the Natural Resource Conservation Agency's PLANTS database http// trident.ftc.nrcs.usda.gov/npdc/. Complete documentation, including a description and explanation of the variety of field sites and/or data supporting the recommended wetland indicator, is necessary for the Regional Interagency Review Panels to adequately understand and consider a submission. To assist in documentation and to facilitate the review, a submission should contain a strong rationale supporting the proposed recommendation including the extent of the area that the field experience and data provided are based. Information presented in the submission from botanical and ecological texts and periodicals should be supplied with the citation of the source. The rationale should clearly discuss, as part of the field information, the percentage of occurrence of the taxon in both wetland and non-wetland areas. A complete submission ideally should present, for each field site referenced in the submission, community information including the scientific names, quantitative measurements of vegetation (e.g. density, frequency, cover, or importance data), soils data including classification and morphology (especially the presence of field indicators (USDA 1996), hydrologic data (especially any intensive water table and redox potential monitoring), and landscape position. A review form is provided with the 1996 National list on the Ecology Section World Wide Web site to facilitate review submission. Completed review forms can be delivered by the World Wide Web to ecology@wetlands.nwi.fws.gov.

Literature Cited

Cowardin, L.M., V. Carter, F.C. Golet, and E.T. LaRoe. 1979. Classification of Wetlands and Deepwater Habitats of the United States. U.S. Fish & Wildlife Service. FWS/OBS–79/31. 103pp.

Kartesz, John T. 1994. A Synonymized Checklist of the Vascular Flora of the United States, Canada, and Greenland. Volume I—Checklist & Volume II—Thesaurus. Timber Press, Portland, OR. Vol. I: 622 pp. Vol. II: 816 pp.

Reed, Jr., Porter B. 1988. National List of Plant Species That Occur in Wetlands: National Summary. U.S. Fish & Wildlife Service. Biol. Rep. 88 (24). 244 pp.

U.S. Department of Agriculture, Natural Resources Conservation Service. 1996. Field Indicators of Hydric Soils in the United States. G.W. Hurt, Whited, P.M., and Pringle, R.F. (eds.). USDA, NRCS, Fort. Worth, TX.

Dated: January 6, 1997

John G. Rodgers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–1255 Filed 1–16–97; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[OR–957–00–1420–00: G7–0013]

Filing of Plats of Survey: Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

WILLAMETTE MERIDIAN

Oregon

T. 40 S., R. 2 E., accepted November 19, 1996
T. 2 N., R. 6 E., accepted October 18, 1996
T. 39 S., R. 13 E., accepted November 29, 1996
T. 28 S., R. 14 E., accepted August 29, 1996
T. 16 S., R. 36 E., accepted October 28, 1996
T. 22 S., R. 3 W., accepted October 28, 1996
T. 5 S., R. 6 W., accepted August 28, 1996

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management,

Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision, For Further Information Contact: Bureau of Land Management, (1515 S.W. 5th Avenue) PO Box 2965, Portland, Oregon 97208.

Dated: January 6, 1997.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 97–1132 Filed 1–16–97; 8:45 am]

BILLING CODE 4310–33–M

[NM–010–1430–01; NMNM 97074]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 2,434.56 acres of Federal lands and 1,076.97 acres of non-Federal lands in Taos and Rio Arriba Counties to protect the recreational and scenic values of the Rio Grande Corridor, NM. This notice closes the land for up to 2 years from surface entry and mining.

DATES: Comments and requests for a public meeting must be received by April 17, 1997.

ADDRESSES: Comments and meeting requests should be sent to the Albuquerque District Manager, BLM, 435 Montano Road N.E., Albuquerque, New Mexico 87107.

FOR FURTHER INFORMATION CONTACT: Francina Martinez, BLM, Taos Resource Area Office, (505) 758–8851.

SUPPLEMENTARY INFORMATION: On January 3, 1997, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land and non-public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

New Mexico Principal Meridian

Federal Lands

T. 23 N., R. 9 E.,
Sec. 22, SE¼SE¼;
Sec. 23, lots 1 to 4, inclusive;
Sec. 24, SW¼NW¼ and N½SW¼ except 2.84 acres in tract A;
Sec. 26, NW¼NW¼;
Sec. 27, NE¼, SE¼NW¼, SW¼, and W½SE¼;
Sec. 34, N½NW¼, SW¼NW¼, and N½SW¼.
T. 23 N., R. 10 E.,
Sec. 15, lots 6 to 9, inclusive;
Sec. 16, lot 3, and SW¼SW¼;
Sec. 19, lots 14, 20 to 22, inclusive, lots 36 and 37;
Sec. 20, lots 13 to 16, inclusive;
Sec. 21, lots 1 and 2, and 6 to 8, inclusive.
T. 24 N., R. 11 E.,
Sec. 32, lot 3.
T. 25 N., R. 11 E.,
Sec. 35, lot 1, N½NE¼, SW¼NE¼, NW¼SE¼;
Sec. 36, lot 1.
T. 27 N., R. 11 E.,
Sec. 36, lots 5 to 7, inclusive, and a parcel of land lying along the west boundary and within the Antoine Leroux Land Grant.
T. 27 N., R. 12 E.,
Sec. 30, SW¼NE¼, SE¼NW¼, E½SW¼, and W½SE¼;
Sec. 31, lots 1 to 4, inclusive, N½NW¼, and 130 acres of the Antoine Leroux Land Grant meandering the east boundary of the Rio Grande.
T. 28 N., R. 12 E.,
Sec. 10: N½NW¼ except patent # 39879.

The areas described aggregate 2,434.56 acres in Taos and Rio Arriba Counties.

Non-Federal Lands

T. 23 N., R. 9 E.,
Sec. 23, tract A, NE¼SW¼, and SE¼;
Sec. 24, lot 1, tract A, patent #178, patent #179, N½NE¼, SW¼NE¼, SE¼NW¼, SW¼SW¼, and NW¼SE¼.
T. 23 N., R. 10 E.,
Sec. 16, lots 1 to 2, inclusive, small holding claim (SHC) 966 tr. 2, SHC 2143, and SHC 1536.
Sec. 19, lots 3 to 4, inclusive and lots 13, 29, and 30, SHC 3266, SHC 388, SHC 969, SHC 561 tr. 3, SHC 559 tr. 1, SHC 556 tr. 2, SHC 560 tr. 2 and 4, SHC 792 tr. 1 and 2, SHC 792 (2), SHC 966, SHC 380 tr. 3, SHC 386, SHC 389, SHC 382 tr. 1, and SHC 494 tr. 2.
Sec. 20, lots 1, 3, 4, SHC 560 tr. 4, SHC 968 tr. 2, SHC 556 tr. 3, SHC 1121 Borrego, Archuleta, Roybal, SHC 561 tr. 4, SHC 798 Romero, Bolton, SHC 801 tr. 1, 2, & 3, SHC 1000, SHC 1120, SHC 4472 tr. 2, and SHC 1111 tr. 3.
Sec. 21, SHC 1111 tr. 3, SHC 1120, SHC 966 tr. 1, SHC 349, SHC 355, SHC 402, SHC 403, SHC 488, SHC 487 tr. 1 & 2, SHC 490 Romero, Roybal, SHC 487 Romero, Ortega, SHC 966 tr. 2, SHC 2143, and SHC 1536.

The areas described aggregate 1,076.972 acres in Rio Arriba County.

The purpose of the proposed withdrawal is to protect the recreational and scenic values of the Rio Grande Corridor, NM.

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 Albuquerque 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 Albuquerque 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 meetings.

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 cancelled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature but only with the approval of an authorized officer of the Bureau of Land Management.

Dated: January 7, 1997.

Michael R. Ford,

District Manager.

[FR Doc. 97–1187 Filed 1–16–97; 9:06 am]

BILLING CODE 4310–FB–P

[NM–038–1100–00; NMNM95104]

Notice of Public Meeting: Proposed Withdrawal; Devil's Backbone Bighorn Sheep Habitat Area, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with 43 CFR 2310.3–1, notice is hereby given that a public meeting will be held to provide the public an opportunity to obtain information and to identify issues related to the BLM's proposed withdrawal of 5,607.52 acres of public land in Socorro County, New Mexico to protect State endangered desert bighorn

sheep habitat in the Devil's Backbone Bighorn Sheep Habitat Area.

DATES: The public meeting will be held on February 24, 1997 at 2 p.m. in the Socorro Resource Area Office, 198 Neel Avenue NW, Socorro, New Mexico 87801.

ADDRESSES: Additional information regarding the scheduled public meeting may be obtained at the Socorro Resource Area Office, 198 Neel Avenue NW, Socorro, New Mexico 87801.

FOR FURTHER INFORMATION CONTACT: Lois Bell, BLM, Socorro Resource Area Office, 198 Neel Ave, NW, Socorro, New Mexico 87801, or telephone (505) 835–0412.

SUPPLEMENTARY INFORMATION: On November 22, 1996, a petition was approved allowing the BLM to file an application to withdraw the subject public land from settlement, sale, location and entry under the general land laws, including the mining laws, subject to valid existing rights.

Dated: January 10, 1997.

Richard T. Watts,

Acting District Manager.

[FR Doc. 97–1206 Filed 1–16–97; 8:45 am]

BILLING CODE 4310–VC–P

National Park Service

Concession Contract Negotiations; Gateway National Recreation Area

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession contract authorizing marina and food service facilities and services for the public at Gateway National Recreation Area for a period of approximately fifteen (15) years from date of contract execution.

EFFECTIVE DATE: March 18, 1997.

ADDRESSES: Interested parties should contact the Superintendent, Jamaica Bay/Breezy Point Unit, Gateway National Recreation Area, Floyd Bennett Field, Brooklyn, NY 11234. Telephone (718) 318–4300, to obtain a copy of the prospectus describing the requirements of the proposed contract. The cost for each prospectus will be $100.00.

SUPPLEMENTARY INFORMATION: This contract has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The existing concessioner does not have a right of preference in the renewal of its contract. The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal must be received by the Superintendent, New England System Support Office, not later than the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: December 23, 1996.

Sandra S. Corbett,

Acting Field Director, Northeast Field Area.

[FR Doc. 97–1197 Filed 1–16–97; 8:45 am]

BILLING CODE 4310–70–M

Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Aniakchak National Monument and the Chairperson of the Subsistence Resource Commission for Aniakchak National Monument announce a forthcoming meeting of the Aniakchak National Monument Subsistence Resource Commission.

The following agenda items will be discussed:

(1) Introduction of Commission members and guests.
(2) Superintendent's welcome.
(3) Review Commission's role and purpose.
(4) Status of Commission membership.
(5) Election of Officers:
  a. Chair.
  b. Vice Chair.
(6) Old business:
  a. Review and approve minutes from last meeting (November 5–6, 1992).
  b. Status of 1992 *Draft* Hunting Plan Recommendations:
  1. Recommendation 92–1 (NPS should continue to allow trapping within Aniakchak National Monument and use of traditional place names.)
  2. Recommendation 92–2 (NPS should continue to allow subsistence hunting within Aniakchak National Monument.)
  3. Recommendation 92–3 (Commission supports development of a list of qualified subsistence users for the Monument.)
  4. Recommendation 92–4 (Revise existing customary and traditional determinations for brown bear, caribou, hares, moose and ptarmigan within Unit 9(E) to allow residents of Chignik, Chignik Lake, Chignik Lagoon, Meshik, Port Heiden, Ivanof Bay and Perryville to take wildlife within Aniakchak National Monument.)
  5. Recommendation 92–6 (Commission supports NPS moose studies in Unit 9(E).)
(7) New business:
  a. National Park Service report on Subsistence Issues Paper.
  b. Federal Subsistence Program Update.
(8) Public and other agency comments.
(9) Subsistence Hunting Plan Work Session:
  a. Finalize recommendations.
  b. Draft new recommendations.
(10) Set time and place of next SRC meeting.
(11) Adjournment.

DATES: The meeting will begin at 9 a.m. on Tuesday, February 4, and conclude around 6 p.m. The meeting will reconvene at 9 a.m. on Wednesday, February 5, and conclude at 12 noon.

LOCATION: The meeting will be held at the Chignik Lake School in Chignik Lake, Alaska.

FOR FURTHER INFORMATION CONTACT: Bill Pierce, Superintendent, or Susan Savage, Subsistence Manager, Aniakchak National Monument, P.O. Box 7, King Salmon, Alaska 99613. Phone (907) 246–3305.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

Ralph Tingey,

Acting Field Director.

[FR Doc. 97–1198 Filed 1–16–97; 8:45 am]

BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collections of information for a technical training program course effectiveness evaluation.

DATES: Comments on the proposed information collection must be received

by March 18, 1997, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210—SIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d)). This notice identifies information collections that OSM will be submitting to OMB for approval.

OSM will request a 3-year term of approval for the information collection activity.

Comments are invited on: (1) the need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the equality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will be included in OSM's submissions of the information collection requests to OMB.

The following information is provided for the information collection: (1) title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: Small Operator Assistance.

OMB Control Number: 1029–0061.

Summary: This information collection requirement is needed to provide assistance to qualified small mine operators under section 507(c) of Public Law 95–87. The information requested will provide the regulatory authority with data to determine the eligibility of the applicant and the capability and expertise of laboratories to perform required tasks.

Bureau Form Number: FS–6.

Frequency of Collection: On Occasion.

Description of Respondents: Small operators and State regulatory authorities.

Total Annual Responses: 300.

Total Annual Burden Hours: 12,140 hours.

Dated: January 13, 1997.

Arthur W. Abbs,

Chief, Division of Regulatory Support.

[FR Doc. 97–1108 Filed 1–16–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1831–97]

Important Announcement for Class Members of American Baptist Churches v. Thornburgh (ABC) Regarding Changes of Address and Temporary Closure of the ABC Post Office Box

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice Regarding Changes of Address and Temporary Closure of ABC Post Office Box.

SUMMARY: This Notice informs *ABC* class members who previously submitted a Change of Address Form (I–855) to the *ABC* Post Office Box in Washington, DC, between the period July 1, 1996, through December 6, 1996, that they will need to resubmit these forms to the address listed in this notice. This action is necessary since the *ABC* Post Office Box was temporarily closed, and mail received between the period August 14, 1996, through December 6, 1996, was either returned to the sender by the Post Office or was never properly received by the Immigration and Naturalization Service (''the Service''). This notice also reminds *ABC* class members of the need to notify the Service of any change in address and explains how to obtain change of address forms and other information about *ABC*.

EFFECTIVE DATE: January 18, 1997.

FOR FURTHER INFORMATION CONTACT: Joanna Ruppel, Asylum Officer, Asylum Division, Office of International Affairs, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC, 20536, Attn: ULLICO, Third Floor; Telephone number (202) 305–2741.

SUPPLEMENTARY INFORMATION: Any *ABC* class member who previously sent a Change of Address Form (Form I–855) to the *ABC* Post Office Box between July 1, 1996, through December 6, 1996, must resubmit that change of address form immediately to the following address: *ABC* Project, Immigration and Naturalization Service, P.O. Box 96821, Washington, DC 20090.

The *ABC* Post Office Box was mistakenly closed, and mail received at the *ABC* Post Office Box between August 14, 1996, and December 6, 1996, was returned to sender or otherwise not properly received by the Immigration and Naturalization Service. The Service regrets any inconvenience this error has caused class members.

All *ABC* class members are reminded that they must notify the Service at the *ABC* Post Office Box within 10 days of any change of address. An *ABC* class member may lose the right to an *ABC* asylum interview and may have his or her asylum request denied if he or she fails to appear for an interview because the Service did not receive written notification of the address change. The Service encourages any class member who is unsure whether the Service has the most recent address to resend his or her address to the *ABC* Post Office Box listed in this notice.

Other than by request, the Service will begin *ABC* interviews no sooner than April 7, 1997, and interview notices will not be issued until 60 days from the date of this notice. Any *ABC* class member may request an expedited *ABC* interview by sending a written request to the Asylum Office that has jurisdiction over the applicant's place of residence.

An *ABC* class member may call 1–800–755–0777 to obtain information and to order *ABC* change of address forms and a list of legal service organizations provided by attorneys representing the *ABC* class. The legal service organizations on the list may be able to help class members who have questions or need advice.

Note: The attached *ABC* Change of Address Form, Form I–855, will not appear in the Code of Federal Regulations.

Dated: January 7, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

U.S. DEPARTMENT OF JUSTICE—IMMIGRATION AND NATURALIZATION SERVICE

[ABC Change of Address Form]

AVISO 18

AMERICAN BAPTIST CHURCHES

FORMULARIO PARA CAMBIO DE DIRECCIÓN

(Inglés y Español)

Yo he solicitado la Protección Provisional ''TPS'' o las disposiciones de *American Baptist Churches,* y mi dirección actual es distinta de la que puse en la solicitud.

Nombre y apellido _____

_____

Número de Archivo A–_____

Mi direcciòn ACTUAL de domicilio es:

_____

_____

Mi país de nacimiento es: _____

Fecha de nacimiento: _____

La última dirección que informé a INS es:

_____

_____

Firma _____

Fecha _____

COMPLETE ESTE FORMULARIO Y ENVÍELO A:

ABC Project
Immigration and Naturalization Service
P.O. Box 96821
Washington, DC 20090

No envíe otras cosas a esta dirección. INS no las aceptará.

GUARDE COPIA DE ESTE FORMULARIO.

RECUERDE: SI SE CAMBIE DE DIRECCIÓN DE NUEVO, *DEBE DE INFORMAR AL SERVICIO DE INMIGRACIÓN (''INS''),* EN LA DIRECCIÓN SEÑALADA. PUEDE USAR ESTE FORMULARIO. SI NO INFORMA AL INS SU CAMBIO DE DIRECCIÓN, PODRÍA PERDER SU DERECHO DE UNA NUEVA ENTREVISTA Y DECISIÓN DE ASILO.

En cuanto tenga una solicitud de asilo pendiente con INS, se le recomienda enviar copia de este formulario de *ABC* de cambio de dirección a su oficina local de asilo. Form I–855 (06–29–95)

NOTICE 18

AMERICAN BAPTIST CHURCHES

CHANGE OF ADDRESS FORM

(English and Spanish)

I have applied for TPS or for benefits under *American Baptist Churches* and have a different address from the address on my registration application.

Name _____

_____

A-Number A–_____

My NEW address is:

_____

_____

My country of birth is: _____

Date of birth: _____

The last address I reported to INS is:

_____

_____

Signature _____

Date _____

FILL OUT THIS FORM AND SEND IT TO:

ABC Project
Immigration and Naturalization Service
P.O. Box 96821
Washington, DC 20090

Do not send anything else to this address. INS will not accept it.

KEEP A COPY OF THIS FORM.

REMINDER: IF YOUR ADDRESS CHANGES AGAIN *YOU MUST INFORM INS* AT THE ABOVE ADDRESS. YOU MAY USE AN *ABC* CHANGE OF ADDRESS FORM. YOU CAN LOSE YOUR RIGHT TO A NEW ASYLUM INTERVIEW AND DECISION IF YOU DO NOT INFORM INS OF YOUR CHANGE OF ADDRESS.

Once you have filed an asylum application with the INS, you are encouraged to also send a copy of this *ABC* Change of Address form to your local Asylum Office.

[FR Doc. 97–833 Filed 1–16–97; 8:45 am]

BILLING CODE 4410–10–M

[INS No. 1800–96]

Request For Volunteers To Participate in a Foreign Student/Exchange Visitor Program Pilot

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Immigration and Naturalization Service (INS), consistent with its statutory authority to regulate foreign students and exchange visitors under sections 101(a)(15)(F), (J) and (M) of the Immigration and Nationality Act as amended (the Act), and in consultation with the United States Information Agency (USIA), the Department of State (DOS), and the Department of Education (DoE), is initiating a pilot program (hereinafter referred to as ''the pilot'') for the 1997/1998 academic year, commencing with the 1997 fall semester, to redesign and improve the collection and reporting of information regarding foreign students and exchange visitors as required under Subtitle D, section 641, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Pub. L. 104–208). The INS and USIA are seeking out schools and exchange visitor programs located in Alabama, Georgia, North Carolina, and South Carolina willing to volunteer as participants in the operation of the pilot. The states of Georgia, Alabama, South Carolina, and North Carolina have been identified based on their location within the eastern time zone; their being subject to uniform jurisdiction under the Atlanta District Office, which also has immigration jurisdiction for the Port-of-Entry at Hartsfield International airport; and Atlanta's accessibility to INS headquarters project managers and contractors via daily direct non-stop air flights to and from the Washington, DC., area. The types of schools and exchange visitor programs solicited include universities, colleges, vocational training schools, flight schools, and post secondary English as Second Language schools. Since the INS is limiting pilot participation to approximately 20 schools and/or exchange visitor programs, it is possible that not all eligible applicants will be selected. The INS will conduct an on-site visit prior to selecting pilot participants.

DATES: Requests to participate in the pilot must be submitted in writing on or before February 26, 1997. The limited period for submission of requests to participate in the pilot is necessitated by the statutory requirement that INS establish a national foreign student and exchange visitor information collection program by January 1, 1998. The INS will notify all schools, institutions, and exchange visitor programs of the status of their request on or before March 31, 1997.

ADDRESSES: Please submit written requests in triplicate to: Brian Collins, Foreign Students and Schools Pilot Program; INS Support, 13600 EDS Drive, M/S A5S–A52; Herndon, Virginia 20171. To ensure proper handling, please reference INS No. 1800–96 on your correspondence.

FOR FURTHER INFORMATION CONTACT:

For information regarding nonimmigrant ''F'' or ''M'' portions of the pilot contact: Maurice Berez, Adjudications Officer, Adjudications and Nationality Division, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–5014. For information regarding the nonimmigrant ''J'' Exchange Visitor program portion of the pilot, contact: Diane Culkin, Program Designation Officer, or Tamara Martin, Program Designation Officer, Exchange Visitor Program Services, United States Information Agency, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 401–9810.

SUPPLEMENTARY INFORMATION:

Background and Statutory Authority

In June 1995, the INS established a task force to conduct a comprehensive review and analysis of the current process for the collection of information regarding foreign students and exchange visitors in the United States. As a result of the review, the task force proposed substantial changes for the collection of information on foreign students and exchange visitors. These changes were subsequently adopted by Congress. See Subtitle D, section 641, of Pub. L. 104–208. Section 641 requires the INS to collect information on an ongoing basis from schools and exchange programs relating to nonimmigrant foreign students and exchange visitors during the course of their stay in the United States, using electronic reporting technology to the fullest extent practicable. Accordingly, the pilot will test automated data systems and telecommunication technology through: (1) The issuance of machine-readable cards to foreign students and exchange visitors at the participating pilot schools and exchange visitor programs, and (2) computer-based reporting from schools to the INS on matters relating to the immigration status of foreign students and exchange visitors.

Prior to August 30, 1997, the INS will amend existing regulations to cover the use of any forms and processes tested under the pilot and found suitable for use on a nationwide basis. Prior to promulgation of such regulations, participants in the pilot shall comply with all existing regulations governing their respective activities.

Primary Pilot Objectives

The primary objectives of the pilot are:

- To improve service by reducing paperwork and expediting processing required for students and exchange visitors for the duration of their nonimmigrant status in the United States;
- To collect accurate, timely, and reliable information for use by Federal agencies charged with monitoring foreign students and exchange visitors;
- To improve communication and cooperation between the Federal Government, educational institutions, and exchange visitor programs;
- To calculate and determine the fees provided for under section 641(e) of Pub. L. 104–208. The INS will not impose such fees during the pilot;
- To work in concert with educational institutions and exchange visitor programs to improve the effectiveness of current foreign student and exchange visitor programs by testing the following:

—Prototype Forms I–20 and IAP–66 which incorporate bar-code technology;
—Prototype machine-readable student/exchange visitor cards to be used in place of Forms I–20 and IAP–66; and
—Electronic reporting to the INS from pilot participants via the Internet and other electronic media.

Application Requirements and Criteria

Applicants must meet the eligibility requirements set forth in section I below. In addition, applicants must provide the information requested in Section II below.

I. Eligibility Requirements

To participate in the pilot, educational institutions and exchange visitor programs must:

A. Be physically located in at least one of the following states: Georgia, Alabama, South Carolina, and North Carolina;

B. Have continuously participated in a Federally approved foreign student or exchange visitor program for the previous 5 years;

C. Have complied with the requirements set forth in 8 CFR 314.3 and 22 CFR part 514.

II. Information Requirements

Educational institutions or exchange visitor programs desiring to participate in the pilot must provide, in writing, the following information:

A. A letter of request to participate in the pilot signed by an official who has the authority to enter into a participation agreement with the INS on behalf of the school, institution, or exchange visitor program;

B. The school, institution, or exchange visitor program's legal name; its INS approval code and/or Exchange Visitor Program number; the original date of approval by INS or designation by USIA and, if applicable, the date of re-approval or re-designation;

C. The mailing address of the school, institution, or exchange visitor program (if a P.O. Box, specify a street address location, telephone number, and facsimile number);

D. Total size of student body at the school, institution, or exchange visitor program;

E. A current job description of the primary and alternate official(s) responsible for foreign students and/or exchange visitors, together with the business telephone/facsimile numbers and Internet (e-mail) address for such official(s). These officials must be employed on a full-time basis in their position;

F. The total number of: (1) F–1 and M–1 foreign students and J–1 exchange visitors at the institution for each of the previous 3 years; (2) individuals within each separate foreign student or exchange visitor category for such period, (3) dependents of such individuals in each separate category (F–2, M–2, and J–2) for such period;

G. A description of: (1) The foreign student/exchange visitor record-keeping system currently in use; (2) the registration record-keeping system currently in use for the general student body, and (3) the communication links between such systems. The description should cover, among other things, hardware, software, operating systems and network architecture;

H. If applicable, a description of Electronic Data Interchange (EDI) use at the school, institution, or program; and

I. A sequential outline of the current procedures used by the school, institution, or exchange visitor program for administering foreign students and exchange visitors. This outline should cover the process from the point of receiving the foreign student's or exchange visitor's initial application for admission through registration, orientation, and completion or termination of program.

Notification to Applicants

The INS, in consultation with the USIA, will prepare a Memorandum of Understanding (''MOU''), to be signed by the INS and selected prospective participants, setting forth the terms and conditions of participation in the pilot.

Participation in the pilot is contingent on the INS conducting an on-site visit and the signing of the MOU.

Duration of Pilot

Although the INS anticipates that the duration of the pilot will be one academic year, it may extend the pilot for one or more academic terms, as deemed necessary to comply with the statute. The INS, if it deems appropriate, may terminate the pilot at any time. The INS may also, in its discretion, terminate participation in the pilot of an individual school, institution, or exchange visitor program at any time.

OMB Reporting Burden

The public reporting burden to prepare the requested application to participate in the pilot is estimated to be 60 hours, including time for reviewing instructions, identifying and describing existing data systems and computer capabilities, and completing and reviewing the collection of information required to apply. Please send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Immigration and Naturalization Service, 425 I Street, NW., HQPDI, Room 5307, Washington, DC 20536. These requirements have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act, and are recorded as OMB Control Number 1115–0204, with an expiration date of June 30, 1997.

Dated: January 8, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 97–1205 Filed 1–16–97; 8:45 am]

BILLING CODE 4410–10–M

[INS No. 1826–96]

Citizens Advisory Panel Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

SUMMARY: The Immigration and Naturalization Service (Service), in accordance with the Federal Advisory Committee Act [5 U.S.C. App. 2] and 41 CFR 101–6.1001–101–6.1035 (1992), has established a Citizens' Advisory Panel (CAP) to provide the Department of Justice with recommendations on ways to reduce the number of complaints of abuse made against employees of the Service, and to minimize or eliminate the causes for those complaints. This notice announces the CAP's forthcoming meeting and the agenda for the meeting.

DATES: February 3–4, 1997, at 8:30 a.m.

ADDRESSES: The Chester Arthur Building, 425 I Street, NW., Sixth Floor Conference Room, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Susan B. Wilt, CAP Designated Federal Official (DFO), Immigration and Naturalization Service, Room 3260, Chester Arthur Building, 425 I Street NW., Washington, DC 20536, Telephone (202) 616–7072.

SUPPLEMENTARY INFORMATION: Pursuant to the charging language of the Senate Appropriations Committee Report 102–331 on the FY 1993 Budget for the Immigration and Naturalization Service, Department of Justice, the Service established a citizens' Advisory Panel for the purpose of providing recommendations to the Attorney General on ways to reduce the number of complaints of abuse made against employees of the Service and, most importantly, to minimize or eliminate the causes for those complaints. The CAP is authorized by the Attorney General to (1) accept and review civilian complaints made against Service employees, and (2) review the systems and procedures used by the Service for responding to such complaints. (February 11, 1994, at 59 FR 6658)

Summary of Agenda: The principal purpose of the meeting is to finalize the report providing recommendations to the Attorney General on ways to reduce the number of complaints of abuse made against employees of the Service.

Public Participation: The CAP meeting is open to the interested public but limited to the space available. Public comments will be heard on February 3, 1997, and should focus on the information in the recommendation paper. A draft copy of the recommendation paper may be obtained by contracting Susan B. Wilt at (202) 616–7072. Persons wishing to make an oral presentation should notify the DFO at least 2 business days prior to the meeting.

Hearing-challenged individuals wishing to attend should contact the DFO by January 24, 1997, so services can be arranged.

Members of the public may file written statements with the CAP DFO before the meeting. Materials submitted at the meeting should be submitted in 25 copies. Minutes of the meeting will be available on request from the CAP DFO.

Dated: January 9, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 97–1181 Filed 1–16–97; 8:45 am]

BILLING CODE 4410–10–M

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Agency Information Collection Activities: Proposed collection; Comment Request

ACTION: Notice of Information Collection Under Review; Three Month Individual Youth Program Tracking Form, Evaluation of the ''Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program''

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the Federal Register and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments until February 18, 1997. This process is conducted in accordance with 5 CFR Part 1320.10.

Written comments and/or suggestions regarding the items(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC, 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC, 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1590. Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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.

Overview of this Information collection

(1) Type of information collection: New collection.

(2) The title of the form/collection: Three Month Individual Youth Program Tracking Form, Evaluation of the ''Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program''

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form: None. Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: Not-for-Profit Institutions. Other: State, Local, or Tribal Government. The study will obtain interview and test information on youth background, social adjustment, deviancy/crime activity, self-esteem, and depression/personality adjustment. The information obtained will be used to determine what the nature of contacts made and services provided to program youth are, how workers evaluate these contacts and services, and what the characteristics of workers are. It will determine the effectiveness of the program, comparing program subjects to non-program gang youth of the same ages, approximately 13 to 20 years old, and their backgrounds.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 5.104 hours per response unit times 400.

(6) An estimate of the total public burden (in hours) associated with the collection: 2,041.1 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: January 13, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–1134 Filed 1–16–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determination Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this date may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates and publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA960001 (March 15, 1996)
MA960017 (March 15, 1996)
MA960018 (March 15, 1996)
MA960019 (March 15, 1996)

Volume II

Pennsylvania
PA960001 (March 15, 1996)
PA060004 (March 15, 1996)
Virginia
VA960002 (March 15, 1996)
VA960007 (March 15, 1996)
VA960040 (March 15, 1996)
West Virginia
WV960002 (March 15, 1996)
WV960003 (March 15, 1996)

Volume III

NONE

Volume IV

Indiana
IN960001 (May 17, 1996)
IN960003 (March 15, 1996)

IN960060 (August 2, 1996)
Michigan
MI960002 (March 15, 1996)
MI960005 (March 15, 1996)
MI960012 (March 15, 1996)
MI960047 (April 19, 1996)
MI960062 (March 15, 1996)

Volume V

Iowa
IA960002 (March 15, 1996)
IA960003 (March 15, 1996)
IA960004 (March 15, 1996)
IA960010 (March 15, 1996)
IA960031 (March 15, 1996)
Nebraska
NE960003 (March 15, 1997)
NE960009 (March 15, 1996)
NE960011 (March 15, 1996)

Volume VI

California
CA960033 (March 15, 1996)
CA960035 (March 15, 1996)
CA960036 (March 15, 1996)
CA960037 (March 15, 1996)
CA960038 (March 15, 1996)
CA960039 (March 15, 1996)
CA960040 (March 15, 1996)
CA960042 (March 15, 1996)
CA960043 (March 15, 1996)
CA960044 (March 15, 1996)
CA960045 (March 15, 1996)
CA960046 (March 15, 1996)
CA960047 (March 15, 1996)
CA960048 (March 15, 1996)
Nevada
NV960001 (March 15, 1996)
NV960005 (March 15, 1996)
Oregon
OR960001 (March 15, 1996)
OR960004 (March 15, 1996)
OR960017 (March 15, 1996)
Washington
WA960008 (March 15, 1996)
WA960023 (March 15, 1996)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 10th day of January 1997.

John Frank,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–992 Filed 1–16–97; 8:45 am]

BILLING CODE 4510–27–M

Office of the Secretary; Submission for OMB Emergency Review; Comment Request

January 14, 1997.

The Department of Labor has submitted the following (see below) emergency processing public information collection request (ICR) to the Office of Management and Budget (OBM) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by January 22, 1997. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5096 ext. 166).

Comments and questions about the ICR listed below should be forwarded to Office Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316).

The Office of Management and Budget is particularly interested in comments which:

- 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;
- 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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 submissions of response.

Agency: U.S. Department of Labor, ETA.

Title: Statutory Waiver Requests.

OMB Number: 1205–Onew.

Frequency: On occasion.

Affected Public: States and Local Service Delivery Areas.

Number of Respondents: 56.

Estimated Time Per Respondent: 80 hours.

Total Burden Hours: 4,480.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): $5,000.

Description: This request is related to the passage of Pub. L. 104–208 which permits States to submit statutory waiver proposals to the Department of Labor in order to overcome barriers to implementing improvements to their workforce development system (see below).

Who: Governors may request statutory waivers from the Secretary of Labor.

What: Governors may request statutory or regulatory waivers under the Job Training Partnership Act (titles I–III) and the Wagner-Peyser (section 8–10).

When: After receipt of guidance.

Where: By submitting the requests to the ETA Regional offices.

Why: To overcome statutory or regulatory barriers which prevent the States from implementing reforms to their workforce development system.

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–1226 Filed 1–16–97; 8:45 am]

BILLING CODE 4510–30–M

Office of the Secretary

Submission for OMB Emergency Review; Comment Requested

January 14, 1997.

The Department of Labor has submitted the following (see below) emergency processing public information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by January 22, 1997. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Departmental Clearance Officer, Theresa M. O'Malley ({202} 219–5096 ext. 166).

Comments and questions about the ICR listed below should be forwarded to Office Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316).

The Office of Management and Budget is particularly interested in comments which:

- 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;
- 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;
- enhance the quality, utility, and clarity of the information to be collected; and
- 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 submissions of response.

Agency: U.S. Department of Labor, ETA.

Title: Workforce Flexibility (work-flex) Partnership Demonstration Program.

OMB Number: 1205–Onew.

Frequency: On Occasion.

Affected Public: States.

Number of Respondents: 20 potential.

Estimated Time Per Respondent: 80 hours.

Total Burden Hours: 1,600.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): $5,000.

Description: This request is related to the passage of P.L. 104–208 which permits States to submit requests to be considered as Workforce Flexibility Partnership Demonstration Programs (see below):

Who: Up to six States, of which at least three States shall each have populations not in excess of 3,500,000, with a preference given to those States that have been designated Ed-Flex Partnership States.

What: Workforce Flexibility (work-flex) Partnership Demonstration Program.

When: March 28, 1997.

Where: Submit an application to the Department of Labor.

Why: To obtain authority to waive any statutory or regulatory requirement applicable to service delivery areas or substate areas within the state under titles I–III of the Job Training Partnership Act (except for requirements relating to wage and labor standards, grievance procedures and judicial review, nondiscrimination, allotment of funds and eligibility, and any of the statutory or regulatory requirements of sections 8–10 of the Wagner-Peyser Act (except for requirements relating to the provision of services to unemployment insurance claimants and veterans, and to universal access to basic labor exchange services without cost to job seekers), for a duration not to exceed the waiver period authorized under section 311(e) of Public Law 103–227, pursuant to a plan submitted by such states and approved by the Secretary for the provision of workforce employment and training activities in the States, which includes a description of the process by which service delivery areas and substate areas may apply for and have waivers approved by the State, the requirements of the Wagner-Peyser Act to be waived, the outcomes to be achieved and other measures to be taken to ensure appropriate accountability for federal funds.

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–1228 Filed 1–16–97; 8:45 am]

BILLING CODE 4510–30–M

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (P.L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: January 30, 1997, 10:00 am–12:00 noon, U.S. Department of Labor, Room S–1011, 200 Constitution Ave., NW., Washington, D.C. 20210.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to section 9(B) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

For further information, contact: Jorge Perez-Lopez, Director, Office of International Economic Affairs. Phone: (202) 219–7597.

Signed at Washington, D.C. this 10th day of January 1997.

Andrew J. Samet,

Acting Deputy Under Secretary, International Affairs.

[FR Doc. 97–1227 Filed 1–16–97; 8:45 am]

BILLING CODE 4510–28–M

NATIONAL ENDOWMENT FOR THE ARTS

Submission for OMB Review; Comment Request

January 15, 1997.

The National Endowment for the Arts (NEA) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for reviews and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the National Endowment for the Arts' Research Division Director, Tom Bradshaw ((202) 682–5432).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the Federal Register.

The OMB is particularly interested in comments which:

- 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;
- 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;
- Enhance the quality, utility and clarity of the information to be collected; and
- 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 submissions of responses.

Agency: National Endowment for the Arts.

Title: 1997 Survey of Public Participation in the Arts.

OMB Number: New.

Frequency: One time.

Affected Public: Individuals or households.

Number of Respondents: 13,320.
Estimated Time Per Respondent: 15 minutes.
Total Burden Hours: 3,871.
Total Annualized Capital/Startup Costs: 0.
Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): 0.
Description: The National Endowment for the Arts proposes to conduct a national Survey of Public Participation in the Arts (SPPA) in 1997 to provide information on the extent to which the adult population participates in the arts.

Responses will be analyzed to determine arts participation patterns and differences by population subgroup and geography and changes from prior SPPA's conducted in 1982, 1985, and 1992. Results will be used by arts administrators, researchers, and policymakers at the national, state and local level.

Murray Welsh,
Director, Administrative Services.
[FR Doc. 97–1216 Filed 1–16–97; 8:45 am]
BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Directorate for Social, Behavioral, and Economic Sciences

Proposed Data Collection: Comment Request
Title of Proposed Request: Survey of Earned Doctorates

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Science Foundation (NSF) will publish periodic summaries of proposed projects. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, call the NSF Clearance Officer on (703) 306–1243.

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.

Proposed Project: The Survey of Earned Doctorates: The Survey of Earned Doctorates has been conducted continuously since 1958 and is jointly sponsored by five Federal agencies in order to avoid duplication. It is an accurate, timely source of information on our Nation's most precious resource—highly educated individuals. Data is obtained from each person earning a research doctorate on their field of specialty, educational background, sources of support in graduate school, postgraduation plans for employment, and demographic characteristics. The information is used extensively by the Federal government, universities, and others. The National Science Foundation, as the lead agency, publishes statistics from the survey in the annual publication series Selected Data on Science and Engineering Doctorates (available in print and electronically on the World Wide Web). The National Academy of Sciences also disseminates a free report entitled Summary Report: Doctorate Recipients from U.S. Universities.

A total response rate of 95% of the total 41,610 persons who earned a research doctorate was obtained in fiscal year 1995.

Burden estimates are as follows:
Total Number of Respondents FY 1995—41,610.

Burden Hours—20 minutes per respondent=1,383 hours total.

Send comments to Herman Fleming, Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 485, Arlington, VA 22230. Written comments should be received by March 17, 1997.

Dated: January 13, 1997.
Herman G. Fleming,
NSF Clearance Officer.
[FR Doc. 97–1136 Filed 1–16–97; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Advanced Scientific Computing; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Advanced Scientific Computing (#1185).
Date and Time: February 3, 1997, 8:30 am to 5:00 pm.
Place: National Science Foundation, 4201 Wilson Boulevard, Suite 370, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Dr. John Van Rosendale, Program Director, New Technologies Program, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1962.
Purpose of Meeting: To provide recommendations and advice concerning proposals submitted to NSF for financial support.
Agenda: Panel review of the New Technologies Program proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 1997.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 97–1138 Filed 1–16–97; 8:45 am]
BILLING CODE 7555–01–M

Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Biological Sciences.
Date and Time: February 5, 6, and 7, 1997.
Place: National Science Foundation, 4201 Wilson Boulevard, Rooms 370, 380, and 390, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Dr. Charles O'Kelly, Dr. Elizabeth Lyons, Dr. Taber Allison, Division Environmental Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1480.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate Doctoral Dissertation Research proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 17, 1997.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 97–1147 Filed 1–16–97; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special

Emphasis Panel in Chemistry (1191) will be holding panel meetings for the purpose of reviewing proposals submitted to the Faculty Early Career Development (CAREER) Program. In order to review the large volume of proposals, panel meetings will be held on January 28–29, February 3, February 13–14, and February 24–25. All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Blvd., Arlington, VA from 8:30 am to 5:00 pm each day.

Contact Person: Dr. Karolyn Eisenstein, Program Director, Office of Special Projects, Chemistry Division, Room 1055, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1850.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1140 Filed 1–16–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel in Chemistry (#1191).

Date and Time: February 13–14, 1997.

Place: Room 1020, NSF, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. George Rubottom, Program Director, Organic Chemistry, Chemistry Division, Room 1055, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1851.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: to review and evaluate proposals for the Faculty Early Career Development Program (CAREER) as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1143 Filed 1–16–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel in Civil and Mechanical Systems (#1205)

Date and Time: Thursday, February 6 & Friday, February 7, 1997, 8:30 a.m. to 5:00 p.m.

Place: Rooms 530 & 580, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Drs. Craig S. Hartley & Sunil Saigal, Program Directors, Mechanics and Materials Program. National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1361.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1145 Filed 1–16–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information, Robotics and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information, Robotics and Intelligent (1200).

Date and Time: February 6–7, 1997, 9:00 a.m. to 5:00 p.m.

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, NW, Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Dr. Maria Zemankova, Deputy Division Director, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1929.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Knowledge Model and Cognitive Systems Program Career proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1142 Filed 1–16–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information, Robotics and Intelligent Systems; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information, Robotics and Intelligent (1200).

Date and Time: February 6–7, 1997, 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 360, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Maria Zemankova, Deputy Division Director, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1929.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Information Technology and Organizations Program Career proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1148 Filed 1–16–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information, Robotics and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information, Robotics and Intelligent (1200).

Date and Time: February 3–4, 1997, 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1120, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Maria Zemankova, Deputy Division Director, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1929.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Database and Expert Systems Program Career proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1149 Filed 1–16–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information, Robotics and Intelligent System; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information, Robotics and Intelligent (1200).

Date and Time: February 3–4, 1997, 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1115N, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Maria Zemankova, Deputy Division Director, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1929.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Robotics and Machine and Intelligence Program proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1150 Filed 1–16–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meetings:

Name and Committee Code: Special Emphasis Panel in Materials Research #1203.

Date and Time: February 10, 1997; 1:00 pm–9:00 pm; February 11, 1997; 8:00 am–5:00 pm.

Place: Princeton Center for Complex Materials, Bowen Hall, Princeton University, Princeton, NJ 08544.

Type of Meeting: Closed.

Contact Person: Dr. Carmen Huber, Associate Program Director, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 306–1996.

Purpose of Meeting: To provide advice and recommendations concerning support for the Materials Research Science and Engineering Center, Princeton University.

Agenda: Presentations and evaluation of progress.

Reason for Closing: The activity being evaluated may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1139 Filed 1–16–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Mathematical Sciences (1204).

Date and Time: February 3–5, 1997; 8:30 a.m. until 5:00 p.m.

Place: Room 1060, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Joe Jenkins, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1879.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the Analysis Program nominations/applications as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1137 Filed 1–16–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Mathematical Sciences (#1204).

Date & Time: February 10–12, 1997, 8:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1060, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Lloyd E. Douglas, Program Director, Office of Special Projects, Mathematical Sciences Division, National Science Foundation, 4201 Wilson Boulevard, Room 1025, Arlington, VA 22230, Telephone: (703) 306–1870.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To Review and evaluate proposals for Faculty Early Career Development (CAREER) Program in Chemistry.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552B(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1146 Filed 1–16–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Mathematical Sciences (#1204).

Date and Time: February 10–12, 1997, 8:30 am–5:00 p.m.

Place: Rooms 340 and 360 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Lloyd E. Douglas, Program Director, Office of Special Projects, Mathematical Sciences Division, National Science Foundation, 4201 Wilson Boulevard, Room 1025, Arlington, VA 22230. Telephone: (703) 306–1870.

Purpose of Meeting: To provide advice and recommendations concerning applications submitted to NSF for financial support.

Agenda: To review and evaluate proposals in the Infrastructure Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1151 Filed 1–16–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (1208).

Date and Time: January 31–February 1, 1997 from 8:30 a.m. to 5:00 p.m.

Place: Room 1060, NSF 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Virginia Brown, Program Director for Theoretical Physics, Division of Physics, Room 1015, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1805.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the Theoretical Physics proposals as part of the selection process for award.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1144 Filed 1–16–97; 8:45 am]

BILLING CODE 7555–01–M

United States Antarctic Program (USAP) Blue Ribbon Panel; Notice of Meeting; Amendment

The meeting originally scheduled for January 31–February 1 has been postponed until February 7 and 8. There are no other changes in the meeting notice. The announcement of this meeting appearing in the Federal Register on January 7, 1997 at 62 FR 1001. For the convenience of the reader, the notice is being re-published in its entirety.

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: United States Antarctic (USAP) Program Blue Ribbon Panel (#5131).

Date and Time: February 7 and 8, 1997—8:00 am–6:00 pm on 2/7 and 8:30 am–5 pm on 2/8.

Place: Room 1235, NSF, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Open.

Contact Person: Guy G. Guthridge, Office of Polar Programs, Room 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. Telephone: (703) 306–1031.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: Examine a full range of infrastructure, management, and scientific options for the United States Antarctic Program so that the Foundation will be able to maintain the high quality of the research and implement U.S. policy in Antarctica under realistic budget scenarios.

Agenda: Draft panel report to NSF.

Dated: January 13, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–1141 Filed 1–16–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–277]

Peco Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of PECO Energy Company (PECO, the licensee) to withdraw its January 13, 1995, as supplemented by letters dated March 14, 1995 and April 12, 1995, application for proposed amendment to Facility Operating License No. DPR–44 for the Peach Bottom Atomic Power Station, Unit No. 2, located in York County, Pennsylvania.

The proposed amendment would have revised Tables 3.7.1 and 3.7.4 of the Technical Specifications to reflect a change in the number of primary containment penetrations and isolation valves associated with the traversing in-core probe (TIP) system. The change in primary containment penetrations was the result of planned modifications to the TIP system for both Unit 2 and Unit 3. The Commission issued Amendment 203 for Peach Bottom Unit 3 on April 24, 1995 which incorporated the requested changes for Unit 3.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on March 1, 1995 (60 FR 11139). However, by letter dated March 15, 1996, the licensee withdrew the proposed change for Peach Bottom Unit 2.

For further details with respect to this action, see the application for amendment dated January 13, 1995, as supplemented by letters dated March 14, 1995 and April 12, 1995, and the licensee's letter dated March 15, 1996, which withdrew the application for license amendment for Peach Bottom Unit 2. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Dated at Rockville, Maryland, this 10th day of January 1997.

For the Nuclear Regulatory Commission .

Joseph W. Shea,

Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–1212 Filed 1–16–97; 8:45 am]

BILLING CODE 7590–01–P

Nuclear Safety Research Review Committee (NSRRC) Meeting of the Subcommittee on Research in Support of Risk-Based Regulation (PRA Subcommittee) and the Subcommittee on Instrumentation and Control (I&C) and Human Factors

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

The NSRRC PRA and I&C and Human Factors Subcommittees will hold a joint meeting on January 24, 1997. The meeting will take place from 9:00 a.m.–5:00 p.m. in room T–10A1, Two White Flint North (TWFN) Building, 11545 Rockville Pike, Rockville, MD and will be open to public attendance.

The Subcommittees will: (1) Continue to review the progress of human factors research; (2) Identify those human factor areas where progress for inclusion in PRA is likely; and (3) Provide recommendations for integrating these human factor considerations into PRA methods.

A detailed agenda will be made available at the meeting.

Oral statements may be presented by members of the public with the concurrence of the presiding Subcommittee Chairman; written statements will be accepted and made available to the Subcommittees. Questions may be asked only by members of the NSRRC Subcommittees and the staff. Persons desiring to make oral statements should notify the Nuclear Regulatory Commission staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portions of the meetings, the Subcommittees may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittees will hold discussions with representatives of the NRC staff regarding the topics to be discussed.

Further information regarding topics to be covered, the rescheduling and/or cancellation of meeting sessions, and the Chairmen's ruling on requests for the opportunity to present oral statements and the time allotted for discussion can be obtained by a telephone call to Dr. Jose Luis M. Cortez (telephone 301/415–6596) between 9:00 a.m. and 4:30 p.m. (EST). Persons planning to attend these meetings are urged to contact the above named individual one or two business days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: January 13, 1997.

Jose Luis M. Cortez,

Senior Research Program Coordinator, Office of Nuclear Regulatory Research.

[FR Doc. 97–1213 Filed 1–16–97; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on February 5, 1997, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, February 5, 1997—10:00 a.m. until 12:00 Noon.

The Subcommittee will discuss proposed ACRS activities and related matters. It may also discuss the qualifications of candidates for appointment to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: January 13, 1997.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 97–1210 Filed 1–16–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–498 AND 50–499]

South Texas Project; Intent to Relocate Local Public Document Room

Notice is hereby given that the Nuclear Regulatory Commission (NRC) will be relocating the local public document room (LPDR) for records pertaining to Houston Lighting and Power Company's South Texas Project. The LPDR is currently located at the J. M. Hodges Library, Wharton County Junior College, Wharton, Texas. Library staff informed the NRC that they are no longer able to maintain the document collection and request that it be moved. This notice invites public comment on possible LPDR locations in the vicinity of the South Texas Project, Bay City, Texas.

The South Texas Project LPDR collection includes all NRC publicly-available records dated January 1, 1981 forward, which are provided in microfiche form. All South Texas Project documents prior to January 1, 1981, are available in paper copy and take up approximately 27 linear feet of shelf space.

Among the factors the NRC will consider in selecting a new location for the LPDR are the following:

(1) Whether the institution is an established document repository located near the nuclear facility with a history of impartially serving the public;

(2) The physical facilities available, including shelf space, storage space, patron workspace, copying equipment and computer access;

(3) The willingness and ability of the library staff to maintain the LPDR collection and assist the public in locating records;

(4) The nature and extent of related research resources, such as government documents;

(5) The public accessibility of the library, including handicap accessibility, parking, ground transportation, and hours of operation, particularly evening and weekend hours;

(6) The proximity of the library to existing user groups of the collection, if known.

Comment period expires February 18, 1997. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed on or before this date.

Written comments may be submitted to Mr. David Meyer, Chief, Regulatory Publications Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, Gelman Building, 2120 L Street NW, Washington, DC.

Questions concerning the NRC's LPDR Program should be addressed to Ms. Jona L. Souder, LPDR Program Manager, Freedom of Information/Local Public Document Room Branch, Office of Information Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone number 301–415–7170, or toll-free 1–800–638–8081.

Dated at Rockville, Maryland, the 13th day of January, 1997.

For the Nuclear Regulatory Commission.

Russell A. Powell,

Chief, Freedom of Information/Local Public Document Room Branch, Office of Information Resources Management.

[FR Doc. 97–1214 Filed 1–16–97; 8:45 am]

BILLING CODE 7590–01–P

Strategic Assessment and Rebaselining Stakeholders Release of Phase II Stakeholder Interaction Report

AGENCY: Nuclear Regulatory Commission.

ACTION: Release of Phase II Stakeholder Interaction Report.

SUMMARY: On January 13, 1996, the Nuclear Regulatory Commission released the Strategic Assessment and Rebaselining Initiative Phase II Stakeholder Interaction Report for public information. Volume I of this report provides an analysis of significant comments received from stakeholders through various media and public conferences. Volume II consists of copies of stakeholder's written comments. Volume III consists of transcripts from the three public conferences held in the fall of 1996.

This four-phase effort was initiated in September 1995, with the goal of producing a strategic plan in CY 1997. The development and implementation of this strategic plan will meet the requirements of the Government Performance and Results Act (GPRA) of 1993.

The Commission will utilize stakeholder comments as it makes final decisions on the issue papers. These decisions will provide the bases for the NRC's Strategic Plan.

The plan will provide a basis for aligning the agency organization and budget with the agency mission and general goals. It will be the agency tool for setting priorities and allocating resources consistent with the vision and goals of the agency.

In Phase I, a steering committee was established comprising senior agency managers. The steering committee reviewed the NRC's activities to understand where the NRC is today, and what needs to be considered in providing options for responding to change. Some key objectives identified by the steering committee were: establish a strategic framework under which the NRC will continue to meet its primary responsibility of protecting public health and safety and the environment; provide a sound and well-rounded foundation for the NRC's direction and decision-making for the rest of this decade and into the next century; ensure that the Commission, its staff, Congress, other Government agencies, and the public have a common understanding of what the NRC's strategic goals are; and establish agency performance measures to determine the extent to which strategic or tactical objectives are being achieved.

In Phase II, the steering committee developed issue papers. They obtained the Commission's preliminary decisions on the issues, and they released the papers for public comments of its stakeholders—Federal entities (Administration/OMB, Congress, and other agencies), NRC employees and their representatives, Agreement States, non-Agreement States, compliers (e.g., licensees, employees of licensees, industry groups), public interest groups, and the public—as part of the decision-making process.

They asked that the stakeholders focus on the following in responding to the NRC:

1. What, if any, important considerations may have been omitted from the issue papers?

2. How accurate are the NRC's assumptions and projections for internal and external factors discussed in the issue papers?

3. Do the Commission's preliminary views associated with each issue paper respond to the current environment and challenges?

4. Additionally, the Commission sought comments on specific questions identified in the ''Preliminary Commission View'' section of each issue paper.

Volumes I and III can be obtained electronically from the NRC's Home Page on the World Wide Web (Internet address http://www.nrc.gov) and FedWorld at 1–800–303–9672. Paper copies of all three volumes are available by calling NRC's Public Document Room at 1–800–397–4209.

FOR FURTHER INFORMATION CONTACT: John W. Craig, Coordinator, Strategic Assessment Task Group at 301–415–3812 or NRC's Public Affairs Office at 415–8200.

Dated in Rockville, Maryland this 13th day of January 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle

Secretary of the Commission

[FR Doc. 97–1211 Filed 1–16–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26643]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

January 10, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 3, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall

identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Unitil Corporation (70–8969)

Unitil Corporation (''Unitil''), 6 Liberty Lane West, Hampton, New Hampshire, 03842–1720, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and rule 54 thereunder.

By order dated November 16, 1992 (HCAR No. 25677), Unitil was authorized to issue and sell up to 76,827 shares of common stock, no par value (''Common Stock''), under its Dividend Reinvestment and Stock Purchase Plan (''DRIP''). Unitil now proposes to issue up to an additional 100,000 shares of Common Stock under the DRIP on substantially the same terms as previously authorized.

Participants in the DRIP can have cash dividends on all or part of their shares reinvested at a 5% discount from current market prices and/or invest optional cash payments, which range from $25 to $5,000 per calendar year at current market prices, whether or not dividends are reinvested.

Employees of Unitil and its subsidiaries who are eligible to participate have the additional option to use payroll deductions in the place of direct cash payments. No commission or service charge is paid by participants in connection with purchases under the DRIP. Current market prices are the average of the high and low prices reported by the American Stock Exchange during each of the last five trading days that end with the date of the dividend.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1159 Filed 1–16–97; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22459; File No. 812–10294]

SoGen Variable Funds, Inc., et al. January 10, 1997

AGENCY: The Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of Application for an Exemption pursuant to the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: SoGen Variable Funds, Inc. (the ''Company''), Societe Generale Asset Management Corp. (the ''Adviser'') and certain life insurance companies and their separate accounts investing now or in the future in the Company.

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to section 6(c) for exemptions from sections 9(a), 13(a), 15(a), and 15(b) thereof and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF THE APPLICATION: Applicants seek an order to permit shares of the Company to be sold to and held by separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies (''Participating Insurance Companies'') or qualified pension and retirement plans outside the separate account context (''Plans'').

FILING DATES: The application was filed on August 12, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on February 4, 1997, and must be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Philip J. Bafundo, Societe Generale Asset Management Corp., 1221 Avenue of the Americas, New York, New York 10020.

FOR FURTHER INFORMATION CONTACT: Veena K. Jain, Attorney, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. The Company, incorporated in Maryland, is registered under the 1940 Act as an open-end management investment company. The Company currently consists of one series, the SoGen Overseas Variable Fund (the ''Fund,'' together with future series of the Company, the ''Funds''). Additional series may be established.

2. The Adviser, an indirect, majority-owned subsidiary of Societe Generale, is registered pursuant to the 1940 Act as an investment adviser and is the investment adviser to the Company.

3. Shares of the Funds will be offered initially to the Continental Assurance Company and Valley Forge Life Insurance Company, and eventually to Participating Insurance Companies and Plans, to serve as investment vehicles for insurance contracts, which may include variable annuity contracts, variable life insurance contracts and variable group life insurance contracts (collectively, ''Contracts'').

4. Each Participating Insurance Company will have the legal obligation of satisfying all requirements applicable to it under the Federal securities laws in connection with any Contract issued by such Company.

5. The Advisory will not act as investment adviser to any of the Plans that will purchase shares of the Company. There will be no pass-through voting to the participants in such Plans.

Applicants' Legal Analysis

1. Section 6(c) authorizes the Commission to grant exemptions from the provisions of the 1940 Act, and rules thereunder, if and to the extent that an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act exempting them from sections 9(a), 13(a), 15(a), and 15(b) thereof and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit ''mixed'' and ''shared'' funding, as defined below.

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust (''UIT''), Rule 6e–2(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–2(b)(15) are available, however, only where the management investment company underlying the UIT offers its shares ''exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company.''

4. The relief granted by Rule 6e–2(b)(15), thus, is not available with respect to a variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity or a flexible premium variable life insurance separate account of the same company or of any other affiliated insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same insurance company or of any affiliated life insurance company is referred to as ''Mixed Funding.'' The relief granted by Rule 6e–2(b)(15) is also not available with respect to a variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding Contracts of one or more unaffiliated life insurance companies. The use of a common management investment company as the underlying investment medium for variable annuity and/or variable life insurance separate accounts of unaffiliated insurance companies is referred to as ''Shared Funding.'' Rule 6e–2(b)(15), therefore, precludes Mixed and Shared Funding.

5. In connection with flexible premium variable life insurance contracts issued through a UIT, Rule 6e–3(T)(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where the UIT's underlying fund offers its shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company.'' Rule 6e–3(T)(b)(15) thus permits Mixed Funding but does not permit Shared Funding.

6. Applicants state that because the relief under Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15) is available only where shares are offered exclusively to separate accounts, additional exemptive relief is also necessary if shares of the Funds are to be also sold to Plans. Applicant assert that the relief granted by paragraphs (b)(15) of Rules 6e–2 and 6e–3(T) should not be affected by the proposed sale of the Funds to Plans.

7. Applicants submit that Mixed and Shared Funding should benefit Contract owners by: (a) Eliminating a significant portion of the costs of establishing and administering separate funds; (b) allowing for a greater amount of assets available for investment by the Company, thereby promoting economies of scale, permitting greater safety though greater diversification, and/or making the addition of Funds more feasible; and (c) encouraging more insurance companies to offer Contracts, resulting in increased competition with respect to both Contract design and pricing, which can be expected to result in more product variation and lower charges. Each Fund of the Company will be managed to attempt to achieve the Fund's investment objectives and not to favor or disfavor any participating insurer or type of insurance product.

8. Applicants state that Section 817(h) of the Internal Revenue Code, as amended, (''Code'') imposes certain diversification requirements on the underlying assets of Contracts. The Code provides that such Contracts shall not be treated as annuity contracts or life insurance contracts for any period (and any subsequent period) for which the investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. On March 2, 1989, the Treasury Department issued regulations which established diversification requirements for the investment portfolios underlying Contracts. Treas. Reg. 1.817–5 (1989). The regulations provide that, to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do, however, contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by Plans without adversely effecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their Contracts. Treas. Reg. 1.817–5(f)(3)(iii).

9. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) under the 1940 Act preceded the issuance of these Treasury regulations and that the sale of shares of the same investment company to both separate accounts and Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15), given the then-current tax law.

Disqualification

10. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as an investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in section 9(a) (1) or (2). Rules 6e–2(b)(15) and 6e–3(T)(b)(15) provide exemptions from section 9(a) under certain circumstances. The relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permits a person disqualified under section 9(a) to serve as an officer, director or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by Rules 6e–2(b)(15)(ii) and 63–3(T)(b)(15)(ii) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) participates in the management or administration of the fund.

11. Applicants state that the partial relief from section 9(a) of the 1940 Act found in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of section 9. Applicants assert that those rules reflect a recognition that it is not necessary for the protection of investors or the purposes fairly intended by the policy or provisions of the 1940 Act to apply the provisions of section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies in that organization. It is also unnecessary to apply section 9 (a) to the many individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Company as the funding medium for Contracts. Therefore, Applicants assert, applying the restrictions of section 9(a) serves no regulatory purpose. Applicants also state that the relief requested should not be affected by the proposed sale of shares of the Funds to the Plans because the Plans are not investment companies and are not, therefore, to section 9(a).

Pass-Through Voting

12. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account.

13. Rule 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement in certain limited circumstances. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of

its Contract owners with respect to the investments of an underlying fund, when required to do so by an insurance regulatory authority. Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) also provide that the insurance company may disregard voting instructions of its Contract owners if the Contract owners initiate any change in the investment company's investment policies, principal underwriter, or any investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(15)(ii) and (b)(7)(ii) (B) and (C) of each rule.

14. Applicants state that shares of the Funds sold to Plans will be held by the trustees of such Plans as required by section 403(a) of the Employee Retirement Income Security Act (''ERISA''). Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) when the Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to section 402(c)(3) of ERISA. Unless one of the two exceptions stated in section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or to the named fiduciary. In any event, there is no pass-through voting to the participants in such Plans. Accordingly, Applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Plans because the Plans are not entitled to pass-through voting privileges.

Conflicts of Interest

15. Applicants assert that Shared Funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several states. Applicants note that where Participating Insurance Companies are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one Participating Insurance Company is domiciled could require action that is inconsistent with the requirements of insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. Applicants submit that this possibility is no different and no greater than exists where a single insurer and its affiliates offer their insurance products in several states.

16. Applicants further submit that affiliation does not reduce the potential for differences among state regulatory requirements. In any event, the conditions (adapted from the conditions included in Rule 6e–3(T)(b)(15) discussed below) are designed to safeguard against any adverse effects that these differences may produce. If a particular state insurance regulator's decision conflicts with the decisions of a majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant Funds. The requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participating in the Company.

17. Applicants also argue that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by Contract owners. Potential disagreement is limited by the requirement that the Participating Insurance Company's disregard of voting instructions be both reasonable and based on specific good faith determinations. However, if a Participating Insurance Company's decision to disregard Contract owner instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the relevant Fund, to withdraw its investment in that Fund. No charge or penalty will be imposed as a result of such withdrawal. The requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participating in the Company.

18. Applicants submit that there is no reason why the investment policies of a fund with Mixed Funding would or should be materially different from what those policies would or should be if such investment company or series thereof funded only variable annuity or variable life insurance contracts, whether flexible premium or scheduled premium policies. Moreover, Applicants represent that the Funds will not be managed to favor or disfavor any particular insurance company or type of Contract.

19. Applicants note that Section 817(h) of the Code imposes certain diversification standards on the underlying assets of Contracts held in the portfolios of management investment companies. Treasury regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits ''qualified pension or retirement plans'' and separate accounts to share the same underlying investment company. Therefore, Applicants have concluded that neither the Code, nor the Treasury regulations, nor the revenue rulings thereunder, present any inherent conflicts of interest if Plans, variable annuity separate accounts and variable life insurance separate accounts all invest in the same management investment company.

20. Applicants note that while there are differences in the manner in which distributions are taxed for Contracts and Plans, these tax consequences do not raise any conflicts of interest. When distributions are to be made, and the separate account or the Plan cannot net purchase payments to make the distributions, the separate account or the Plan will redeem shares of the Company at their net asset value. The Plan will then make distributions in accordance with the terms of the Plan. A Participating Insurance Company will make distributions in accordance with the terms of the Contract.

21. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving such voting rights to Contract owners and to Plans. Applicants represent that the transfer agent for the Company will inform each Participating Insurance Company of its share ownership as well as inform the trustees of Plans of their holdings. A Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T).

22. Applicants argue that the ability of the Funds to sell their respective shares directly to Plans does not create a ''senior security,'' as such term is defined under section 18(g) of the 1940 Act, with respect to any Contract owner as opposed to a participant under a Plan. Regardless of the rights and benefits of Plan participants and Contract owners under their respective Plans and Contracts, the Plans and separate accounts have rights only with respect to their shares of the Funds. Such shares may be redeemed only at net asset value. No shareholder of the Company has any preference over any other shareholder with respect to

distribution of assets or payment of dividends.

23. Applicants state that there are no conflicts of interest between Contract owners and Plan participants with respect to the state insurance commissioners' veto powers over investment objectives. The state insurance commissioners have been given the veto power to prevent insurance companies indiscriminately redeeming their separate accounts out of one Fund and investing those assets in another Fund. Generally, to accomplish such redemptions and transfers, complex and time consuming transactions must be undertaken. Conversely, trustees of Plans can make the decision quickly and implement redemption of shares from the Company and reinvest the monies in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending a suitable investment. Based on the foregoing, Applicants represent that even should there arise issues where the interests of Contract owners and the interests of the Plans and Plan participants conflict, the issues can be almost immediately resolved in that trustees of the Plans can, independently, redeem shares out of the Company.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the Board of Directors (''Board'') of the Company shall consist of persons who are not ''interested persons'' of the Funds, as defined by section 2(a)(19) of the 1940 Act and rules thereunder, and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of death, disqualification, or bona fide resignation of any director, then the operation of this condition shall be suspended: (a) For a period of 45 days, if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Board will monitor the Company for the existence of any material irreconcilable conflict between and among the interests of Contract owners of all separate accounts investing in the Company. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Company are managed; (e) a difference in voting instructions given by owners of variable annuity and variable life insurance contracts; or (f) a decision by an insurer to disregard voting instructions of Contract owners.

3. Participating Insurance Companies and the Adviser, and any Plan that executes a participation agreement upon becoming an owner of 10 percent or more of the issued and outstanding shares of the Company (collectively, ''Participating Parties'') will report any potential or existing conflicts of which it becomes aware to the Board. participating Parties will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for it to consider any issues raised. This responsibility includes, but is not limited to, an obligation by a Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participating Parties investing in the Company under their agreements governing participation in the Company, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of the Contract owners and, if applicable, Plan participants.

4. If it is determined by a majority of the Board, or by a majority of its disinterested directors, that a material irreconcilable conflict exists, the relevant Participating parties shall, at their expense and to the extent reasonably practicable (as determined by a majority of disinterested directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, including: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Company or any Fund therein and reinvesting such assets in a different investment medium, which may include another Fund, if any, of the Company or submitting the question of whether such segregation should be implemented to a vote of all affected Contract owners and, as appropriate, segregating the assets of any appropriate group (i.e., variable annuity or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change; (b) withdrawing the assets allocable to some or all of the Plans from the Company and reinvesting those assets in a different investment medium; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because a Participating Insurance Company's decision to disregard Contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the Company's election, to withdraw its separate account's investment in the Company, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility of taking remedial action in the event of a Board determination of the existence of a material irreconcilable conflict and bearing the cost of such remedial action, shall be a contractual obligation of all Participating Parties under their agreements governing participation in the Company, and these responsibilities will be carried out with a view only to the interests of the Contract owners and, as applicable, Plan participants. For purposes of this Condition Four, a majority of the disinterested members of the Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Company or the Adviser or any Plan be required to establish a new funding medium for any Contract. No Participating Insurance Company shall be required by this Condition Four to establish a new funding medium for any Contract if an offer to do so has been declined by a vote of a majority of Contract owners materially adversely affected by the material irreconcilable conflict.

5. All Participating Parties will be promptly informed in writing of the Board's determination that a material irreconcilable conflict exists and its implications.

6. Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Contract owners. Accordingly, the Participating Insurance Companies will vote shares of a Fund held in their separate accounts in a manner consistent with voting instructions timely received from Contract owners. Participating Insurance Companies will be responsible for assuring that each of

their separate accounts calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Company will be a contractual obligation of all participating Insurance Companies under the agreements governing participation in the Company. Each Participating Insurance Company will vote shares for which it has not received voting instructions as well as shares it owns in the same proportion as it votes shares for which it has received instructions.

7. All reports of potential or existing conflicts of interest received by a Board, and all Board action with regard to determining the existence of a conflict, notifying Participating Parties of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

8. The Company will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of Mixed and Shared Funding may be appropriate. The Company shall disclose in its prospectus that: (a) Its shares are offered to Plans and to separate accounts that fund all types of Contracts offered by various insurance companies; (b) material irreconcilable differences may arise; and (c) the Board will monitor events in order to identify any material conflicts of interest and determine what action, if any, should be taken.

9. The Company will comply with all provisions of the 1940 Act requiring voting by shareholders (which for these purposes, shall be the persons having a voting interest in the shares of the Company) and in particular, the Company will either provide for annual meetings (except insofar as the Commission may interpret section 16 of the 1940 Act not to require such meetings) or, if annual meetings are not held, comply with section 16(c) of the 1940 Act (although the Company is one of the trusts described in section 16(c) of the 1940 Act), as well as with section 16(a) and, if and when applicable, section 16(b) of the 1940 Act. Further, the Fund will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

10. If an to the extent Rule 6e–2 or Rule 6e–3(T) is am emended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to Mixed and Shared Funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Company and/or the Participating Parties, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 or Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

11. No less than annually, the Participating Parties shall submit to the Board such reports, materials, or data as the Board may reasonable request so that it may carry out fully the obligations imposed upon them by the conditions stated in the application. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of Participating Parties to provide these reports, materials, and data to the Board shall be a contractual obligation of all Participating Parties under the agreements governing their participation in the Company.

12. In the event that a Plan shareholder should ever become an owner of 10 percent or more of the assets of the Company, that Plan shareholder will execute a fund participating agreement with the Company. A Plan shareholder will execute an application containing an acknowledgement of this condition at the time of the initial purchase of shares of the Company.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1160 Filed 1–16–97; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22458; 811–4394]

TrustFunds Institutional Funds; Notice of Application

January 10, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: TrustFunds Institutional Funds.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on December 30, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Sec's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 4, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 28 State Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT:

Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified management investment company organized as a Massachusetts business trust. On August 23, 1985, applicant registered under the Act and filed a registration statement of Form N–1A under the Act and the Securities Act of 1933. Applicant has never commenced operations.

2. Applicant has no securityholders, debts, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1158 Filed 1–16–97; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22457; 811–4353]

TrustFunds Mortgage + Plus Trust; Notice of Application

January 10, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: TrustFunds Mortgage + Plus Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on December 30, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 4, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 28 State Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, non-diversified management investment company organized as a Massachusetts business trust. On July 15, 1985, applicant registered under the Act and filed a registration statement of Form N–1A under the Act and the Securities Act of 1933. Applicant has never commenced operations.

2. Applicant has no securityholders, debts, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1157 Filed 1–16–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38152; File No. SR–CBOE–96–79]

January 10, 1997.

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Elimination of Position and Exercise Limits for FLEX Equity Options

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 December 27, 1996, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE, pursuant to Rule 19b–4 of the Act, proposes to revise Exchange Rules 4.11, 4.12, and 24A.7 to eliminate position and exercise limits for FLEX Equity Options.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate position and exercise limits for FLEX Equity Options. Currently, Exchange Rule 24A.7(b) sets forth position limits for FLEX Equity Options[3] equal to three times the positions limits for corresponding Non-FLEX Equity Options. Generally, position limits are set forth in Exchange Rule 4.11 and exercise limits are set forth in Exchange Rule 4.12.

The Exchange believes that the elimination of such limits is appropriate given the institutional nature of the market for FLEX Equity Options. According to the Exchange, many large investors find the use of exchange-traded options impractical because of the constraints imposed by position limits. The Exchange believes that the elimination of position limits will attract additional investors to exchange-traded options, thereby reducing transaction costs as well as improving price efficiency for all exchange-traded option market participants.

The Exchange also believes that FLEX Equity Options, after the elimination of position limits, may become an important part of large investors' investment strategies. In the absence of position limits, investors will be able to use options to implement specific viewpoints regarding the underlying common stock.

The Exchange also anticipates that issuers of stocks underlying FLEX Equity Options will use these options, primarily through the sale of puts, as part of their stock repurchase programs.[4] In many cases, the size of announced buy-back programs significantly exceeds the number of shares that could be repurchased under the position limits currently imposed on FLEX Equity Options. While the Exchange does not expect that corporate

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In general, FLEX Equity Options provide investors with the ability to customize basic option features including size, expiration date, and exercise style.

[4] The Commission notes that issuers would, of course, need to comply with all applicable provisions of the federal securities laws in conducting their share repurchase programs.

issuers will use the sale of put options to buy all the securities that are covered by their repurchase programs, FLEX Equity Options without position limits at least will provide issuers with an alternative. The inability of corporations to use the sale of exchange-traded equity put options on a significant scale relegates this activity to less transparent markets, such as offshore markets which do not come under Commission oversight.

Pursuant to Section 13(d) of the Act and the rules and regulations thereunder, the inclusion of any option position is required when reporting the beneficial ownership of more than 5% of any equity security.[5] The integration of options and reporting requirements in the underlying security pursuant to Section 13(d) makes large option positions widely known and easily monitored by regulators and other market participants. In this light, FLEX Equity Options trading will have the transparency of any exchange-traded option transaction or position (open interest) plus the call market focus of liquidity inherent in the Request for Quote (''RFQ'') process. Similar to Non-FLEX options, positions in FLEX options are required, pursuant to Exchange Rule 4.13, to be reported to the Exchange when an account establishes aggregate same-side of the market position of 200 or more FLEX option contracts.

The Exchange recognizes the theoretical possibility that a would-be manipulator could initiate a large FLEX Equity Option RFQ with no intention of actually trading. Such tactics, however, would be obvious to the Exchange surveillance staff as well as to the Commission, and could be handled under current Exchange rules.

2. Statutory Basis

The CBOE believes the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–96–79 and should be submitted by February 7, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1222 Filed 1–16–97; 8:45 am]

BILLING CODE 8010–01–M

[5] Pursuant to Rule 13d–3 under the Act, a person will be deemed to be the beneficial owner of a security if that person has the right to acquire beneficial ownership of such security within sixty days, including the right to acquire through the exercise of any option.

[6] 17 CFR 200.30–3(a)(12).

[Release No. 34–38163; File No. SR–ISCC–96–06]

January 13, 1997.

Self-Regulatory Organizations; International Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Officer Titles

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on December 11, 1996, the International Securities Clearing Corporation (''ISCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by ISCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies ISCC's rules and by-laws to create the new title of managing director.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISCC 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. ISCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In order to conform with how ISCC and many firms in the industry operate, ISCC has created the new title of managing director. The purpose of the proposed rule change is to modify ISCC's rules and by-laws to accommodate the change in ISCC's internal management structure. Section 3.1 of the by-laws is amended to reflect the creation of the new position of managing director and also to permit ISCC to designate one or more vice presidents as senior vice presidents. The proposed rule change amends Section

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by ISCC.

3.5 of the by-laws to provide managing directors with the powers and duties formerly given to executive vice presidents. Sections 1.2 and 1.8 of the by-laws are amended to permit managing directors to call special shareholder meetings and to act as presiding officer at a shareholder meeting. Section 3.6 is amended to provide that in the event the President is unable to act, managing directors, executive vice presidents, and then vice presidents may assume such duties.

The proposed rule change also makes certain amendments to ISCC's rules. Rule 22 is amended to eliminate the ability of an executive vice president or vice president to suspend the rules and to permit the general counsel to exercise such authority. Rule 23 is amended to eliminate the ability of executive vice presidents to act on behalf of ISCC and to grant such authority to managing directors. Pursuant to Rule 33, the Board of Directors can now delegate the authority to prescribe procedures and regulations to managing directors rather than to executive vice presidents.

The proposed rule change is consistent with the requirements of Section 17A of the Act [3] and the rules and regulations thereunder because it makes technical modifications to ISCC's rules and by-laws so that they coincide with ISCC's new internal management structure.

(B) Self-Regulatory Organization's Statement on Burden on Competition

ISCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. ISCC will notify the Commission of any written comments received by ISCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) [4] of the Act and pursuant to Rule 19b–4(e)(3) [5] promulgated thereunder in that the proposed rule change is concerned solely with the administration of ISCC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of ISCC.

All submissions should refer to File No. SR–ISCC–96–06 and should be submitted by February 7, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1218 Filed 1–16–97; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(e)(3).

[6] 17 CFR 200.30–3(a)(12).

[Release No. 34–38158; File No. SR–NYSE–96–34]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of a Proposed Rule Change by the New York Stock Exchange, Inc. to Make Permanent the Near Neighbor, Capital Utilization and Rule 103A Pilot Programs for Measuring Specialist Performance and Adopt a New Specialist Performance Measure

January 10, 1997.

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 December 3, 1996, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II 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 and to grant accelerated approval to the portion of the proposal to make permanent the Near Neighbor, Capital Utilization, and Rule 103A pilot programs for measuring specialist performance.[3]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of making permanent certain pilot programs for measuring specialist performance and adopting a new specialist performance measure. The three pilots are the Near Neighbor pilot, the Capital Utilization Data pilot, and the Rule 103A pilot.[4] The Exchange also proposes to adopt a new performance measure, the ''adjusted stabilization'' rate measure.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In partially approving the NYSE proposal, the Commission is not approving, at this time, the portion of the proposal relating to implementing a new specialist performance measure, the ''adjusted stabilization'' rate. That portion of the proposal is being published for comment in this notice.

[4] The Commission notes that the capital utilization and near neighbor measures currently are only used by the Allocation Committee in making specialist allocation decisions. The Commission initially approved the capital utilization program on a one-year pilot basis in Securities Exchange Act Release No. 33369 (December 22, 1993), 58 FR 69431 (December 30, 1993). The Commission approved a six-month extension of the pilot program in Securities Exchange Act Release No. 35175 (December 29, 1994), 60 FR 2167 (January 6, 1995) (extending pilot through June 30, 1995). The Commission approved two subsequent extensions of the pilot so that the Exchange and the Commission could evaluate the capital utilization, near neighbor, and Rule 103A programs concurrently. *See* Securities Exchange Act Release Nos. 35926 (June 30, 1995), 60 FR 35760 (July 11, 1995) (extending pilot through September 10, 1996) and 37668 (September 11, 1996), 61 FR 49371 (September 19, 1996) (extending pilot through January 10, 1997). The Commission approved the near neighbor program on a pilot basis in Securities Exchange Act Release No. 35927 (June 30, 1995), 60 FR 35927 (July 11, 1995) (pilot approved through September 10, 1996). The Commission approved an extension of the near neighbor pilot program, until January 10, 1997, in Securities Exchange Act Release No. 37668 (September 11, 1996), 61 FR 49371 (September 19, 1996). The Rule 103A pilot program was initially adopted in 1979. *See* Securities Exchange Act Release Nos. 15827 (May 15, 1979), 44 FR 100 (May 22, 1979). Since then, the program has been extended many times. The most recent extension continues the pilot until January 10, 1997. *See* Securities Exchange Act Release No. 37667 (September 11, 1996), 61 FR 49185 (September 18, 1996).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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 Exchange currently uses several programs to measure specialist performance, including specialist capital utilization, the ''near neighbor'' approach, and the standards of acceptable performance specified in Rule 103A. Information on these measures is supplied to the Allocation Committee for its use in determining allocation of listing companies.[5] The ''near neighbor'' measure compares certain performance measures of a stock (price continuity, depth, quotation spread, and capital utilization) to those stocks with similar trading characteristics; the comparison is made over ''rolling'' three-month periods.[6] The ''near neighbor'' measure has been in use on a pilot basis since August 1995. Capital utilization focuses on a specialist unit's use of its own capital in relation to the total dollar volume of trading activity in the unit's stocks.[7] It has been utilized as a pilot since February 1994. These measures are presented to the Allocation Committee in summary form for each unit applying for a new listing and are a factor in allocating newly-listed stock.

Rule 103A, adopted in 1979, codifies standards based on the Specialist Performance Evaluation Questionnaire (''SPEQ'') and specialist performance with respect to openings of stocks and turnaround of order reports and administrative messages received. Data with respect to these standards is also provided to the Allocation Committee. In addition, the Market Performance Committee uses the Rule 103A information to initiate performance improvement actions for specialist units that fall below the criteria detailed in the Rule. A unit's continued inability to raise its performance level can lead to a reallocation of one or more of its stocks.

Commission staff have indicated to the NYSE staff the position that sufficient experience has been gained through extended operation of these pilot programs in order for the NYSE to determine whether each should be approved on a permanent basis. Permanent approval will not mean that the programs cannot be periodically revised and amended to improve their effectiveness. For example, the Exchange is currently working with consultants from the Massachusetts Institute of Technology to refine the near neighbor and capital utilization data to increase its usefulness. The NYSE notes that these efforts are ongoing and may lead to enhancements in the future.

In addition to making the three pilot programs permanent, the Exchange proposes to add, as a new measure of specialist performance, ''adjusted stabilization'' rates. Specialists are expected to stabilize stock price movements by buying and selling from their own account against the prevailing trend of the market. ''Stabilization'' refers to those instances where a stock dealer purchases on minus and zero minus ticks, and sells on plus and zero plus ticks. For purposes of the proposed specialist performance measure, ''adjusted stabilization'' would consist of proprietary purchases by specialists on minus and zero minus ticks, as well as zero plus tick purchases on the current bid (provided the current bid is below the offer of the immediately preceding trade); and proprietary sales on plus and zero plus ticks, as well as zero minus tick sales on the current offer (provided the current offer is above the bid of the immediately preceding trade). The Exchange believes that ''adjusted stabilization'' is a useful concept in that it reflects liquidity added to the market by specialists, and is consistent with the specialist's overall obligation to stabilize the market in that the specialist is not initiating either a transaction or a price change, but is rather adding depth to the market at prices at which transactions have already occurred.

Adjusted stabilization rate information would be provided to the Allocation Committee to assist the Committee in assessing the value added by specialists to the depth and liquidity of stocks they currently trade.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[8] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is consistent with these requirements in that continuing to develop objective measures of specialist performance would help perfect the mechanism of a free and open market and 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 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 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:

[5] The Exchange's Allocation Policy and Procedures govern the allocation of equity securities to NYSE specialist units. The Allocation Committee has sole responsibility for the allocation of securities to specialist units pursuant to Board-delegated authority, and is overseen by the Quality of Markets Committee of the Board of Directors. The Allocation Committee renders decisions based upon the allocation criteria specified in the Allocation Policy. The Allocation Policy emphasizes that the most significant allocation criterion is specialist performance. In this regard, the Allocation Policy states that the Allocation Committee will base its allocation decisions on the Specialist Performance Evaluation Questionnaire (''SPEQ''), objective performance measures, and the Committee's expert professional judgment. *See* Securities Exchange Act Release No. 34906 (October 27, 1994), 59 FR 55142 (November 3, 1994) (order approving revisions to the NYSE's Allocation Policy).

The weight given in the allocation decision making process to the SPEQ was reduced from 1/3 to 1/4 in recognition of the Exchange's adoption for allocation decision purposes of the near neighbor and capital utilization objective measures. *See* Securities Exchange Act Release No. 35932 (June 30, 1995), 60 FR 35763 (June 30, 1995).

[6] For a more detailed description of the near neighbor measure, see Securities Exchange Act Release No. 35927, *supra* note. 1.

[7] For a comprehensive description of the capital utilization measure of specialist performance, see Securities Exchange Act Release No. 35926, *supra* note 1.

[8] 15 U.S.C. 78f(b)(5).

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving the portion of the proposed rule change relating to making permanent the three pilot programs on an accelerated basis prior to the thirtieth day after publication in the Federal Register.

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 Room. 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–NYSE–96–34 and should be submitted by [insert date 21 days from date of publication].

V. Commission's Findings and Order Granting Partial Accelerated Approval of Proposed Rule Change

The Commission finds that the portion of the proposed rule change making permanent the specialist performance measure pilot programs is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act.[9] Section 6(b)(5) requires, among other things, that the Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Further, the Commission finds that the portion of the proposal to make permanent the pilot programs is consistent with Section 11(b) of the Act[10] and Rule 11b–1 thereunder,[11] which allow exchanges to promulgate rules relating to specialists to ensure fair and orderly markets. For the reasons set forth below, the Commission continues to believe that the consideration of specialist near neighbor and capital utilization analysis and the Rule 103A performance evaluation process by the Allocation Committee will enhance the Exchange's allocation process and encourage improved specialist performance, consistent with helping to perfect the mechanism of a free and open market and to protect investors and the public interest.

Specialists play a crucial role in providing stability, liquidity and continuity to the trading of securities. Among the obligations imposed upon specialists by the Exchange, and by the Act and rules thereunder, is the maintenance of fair and orderly markets in designated securities.[12] To ensure that specialists fulfill these obligations, it is important that the Exchange implement objective measures of specialist performance and prescribe stock allocation procedures and policies that encourage specialists to strive for optimal performance. The Commission supports NYSE's ongoing efforts to develop objective measures of specialist capital utilization and near neighbor analysis for use in the allocation process to encourage improved specialist performance and market quality. In addition, effective oversight, including periodic evaluation of the specialist's performance, is important to the maintenance of a fair and efficient marketplace. The Commission believes that the NYSE's Rule 103A performance evaluation is critical to this oversight in that it provides the Exchange with the means to identify and correct poor specialist performance, to ascertain whether specialists are maintaining fair and orderly markets in their assigned securities, and to bring performance evaluation actions as a result of the evaluation process.

The Commission also believes that making permanent the pilot programs for these three measures is appropriate because the Exchange indicates that it has found these measures useful in providing the NYSE Allocation Committee with measures of specialist performance. The NYSE's Allocation Policy emphasizes that the most significant allocation criterion is specialist performance.[13] In the Commission's view, performance based stock allocations not only help to ensure that stocks are allocated to specialists who will make the best markets, but will provide an incentive for specialists to improve their performance or maintain superior performance.[14]

The Commission finds good cause for approving the portion of the proposed rule change relating to making permanent the pilot programs prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. The Commission believes that accelerated approval of that portion of the proposal is appropriate because it will enable the Exchange to continue to make use of the capital utilization, near neighbor, and Rule 103A evaluation measures of specialist performance on an uninterrupted basis and will ensure continuity and consistency in the stock allocation deliberation process. Further, the initial proposals to adopt the capital utilization pilot and the near neighbor pilot were noticed previously in the Federal Register for the full statutory period and the Commission did not receive any comments on these proposals.[15] In addition, a substantial portion of current Rule 103A was noticed for the full statutory period in 1987, and the Commission did not receive any adverse commentary on the revised Rule 103A program.[16]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[17] that the portion of the proposed rule change (File No. SR–NYSE–96–34) relating to making permanent the pilot programs is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1220 Filed 1–16–97; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78k(b).

[11] 17 CFR 240.11b–1.

[12] *See, e.g.,* 17 CFR 240.11b–1; NYSE Rule 104.

[13] *See e.g.,* Securities Exchange Act Release No. 34906, *supra* note 4.

[14] The Commission notes that it would still like the near neighbor and capital utilization measures to be incorporated into the Rule 103A evaluation process.

[15] *See supra* Securities Exchange Act Release Nos. 33369 and 35927, note 2.

[16] *See* Securities Exchange Act Release Nos. 24919 (September 15, 1987), 52 FR 35821 (September 23, 1987); 25681 (May 9, 1988), 53 FR 17287 (May 16, 1988).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

[Release No. 34–38157; File No. SR–PHLX–96–46]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Listing and Trading of European-Style Options on the Philadelphia Stock Exchange Semiconductor Index

January 10, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 18, 1996, the Philadelphia Stock Exchange Inc., (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, III below, which Items have been prepared by PHLX. On December 30, 1996, and January 6, 1997, PHLX amended the filing (''Amendment No. 1'' and ''Amendment No. 2,'' respectively).[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PHLX proposes to list and trade European-style index options[3] and LEAPS[4] on the PHLX Semiconductor index. The European-style index options would trade side-by-side with the existing American-style Semiconductor index options.[5] With the exception of the exercise style, the two indices are otherwise identical.[6]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PHLX included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PHLX 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

PHLX proposes to list and trade European-style options on PHLX's Semiconductor index.[7] This index would trade side-by-side with the American-style Semiconductor index options presently listed and trading on the Exchange. The proposed index options would have the same specifications as the American-style index options with the exception of the exercise style.[8] PHLX would differentiate the proposed European-style Semiconductor index options by using the symbol SXE, while the symbol for the American-style index options would remain SOX. The Exchange will provide notice to its membership and the public prior to the effectiveness of this filing emphasizing the difference between the symbols and the exercise style of both index options. Following Commission approval, the Exchange agrees that on a quarterly basis, it will notify its membership of the differentiation between the two index options, their exercise styles, and the aggregation of position limits for European-style and American-style options on PHLX's Semiconductor index.

The Exchange received numerous customer requests for a European-style Semiconductor Index option indicating that many investors prefer to trade index options that cannot be exercised except on the last trading day prior to expiration. European-style index options have certain advantages, including the elimination of the risk of early exercise. For example, investors holding spread positions would not have to be concerned that one leg of a short position can be exercised prior to expiration. The elimination of the early exercise also allows the investor to engage in long range planning and long range strategies. However, the Exchange also recognizes the great success of the existing American-style option which allows those investors who like the early exercise feature to have that ability.

The exercise price of the options will be set at 5 point intervals. Additional exercise prices will be added in accordance with PHLX Rule 1101A(a). The last trading day for expiring contracts will be the Thursday before the third Friday of the expiration month. PHLX will trade consecutive and cycle month series of the options pursuant to Rule 1101A. Specifically, there will be three expiration months from the March, June, September, December cycle plus at least two additional near term months. LEAPS will also be traded on the Index pursuant to Exchange Rule 1101A(b)(iii). The Semiconductor index is an industry index, and therefore the PHLX will employ position limits and exercise limits pursuant to PHLX Rules 1001A(b)(i) and 1002A respectively. The position and exercise limits will be aggregated with the American-style index options presently trading on the Semiconductor index. Therefore, the aggregated position limit will be 15,000 contracts.[9] The options will trade during the hours of 9:30 a.m. and 4:10 p.m. eastern time.

The options will be traded pursuant to current PHLX rules governing the trading of the index options, particularly PHLX Rules 1000A through 1102A and generally, PHLX Rules 1000 to 1072. The Exchange also represents that surveillance procedures currently used to monitor the trading in each of the Exchange's other index options will also be used to monitor trading in options on the Index. These procedures include having complete access to the trading activity in the underlying securities which are all traded on either the NYSE or NASDAQ. In addition, the Intermarket Surveillance Group Agreement (''ISG Agreement'') dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the index.

PHLX believes the proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5),[10] in that it is designed to promote just and equitable principles of trade, facilitate transactions in securities, while protecting investors and the public

[1] 15 U.S.C. 78s(b)(1).

[2] Letters from Nandita Yagnik, Esq., New Product Development, PHLX, to Margaret Blake, Office of Supervision, Division of Market Regulation, Commission (December 23, 1996 and January 2, 1997).

[3] A European-style option may be exercised only during a specified period before the option expires.

[4] LEAPS are long-term index options having up to 36 months to expire.

[5] *See* Securities Exchange Act Release No. 34546 (August 4, 1994) 59 FR 43881 (order approving the listing and trading of options and long term options on the PHLX Semiconductor Index).

[6] A list of the specific stocks together with their price, market value, and weight in the index is attached as Exhibit B to the filing and is available for review in the Public Reference Section of the Commission, or the principal office of the PHLX.

[7] The Semiconductor index is a price weighted index consisting of 16 stocks of companies listed on the New York or NASDAQ stock exchanges which are primarily involved in the design, manufacture, sale and distribution of Semiconductors used in computer and other electronic device manufacturing. As of the close of trading on October 14, 1996 the index had a value at 195.70. The Semiconductor index had a two for one split on July 24, 1995.

[8] The European-style options on PHLX's Semiconductor index will be a.m. settled like the American-style options currently trading on the Semiconductor index.

[9] *See* Securities Exchange Act Release No. 37863 (October 28, 1996), 61 FR 56599 (order approving an increase in Narrow-Based index option position and exercise limits).

[10] 15 U.S.C. § 78f(b)(5).

interest. Specifically the Exchange believes that the proposal provides investors with a choice that allows the investor to choose the exercise style most suitable to their investment needs. In addition, the Exchange believes that the proposal will not create investor confusion regarding the two indices because of the difference in the symbols representing the two index options.

B. Self-Regulatory Organization's Statement on Burden on Competition

PHLX believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change shall become operative 30 days after the date of filing the amended proposal,[11] or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PHLX. All submissions should refer to File No. SR–PHLX–96–46 and should be submitted by February 7, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1217 Filed 1–16–97; 8:45 am]

BILLING CODE 8010–01–M

[11] PHLX submitted the last amendment on January 6, 1997 and therefore the 30 days will be calculated from this date.

[12] 17 CFR 200.30–3(a)(12) (1996).

[Release No. 34–38154; File No. SR–PHLX–96–40]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Incorporated; Order Approving of Proposed Rule Change Relating to Equity Margin Rules

January 10, 1997.

I. Introduction

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'') a proposed rule change relating to its equity margin rules. The proposal was published for comment in the Federal Register on November 25, 1996.[2] No comments were received on the proposed rule change. This order approves the Exchange's proposal.

II. Description of the Proposal

The PHLX has proposed 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'').

Amended Rule 721 will now provide for initial customer margin requirements that 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] 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.

The PHLX has proposed to amend Rule 722 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 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. The PHLX proposed adding these provisions so as to parallel its margin rule with that of the NYSE.[4]

The PHLX has proposed to completely restate Rule 723. The pre-amended version of Rule 723 applied to member and member firm trading which is now governed by PHLX Rules 722 and 703.[5] Exchange research identified that the current text of Rule 723 has not been amended since at least 1937.[6] Accordingly, the arcane text predates all modern margin and capital rules of the PHLX. In lieu of the outdated provisions of 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.[7]

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.

Other major SROs do not have any intra-day margin requirements

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 37962 (November 19, 1996), 61 FR 59919.

[3] *See* NYSE Rule 431(b); AMEX Rule 462; PSE Rules 2.15(e), 2.16(a).

[4] *See* NYSE Rule 431(e)(6).

[5] Rule 722 concerns margin accounts, and Rule 703 concerns financial responsibility and reporting.

[6] In researching the history of Rule 723 the PHLX reviewed Exchange guides from as far back as the 1930s, 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.

[7] The PHLX proposes adopting the language promulgated by the New York Stock Exchange. *See* NYSE Rule 431(f)(8)(B)–(C) and (f)(9).

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.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5).[9] The proposed rule change is designed to remove impediments to and perfect the mechanism of a national market system and to protect investors and the public interest. The Commission believes that the proposed amendments to the equity margin rules will result in the harmonization of the PHLX's equity margin rules with those of other SROs.

Specifically, the Commission finds appropriate the proposal to amend Rule 721 to provide for initial customer margin requirements that are identical to the initial customer equity margin requirements of the NYSE, the AMEX, and the PSE. The rule will require that 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.

The Commission also finds appropriate the PHLX proposal to amend Rule 722 to parallel the NYSE margin rule, 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 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.

Rule 723 will be restated to 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. 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. The Commission finds these proposals appropriate in light of their consistency with the rules of other SROs.[10] The Commission believes that it is appropriate for the PHLX to completely restate Rule 723 to eliminate intra-day margin requirements governing member trading, consistent with the requirements of other SROs. The restatement of the rule also is appropriate in light of the fact that other provisions of the pre-amendment version of Rule 723 are now governed by other PHLX rules.[11]

The Commission finds that these amendments will enhance financial protections and, as a result, enhance the integrity of the Exchange's markets by ensuring that members and customers maintain adequate margin reserves. Because the amendments result in PHLX equity margin rules that are identical to those of other SROs, they do not raise new regulatory concerns.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–PHLX–96–40) is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1219 Filed 1–16–97; 8:45 am]

BILLING CODE 8010–01–M

[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.

[9] 15 U.S.C. § 78f(b)(5).

[10] *Surpa* note 7.

[11] *Surpa* note 5 and accompanying text.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

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 March 18, 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: ''Small Business and Agriculture Regulatory Enforcement Ombudsman''.

Type of Request: New.

Form No: SBA Form 1993.

Description of Respondents: Small Business Owners and Farmers.

Annual Responses: 1000.

Annual Burden: 500.

Comments: Send all comments regarding this information collection to Dorothy Overal, Office of Field Operations, Small Business Administration, 409 3rd Street, S. W., Suite 7125 Washington, D.C. 20416. Phone No.: 202–205–6808.

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. 97–1196 Filed 1–16–97; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2926]

California; Declaration of Disaster Loan Area

Humboldt County and the contiguous counties of Del Norte, Mendocino, Siskiyou, and Trinity in the State of California constitute a disaster area as a result of damages caused by severe storms and flooding which occurred December 7–9, 1996. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on March 14, 1997 and for economic injury until the close of business on October 14, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, 1825 Bell Street, Suite 208, Sacramento, CA 95825, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.250
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 292606 and for economic injury the number is 933900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: January 13, 1997.

Philip Lader,

Administrator.

[FR Doc. 97–1195 Filed 1–16–97; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2894]

North Carolina; Declaration of Disaster Loan Area (Amendment #6)

In accordance with a notice from the Federal Emergency Management Agency, dated January 3, 1997, the above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damage as a result of this disaster to February 4, 1997.

All other information remains the same, i.e., the termination date for filing applications for loans for economic injury is June 6, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: January 10, 1997.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 97–1194 Filed 1–16–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending January 10, 1997

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–97–2045.
Date filed: January 7, 1997.
Parties: Members of the International Air Transport Association.
Subject: PSC/Reso/087 dated November 29, 1996 r1-r60, Book of Finally Adopted Resos, Minutes—PSC/Minutes/008 dated December 9, 1996, Intended effective date: June 1, 1997.

Paulette V. Twine,

Chief, Documentary Services.

[FR Doc. 97–1251 Filed 1–16–97; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ending January 10, 1997

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–97–2044.
Date filed: January 7, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 4, 1997.
Description: Application of Mesaba Aviation, Inc., d/b/a Mesaba Airlines d/b/a Mesaba Northwest Airlink, applies, pursuant to 14 C.F.R. 204.5 and Subpart Q of the Department's Procedural Regulations, for an amendment to its certificate of public convenience and necessity to allow Mesaba to operate aircraft with a seating capacity greater than 60 seats.

Docket Number: OST–97–2046.
Date filed: January 7, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 4, 1997.
Description: Application of United Air lines, Inc., pursuant to 49 U.S.C. 41101, and Subpart Q of the Regulations, applies for renewal of authority to engage in scheduled foreign air transportation of persons, property, and mail between the United States and Sao Paulo, Rio de Janeiro, Brasilia, and Belem, Brazil; Barranquilla, Colombia; and Buenos Aires, Argentina. These services are authorized on segments 1 and 6 of United's certificate of public convenience and necessity for Route 632.

Docket Number: OST–97–2054.

Date filed: January 10, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 7, 1997.

Description: Application of British Airways Plc, pursuant to 49 U.S.C. 41305, and Subpart Q of the Regulations, applies for an amended Foreign Air Carrier Permit authorizing scheduled foreign air transportation of persons, property, and mail between points in the United Kingdom and points in the United States, and beyond the United States with Fifth Freedom Rights to the full extent consistent with the United Kingdom-United States bilateral agreement. British Airways further seeks the right to integrate the requested authority with all of its existing and future authority to engage in foreign air transportation under its foreign air carrier permit and certain exemptions issued by the Department.

Docket Number: OST–97–2056.

Date filed: January 10, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 7, 1997.

Description: Application of American Airlines, Inc., pursuant to 49 U.S.C. 41108, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing scheduled foreign air transportation of persons, property, and mail between points in the United States and points in the United Kingdom, and beyond the United Kingdom with traffic rights to the full extent consistent with applicable bilateral agreements. American further seeks the right to integrate the requested authority with all of its existing and future authority to engage in foreign air transportation under certificates of public convenience and necessity and exemptions issued by the Department.

Docket Number: OST–97–2058.

Date filed: January 10, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 31, 1997.

Description: Joint application of American Airlines, Inc. and British Airways Plc, pursuant to 49 U.S.C. 41308 and 41309, for approval of and antitrust immunity for their alliance agreement of June 11, 1996 (Exhibit JA–1). The joint applicants request that antitrust immunity be effective no later

than March 30, 1997, and remain in place for a period of at least five years.

Paulette V. Twine,

Chief, Documentary Services.

[FR Doc. 97–1250 Filed 1–16–97; 8:45 am]

BILLING CODE 4910–62–P

Coast Guard

[CGD 97–002]

Chemical Transportation Advisory Committee; Subcommittee on the Review/Update of Vapor Control System Regulations Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Vapor Control System (VCS) Regulations Review/Update Subcommittee of the Chemical Transportation Advisory Committee (CTAC) will meet to evaluate the need for revision of the marine vapor control regulations found in Title 33, Code of Federal Regulations, Part 154 and Title 46, Code of Federal Regulations, Part 39. The meeting is open to the public.

DATES: The meeting of the VCS Subcommittee will be held on January 29–30, 1997, from 9:30 a.m. to 3 p.m. Written material and requests to make oral presentations should reach the Coast Guard on or before January 24, 1997.

ADDRESSES: The meeting of the VCS Subcommittee will be held in the training room at Marine Safety Office Houston-Galveston, 9640 Clinton Drive, Houston, TX 77029. For directions to MSO Houston-Galveston, please contact Lieutenant J.J. Plunkett, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Lieutenant J.J. Plunkett, Commandant (G–MSO–3), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; telephone (202) 267–0087, fax (202) 267–4570.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda includes the following:

(1) Presentation of each subcommittee member's work thus far and plans for the future.

(2) Review and discuss the work completed by each member.

After a brief meeting together, the subcommittee members will form into two work groups to discuss in detail their assigned tasks. The two groups are Facility VCS work group and Vessel VCS work group.

Procedural

This meeting is open to the public. At the Subcommittee Chairperson's discretion, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations at the meeting should notify Mr. Paul J. Book no later than January 24, 1997. Written material for distribution at the meeting should reach the Coast Guard no later than January 24, 1997. If a person submitting material would like a copy distributed to each member of the subcommittee on advance of the meeting, that person should submit 25 copies to Mr. Book no later than January 24, 1997.

Information on Services for the Handicapped

For information on facilities or services for the handicapped or to request special assistance at the meeting, contact Lieutenant Plunkett as soon as possible.

Dated: January 10, 1997.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 97–1175 Filed 1–16–97; 8:45 am]

BILLING CODE 4910–14–M

Surface Transportation Board

[STB Docket No. AB–43 (Sub-No. 163)]

Illinois Central Railroad Company—Abandonment—Between Aberdeen Junction and Kosciusko, in Holmes and Attala Counties, MS

AGENCY: Surface Transportation Board.

ACTION: Notice of Findings.

SUMMARY: The Board has found that the public convenience and necessity permit Illinois Central Railroad Company to abandon its 21.70-mile rail line between milepost H–0.20 at Aberdeen Junction and milepost H–21.90 at Kosciusko, in Holmes and Attala Counties, MS, subject to environmental conditions and standard employee protective conditions.

DATES: The Board's decision will be effective and abandonment may be carried out on February 12, 1997, unless, prior to that date, the Board finds that one or more financially responsible persons have offered financial assistance (through subsidy or purchase) regarding the line.

Financial assistance offers must be filed with the Board and the railroad no later than January 28, 1997. Any offer previously made must be remade by the due date.

ADDRESSES: Send offers of financial assistance referring to STB Docket No. AB–43 (Sub-No. 163) to: (1) Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW, Washington, DC 20423; and (2) Illinois Central's representative: Myles L. Tobin, Illinois Central Railroad Company, 455 North Cityfront Plaza Drive, Chicago, IL 60611–5504. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer mailed to the Board: ''Office of Proceedings, AB-OFA.''

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10904 and 49 CFR 1152.27.

Decided: January 13, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–1215 Filed 1–16–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[No. 97–3]

Capital and Accounting Standards

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice.

SUMMARY: Pursuant to the reporting requirements of section 121 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), we have submitted our report to the Chairman and ranking minority member of the Committee on Banking, Housing and Urban Affairs of the Senate and the Chairman and ranking minority member of the Committee on Banking and Financial Services of the House of Representatives identifying the differences between the capital and accounting standards used by the office of Thrift Supervision (OTS) and the capital and accounting standards used by the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC) and the Board of Governors of, the Federal Reserve System (FRB)(collectively, the banking agencies).

Our report contains two attachments. Attachment I, ''Summary of Differences in Capital Standards,'' identifies and explains the reasons for differences in the OTS capital standards and those of the other banking agencies. Attachment II, ''Summary of Differences in Accounting Practices,'' identifies and explains the reasons for the major differences between OTS and the other banking agencies in supervisory reporting practices that affect their respective capital standards.

Despite some differences, the capital and accounting rules of OTS generally parallel those of the banking agencies (collectively, the ''agencies''). Many of the differences result from either statutory requirements (*e.g.*, deduction of investment in subsidiaries engaged in activities impermissible for national banks) or historical differences between the banking and thrift industries (*e.g.*, investment authorities, mutual form of organization).

Moreover, the agencies continue to work together to minimize their current differences and to ensure that the new rules and policies they adopt are consistent and result in a uniform national banking policy. The agencies frequently issue joint regulatory and policy documents in working toward the general goal of interagency consistency set forth in section 303 of the Reigle Community Development and Regulatory Improvement Act of 1994 (CDRIA).

Today's report reflects differences as of September 30, 1996. It indicates how these differences will be resolved, in accordance with the agencies' *Joint Report: Streamlining of Regulatory Requirements* (Sept. 23, 1996) (Joint Report).

Furthermore, the OTS requires that savings associations follow generally accepted accounting principles (GAAP) for regulatory reports. This complies with the requirement of section 121(a) of FDICIA that the accounting principles applicable to reports or statements filed with OTS be consistent with GAAP.

The OTS capital standards comply with the requirements of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), including the general requirement that the capital standards applicable to savings associations be no less stringent than those applicable to national banks.

EFFECTIVE DATE: January 17, 1997.

FOR FURTHER INFORMATION CONTACT: John Connolly, Senior Program Manager for Capital Policy, (202) 906–6465, Supervision Policy; or Timothy J. Stier, Chief Accountant, (202) 906–5699, Accounting Policy, Supervision, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Attachment I—Summary of Differences in Capital Standards

FDICIA requires a report to Congress on the differences in the capital standards for banks and savings associations. Below is a summary of the differences.

A. Major Differences

1. Interest-Rate Risk Component

Interest-Rate Risk Component: The OTS has adopted a final rule incorporating an interest-rate risk component into its risk-based capital requirements. Under the rule, institutions with an above-normal level of interest-rate risk will be subject to a capital charge commensurate with their risk exposure. Institutions have been submitting their interest-risk data and receiving a report on their interest-risk exposure under the OTS model from OTS staff since March 1991. This interest-rate risk analysis is considered so valuable by savings associations that a considerable number of associations not required to file reports do so voluntarily. Furthermore, the OTS supervisory staff considers institutions' interest-rate risk exposure in assessing institutions' capital adequacy and asset/liability management. OTS has not yet implemented the requirement for associations to deduct an interest-rate risk component in calculating their risk-based capital.

The banking agencies also are implementing policies under which they consider banks' interest-rate risk exposure in the examination process. On August 2, 1995, the banking agencies published a joint final rule in the Federal Register on interest-rate risk. See 60 FR 39490 (August 2, 1995). The final rule amends their capital adequacy guidelines to clarify the authority of the banking agencies to include in their evaluation of bank capital adequacy an assessment of banks' exposure to declines in capital due to interest rate movements. Concurrent with the publication of the final rule, the banking agencies issued a joint policy statement for comment that describes the process that the banking agencies will use to measure and assess the exposure of a bank's economic value to changes in interest rates. See 60 FR 39495 (August 2, 1995).

The OTS interest-rate risk approach differs from that of the banking agencies in important respects. The major differences are the methodology and data used to measure interest rate exposure.

Reason for OTS Difference: Because interest-rate risk is a significant risk to savings associations, OTS believes that it is important to use a relatively sophisticated model to measure the interest-rate risk exposure of individual institutions. OTS believes that it is particularly important to use a model that is capable of measuring the option component in mortgages and the effect of financial derivatives on an institution's overall interest-rate-risk exposure. As a consequence, OTS uses an option-based pricing model to measure exposure and collects detailed financial data on a reporting form that was designed to provide the financial data that OTS needs to measure exposure.

2. Leverage Ratio Standard

The agencies use uniform leverage ratio standards for purposes of the capital ratio thresholds used in defining the prompt corrective action (PCA) categories under section 38 of the Federal Deposit Insurance Act (FDIA). Institutions, other than CAMEL–1 rated institutions, must satisfy a leverage ratio standard requiring institutions to have Tier 1 (core) capital equal to four percent of assets to be adequately capitalized for purposes of the prompt corrective action system. The leverage ratio standard for CAMEL–1 rated institutions only requires them to have Tier 1 (core) capital equal to three percent of assets, although most CAMEL–1 rated institutions exceed this requirement by a wide margin. The leverage ratio requirements in the banking agencies' capital regulations mirror those in their PCA regulations.

Although the OTS capital rule continues to contain a three percent leverage ratio requirement, the four percent leverage ratio requirement to be ''adequately capitalized'' for PCA purposes is, in effect, the controlling standard for thrifts.

Reason for OTS Difference: Initial adoption of a three percent leverage ratio requirement in the OTS capital rule in 1989 prior to adoption of the banking agencies' current standard. As indicated in the September 23 Joint Report, the agencies will be issuing a proposed rule to make all of their leverage ratio regulations uniform.

3. Subsidiaries

Subsidiary (general): OTS defines a subsidiary as a five percent or greater ownership interest in an entity. The OTS requires full consolidation of any subsidiary with its parent association if the subsidiary is consolidated for

reporting purposes consistent with generally accepted accounting principles (GAAP) (except for subsidiaries engaged as principal in activities impermissible for national banks, as described below). If an association owns a five percent or greater interest, but does not have control under GAAP, OTS requires pro-rata consolidation, as discussed below.

The banking agencies generally follow the GAAP approach for the definition and consolidation of subsidiaries, but do not require consolidation of subsidiaries not exceeding certain ''de minimis'' thresholds. Subject to these exceptions, subsidiaries generally are fully consolidated if the parent institution holds more than 50 percent of the outstanding voting stock, or if the subsidiary is otherwise controlled or capable of being controlled by the parent institution (*see* exception for depository institutions).

The OTS, however, instead of applying, ''pro rata'' consolidation, has decided to use its discretion under its capital rule to follow GAAP and the banking agencies' approach in consolidating community development subsidiaries and low-income housing tax credit limited partnerships.

Reason for OTS Difference: Policy decision in 1989 based, in part, on the wide array of subsidiaries that state-chartered associations had previously been permitted to hold. In 1994, however, the OTS decided to follow the consolidation approach of GAAP and the other Federal banking agencies in consolidating community development subsidiaries. This beneficial capital treatment avoids the requirement for associations to deduct their investments in community development subsidiaries engaged in activities that are permissible for subsidiaries of national banks, but impermissible for national banks themselves. In June 1996, the OTS proposed to define ''subsidiary'' for capital purposes generally in the same manner as the banking agencies.

Subsidiaries (impermissible): FIRREA and the OTS capital rule require the deduction from core capital of savings associations' investments in and loans to subsidiaries that engage in activities not permissible for national banks. Generally, any new investment after April 13, 1989, in such nonincludable subsidiaries has had to be deducted immediately. Furthermore, because all transition schedules for grandfathered investments in nonincludable subsidiaries expired as of June 30, 1996, all investments in nonincludable subsidiaries must be deducted in computing core capital.

As of July 1, 1996, savings associations must deduct all investments in, and extensions of credit to, nonincludable real estate subsidiaries, consistent with the deduction requirement applicable to other types of nonincludable subsidiaries since July 1, 1994.

The banking agencies may require the deduction of investments in certain subsidiaries, generally on a case-by-case basis. For example, the FRB deducts investments in, and unsecured advances to, Section 20 securities subsidiaries from a member bank's capital. The FDIC similarly deducts investments in, and unsecured advances to, securities subsidiaries and mortgage banking subsidiaries. The FDIC also exercises similar authority over the subsidiaries of state nonmember banks engaged in activities not permissible for national banks.

Reason for OTS Difference: The Home Owners' Loan Act, as amended by FIRREA, requires associations to deduct investments in and loans to subsidiaries engaged as principal in activities impermissible for national banks. Generally, savings associations are required to deduct the total amount of their investments in, and advances to, such nonincludable subsidiaries.

The deduction of investments in subsidiaries from parent associations' capital is designed to insulate associations' capital from activities potentially riskier than those in which associations are permitted to engage. The statutory standard for whether an activity is risky is whether a national bank may engage in that activity, plus certain other expressly permissible activities.

Subsidiaries (Permissible—Minority Ownership): The OTS capital rule, as discussed above, requires the pro-rata consolidation of subsidiaries where the association does not have control, as defined under GAAP, but owns a five percent or greater ownership interest in the subsidiary. The banking agencies generally require capital to be held only against the investments in such subsidiaries but may, on a case-by-case basis, deduct them from capital or consolidate them either fully or on a pro-rata basis.

Reason for OTS Difference: Policy decision in 1989 to ensure ample capital against the diverse assets then held by thrift subsidiaries, particularly subsidiaries of certain state-chartered associations. The proposed changes to the OTS's definition of subsidiary for capital purposes will remove this difference.

Subsidiaries (Lower-tier Depository Institutions): Under OTS rules, a depository institution subsidiary is automatically consolidated with its parent association if the subsidiary was acquired prior to May 1, 1989. The parent association's investment in such subsidiaries is automatically excluded from the parent association's capital if the depository institution subsidiary was acquired on or after May 1, 1989, unless it engages only in activities permissible for a national bank. On a case-by-case basis, the OTS requires consolidation of lower-tier depository institutions, if consolidation results in a higher capital requirement than the exclusion requirement. For purposes of risk-based capital, the banking agencies generally consolidate majority-owned subsidiaries.

Reason for OTS Difference: The Home Owners' Loan Act, as amended by FIRREA, requires associations to deduct investments in and loans to subsidiaries, including depository institutions acquired after May 1, 1989, engaged as principal in activities impermissible for national banks. OTS's policy addresses the need for both the parent and subsidiary institutions to have adequate capital on a consolidated and unconsolidated basis. It also ensures that OTS capital standards are at least as stringent as those imposed on banks. (HOLA sections 5(t)(5)(A), (C), (E)) .

4. *Equity Investments:* Savings associations must deduct the amount of their equity investments, as defined in the OTS capital rule, in computing total capital used to satisfy their risk-based capital requirements. The banking agencies allow only a limited range of equity investments and place those investments in the 100 percent risk-weight category, rather than requiring deduction.

In March 1993, OTS issued a final rule that provides parallel treatment of equity investments for thrifts and national banks. Equity investments of thrifts that are permissible for national banks (primarily stock of Freddie Mac, stock of Fannie Mae and certain loans with equity characteristics) are placed in the 100 percent risk-weight category.

Reason for OTS Difference: OTS will continue to require the deduction from capital of equity investments that are impermissible for national banks. This approach is designed to insulate the institution and the insurance fund from the risk of these investments. This policy is intended to result in such investments being either divested or ''pushed down'' into subsidiaries, where savings associations can limit their liability and attempt to attract partial market funding for the subsidiaries. The OTS will address the safety and

soundness of equity investments of thrifts that are permissible for national banks through the same capital and supervisory approach used by the banking agencies.

5. *20 Percent Risk-Weight for High Quality Mortgage-backed Securities:* OTS includes agency securities (i.e., issued by Freddie Mac or Fannie Mae) in the 20 percent risk-weight category. OTS also places high-quality, private-issue, mortgage-related securities (i.e., eligible securities under the Secondary Mortgage Market Enhancement Act (SMMEA)) in the 20 percent risk-weight category. These private-issue mortgage-backed securities represent interests in residential or mixed-use real estate and are rated in one of the two highest investment-grade rating categories by a nationally recognized statistical rating organization. Generally, the banking agencies place private-issue, mortgage-backed securities in the 50 percent or 100 percent risk-weight category.

Reason for OTS Difference: Policy decision to take the high credit quality of these securities into account in risk-weighting these securities.

6. *Qualifying Multifamily Mortgage Loans:* OTS and the banking agencies have uniform rules placing multifamily loans satisfying the criteria of section 618(b) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (RTC Act), in the 50 percent risk-weight category.

The OTS, however, extended grandfathered treatment to multifamily mortgage loans that were in the 50 percent risk-weight category under a prior OTS rule in March 1994, when OTS adopted its rule implementing section 618(b) of the RTC Act. Those low-risk, grandfathered multifamily loans must continue to satisfy the criteria of the prior OTS rule. Those criteria are that the loans are secured by multifamily residential buildings with 5–36 units, have maximum 80 percent loan-to-value ratios and maintain occupancy rates of at least 80 percent.

Reason for OTS Difference: The rules of the OTS and the banking agencies are generally consistent. The OTS, however, decided to extend grandfathered treatment to low-risk multifamily loans previously qualifying for the 50 percent risk-weight category under the prior OTS multifamily rule.

7. *Intangible Assets and Mortgage Servicing Rights:* The final rule on the capital treatment of intangible assets adopted by the OTS generally is consistent with the rules adopted by the banking agencies. The OTS rule, however, contains a grandfathering provision and a transition provision for purchased mortgage servicing rights included in capital prior to adoption of the revised final rule.

The OTS rule also contains a grandfathering provision allowing continued inclusion of core deposit premiums included in associations' capital on the effective date of the final rule. These core deposit premiums were previously included in capital pursuant to temporary OTS guidance if an association's management determined that they passed a three-part test and the amount included did not exceed 25 percent of core capital. The new rule requires the deduction of nongrandfathered core deposit premiums from capital.

In August 1995, the OTS also issued a joint rule with the other banking agencies adopting uniform interim capital treatment of originated mortgage servicing rights. The Financial Accounting Standards Board required originated mortgage servicing rights to be capitalized in accordance with prescribed valuation criteria by adopting Statement of Financial Accounting Standard No. 122, ''Accounting for Mortgage Servicing Rights'', in May 1995. The joint interim rule generally applies the same treatment to originated mortgage servicing rights that the agencies previously applied to purchased mortgage servicing rights. This capital treatment includes a 50 percent of Tier 1 capital limit and valuation at the lower of 90 percent of fair market value or 100 percent of amortized book value.

Reason for OTS Difference: The treatment of intangible assets and mortgage servicing rights under the capital rules of OTS and the banking agencies are generally uniform. The OTS, however, decided to allow associations to continue to include purchased mortgage servicing rights and core deposit premiums in capital computations if the specific assets had previously been included in associations' capital under prior OTS rule or policy.

8. Recourse Arrangements

Assets Sold with Recourse (Nonmortgage): If a savings association makes a GAAP sale of nonmortgage assets with recourse, the OTS (i) treats the transaction as a sale for purpose of reporting and leverage ratio computation and (ii) requires capital to be held against the total amount of the loans sold with recourse in calculating the association's risk-based capital requirement. Despite being a GAAP sale, the banking agencies treat the transaction as a financing. This means that the original assets are considered still on the books, along with the proceeds received, in computing the leverage and risk-based assets.

Reason for OTS Difference: OTS follows GAAP in determining whether a transaction is a sale for reporting purposes and in computing associations' leverage ratio capital requirements. The OTS policy also ensures that the economic risk to associations from sales with recourse is captured in determining associations' risk-based capital requirements.

Assets Sold with Recourse (Mortgages—Private Transactions): If a savings association sells mortgage assets with recourse to private entities and the transaction is treated as a sale under GAAP, OTS follows the same policy as it follows regarding sales of nonmortgage assets. Under this policy, OTS (i) treats the transaction as a sale and (ii) requires capital to be held against the total amount of loans sold with recourse in calculating the association's risk-based capital requirement.

A bank that sells pools of residential mortgages to private entities with recourse generally is required to hold the full amount of capital against the mortgages sold, as well as the proceeds received, regardless of the amount of recourse retained and the treatment of the transactions for regulatory reporting purposes.

The rules of the FRB and OCC, however, provide that no capital is required against pools of 1- to 4-family mortgages sold to private entities with ''insignificant recourse'' (i.e., less than expected losses) for which a specific noncapital reserve or liability account is established and maintained for the maximum amount of possible loss under the recourse provision.

If ''*significant*'' recourse is retained, the transaction is not reported as a sale and the assets remain on the balance sheet. Capital is required to be held against the on-balance sheet amount of the assets. The FDIC follows this approach for all sales with recourse; the FDIC has not adopted an ''insignificant recourse'' policy.

Reason for OTS Difference: OTS follows GAAP in determining whether a transaction is a sale for reporting purposes and in computing associations' leverage ratio capital requirement. The OTS policy also ensures that the economic risk to associations from sales with recourse will be captured in determining their risk-based capital requirements. The banking agencies' application of their limited recourse provisions for computing banks' risk-based capital requirements has affected the

significance of the ''insignificant recourse'' provisions of the FRB and OCC.

Assets Sold with Recourse (Limited Recourse): In accordance with section 350 of the Riegle Community Development and Regulatory Improvement Act of 1994, the banking agencies adopted a low-level recourse rule. The OTS adopted its low-level recourse provision in 1989. The remaining difference regarding such sales with recourse is that the OTS follows GAAP in according sales treatment to those transactions for reporting and leverage computation purposes. The banking agencies generally do not accord sales treatment to sales with low-level recourse and continue to treat the transaction as a financing in computing banks' leverage ratio requirements, subject to the ''insignificant recourse'' provisions of the FRB and OCC.

Reason for OTS Difference: The agencies, low-level recourse provisions, in accordance with section 350 of the Riegle Act, limit an institution's capital requirement to its maximum contractual liability under its recourse obligation. The difference between OTS and the banking agencies for reporting and leverage ratio purposes is caused by the OTS decision to follow GAAP in determining whether to accord sales treatment.

Recourse Servicing: Where savings associations are responsible for credit losses on loans they service, OTS requires capital against the amount of the underlying loans consistent with the recourse policy set forth above. Although savings associations do not own the underlying assets, they have a contingent liability and are subject to losses on those loans. OTS requires associations to hold capital against the underlying loans posing economic risk for the associations. The banking agencies do not assess capital on the underlying loans but only on the value of the servicing rights.

Reason for OTS difference: Policy decision to assess capital on underlying loans to buffer associations from the risk of loss on such loans.

9. *Purchased Subordinated Securities:* The OTS risk-based capital standard requires associations to hold capital against the amount of their subordinated securities and any more senior securities. It does not matter whether the subordinated securities were acquired from others or result from the securitization of loans they originated. Associations' risk-based capital requirements are limited, however, by the low-level recourse provision.

Banks are only required to hold capital against the amount of more senior securities if the institution originated and sold the underlying loans. The banking agencies do not require banks to hold capital against securities senior to acquired subordinated securities if a bank acquired the securities in the market from third parties.

Reason for OTS Difference: Policy decision to ensure appropriate capital against risk of these assets. Whether institutions create subordinated securities or purchase subordinated securities, the risks are similar.

10. *Consequences of Failure to Meet Capital Standards:* The PCA provisions of FDICIA impose a stringent regulatory regimen on thrifts and banks failing their capital requirements. The PCA provisions of section 131 of FDICIA establish five regulatory categories, with the distinctions primarily based on institutions' capital ratios. Section 131 imposes various sanctions and restrictions on institutions in the lower three PCA categories, while other regulations (brokered deposits and the risk-based premium rules of the FDIC) provide preferential treatment to the well-capitalized institutions. The agencies issued a joint preamble and parallel rules implementing PCA.

Savings associations are also subject to additional restrictions and requirements under the HOLA, as enacted in FIRREA. The OTS will continue to apply these provisions to savings associations, but is coordinating their implementation with the PCA provisions to the extent possible. The HOLA provisions do not apply to banks.

Reason for OTS Difference: The agencies have adopted uniform rules implementing the PCA provisions of FDICIA. The HOLA, however, continues to impose additional restrictions on savings associations (HOLA section 5(t)(6)).

11. Collateralized Transactions

Since December 1994, the agencies have had three different rules for the capital treatment of transactions that are supported by qualifying collateral. The FDIC's and OTS's risk-based capital standards provide that the portion of a transaction collateralized by cash on deposit in the lending institution or by the market value of central government securities of countries that are members of the Organization for Economic Cooperation and Development (OECD securities) may be assigned to the 20 percent risk-weight category. The FRB's general rule is like the FDIC's and OTS's rule, but with a limited exception. The exception is that transactions fully collateralized with cash or OECD securities marked-to-market daily with positive collateral margin maintained. The OCC's rule permits the portion of a transaction that is collateralized with a positive margin by cash or OECD securities, which must be marked-to-market daily, to receive a zero percent risk-weighting.

Reason for OTS Difference: The OTS and FDIC regulations on collateralized transactions have not been changed since 1989. The FRB and OCC revised their regulations in different ways in 1992 and 1994, respectively. As indicated in the September 23 Joint Report, consistent with section 303 of the Riegle Act, in August, 1996, the agencies jointly proposed a uniform approach to the capital treatment of collateralized transactions. Under the proposed approach, designated portions of claims are included in the zero percent risk-weight category if the institution marks the designated portion to market daily and requires the obligor to adjust the amount of underlying collateral to maintain a positive daily margin on the designated portion of the claim.

B. Minor Differences

1. *1.5 Percent Tangible Capital Requirement:* OTS has an explicit 1.5 percent tangible capital requirement; the bank regulators do not.

Reason for OTS Difference: FIRREA required OTS to establish a tangible capital requirement of at least 1.5 percen of assets. (HOLA 5(t)(2)(B)).

2. *Collateralized Mortgage Obligations (CMO) Tranches:* In its final interest-rate risk rule, OTS eliminated the placement of stripped securities and certain collateralized mortgage obligations in the 100 percent risk-weight category because of their interest-rate risk sensitivity. The OTS interest-rate risk model evaluates the interest-rate risk stemming from these assets. The OTS examination and supervisory staffs consider associations, interest-rate risk exposure, along with aspects of associations, capital position, in determining the associations, capital adequacy under the CAMEL system. Residual securities remain in the 100 percent risk-weight category because of their degree of credit risk and other risks.

The banking agencies vary in their approach: OCC has stated that any CMO tranche absorbing more than its pro-rata share of the risk of losing principal is risk-weighted at 100 percent (others generally at 20 percent); FRB has stated that any CMO tranche absorbing more than its pro-rata share of loss is risk-weighted at 100 percent (others

generally at 20 percent); FDIC undertakes a case-by-case review.

Reason for OTS Difference: Policy decision to address the interest-rate risk of CMOs through the OTS interest-rate risk rule, model and supervisory oversight. Policy determination that dealing with these securities in this way made continued risk-weighting for credit risk in the 100 percent risk-weight category unwarranted. The degree of credit risk and other risks to which residual securities expose associations warrant their continued risk-weighting in the 100 percent risk-weight category.

3. *Pledged Deposits/Nonwithdrawable Accounts:* OTS includes these instruments as core capital for mutual associations if they meet the same requirements as non-cumulative perpetual preferred stock. If they do not meet the requirements for inclusion in core capital, OTS includes them as supplementary capital provided they meet the standards for preferred stock or subordinated debt. The banking agencies do not address this issue because these instruments represent the capital of mutual associations legally restricted from issuing equity securities (i.e., their depositor members are their owners). Banks generally are not organized in mutual form.

Reason for OTS Difference: Policy decision to treat these instruments the same as the equity instruments of corporate thrifts because they provide the same protection as equity to the mutual associations and the deposit insurance fund.

4. *Qualifying Single Family Mortgage Loans:* In order to be placed in the 50 percent risk-weight category, OTS requires that mortgages have no more than an 80 percent loan-to-value (LTV) ratio (unless they have private mortgage insurance (PMI) bringing the LTV ratio down to 80 percent). The banking agencies require ''prudent, conservative'' underwriting without specific LTV ratio requirements.

Reason for OTS Difference: Policy decision to make explicit what OTS believes is generally ''prudent and conservative''; the banking agencies generally include a similar LTV standard in their examiner guidance.

5. *Loans to Individual Purchasers for the Construction of Their Homes:* OTS and OCC place these assets in the 50 percent risk-weight category. The FRB and FDIC may treat them as construction loans (100 percent) or as mortgage loans (50 percent) depending on their characteristics.

Reason for OTS Difference: Policy decision to include such loans in standard treatment of 1–4 family mortgage loans, as does the OCC. As indicated in the September 23 Joint Report, the agencies expect to issue a proposal to make their regulations uniform in this area.

6. *Holding of First and Second Liens on Home Mortgages by the Same Institution:* The FRB and OTS generally treat first and second liens held by the same institution as single loans if there are no intervening liens. The OCC generally places second liens in the 100 percent risk-weight category. The FDIC combines first and second liens in evaluating whether the first lien is prudently underwritten, but places all second liens in the 100 percent risk-weight category.

Reason for OTS Difference: Policy decision generally to treat two extensions of credit to the same individual and secured by the same 1–4 family residence the same as a single extension of credit. The combined credit should be placed in the appropriate risk-weight depending on whether the combined credit meets the other criteria for a qualifying mortgage loan. As indicated in the September 23 Joint Report, the agencies expect to issue a proposal to make their regulations uniform in this area.

7. *Rules on Maturing Capital Instruments (MCI):* OTS and the banking agencies use different rules to determine how much of MCI counts toward capital. OTS (i) grandfathers issuances of MCI issued on or before November 7, 1989 (which was the date of the rule change) and (ii) allows two options for issuances of MCI after November 7, 1989 (a) the bank rule (five year amortization) or (b) a limit of 20 percent of total capital maturing in any one year for instruments within seven years of maturity.

The banking agencies require use of the straight five-year approach.

Reason for OTS Difference: Policy decision to minimize unnecessary disincentives for issuance of subordinated debt and to avoid unduly penalizing pre-FIRREA issuances of MCI.

8. *Limitation on Subordinated Debt:* The banking agencies limit subordinated debt to 50 percent of core capital. OTS has no limit on the amount of subordinated debt that can count as supplementary capital.

Reason for OTS Difference: Policy decision to encourage issuance of supplementary capital.

9. *Nonresidential Construction and Land Loans:* OTS requires the amount of these loans above an 80 percent LTV ratio to be deducted from total capital (with a five year phase-in). The banking agencies place the whole loan amount in the 100 percent risk-weight category.

Reason for OTS Difference: Policy decision to ensure appropriate capital against risk of these assets. OTS experience indicates that high-LTV ratio land loans and nonresidential construction loans present particularly high levels of risk.

10. *FSLIC/FDIC-covered Assets:* OTS places these assets in the zero percent risk-weight category. The banking agencies generally place these assets in the 20 percent risk-weight category.

Reason for OTS Difference: Policy decision to recognize OTS Capital and Accounting Standards that these assets have never resulted in losses and that these government guaranteed obligations are supported by a ''backup'' call on the United States Treasury.

11. *Mutual Funds*: In general, OTS establishes the risk weighting for mutual funds on the asset with the highest capital requirement actually held by the mutual fund. The banking agencies base their capital charge on the highest risk-weighted asset that is a permissible investment by the mutual fund. The 20 percent risk-weight category is the lowest risk-weight category in which associations may place mutual fund investments.

OTS allows, on a case-by-case basis, ''pro-rata'' risk-weighting of investments in mutual funds, based on the assets of the mutual fund (i.e., if 90 percent of a mutual fund's assets are 20 percent risk-weight assets and 10 percent are 100 percent risk-weight assets, we may allow 90 percent of the investment in 20 percent risk-weight category and 10 percent in the 100 percent risk-weight category). The OCC permits national banks to pro-rate mutual fund investments between risk-weight categories based on the maximum amount of different types of assets that mutual funds may hold in accordance with their prospectuses. The FDIC and FRB do not allow banks to pro-rate mutual fund investments between risk-weight categories.

Reason for OTS Difference: Policy decision to ensure appropriate capital against the risk of these assets. OTS believes that allowing institutions to pro-rate their investments and focus on ''actual'' assets ensures that savings associations hold capital in an amount essentially equivalent to that required if they directly held the assets in which the mutual fund invested. However, as indicated in the September 23 Joint Report, the agencies expect to issue a proposal in the near future to make their regulations uniform in this area.

12. *Capital Requirement on Holding Companies:* FRB applies the risk-based

capital requirements to bank holding companies; OTS does not apply them to thrift holding companies.

Reason for OTS Difference: OTS policy decision to not impose capital requirements on corporate entities because they do not pose a risk to the deposit insurance fund.

13. *Agricultural Loan Losses:* The banking agencies, due to a statutory requirement, allow such losses to be deferred (and, effectively, allow these losses to be ''included'' in supplementary capital). OTS does not allow such losses to be deferred or included in assets or capital.

Reason for OTS Difference: OTS has no statutory requirement to allow such deferred losses in assets or capital.

14. *Income Capital Certificates (ICCS) and Mutual Capital Certificates (MCCs):* OTS allows inclusion in supplementary capital. Because these items do not exist in the banking industry, the banking agencies do not address them.

Reason for OTS Difference: ICCs/MCCs are counted as supplementary capital due to their being functionally equivalent to net worth certificates (which are required, by statute, to be included in capital).

Attachment II—Summary of Differences in Accounting Practices

Differences by each agency in accounting or supervisory reporting practices may cause differences in amounts of regulatory capital maintained by depository institutions. These differences are the result of an evolutionary process that primarily reflects historical agency philosophy and industry trends.

The OTS follows generally accepted accounting principles for regulatory reporting purposes. The other banking agencies require banks to follow certain prescribed regulatory accounting principles (RAP) instead of GAAP for reporting purposes. The banking agencies, however, are contemplating moving toward GAAP reporting in 1997, which will eliminate most remaining differences between the reporting of OTS and the other banking agencies.

A summary of these differences is presented below.

1. Futures and Forward Contracts

OTS practice is to follow generally accepted accounting principles. In accordance with SFAS 80, when hedging criteria are satisfied, the accounting for the futures contract shall be related to the accounting for the hedged item. Changes in the market value of the futures contract are recognized in income when the effects of related changes in the price or interest rate of the hedged item are recognized. Such reporting can result in deferred gains and losses in accordance with GAAP.

The banking agencies do not follow GAAP, but report changes in the market value of futures contracts even when used as hedges in the current period's income statement. However, futures contracts used to hedge mortgage banking operations are reported in accordance with GAAP.

2. Excess Service Fees

OTS practice is to follow GAAP in valuing excess service fees. When loans are sold with servicing retained and the stated servicing fee rate differs materially from a normal servicing fee rate, the sales price should be adjusted in determining the gain or loss from the sale of the loans. This provides for the recognition of a normal fee in each subsequent year that servicing continues on the loans. The gain recorded at the date of sale cannot be larger than the gain assuming the loans were sold servicing released. The subsequent valuation of the excess servicing is adjusted based upon anticipated prepayment rates and interest rates.

The banking agencies follow GAAP for residential mortgage loan pools. For all other types of loans, the banking agencies do not follow GAAP. In those cases they require that excess servicing fees retained on loans sold be reported as realized over the contractual life of the transferred asset.

3. In-Substance Defeasance of Debt

OTS practice is to follow GAAP. In accordance with SFAS 76, when a debtor irrevocably places risk-free monetary assets in a trust solely to satisfy the debt and the possibility that the debtor will be required to make further payments is remote, the debt is considered extinguished. The transfer can result in a gain or loss in the current period.

The banking agencies do not follow GAAP. The banking agencies continue to report the defeased debt as a liability and the securities contributed to the trust as assets with no recognition of any gain or loss on the transaction.

4. Sales of Assets with Recourse

OTS practice is to follow GAAP. A transfer of receivables with recourse is recognized as a sale under GAAP if (i) the transferor surrenders control of the future economic benefits, (ii) the transferor's obligation under the recourse provisions can be reasonably estimated, and (iii) the transferee cannot require repurchase of the receivables except pursuant to the recourse provisions.

However, in the calculation of OTS risk-based capital, certain off-balance sheet conversions are performed that result in capital being required for the risk retained. See further discussion of capital differences with respect to this item in Attachment I, Capital Differences.

The practice of the banking agencies is generally to report transfers of receivables with recourse as sales only when the transferring institution (i) retains no risk of loss from the assets transferred and (ii) has no obligation for the payment of principal or interest on the assets transferred. As a result, assets transferred with recourse are reported as financings, not as sales.

However, this general rule does not apply to the transfer of mortgage loans under one of the government programs of the Government National Mortgage Association, Freddie Mac or Fannie Mae. Transfers of mortgages under one of these programs are automatically treated as sales. Furthermore, the OCC and FRB provide for the treatment of private transfers of mortgages as sales if the transferring institution does not retain a significant risk of loss on the assets transferred.

5. Negative Goodwill

OTS practice is to follow GAAP for reporting purposes. OTS permits negative goodwill to offset goodwill reported as an asset. The banking agencies require that negative goodwill be reported as a liability, and not be netted against goodwill assets.

6. Push-Down Accounting

OTS practice is to follow GAAP. OTS requires push-down accounting when there is at least a 90 percent change in ownership. Push-down accounting generally applies the fair value concepts of purchase accounting in the context of a holding company's acquisition of a company to be held as a separate subsidiary or combined with an existing subsidiary.

The banking agencies require push-down accounting when there is at least a 95 percent change in ownership.

Dated: January 6, 1997.

By the Office of Thrift Supervision.

Nicolas P. Retsinas,

Director.

[FR Doc. 97–1182 Filed 1–16–97; 8:45 am]

BILLING CODE 6720–01–P

UNITED STATES ENRICHMENT CORPORATION

Sunshine Act Meeting

BILLING CODE: 8720–01.

AGENCY: United States Enrichment Corporation Board of Directors.

TIME AND DATE: 8:00 am, Wednesday, January 22, 1997.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

- Review of commercial and financial matters of the Corporation.

CONTACT PERSON FOR MORE INFORMATION: Barbara Arnold, 301–564–3354.

Dated: January 15, 1997.

Robert J. Moore,

Corporate Secretary.

[FR Doc. 97–1429 Filed 1–15–97; 3:09 pm]

BILLING CODE 8720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Medical Care Interagency Reimbursement Rates for FY 1997

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In accordance with provisions of OMB Circular A–11, Section 12.5(a), revised reimbursement rates have been established by the Department of Veterans Affairs for inpatient and outpatient medical care furnished to beneficiaries of other Federal agencies during FY 1997. These rates will be charged for such medical care provided on and after December 1, 1996, at health care facilities under the direct jurisdiction of the Secretary of Veterans Affairs.

FOR FURTHER INFORMATION CONTACT: Mr. Walter J. Besecker, Director, Medical Care Cost Recovery Office (174), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202)–273–5662.

SUPPLEMENTARY INFORMATION: The Interagency Reimbursement Rates, effective December 1, 1996, are as follows:

VA Hospital Care, rates per inpatient day:	
General Medicine	946
Neurology	915
Rehabilitation Medicine	743
Blind Rehabilitation	886
Spinal Cord Injury	884
Surgery	1761
General Psychiatry	448
Substance Abuse (Alcohol and Drug Treatment)	297
Intermediate Medicine	385
VA Nursing Home Care, rate per day:	
Nursing Home Care	258
VA Outpatient Care, rates per visit or per prescription filled:	
Outpatient Visit*	178
Emergency Dental Outpatient Visit	107
Prescription Filled	19

*Rate includes dialysis treatments and non-emergency dental visits.

Inpatient charges to other Federal agencies will be at the current Interagency per diem rate for the type of bed section or discrete treatment unit providing the care.

Prescription filled charge in lieu of the outpatient visit rate will be charged when the patient receives no service other than the Pharmacy outpatient service. This charge applies whether the patient receives the prescription in person or by mail.

When medical services for beneficiaries of other Federal agencies are obtained by the Department of Veterans Affairs from private sources, the charges to the other Federal agencies will be the actual amounts paid by the Department of Veterans Affairs for such services.

Dated: January 8, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 97–1180 Filed 1–16–97; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 63, No. 12
Friday, January 17, 1997

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 AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1499

Foreign Donation of Agricultural Commodities

Correction

In rule document 96–30032 beginning on page 60513 in the issue of Friday, November 29, 1996 make the following corrections:

§1499.1 [Corrected]

1. On page 60515, in the third column, in the third line, ''standing'' should read ''stranding''.

§1499.8 [Corrected]

2. On page 60519, in the first column, §1499.8(h)(3) should read ''*No demurrage.* CCC will not pay demurrage.''and remove the remaining text.

3. On the same page, in the same column, insert the following section heading above paragraph (a):

§ 1499.9 Arrangements for entry and handling in the foreign country.

§1499.12 [Corrected]

4. On the same page, in the third column, in §1499.12(d), in the second line, insert a coma after ''part''.

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Request for Proposals (RFP): Special Research Grants Program, Potato Research

Correction

In notice document 97–157, beginning on page 876, in the issue of Monday, January 6, 1997, make the following correction:

On page 876, in the third column, in the third paragraph, in the eighth line, ''$41,134,612'' should read ''$1,134,612''.

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Special Research Grants Program, Pest Management Alternatives Research; Fiscal Year 1997; Solicitation of Proposals

Correction

In notice document 97–159, beginning on page 884, in the issue of Monday, January 6, 1997, make the following correction:

On page 886, in the first column, in the first full paragraph, in the fifth line, ''psh@reeusda.gov'' should read ''psb@reeusda.gov''.

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 729

RIN 0560–AE82

Amendments to the Peanut Poundage Quota Regulations

Correction

In rule document 96–17690, beginning on page 36997, in the issue of Tuesday, July 16, 1996, make the following correction.

§ 729.214 [Corrected]

On page 37001, in § 729.214, in the second column, in the last paragraph, in the first line, the paragraph designation ''(1)'' should read ''(l)''.

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961107312-6312-01; I.D. 102296B]

RIN 0648-XX69

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands; Proposed 1997 Harvest Specifications for Groundfish

Correction

In proposed rule document 96–30045, beginning on page 60076, in the issue of November 26, 1996, make the following corrections:

1. On page 60079, in Table 2, in Footnote 6, ''Reminder'' should read ''Remainder''.

2. On page 60083, in Table 7, in the first column, under ''Total'' insert ''Non-trawl Fisheries''.

3. On page 60081, Table 6 is corrected to read as set forth below:

TABLE 6.—APPROVED SHARES (PERCENTAGES) AND RESULTING ALLOCATIONS (MT) OF THE 1997 SABLEFISH CDQ RESERVE SPECIFIED FOR THE BERING SEA (BS) AND ALEUTIAN ISLANDS (AI) SUBAREAS AMONG APPROVED CDP RECIPIENTS

Sablefish CDP recipient	Area	Percent	Allocation (mt)
Atka Fishermen's Association	BS	0	0
	AI	0	0
Bristol Bay Economic Development Corp	BS	0	0
	AI	25	34
Coastal Villages Fishing Cooperative	BS	0	0
	AI	25	34
Norton Sound Economic Development Corporation	BS	25	20
	AI	30	40
Pribilof Island Fishermen	BS	0	0
	AI	0	0
Yukon Delta Fisheries Development Association	BS	75	59
	AI	10	13
Aleutian Pribilof Islands Community Development Association	BS	0	0
	AI	10	13
Total	BS	100	79
	AI	100	134

BILLING CODE 1505–01–D

Federal Register

Friday
January 17, 1997

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants 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; Rule Clarifications; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5672–5]

RIN 2060–AC19

National Emission Standards for Hazardous Air Pollutants 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; Rule Clarifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule: Amendments.

SUMMARY: On April 22, 1994 and June 6, 1994, the EPA issued the National Emission Standards for Hazardous Air Pollutants 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. This rule is commonly known as the Hazardous Organic NESHAP or the HON. In June 1994, petitions for review of the April 1994 rule were filed in the U.S. Court of Appeals for the District of Columbia Circuit. The petitioners raised over 75 technical issues and concerns with drafting clarity of the rule.

On August 26, 1996, the EPA proposed correcting amendments to the rule to address the petitioners' issues. Among the proposed amendments were proposed revisions to definitions that apply to wastewater and wastewater treatment and revised control and compliance provisions for wastewater. A new compliance date of April 22, 1999, was proposed for process wastewater, heat exchange systems, equipment subject to the provisions of §63.149, and maintenance wastewater. The EPA also proposed a separate compliance date for wastewater streams affected by the omission of nitrobenzene from the list of compounds subject to the wastewater provisions. The proposed revisions to the other provisions to the rule also included corrections and clarifications to ensure the rule is implemented as intended. The proposed amendments also included some additional compliance options that would reduce the burden associated with the recordkeeping and reporting requirements of the rule. Today's action takes final action on those proposed amendments.

These amendments to the rule will not change the basic control requirements of the rule or the level of health protection it provides. The rule requires new and existing major sources to control emissions of hazardous air pollutants to the level reflecting application of the maximum achievable control technology.

EFFECTIVE DATE: January 17, 1997.

FOR FURTHER INFORMATION CONTACT: For general questions, contact Dr. Janet S. Meyer, Coatings and Consumer Products Group, at (919) 541–5254 or Mary Tom Kissell, Waste and Chemical Processes Group, at (919) 541–4516. For technical questions on wastewater provisions, contact Elaine Manning, Waste and Chemical Processes Group, telephone number (919) 541–5499. The mailing address for the contacts is Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities and Background Information

A. Regulated Entities

The regulated category and entities affected by this action include:

Category	Examples of regulated entities
Industry	Synthetic organic chemical manufacturing industry (SOCMI) units, e.g., producers of benzene, toluene, or any other chemical listed in Table 1 of 40 CFR part 63, subpart F.

This table is not intended to be exhaustive but, rather, provides a guide for readers regarding entities likely to be interested in the revisions to the regulation affected by this action. Entities potentially regulated by the HON are those which produce as primary intended products any of the chemicals listed in table 1 of 40 CFR part 63, subpart F and are located at facilities that are major sources as defined in section 112 of the Clean Air Act (CAA). To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.100. If you have questions regarding the applicability of this action to a particular entity, consult one of the individuals listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Background on Rule

On April 22, 1994 (59 FR 19402), and June 6, 1994 (59 FR 29196), the EPA published in the Federal Register the NESHAP for the synthetic organic chemical manufacturing industry (SOCMI), and for several other processes subject to the equipment leaks portion of the rule. These regulations were promulgated as subparts F, G, H, and I in 40 CFR part 63, and are commonly referred to as the hazardous organic NESHAP, or the HON. Since the April 22, 1994 notice, there have been several amendments to clarify various aspects of the rule. Readers should see the following Federal Register notices for more information: September 20, 1994 (59 FR 48175); October 24, 1994 (59 FR 53359); October 28, 1994 (59 FR 54131); January 27, 1995 (60 FR 5321); April 10, 1995 (60 FR 18020); April 10, 1995 (60 FR 18026); December 12, 1995 (60 FR 63624); February 29, 1996 (61 FR 7716); June 20, 1996 (61 FR 31435); August 26, 1996 (61 FR 43698); and December 5, 1996 (61 FR 64571).

In June 1994, the Chemical Manufacturers Association (CMA) and Dow Chemical Company filed petitions for review of the promulgated rule in the U.S. Court of Appeals for the District of Columbia Circuit, *Chemical Manufacturers Association* v. *EPA*, 94–1463 and 94–1464 (D.C. Cir.) and *Dow Chemical Company* v. *EPA*, 94–1465 (D.C. Cir). The petitioners raised over 75 technical issues on the rule's structure and applicability. Issues were raised regarding details of the technical requirements, drafting clarity, and structural errors in the drafting of certain sections of the rule. On August 26, 1996, the EPA proposed clarifying and correcting amendments to subparts F, G, H, and I of part 63 to address the issues raised by CMA and Dow on the April 1994 rule.

In the August 26, 1996 document, the EPA committed to taking final action on some portions of the proposed amendments to the rule as soon as possible after the close of the comment period in order to give sources as much lead time as possible. In the December 5, 1996 Federal Register, the EPA took final action on those portions of the proposed amendments that would eliminate the need for filing some implementation plans that would otherwise be due December 31, 1996, and would allow the filing of requests for compliance extensions up to 4 months before the April 1997 compliance date.

Today the EPA is taking final action on the remaining portions of the amendments proposed on August 26, 1996.

C. Public Comment on the August 26, 1996 Proposal

Eighteen comment letters were received on the August 26, 1996 Federal Register document that proposed

changes to the rule. All comment letters received were from industry representatives and trade associations. Most of the comment letters were supportive of the proposed amendments. A few of these comment letters also included suggested editorial revisions to further clarify some aspects of the proposed amendments or to address oversights in the proposed amendments. The EPA considered these suggestions and, where appropriate, made changes to the proposed amendments. The significant issues raised and the changes to the proposed amendments are summarized in this preamble. A memorandum containing the EPA's response to all comments can be found in Docket A–90–19, item number IX–C–1. The response to comments may also be obtained over the Internet at http://ttnwww.rtpnc.epa.gov or from the EPA's Technology Transfer Network (TTN). The TTN is a network of electronic bulletin boards developed and operated by the Office of Air Quality Planning and Standards. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for up to a 14,400 bits per second modem. Select TTN Bulletin Board: Clean Air Act Amendments and select menu item Recently Signed Rules. If more information on TTN is needed, contact the systems operator at (919) 541–5384.

D. Judicial Review

Under Section 307(b)(1) of the CAA, judicial review of this final action is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under Section 307(b)(2) of the CAA, the requirements that are subject to today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

II. Overview of Amendments to Rule

With today's action, the EPA is issuing clarifying and correcting amendments to subparts F, G, H, and I of 40 CFR part 63 that were proposed on August 26, 1996. Readers should refer to the August 26, 1996 Federal Register document for a complete discussion of the background and the proposed changes to the rule. Today's revisions are intended to remove any ambiguity and clearly convey the EPA's intent, to make the rule easier to read and implement, and to increase flexibility for the source.

These amendments include an extension of the existing source compliance date to April 22, 1999 for process wastewater, heat exchange systems, maintenance wastewater, and equipment subject to the provisions of §63.149 and also establish a separate compliance date for wastewater streams affected by the omission of nitrobenzene from table 9 of subpart G. A three year compliance date is being established for process wastewater streams that are subject to control requirements due to the presence of nitrobenzene due to an error in the April 22, 1994 rule. Equipment subject to the other provisions of the rule must be in compliance by April 22, 1997, unless a compliance extension is granted.

Today's amendments also include the revisions to the wastewater sections of subpart G, §§63.132 through 63.147. As discussed in the August 26, 1996 document, the wastewater sections have been redrafted to improve organizational structure and clarity. The revised wastewater sections reflect the concept that only when water is ''discarded'' from a process is it ''wastewater,'' and thus subject to the HON wastewater provisions. The revised wastewater sections in subpart G also include provisions that: (1) Ensure that streams traveling from one piece of process equipment to another are handled appropriately to avoid emissions to the environment, and (2) ensure that the changes in the wastewater definition do not permit sources to dilute their streams prior to the point the streams are considered wastewater, thus avoiding control requirements. The amendments to the wastewater provisions also include the provisions that would allow a HON source owner or operator to ship waste off-site for treatment. Under these revisions to the rule, the owner or operator choosing not to treat wastewater on-site may only ship to a facility that has certified that it will treat the waste to the standard required by the HON.

In contrast to the significant revisions of the wastewater provisions, only minor changes are being made to other sections of the rule. In addition to removing ambiguity and increasing flexibility for the source, some revisions reduce the reporting and recordkeeping burden for sources. The reporting and recordkeeping revisions include changes that (1) reduce the number of copies of reports that must be submitted to the EPA and the States, and (2) provide for alternative, less frequent recordkeeping of monitoring data where sources are able to demonstrate that no violations have occurred for prolonged stretches of time.

III. Summary of Major Comments and Changes to the Proposed Amendments to the Rule

A. Applicability of Rule to Storage Vessels Located in a Tank Farm or Marine Terminal

In the August 26, 1996 document, the EPA proposed amendments to clarify the applicability of the rule to storage vessels located in tank farms and marine tank farms. Due to an oversight, the provisions currently in § 63.100(g) of subpart F of the April 1994 rule did not include instructions regarding allocation of tanks in remote locations, such as tank farms. The proposed amendments, § 63.100(g)(3), provided explicit procedures to be followed to assign the storage vessels to a process and then to determine the applicability of the rule.

Most commenters were supportive of the proposed amendment. However, one commenter requested clarification of the difference between a remote storage tank owned by a chemical process facility and a remote storage tank owned by a for-hire, bulk liquid terminal. The commenter thought the proposed amendments to § 63.100(g) could inappropriately cause a remote storage tank owned by a for-hire, bulk liquid terminal to be considered subject to the HON. The commenter requested that the rule specifically state that remote storage vessels at independent tank farm distribution facilities are not subject to the rule.

The EPA agrees with the commenter that the focus of this rule is on chemical manufacturing plants and not on for-hire terminals that store products for distribution. The EPA believes that the commenter's concern arose because the preamble description of this proposed change was not sufficiently clear that this assignment procedure was for allocation of storage vessels at remote locations within the plant site. The EPA believes that when the provisions of § 63.100(g)(3) are considered within context of all the applicability criteria in subpart F it is clear that this proposed assignment procedure for storage vessels in tank farms does not extend the applicability to for-hire terminals that are not part of the major source. For the amendments to affect any specific storage vessel (or transfer rack or distillation unit), it would have to be part of a chemical manufacturing process unit at a major source subject to the rule. In order for a storage vessel (or transfer rack or distillation unit) to be part of a major source, it would have to be (among other things) under the control of the owner or operator of the chemical manufacturing process unit

and located within the same contiguous area as the chemical manufacturing process unit. A storage vessel owned by a for-hire bulk liquid terminal could only be subject to the HON if it was under the control of the owner or operator of the HON chemical manufacturing process unit, and contiguously located, and therefore part of the same major source. The EPA believes that the applicability of the rule is clear and it is not necessary to add explicit language to the rule to specify that storage vessels at for-hire terminals that are not part of the major source are not subject to the rule.

B. Revision to Table 2 of Subpart F List of Regulated Organic Hazardous Air Pollutants

In the August proposal, the EPA proposed to revise table 2 of subpart F to list 21 specific compounds that are to be regulated as polycyclic organic matter (POM) in the HON. The specific compounds listed were identified as being consistent with the historical working definition of POM, which emphasizes emissions from incomplete combustion and pyrolysis processes (49 FR 31680). This change was proposed to address requests for clarification of the scope of the term POM in the HON.

Several commenters contended that 1,2-naphthylamine sulfonic acid, 1,4-naphthylamine sulfonic acid, α-naphthol, and β-naphthol should not have been included on the list of specific compounds proposed to be added to table 2 to replace the hazardous air pollutants category POM. These commenters all asserted that these compounds do not meet the historical working definition of POM, as claimed by the EPA in the August 26, 1996 document. In support of that view, the commenters stated that, in 1992, the EPA acknowledged the potential problems with the statutory definition of POM and stated that, although the definition would remain, the EPA would emphasize emissions from combustion and pyrolysis activities (letter from John Seitz to Larry Thomas, The Society of the Plastics Industry, March 3, 1992). The commenters also believe that, in 1994, the EPA announced a new POM definition in a response to comments Background Information Document (EPA–453/R–94–003d) for the HON that states:

> Polycyclic organic matter is generally formed or emitted during thermal processes including (1) incomplete combustion, (2) pyrolysis, (3) the volatilization of fossil fuels or bitumens, or (4) the distillation or thermal processing of non-fossil fuels. (HON BID, Vol. 2D, p.4)

The commenters believe that these four compounds do not meet what they describe as the revised definitions of POM since the compounds are not produced by combustion processes and are not used in the types of processes intended to be covered by this listing. The commenters recommended that these specific compounds not be added to table 2 of subpart F. One commenter also argued that the EPA should follow the listing process in section 112(b) of the CAA if the EPA wished to list these specific compounds as hazardous air pollutants.

The EPA does not agree with the commenters that these four compounds do not meet the historical working definition of POM and thus, should not be added to table 2 of subpart F. The term POM, as defined in section 112(b) of the CAA, includes organic compounds with more than one benzene ring and which have a boiling point greater than or equal to 100° C. This definition is very broad and does not limit the term to the group of compounds which the EPA believes are principally responsible for mutagenicity and carcinogenicity in humans and animals. This arises because the current statutory definition includes any compound with more than one benzene ring and is not limited to fused ring compounds. Neither the March 1992 Seitz letter, nor the HON Background Information Document amend the statutory definition of POM. The August 26, 1996 proposal, to list 21 specific compounds on table 2 of subpart F instead of listing POM generally, is consistent with the molecular structures of concern in the historical definition. Specifically, the 21 compounds have molecular structures with two or more fused rings at least one of which is benzenoid in structure. These chemicals were identified as chemical products produced by the chemical manufacturing processes considered to be within the definition of the SOCMI source category. Whether these compounds were produced by extraction from materials produced by pyrolysis processes or derived from petroleum feedstocks, was not a consideration in the listing. The EPA does not agree with the commenter's interpretation that compounds can be considered POM only if formed by incomplete combustion and/or pyrolysis operations; the statutory definition of POM is not limited in that fashion.

The reason for including these specific compounds on table 2 instead of listing POM generally was to ensure that emissions of these compounds from the chemical manufacturing process unit producing these chemicals would be subject to the requirements of the rule. All of these compounds meet the definition of POM in section 112(b) of the CAA. Specification of these compounds on table 2 will not result in application of the rule to sources using these chemical products to produce other products. It will require that emissions of these substances from sources subject to this rule to be subject to the requirements of the rule. Before today's changes to table 2 of subpart F, emissions of the 21 substances were subject to the requirements of the rule. Today's changes merely clarify what the substances are rather than referring to POM generally.

Finally, the EPA disagrees with the commenter who argued that the EPA should follow the listing process in section 112(b) to list these compounds as hazardous air pollutants. The specific hazardous air pollutants added to table 2 meet the definition of POM in section 112(b) and therefore are already subject to the requirements of section 112 without further listing action.

One commenter also asserted that listing 1,2-naphthylamine sulfonic acid and 1,4-naphthylamine sulfonic acid as Hazardous Air Pollutants has potential consequences under other statutes. The commenter noted that the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 101(14)(e) incorporates by reference any hazardous air pollutant listed under the CAA. This, in turn, establishes Federal authority to respond to releases or threats of releases of hazardous substances and triggers notification requirements of releases to the National Response Center above the Reportable Quantity (RQ) and liability for costs associated with cleanup and any natural resources damages resulting from the release. Another possible result is under section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) that the owner or operator of a facility from which an RQ or more of a CERCLA hazardous substance has been released must immediately notify state and local emergency response authorities.

The EPA does not agree with the commenter's assessment of the potential consequences of the proposed listing of the 21 compounds in table 2 of 40 CFR part 63, subpart F. The commenter's opinion that the listing of the chemicals of interest in table 2 in place of POM generally triggers new CERCLA and EPCRA reporting requirements is incorrect, as the requirements were effective upon enactment of the CAA by virtue of CERCLA section 101(14) and, in turn, section 102(b). The POM category was one of five broad generic

categories of CAA section 112 hazardous air pollutants codified as a hazardous substance pursuant to CERCLA section 101(14) in 40 CFR 302.4. Section 101(14) of CERCLA states that the term ''hazardous substance'' includes ''any hazardous air pollutant listed under section 112 of the Clean Air Act.'' Thus, the CAA categories automatically became hazardous substances under CERCLA when listed as hazardous air pollutants under section 112 in 1990. In the June 12, 1995 Federal Register (60 FR 30926), the EPA stated that ''All substances within the (CAA section 112 hazardous air pollutants) categories, as well as the categories themselves, are CERCLA hazardous substances'' and that ''CERCLA section 102(b) provides that an RQ of one pound applies to hazardous substances (which include the CAA hazardous air pollutants) until this RQ is adjusted by regulation. Therefore, the section 112 listing of POM in the CAA automatically triggers a one pound RQ for any chemical which falls within the section 112(b) definition of POM. Issuance of a MACT standard requiring control of specific hazardous air pollutants has no additional effect on CERCLA coverage.

C. Compliance Extension for New Sources

The August 26, 1996 proposal included an extension of the compliance date to April 22, 1999 for heat exchange systems, maintenance wastewater, equipment subject to § 63.149, and process wastewater for existing sources. This proposed change was in § 63.100(k)(2)(ii) of the proposed rule.

Several commenters suggested that the compliance schedule should be extended for new sources to April 22, 1999 or initial startup, whichever is later. The commenter's did not state the basis for their belief that more than 2 additional years should be provided for new sources.

While the EPA believes that, in some limited instances new sources may need more time for compliance than was provided in the April 1994 rule, the EPA does not believe that 2 years is justified. In today's final rule the EPA has provided that, in general, new sources that commenced construction or reconstruction up to the date of proposal of the August 1996 amendments continue to have a compliance date of April 22, 1994, (the date of the original final rule) or start-up, whichever is later.

However, some exceptions have been added. Commenters had requested more compliance time for heat exchange systems, maintenance and process wastewater streams, and equipment subject to §63.149 (those pieces of equipment for which a new, later compliance date has been set with respect to existing sources). In response to this request the EPA has decided that heat exchange systems, maintenance wastewater streams, process wastewater streams, and equipment subject to §63.149 that are part of new sources on which construction or reconstruction commenced before proposal of the August 1996 amendments will have a compliance date that is the later of start-up or 180 days from the date of today's final rule.

These exceptions will provide new sources that commenced planning for, or actually achieved compliance with, the April 22, 1994 rule, 6 months more time to allow any minor adjustments necessary to comply with the provisions of today's final rule applicable to the heat exchange system, maintenance and process wastewater streams, and equipment subject to §63.149.

In addition, today's final rule provides that new sources upon which construction or reconstruction commenced after the August 1996 proposal, must be in compliance upon the later of initial start-up or the date of today's final rule.

The EPA believes that 180 days from today is ample time for any new sources that are already in compliance with the April 1994 final rule to make the necessary adjustments to their recordkeeping and reporting procedures to ensure compliance with today's rule. Those sources that commenced construction after December 31, 1992, but have not yet reached start-up will be able to adjust their start-up date to allow time to reach compliance as will any new sources commencing construction after the August 26, 1996 proposal.

D. Delay of Repair for Heat Exchangers

The August proposal included new §63.104 requirements for monitoring heat exchange systems for leaks of process fluids into cooling water. The proposed §63.104 would replace the existing provisions in §63.104 of subpart F. The revisions were proposed to address issues with the existing provisions 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. The proposed §63.104 also included revisions to the delay of repair provisions to allow delay until the next shutdown if a shutdown is planned within 2 months of determination that delay of repair is necessary. The proposed revisions to §63.104 also provided that repair may be delayed up to a maximum of 120 days if the necessary parts or personnel were not available. These new provisions would replace the provisions in the April 1994 rule which only allows delay of repair when it can be demonstrated that immediate shutdown for repair would create more emissions than the emissions that would result from delaying repair of the leaking heat exchanger until the next shutdown. In the August 26, 1996 document, it was explained that the proposed revisions to the delay of repair provisions of the rule were being made to make these provisions workable and to minimize debate over modeling of emissions from heat exchanger systems.

Several commenters objected to this change in the delay of repair provisions in §63.104. The commenters argued that it is inappropriate to require an unscheduled shutdown if it can be demonstrated that greater emissions would result than would occur if the leak were repaired at the next scheduled shutdown. The commenters thought that this change was an unintended result of other changes to the wording of the provision.

As a result of this comment, the EPA reconsidered the circumstances where delay of repair would be appropriate and the approach used to develop an enforceable provision. Based on further examination of situations that might arise in a facility subject to the standard, the EPA concluded that §63.104(e)(2) could be revised to allow delay of repair in situations where greater emissions would result than would occur if the leak were repaired at the next scheduled shutdown if the procedure for calculating emissions were specified in the rule. The revised §63.104(e)(2) includes delay of repair provisions for cases where the maximum potential emissions from the leaking heat exchanger are less than the emissions that would result from an unscheduled shutdown. The proposed 120 day maximum delay due to unavailability of parts or personnel to effect the repair is also retained in the final provisions. The EPA believes that the added provision will address cases involving low flow rate heat exchangers that can not be isolated from the process and where process unit shutdowns may result in substantial emissions. The EPA believes that the revised §63.104(e)(2) provides the flexibility needed while maintaining the enforcability of the provision.

E. Wastewater Issues

1. Point of Determination

In the August 26, 1996 proposal, the EPA proposed to revise the wastewater provisions to base the determination of applicability of control requirements to a wastewater stream on its characteristics at the point where the wastewater stream exits the last recovery device instead of at the point of generation (POG). The new location for determining the characteristics of a wastewater stream was termed the point of determination (POD) to distinguish it from the POG concept used in other air rules for waste and wastewater such as the Benzene Waste NESHAP. This proposed revision was one of several changes proposed to address problems with the clarity and structure of the wastewater provisions in the April 1994 rule.

The public comment on the proposal was supportive of the new POD concept. Therefore, the proposed revision changing from a POG approach to the POD approach is being incorporated into the final rule without revision. However, some public inquiries on the proposal also indicated that confusion exists regarding some details of the concept. Specifically, some readers have mistakenly interpreted POD by confusing the meaning of ''recovery device'' and ''treatment process.'' This section of the preamble sets forth the EPA's intent and emphasizes that key definitions and provisions should be used together to understand and correctly implement the POD concept in this rule.

The EPA's intent in developing the POD approach was to have a decision criterion that is replicable and clearly specifies the location for evaluation of a wastewater stream for the purposes of control. All equipment prior to the POD is considered to be part of the process and equipment downstream of the POD is not considered to be part of the process. The POD is defined as each point where process wastewater exits the chemical manufacturing process unit. To understand the POD approach, other portions of the rule must be understood, especially the definitions of wastewater, recovery device, and treatment process and the provisions in §63.149.

''Wastewater'' is defined, inter alia, as water that is discarded from a chemical manufacturing process unit. Under the revised approach for defining wastewater, a stream does not become wastewater until it exits the last recovery device. At that point, because the stream is no longer being processed or used, it is considered to be discarded. ''Recovery device'' is defined as an individual unit of equipment capable of and normally used for the purpose of recovering chemicals for fuel value, use, or reuse or for sale for one of these purposes.

A ''treatment process'' is defined in the HON as a specific technique that removes or destroys organics in a wastewater stream or residual. Examples of treatment processes are a steam stripper (which separate the organic material from the water) and a biological treatment process (which destroys the organic compounds).

The EPA recognizes that the same categories of equipment, such as oil-water separators or organic removal devices such as decanters or strippers, may be recovery devices or treatment devices depending upon the specific application in a particular process' operations. To determine whether a particular item of equipment should be considered a recovery device or a treatment process, it is necessary to consider the subsequent utilization or disposition of the materials that pass through the item of equipment. If the recovered materials are then used for the same general purpose for which chemicals are utilized within the facility (i.e., used for the chemical properties of the material or for use as a fuel), then the equipment would be considered a recovery device. If the material is not recovered for use, reuse, or fuel value or for sale for use, reuse, or fuel value (under normal circumstances), the equipment can not be considered a recovery device. For example, an organic water separator, such as a steam stripper could not be considered to be a recovery device if the separated organic material is later sent to an incinerator for disposal. However, if the separated organic material were used in a process or incorporated into product, the steam stripper would be considered part of the process.

In developing the POD approach, the EPA assumed that organic hazardous air pollutants containing fluids within the process would be managed in closed systems to minimize losses of a recoverable material. The EPA based this assumption on information provided by industry representatives and the EPA's experience with the chemical industry. The provisions in table 35 of subpart G and the new §63.149 were designed to ensure that conveyance and handling of organic hazardous air pollutants containing process fluids would be handled in a manner consistent with the requirements for wastewater streams subject to control.

The EPA considers the POD approach as appropriate for this rule because the HON addresses the other emission points in the chemical manufacturing process unit. The EPA does not believe that the POD approach would be appropriate for other rules that are not as comprehensive in the coverage of emission points. For example, the POD concept would not be appropriate in cases where it is known that other emission points would not be subject to any control requirements.

2. Clarification of Safety Relief Device Provisions for Waste Management Units

The August proposed revisions to §63.132 included provisions to allow waste management units to be equipped with pressure relief devices needed for safety purposes, §63.132 (a)(2)(i) and (b)(3)(i). Although no comments were received on these proposed provisions, the EPA has received inquiries from some industry representatives and consultants requesting clarification of the intent of these provisions. The inquiries concerned whether these provisions prohibit the use of pressure-vacuum vents on wastewater tanks storing wastewater streams or whether these provisions would allow venting of emissions to the atmosphere of wastewater tanks storing Group 1 wastewater streams.

The intent of the pressure relief valve provisions in §63.132 (a)(2)(i) and (b)(3)(i) is to provide for safety releases in emergency situations only. These provisions provide that a pressure relief device on waste management units is allowed ''provided the pressure relief device is not used for planned or routine venting of emissions.'' These provisions should not be interpreted as providing for routine venting of emissions from waste management units.

Neither should these provisions be interpreted as prohibiting pressure-vacuum vents on fixed roof wastewater tanks allowed for tanks storing wastewater streams with a maximum true vapor pressure of less than: (1) 13.1 kPa if the tank capacity is greater than or equal to 75 m^3 but less than 151 m^3; or (2) less than 5.2 kPa if the tank capacity exceeds 151 m^3 as specified in §63.133(a)(1). The rule requires that tanks meeting these criteria be equipped with a fixed roof and allows the roof to be equipped with openings necessary for operation, inspection, and maintenance. There is no requirement to control emissions from tanks meeting these criteria.

3. Issues Associated With Biological Treatment Processes

The August proposal included provisions that provided easier compliance demonstration options for well-mixed activated sludge systems that are used to control readily biodegraded compounds. In this proposed change to the April 1994 rule, the compounds listed in table 9 of subpart G were divided into three lists. In the proposal, a performance evaluation would not be required for activated sludge systems that met the definition of enhanced biological treatment system and the unit was controlling wastewater streams that contained only list 1 compounds. The proposed revisions to appendix C still required a performance demonstration for activated sludge systems used to treat a combination of list 1 and list 2 and/or list 3 compounds.

All comments on the proposed compliance demonstration provisions for biological treatment systems were supportive of this approach. However, based on conversations with industry representatives, the EPA has learned that some people are misinterpreting the proposed definition of ''enhanced biological treatment system or biological treatment process.'' This section of the preamble sets forth the EPA's intent and reiterates the basis for the proposed compliance demonstration exemption for certain biological treatment units. Because of the potential for misinterpretation of the term, a clarifying change has been made to the proposed definition for ''enhanced biological treatment system or enhanced biological treatment process.''

The proposed revisions to the rule defined an enhanced biological treatment system as an aerated treatment unit(s) that contains biomass suspended in water followed by a clarifier that removes biomass from the treated water and recycles recovered biomass to the aeration unit. The mixed liquor volatile suspended solids (biomass) is greater than 1 kilogram per cubic meter throughout each aeration unit. The biomass is suspended and aerated in the water of the aeration unit(s) by either submerged air flow or mechanical agitation. The EPA's intent in defining the enhanced biological treatment system was to reflect the modeling of an activated sludge system with a well-mixed biological treatment unit that was used to develop the three lists of compounds in table 36. (A well-mixed or completely mixed system is a biological treatment unit where particles entering the tank are dispersed immediately throughout the tank and the system has uniform characteristics (Docket A–90–23, item VII–B–8).) The requirement to recycle biomass indicated an activated sludge system. The requirement to have the biomass suspended and aerated indicated an aerobic biological unit. The phase ''throughout each aeration unit'' was intended to mean that the unit was well-mixed. It is this phrase that is being misinterpreted or overlooked by readers. Therefore, the EPA has slightly revised the definition for enhanced biological treatment systems in today's rule to help clarify the intent. In today's rule the second sentence of the definition reads, ''the mixed liquor volatile suspended solids (biomass) is greater than 1 kilogram per cubic meter homogeneously distributed throughout each aeration unit.'' The additional phrase, ''homogeneously distributed,'' was added to clarify the EPA's intent to define a uniformly well-mixed biological treatment unit. The EPA believes this revision clarifies the original intent and does not alter the meaning of the term.

An example of a system that would meet the enhanced biological treatment system definition would be a conventional well-designed, operated, and maintained activated sludge system. The biological treatment unit of this enhanced biological treatment system would contain a homogeneous mixture or, in other words, the biological treatment unit would have the same concentration, mixed liquor volatile suspended solids (MLVSS), and dissolved oxygen throughout the vessel where the biological reactions occur.

A plug-flow system is an example of a biological treatment system that does not meet the HON enhanced biological treatment system definition. Plug-flow systems typically occur in long tanks with a high length-to-width ratio in which longitudinal dispersion is minimal or absent (Docket A–90–23, item VII–B–8). Plug-flow systems are not considered acceptable units for the compliance demonstration exemption because they may tend to have higher air emissions at the front of the system where the concentration is higher. This is not to say that a well operated plug-flow system would not be an acceptable biological treatment system; however, the EPA was not as confident that the parameters required to operate an acceptable plug-flow system could be defined. These systems are required to demonstrate compliance through use of the procedures in appendix C. Appendix C has been revised to state that the calculation procedures (forms) in the appendix are for well-mixed systems and to include suggestions for ways to address systems that are not uniform well-mixed systems.

F. Miscellaneous Changes

The EPA also made a number of clarifying changes to several sections of the August 1996 proposal. Examples of provisions that were revised to clarify requirements include § 63.145(f)(5), § 63.146(d)(1), and the oxygen control system requirements in section 2.1.6 of Methods 304A and 304B. The EPA believes that these revisions clarify the original intent and do not alter the effect of the rule.

In addition to clarifying changes to the August 1996 proposed amendments to the rule, the EPA also made minor revisions to provide consistency with other similar provisions elsewhere in the rule or in other rules. The EPA slightly revised the provisions in § 63.144(b)(5)(i)(C) to provide consistency between the requirements for use of alternative methods allowed in the HON with similar requirements in 40 CFR part 265, subpart CC (61 FR 59932). One of the changes is to remove a requirement to perform the initial calibration of the analytical system with the compounds for which the analysis is being conducted for Methods 624 and 625. This requirement is already addressed in the procedures outlined in Methods 624 and 625. The other change is to reference a procedure that may be used to add compounds to a method's published list of approved compounds for Methods 624, 625, 1624, and 1625. The record retention requirements for the heat exchanger monitoring plan in § 63.104(c) were revised from the requirements in § 63.103(c) to specify requirements that are similar to the proposed requirements in § 63.152(g)(1)(vi)(D). The revised provisions require that the owner or operator maintain, at all times, the monitoring plan that is currently in use and retain copies of the most recently superceded plan for 15 years. This revision was made to ensure that there could be no misunderstanding that copies of the current plan must be maintained regardless of the duration of the retention period.

G. Technical Corrections

The following amendments are minor technical corrections that were not part of the August 26, 1996 proposal. These changes are being made as part of today's action as a matter of efficiency in rulemaking. Furthermore, these changes are noncontroversial and do not substantively change the requirements of the rule. By promulgating these technical corrections directly as a final rule, the EPA is foregoing an

opportunity for public comment on a notice of proposed rulemaking. Section 553(b) of title 5 of the United States Code and section 307(b) of the CAA permit an agency to forego notice and comment when ''the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' The EPA finds that notice and comment regarding these minor technical corrections are unnecessary due to their noncontroversial nature and because they do not substantively change the requirements of the HON. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b) for a determination that the issuance of a notice of proposed rulemaking is unncessary.

1. Removal of Caprolactam From Table 2 of 40 CFR Part 63, Subpart F

On June 18, 1996 (61 FR 30816), the EPA took final action deleting caprolactam from the list of hazardous air pollutants under section 112(b) of the CAA. Accordingly, as caprolactam is no longer subject to regulation under section 112(d) of the CAA, the EPA is removing caprolactam from table 2 of 40 CFR part 63, subpart F.

2. Correction of § 63.174(h)(2)

On June 20, 1996 (61 FR 31440), the EPA amended § 63.174(h)(1) of subpart H to replace references to ''glass or glass-lined connectors'' with the terminology ''ceramic or ceramic-lined connectors.'' This change was made to use the more generic terminology for these connectors (60 FR 18074). The need to amend § 63.174(h)(2) was overlooked at the time these amendments were issued. In today's action, the EPA is revising § 63.174(h)(2) to use the terminology ''ceramic or ceramic-lined connectors'' instead of ''glass or glass-lined connectors''. This change will remove an inconsistency in the drafting of § 63.174(h).

IV. Administrative Requirements

A. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the rule under the Provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0282. An Information Collection Request (ICR) document was prepared by the EPA (ICR No. 1414.02) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington DC 20460 or by calling (202) 260–2740.

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 the EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The changes included in this rule will have no impact on the information collection burden estimates previously made. The changes consist of new definitions, alternative test procedures, and clarifications of requirements. The changes are not additional requirements. Consequently, the ICR has not been revised for this rule.

B. Executive Order 12866 Review

Under Executive Order 12866, the EPA must determine whether the proposed regulatory action is ''significant'' and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to 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 HON rule promulgated on April 22, 1994 was considered ''significant'' under Executive Order 12866, and a regulatory impact analysis was prepared. The amendments issued today clarify the rule and correct structural problems with the drafting of some sections. The amendments also provide additional flexibility for sources and provide opportunities to reduce the recordkeeping and reporting burden. These amendments do not add any new control requirements. Therefore, this regulatory action is considered ''not significant.''

C. Regulatory Flexibility

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. See the April 22, 1994 Federal Register (59 FR 19449) for the basis for this determination. The changes to the rule remove a reporting requirement and provide additional time to request compliance extensions. Therefore, the changes do not create a burden for any of the regulated entities.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the 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).

E. Unfunded Mandates Reform Act

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.

List of Subjects in 40 CFR Part 63

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

Dated: December 26, 1996.

Carol M. Browner,

Administrator.

Chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

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

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

Subpart F—National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry

2. Section 63.100 is amended as follows:

a. By revising paragraphs (b)(2), (c), (e), (f) introductory text, (f)(1), (g) introductory text, (g)(1) introductory text in paragraphs, (g)(2) introductory text, (h)(1) introductory text, (h)(2) introductory text, (h)(1)(i), (h)(2)(i), (h)(2)(ii)(A), (j)(4), (k)(1), (k)(2), (k)(3) introductory text;

b. By redesignating paragraphs (f)(6) through (f)(9) as (f)(8) through (f)(11);

c. By adding paragraphs (f)(6), (f)(7), (g)(3), (g)(4), (h)(3), and (k)(9); and

d. By removing paragraph (h)(2)(v).

The revisions and additions read as follows:

§63.100 Applicability and designation of source.

* * * * *

(b) * * *

(2) Use as a reactant or manufacture as a product, or co-product, one or more of the organic hazardous air pollutants listed in table 2 of this subpart;

* * * * *

(c) The owner or operator of a chemical manufacturing process unit that meets the criteria specified in paragraphs (b)(1) and (b)(3) of this section but does not use as a reactant or manufacture as a product or co-product, any organic hazardous air pollutant listed in table 2 of this subpart shall comply only with the requirements of § 63.103(e) of this subpart. To comply with this subpart, such chemical manufacturing process units shall not be required to comply with the provisions of subpart A of this part.

* * * * *

(e) The source to which this subpart applies is the collection of the process vents; storage vessels; transfer racks; waste management units; maintenance wastewater; heat exchange systems; equipment identified in § 63.149 of subpart G; and pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, surge control vessels, and bottoms receivers that are associated with the collection of all chemical manufacturing process units at a major source that meet the criteria specified in paragraphs (b)(1) through (b)(3) of this section. The source also includes equipment required by, or utilized as a method of compliance with this subpart F, subpart G or H of this part which may include control devices and recovery devices.

(1) This subpart applies to maintenance wastewater and heat exchange systems within a source that is subject to this subpart.

(2) This subpart F and subpart G of this part apply to process vents, storage vessels, transfer racks, equipment identified in § 63.149 of subpart G of this part, and wastewater streams and associated treatment residuals within a source that is subject to this subpart.

(3) This subpart F and subpart H of this part apply to pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, surge control vessels, and bottoms receivers within a source that is subject to this subpart. If specific items of equipment, comprising part of a chemical manufacturing process unit subject to this subpart, are managed by different administrative organizations (e.g., different companies, affiliates, departments, divisions, etc.), those items of equipment may be aggregated with any chemical manufacturing process unit within the source for all purposes under subpart H of this part, providing there is no delay in the applicable compliance date in § 63.100(k).

(f) The source includes the emission points listed in paragraphs (f)(1) through (f)(11) of this section, but those emission points are not subject to the requirements of this subpart F and subparts G and H of this part. This subpart does not require emission points that are listed in paragraphs (f)(1) through (f)(11) of this section to comply with the provisions of subpart A of this part.

(1) Equipment that is located within a chemical manufacturing process unit that is subject to this subpart but the equipment does not contain organic hazardous air pollutants.

* * * * *

(6) Water from testing of deluge systems;

(7) Water from testing of firefighting systems;

* * * * *

(g) The owner or operator shall follow the procedures specified in paragraphs (g)(1) through (g)(4) of this section to determine whether a storage vessel is part of the source to which this subpart applies.

(1) Where a storage vessel is dedicated to a chemical manufacturing process unit, the storage vessel shall be considered part of that chemical manufacturing process unit.

* * * * *

(2) If a storage vessel is not dedicated to a single chemical manufacturing process unit, then the applicability of this subpart F and subpart G of this part shall be determined according to the provisions in paragraphs (g)(2)(i) through (g)(2)(iii) of this section.

* * * * *

(3) Where a storage vessel is located at a major source that includes one or more chemical manufacturing process units which place material into, or receive materials from the storage vessel, but the storage vessel is located in a tank farm (including a marine tank farm), the applicability of this subpart F and subpart G of this part shall be determined according to the provisions in paragraphs (g)(3)(i) through (g)(3)(iv) of this section.

(i) The storage vessel may only be assigned to a chemical manufacturing process unit that utilizes the storage vessel and does not have an intervening storage vessel for that product (or raw material, as appropriate). With respect to any chemical manufacturing process unit, an intervening storage vessel means a storage vessel connected by hard-piping to the chemical manufacturing process unit and to the storage vessel in the tank farm so that product or raw material entering or leaving the chemical manufacturing process unit flows into (or from) the intervening storage vessel and does not flow directly into (or from) the storage vessel in the tank farm.

(ii) If there is no chemical manufacturing process unit at the major source that meets the criteria of paragraph (g)(3)(i) of this section with respect to a storage vessel, this subpart F and subpart G of this part do not apply to the storage vessel.

(iii) If there is only one chemical manufacturing process unit at the major source that meets the criteria of paragraph (g)(3)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to that chemical manufacturing process unit. Applicability of this subpart F and subpart G to this part to the storage vessel shall then be determined

according to the provisions of paragraph (b) of this section.

(iv) If there are two or more chemical manufacturing process units at the major source that meet the criteria of paragraph (g)(3)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to one of those chemical manufacturing process units according to the provisions of paragraph (g)(2) of this section. The predominant use shall be determined among only those chemical manufacturing process units that meet the criteria of paragraph (g)(3)(i) of this section. Applicability of this subpart F and subpart G of this part to the storage vessel shall then be determined according to the provisions of paragraph (b) of this section.

(4) If the storage vessel begins receiving material from (or sending material to) another chemical manufacturing process unit, or ceasing to receive material from (or send material to) a chemical manufacturing process unit, or if the applicability of this subpart F and subpart G of this part to a storage vessel has been determined according to the provisions of paragraphs (g)(2)(i) through (g)(2)(iii) of this section and there is a change so that the predominant use may reasonably have changed, the owner or operator shall reevaluate the applicability of this subpart to the storage vessel.

(h) * * *

(1) Where a loading rack is dedicated to a chemical manufacturing process unit, the loading rack shall be considered part of that specific chemical manufacturing process unit.

(i) If the chemical manufacturing process unit is subject to this subpart according to the criteria specified in paragraph (b) of this section and the loading rack does not meet the criteria specified in paragraphs (f)(9) and (f)(10) of this section, then the loading rack is considered a transfer rack (as defined in § 63.101 of this subpart) and is part of the source to which this subpart applies.

* * * * *

(2) If a loading rack is shared among chemical manufacturing process units, then the applicability of this subpart F and subpart G of this part shall be determined at each loading arm or loading hose according to the provisions in paragraphs (h)(2)(i) through (h)(2)(iv) of this section.

(i) Each loading arm or loading hose that is dedicated to the transfer of liquid organic hazardous air pollutants listed in table 2 of this subpart from a chemical manufacturing process unit to which this subpart applies is part of that chemical manufacturing process unit and is part of the source to which this subpart applies unless the loading arm or loading hose meets the criteria specified in paragraphs (f)(9) or (f)(10) of this section.

(ii) * * *

(A) If the chemical manufacturing process unit is subject to this subpart according to the criteria specified in paragraph (b) of this section, then the loading arm or loading hose is part of the source to which this subpart applies unless the loading arm or loading hose meets the criteria specified in paragraphs (f)(9) or (f)(10) of this section.

* * * * *

(3) If a loading rack that was dedicated to a single chemical manufacturing process unit begins to serve another chemical manufacturing process unit, or if applicability was determined under the provisions of paragraphs (h)(2)(i) through (h)(2)(iv) of this section and there is a change so that the predominant use may reasonably have changed, the owner or operator shall reevaluate the applicability of this subpart to the loading rack, loading arm, or loading hose.

* * * * *

(j) * * *

(4) Process vents from batch operations within a chemical manufacturing process unit;

* * * * *

(k) * * *

(1)(i) New sources that commence construction or reconstruction after December 31, 1992, but before August 27, 1996 shall be in compliance with this subpart F, subparts G and H of this part upon initial start-up or by April 22, 1994, whichever is later, as provided in § 63.6(b) of subpart A of this part, and further, where start-up occurs before January 17, 1997 shall also be in compliance with this subpart F and subparts G and H of this part (as amended on January 17, 1997) by January 17, 1997, except that, with respect to all new sources that commenced construction or reconstruction after December 31, 1992, and before August 27, 1996:

(A) Heat exchange systems and maintenance wastewater, that are part of a new source on which construction or reconstruction commenced after December 31, 1992, but before August 27, 1996, shall be in compliance with this subpart F no later than initial start-up or 180 days after January 17, 1997, whichever is later;

(B) Process wastewater streams and equipment subject to § 63.149, that are part of a new source on which construction or reconstruction commenced after December 31, 1992, but before August 27, 1996, shall be in compliance with this subpart F and subpart G of this part no later than initial start-up or 180 days after January 17, 1997, whichever is later; and

(ii) New sources that commence construction after August 26, 1996 shall be in compliance with this subpart F, subparts G and H of this part upon initial start-up or by January 17, 1997, whichever is later.

(2) Existing sources shall be in compliance with this subpart F and subpart G of this part no later than the dates specified in paragraphs (k)(2)(i) and (k)(2)(ii) of this section, unless an extension has been granted by the Administrator as provided in § 63.151(a)(6) of subpart G of this part or granted by the permitting authority as provided in § 63.6(i) of subpart A of this part.

(i) Process vents, storage vessels, and transfer racks at an existing source shall be in compliance with the applicable sections of this subpart and subpart G of this part no later than April 22, 1997.

(ii) Heat exchange systems and maintenance wastewater shall be in compliance with the applicable sections of this subpart, and equipment subject to § 63.149 and process wastewater streams shall be in compliance with the applicable sections of this subpart and subpart G of this part no later than April 22, 1999, except as provided in paragraphs (k)(2)(ii)(A) and (k)(2)(ii)(B) of this section.

(A) If a process wastewater stream or equipment subject to § 63.149 is subject to the control requirements of subpart G of this part due to the contribution of nitrobenzene to the total annual average concentration (as determined according to the procedures in § 63.144(b) of subpart G of this part), the wastewater stream shall be in compliance no later than January 18, 2000.

(B) If a process wastewater stream is used to generate credits in an emissions average in accordance with § 63.150 of subpart G of this part, the process wastewater stream shall be in compliance with the applicable sections of subpart G of this part no later than April 22, 1997.

(3) Existing sources shall be in compliance with subpart H of this part no later than the dates specified in paragraphs (k)(3)(i) through (k)(3)(v) of this section, except as provided for in paragraphs (k)(4) through (k)(8) of this section, unless an extension has been granted by the Administrator as provided in § 63.182(a)(6) of this part or granted by the permitting authority as provided in § 63.6(i) of subpart A of this part. The group designation for each

process unit is indicated in table 1 of this subpart.

* * * * *

(9) All terms in this subpart F or subpart G of this part that define a period of time for completion of required tasks (e.g., weekly, monthly, quarterly, annual), unless specified otherwise in the section or subsection that imposes the requirement, refer to the standard calendar periods.

(i) Notwithstanding time periods specified in this subpart F or subpart G of this part for completion of required tasks, such time periods may be changed by mutual agreement between the owner or operator and the Administrator, as specified in subpart A of this part (e.g., a period could begin on the compliance date or another date, rather than on the first day of the standard calendar period). For each time period that is changed by agreement, the revised period shall remain in effect until it is changed. A new request is not necessary for each recurring period.

(ii) Where the period specified for compliance is a standard calendar period, if the initial compliance date occurs after the beginning of the period, compliance shall be required according to the schedule specified in paragraphs (k)(9)(ii)(A) or (k)(9)(ii)(B) of this section, as appropriate.

(A) Compliance shall be required before the end of the standard calendar period within which the compliance deadline occurs, if there remain at least 3 days for tasks that must be performed weekly, at least 2 weeks for tasks that must be performed monthly, at least 1 month for tasks that must be performed each quarter, or at least 3 months for tasks that must be performed annually; or

(B) In all other cases, compliance shall be required before the end of the first full standard calendar period after the period within which the initial compliance deadline occurs.

(iii) In all instances where a provision of this subpart F or subpart G of this part requires completion of a task during each of multiple successive periods, an owner or operator may perform the required task at any time during the specified period, provided the task is conducted at a reasonable interval after completion of the task during the previous period.

* * * * *

3. Section 63.101 is amended as follows:

a. By revising the definitions of ''Chemical manufacturing process unit,'' ''Control device'', ''Process vent'', ''Recovery device,'' ''Shutdown'', and ''Start-up'', the first sentence in the definition for ''Transfer rack'', and revising the definitions for ''Unit operation'', and ''Vapor balancing system''; and ''Wastewater''; and

b. By adding in alphabetical order the definitions of ''Fuel gas,'' ''Fuel gas system'', ''On-site or On site'', ''Recapture device'', and ''Waste management unit'' to read as follows:

§ 63.101 Definitions.

* * * * *

Chemical manufacturing process unit means the equipment assembled and connected by pipes or ducts to process raw materials and to manufacture an intended product. A chemical manufacturing process unit consists of more than one unit operation. For the purpose of this subpart, chemical manufacturing process unit includes air oxidation reactors and their associated product separators and recovery devices; reactors and their associated product separators and recovery devices; distillation units and their associated distillate receivers and recovery devices; associated unit operations; associated recovery devices; and any feed, intermediate and product storage vessels, product transfer racks, and connected ducts and piping. A chemical manufacturing process unit includes pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, and control devices or systems. A chemical manufacturing process unit is identified by its primary product.

Control device means any combustion device, recovery device, or recapture device. Such equipment includes, but is not limited to, absorbers, carbon adsorbers, condensers, incinerators, flares, boilers, and process heaters. For process vents (as defined in this section), recapture devices are considered control devices but recovery devices are not considered control devices. For a steam stripper, a primary condenser is not considered a control device.

* * * * *

Fuel gas means gases that are combusted to derive useful work or heat.

Fuel gas system means the offsite and onsite piping and flow and pressure control system that gathers gaseous stream(s) generated by onsite operations, may blend them with other sources of gas, and transports the gaseous stream for use as fuel gas in combustion devices or in in-process combustion equipment such as furnaces and gas turbines either singly or in combination.

* * * * *

On-site or *On site* means, with respect to records required to be maintained by this subpart, that the records are stored at a location within a major source which encompasses the affected source. On-site includes, but is not limited to, storage at the chemical manufacturing process unit to which the records pertain, or storage in central files elsewhere at the major source.

* * * * *

Process vent means a gas stream containing greater than 0.005 weight-percent total organic hazardous air pollutants that is continuously discharged during operation of the unit from an air oxidation reactor, other reactor, or distillation unit (as defined in this section) within a chemical manufacturing process unit that meets all applicability criteria specified in § 63.100 (b)(1) through (b)(3) of this subpart. Process vents are gas streams that are discharged to the atmosphere (with or without passing through a control device) either directly or after passing through one or more recovery devices. Process vents exclude relief valve discharges, gaseous streams routed to a fuel gas system(s), and leaks from equipment regulated under subpart H of this part.

* * * * *

Recapture device means an individual unit of equipment capable of and used for the purpose of recovering chemicals, but not normally for use, reuse, or sale. For example, a recapture device may recover chemicals primarily for disposal. Recapture devices include, but are not limited to, absorbers, carbon adsorbers, and condensers.

Recovery device means an individual unit of equipment capable of and normally used for the purpose of recovering chemicals for fuel value (i.e., net positive heating value), use, reuse or for sale for fuel value, use, or reuse. Examples of equipment that may be recovery devices include absorbers, carbon adsorbers, condensers, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units. For purposes of the monitoring, recordkeeping, and reporting requirements of subpart G of this part, recapture devices are considered recovery devices.

* * * * *

Shutdown means for purposes including, but not limited to, periodic maintenance, replacement of equipment, or repair, the cessation of operation of a chemical manufacturing

process unit or a reactor, air oxidation reactor, distillation unit, waste management unit, equipment required or used to comply with this subpart F, subparts G, or H of this part or the emptying and degassing of a storage vessel. Shutdown does not include the routine rinsing or washing of equipment in batch operation between batches.

* * * * *

Start-up means the setting into operation of a chemical manufacturing process unit or a reactor, air oxidation reactor, distillation unit, waste management unit, or equipment required or used to comply with this subpart F, subpart G, or H of this part or a storage vessel after emptying and degassing. Start-up includes initial start-up, operation solely for testing equipment, the recharging of equipment in batch operation, and transitional conditions due to changes in product for flexible operation units.

* * * * *

Transfer rack means the collection of loading arms and loading hoses, at a single loading rack, that are assigned to a chemical manufacturing process unit subject to this subpart according to the procedures specified in § 63.100(h) of this subpart and are used to fill tank trucks and/or railcars with organic liquids that contain one or more of the organic hazardous air pollutants listed in table 2 of this subpart. * * *

* * * * *

Unit operation means one or more pieces of process equipment used to make a single change to the physical or chemical characteristics of one or more process streams. Unit operations include, but are not limited to, reactors, distillation units, extraction columns, absorbers, decanters, dryers, condensers, and filtration equipment.

Vapor balancing system means a piping system that is designed to collect organic hazardous air pollutants vapors displaced from tank trucks or railcars during loading; and to route the collected organic hazardous air pollutants vapors to the storage vessel from which the liquid being loaded originated, or to another storage vessel connected by a common header or to compress and route to a process or a fuel gas system the collected organic hazardous air pollutants vapors.

Waste management unit means the equipment, structure(s), and/or device(s) used to convey, store, treat, or dispose of wastewater streams or residuals. Examples of waste management units include: Wastewater tanks, surface impoundments, individual drain systems, and biological wastewater treatment units. Examples of equipment that may be waste management units include containers, air flotation units, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units. If such equipment is used for recovery then it is part of a chemical manufacturing process unit and is not a waste management unit.

Wastewater means water that:

(1) Contains either:

(i) an annual average concentration of Table 9 compounds (as defined in § 63.111 of subpart G of this part) of at least 5 parts per million by weight and has an annual average flow rate of 0.02 liter per minute or greater, or

(ii) An annual average concentration of Table 9 compounds (as defined in § 63.111 of subpart G) of at least 10,000 parts per million by weight at any flow rate, and that

(2) Is discarded from a chemical manufacturing process unit that meets all of the criteria specified in § 63.100 (b)(1) through (b)(3) of this subpart. Wastewater is process wastewater or maintenance wastewater.

4. Section 63.102 is amended by revising paragraphs (a)(1) and (a)(2); adding paragraphs (a)(3) and (a)(4) to read as follows:

§ 63.102 General standards.

(a) * * *

(1) The provisions set forth in this subpart F and subpart G of this part shall apply at all times except during periods of start-up or shutdown (as defined in § 63.101 of this subpart), malfunction, or non-operation of the chemical manufacturing process unit (or specific portion thereof) resulting in cessation of the emissions to which this subpart F and subpart G of this part apply. However, if a start-up, shutdown, malfunction or period of non-operation of one portion of a chemical manufacturing process unit does not affect the ability of a particular emission point to comply with the specific provisions to which it is subject, then that emission point shall still be required to comply with the applicable provisions of this subpart F and subpart G of this part during the start-up, shutdown, malfunction or period of non-operation. For example, if there is an overpressure in the reactor area, a storage vessel in the chemical manufacturing process unit would still be required to be controlled in accordance with § 63.119 of subpart G of the part. Similarly, the degassing of a storage vessel would not affect the ability of a process vent to meet the requirements of § 63.113 of subpart G of this part.

(2) The provisions set forth in subpart H of this part shall apply at all times except during periods of start-up or shutdown, as defined in § 63.101(b) of this subpart, malfunction, process unit shutdown (as defined in § 63.161 of subpart H of this part), or non-operation of the chemical manufacturing process unit (or specific portion thereof) in which the lines are drained and depressurized resulting in cessation of the emissions to which subpart H of this part applies.

(3) The owner or operator shall not shut down items of equipment that are required or utilized for compliance with the provisions of this subpart F, subpart G or H of this part during times when emissions (or, where applicable, wastewater streams or residuals) are being routed to such items of equipment, if the shutdown would contravene requirements of this subpart F, subpart G or H of this part applicable to such items of equipment. This paragraph does not apply if the item of equipment is malfunctioning, or if the owner or operator must shut down the equipment to avoid damage due to a contemporaneous start-up, shutdown, or malfunction of the chemical manufacturing process unit or portion thereof.

(4) During start-ups, shutdowns, and malfunctions when the requirements of this subpart F, subparts G and/or H of this part do not apply pursuant to paragraphs (a)(1) through (a)(3) of this section, the owner or operator shall implement, to the extent reasonably available, measures to prevent or minimize excess emissions to the extent practical. For purposes of this paragraph, the term ''excess emissions'' means emissions in excess of those that would have occurred if there were no start-up, shutdown, or malfunction and the owner or operator complied with the relevant provisions of this subpart F, subparts G and/or H of this part. The measures to be taken shall be identified in the applicable start-up, shutdown, and malfunction plan, and may include, but are not limited to, air pollution control technologies, recovery technologies, work practices, pollution prevention, monitoring, and/or changes in the manner of operation of the source. Back-up control devices are not required, but may be used if available.

* * * * *

5. Section 63.103 is amended by adding two sentences to the end of the introductory text of paragraph (c); revising paragraphs (c)(1), (c)(2)(i), (c)(2)(ii), and (c)(2)(iii); removing paragraph (c)(2)(iv); revising paragraph (d)(1); revising paragraph (e); and

revising the last sentence of paragraph (f) to read as follows:

§ 63.103 General compliance, reporting, and recordkeeping provisions.

* * * * *

(c) * * * If an owner or operator submits copies of reports to the applicable EPA Regional Office, the owner or operator is not required to maintain copies of reports. If the EPA Regional Office has waived the requirement of § 63.10(a)(4)(ii) for submittal of copies of reports, the owner or operator is not required to maintain copies of reports.

(1) All applicable records shall be maintained in such a manner that they can be readily accessed. The most recent 6 months of records shall be retained on site or shall be accessible from a central location by computer or other means that provides access within 2 hours after a request. The remaining four and one-half years of records may be retained offsite. Records may be maintained in hard copy or computer-readable form including, but not limited to, on paper, microfilm, computer, floppy disk, magnetic tape, or microfiche.

(2) * * *

(i) Records of the occurrence and duration of each start-up, shutdown, and malfunction of operation of process equipment or of air pollution control equipment or continuous monitoring systems used to comply with this subpart F, subpart G, or H of this part during which excess emissions (as defined in § 63.102(a)(4)) occur.

(ii) For each start-up, shutdown, and malfunction during which excess emissions (as defined in § 63.102(a)(4)) occur, records that the procedures specified in the source's start-up, shutdown, and malfunction plan were followed, and documentation of actions taken that are not consistent with the plan. For example, if a start-up, shutdown, and malfunction plan includes procedures for routing a control device to a backup control device (e.g., the incinerator for a halogenated stream could be routed to a flare during periods when the primary control device is out of service), records must be kept of whether the plan was followed. These records may take the form of a ''checklist,'' or other form of recordkeeping that confirms conformance with the start-up, shutdown, and malfunction plan for the event.

(iii) For continuous monitoring systems used to comply with subpart G of this part, records documenting the completion of calibration checks and maintenance of continuous monitoring systems that are specified in the manufacturer's instructions or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

* * * * *

(d) * * *

(1) Wherever subpart A of this part specifies ''postmark'' dates, submittals may be sent by methods other than the U.S. Mail (e.g., by fax or courier). Submittals shall be sent on or before the specified date.

* * * * *

(e) The owner or operator of a chemical manufacturing process unit which meets the criteria of § 63.100(b)(1) and § 63.100(b)(3), but not the criteria of § 63.100(b)(2), shall comply with the requirements of either paragraph (e)(1) or (e)(2) of this section.

(1) Retain information, data, and analysis used to determine that the chemical manufacturing process unit does not use as a reactant or manufacture as a product or co-product any organic hazardous air pollutant. Examples of information that could document this include, but are not limited to, records of chemicals purchased for the process, analyses of process stream composition, engineering calculations, or process knowledge.

(2) When requested by the Administrator, demonstrate that the chemical manufacturing process unit does not use as a reactant or manufacture as a product or co-product any organic hazardous air pollutant.

* * * * *

(f) * * * Compliance with this subpart F and subpart G of this part shall be no later than April 22, 1997, or as otherwise specified in § 63.100(k)(2)(ii) of this subpart, unless an extension has been granted by the EPA Regional Office or permitting authority as provided in § 63.6(i) of subpart A of this part.

* * * * *

6. Section 63.104 is revised to read as follows:

§ 63.104 Heat exchange system requirements.

(a) Unless one or more of the conditions specified in paragraphs (a)(1) through (a)(6) of this section are met, owners and operators of sources subject to this subpart shall monitor each heat exchange system used to cool process equipment in a chemical manufacturing process unit meeting the conditions of § 63.100 (b)(1) through (b)(3) of this subpart, except for chemical manufacturing process units meeting the condition specified in § 63.100(c) of this subpart, according to the provisions in either paragraph (b) or (c) of this section. Whenever a leak is detected, the owner or operator shall comply with the requirements in paragraph (d) of this section.

(1) The heat exchange system is operated with the minimum pressure on the cooling water side at least 35 kilopascals greater than the maximum pressure on the process side.

(2) There is an intervening cooling fluid, containing less than 5 percent by weight of total hazardous air pollutants listed in table 4 of this subpart, between the process and the cooling water. This intervening fluid serves to isolate the cooling water from the process fluid and the intervening fluid is not sent through a cooling tower or discharged. For purposes of this section, discharge does not include emptying for maintenance purposes.

(3) The once-through heat exchange system is subject to a National Pollution Discharge Elimination System (NPDES) permit with an allowable discharge limit of 1 part per million or less above influent concentration or 10 percent or less above influent concentration, whichever is greater.

(4) The once-through heat exchange system is subject to an NPDES permit that:

(i) Requires monitoring of a parameter(s) or condition(s) to detect a leak of process fluids into cooling water;

(ii) Specifies or includes the normal range of the parameter or condition;

(iii) Requires monitoring for the parameters selected as leak indicators no less frequently than monthly for the first six months and quarterly thereafter; and

(iv) Requires the owner or operator to report and correct leaks to the cooling water when the parameter or condition exceeds the normal range.

(5) The recirculating heat exchange system is used to cool process fluids that contain less than 5 percent by weight of total hazardous air pollutants listed in table 4 of this subpart.

(6) The once-through heat exchange system is used to cool process fluids that contain less than 5 percent by weight of total hazardous air pollutants listed in table 9 of subpart G of this part.

(b) The owner or operator who elects to comply with the requirements of paragraph (a) of this section by monitoring the cooling water for the presence of one or more organic hazardous air pollutants or other representative substances whose presence in cooling water indicates a leak shall comply with the requirements specified in paragraphs (b)(1) through (b)(6) of this section. The cooling water shall be monitored for total hazardous

air pollutants, total volatile organic compounds, total organic carbon, one or more speciated HAP compounds, or other representative substances that would indicate the presence of a leak in the heat exchange system.

(1) The cooling water shall be monitored monthly for the first 6 months and quarterly thereafter to detect leaks.

(2)(i) For recirculating heat exchange systems (cooling tower systems), the monitoring of speciated hazardous air pollutants or total hazardous air pollutants refers to the hazardous air pollutants listed in table 4 of this subpart.

(ii) For once-through heat exchange systems, the monitoring of speciated hazardous air pollutants or total hazardous air pollutants refers to the hazardous air pollutants listed in table 9 of subpart G of this part.

(3) The concentration of the monitored substance(s) in the cooling water shall be determined using any EPA-approved method listed in part 136 of this chapter as long as the method is sensitive to concentrations as low as 10 parts per million and the same method is used for both entrance and exit samples. Alternative methods may be used upon approval by the Administrator.

(4) The samples shall be collected either at the entrance and exit of each heat exchange system or at locations where the cooling water enters and exits each heat exchanger or any combination of heat exchangers.

(i) For samples taken at the entrance and exit of recirculating heat exchange systems, the entrance is the point at which the cooling water leaves the cooling tower prior to being returned to the process equipment and the exit is the point at which the cooling water is introduced to the cooling tower after being used to cool the process fluid.

(ii) For samples taken at the entrance and exit of once-through heat exchange systems, the entrance is the point at which the cooling water enters and the exit is the point at which the cooling water exits the plant site or chemical manufacturing process units.

(iii) For samples taken at the entrance and exit of each heat exchanger or any combination of heat exchangers in chemical manufacturing process units, the entrance is the point at which the cooling water enters the individual heat exchanger or group of heat exchangers and the exit is the point at which the cooling water exits the heat exchanger or group of heat exchangers.

(5) A minimum of three sets of samples shall be taken at each entrance and exit as defined in paragraph (b)(4) of this section. The average entrance and exit concentrations shall then be calculated. The concentration shall be corrected for the addition of any makeup water or for any evaporative losses, as applicable.

(6) A leak is detected if the exit mean concentration is found to be greater than the entrance mean using a one-sided statistical procedure at the 0.05 level of significance and the amount by which it is greater is at least 1 part per million or 10 percent of the entrance mean, whichever is greater.

(c) The owner or operator who elects to comply with the requirement of paragraph (a) of this section by monitoring using a surrogate indicator of heat exchange system leaks shall comply with the requirements specified in paragraphs (c)(1) through (c)(3) of this section. Surrogate indicators that could be used to develop an acceptable monitoring program are ion specific electrode monitoring, pH, conductivity or other representative indicators.

(1) The owner or operator shall prepare and implement a monitoring plan that documents the procedures that will be used to detect leaks of process fluids into cooling water. The plan shall require monitoring of one or more surrogate indicators or monitoring of one or more process parameters or other conditions that indicate a leak. Monitoring that is already being conducted for other purposes may be used to satisfy the requirements of this section. The plan shall include the information specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this section.

(i) A description of the parameter or condition to be monitored and an explanation of how the selected parameter or condition will reliably indicate the presence of a leak.

(ii) The parameter level(s) or conditions(s) that shall constitute a leak. This shall be documented by data or calculations showing that the selected levels or conditions will reliably identify leaks. The monitoring must be sufficiently sensitive to determine the range of parameter levels or conditions when the system is not leaking. When the selected parameter level or condition is outside that range, a leak is indicated.

(iii) The monitoring frequency which shall be no less frequent than monthly for the first 6 months and quarterly thereafter to detect leaks.

(iv) The records that will be maintained to document compliance with the requirements of this section.

(2) If a substantial leak is identified by methods other than those described in the monitoring plan and the method(s) specified in the plan could not detect the leak, the owner or operator shall revise the plan and document the basis for the changes. The owner or operator shall complete the revisions to the plan no later than 180 days after discovery of the leak.

(3) The owner or operator shall maintain, at all times, the monitoring plan that is currently in use. The current plan shall be maintained on-site, or shall be accessible from a central location by computer or other means that provides access within 2 hours after a request. If the monitoring plan is superseded, the owner or operator shall retain the most recent superseded plan at least until 5 years from the date of its creation. The superseded plan shall be retained on-site (or accessible from a central location by computer or other means that provides access within two hours after a request) for at least 6 months after its creation.

(d) If a leak is detected according to the criteria of paragraph (b) or (c) of this section, the owner or operator shall comply with the requirements in paragraphs (d)(1) and (d)(2) of this section, except as provided in paragraph (e) of this section.

(1) The leak shall be repaired as soon as practical but not later than 45 calendar days after the owner or operator receives results of monitoring tests indicating a leak. The leak shall be repaired unless the owner or operator demonstrates that the results are due to a condition other than a leak.

(2) Once the leak has been repaired, the owner or operator shall confirm that the heat exchange system has been repaired within 7 calendar days of the repair or startup, whichever is later.

(e) Delay of repair of heat exchange systems for which leaks have been detected is allowed if the equipment is isolated from the process. Delay of repair is also allowed if repair is technically infeasible without a shutdown and any one of the conditions in paragraph (e)(1) or (e)(2) of this section is met. All time periods in paragraphs (e)(1) and (e)(2) of this section shall be determined from the date when the owner or operator determines that delay of repair is necessary.

(1) If a shutdown is expected within the next 2 months, a special shutdown before that planned shutdown is not required.

(2) If a shutdown is not expected within the next 2 months, the owner or operator may delay repair as provided in paragraph (e)(2)(i) or (e)(2)(ii) of this section. Documentation of a decision to delay repair shall state the reasons repair was delayed and shall specify a

schedule for completing the repair as soon as practical.

(i) If a shutdown for repair would cause greater emissions than the potential emissions from delaying repair, the owner or operator may delay repair until the next shutdown of the process equipment associated with the leaking heat exchanger. The owner or operator shall document the basis for the determination that a shutdown for repair would cause greater emissions than the emissions likely to result from delaying repair as specified in paragraphs (e)(2)(i)(A) and (e)(2)(i)(B) of this section.

(A) The owner or operator shall calculate the potential emissions from the leaking heat exchanger by multiplying the concentration of total hazardous air pollutants listed in table 4 of this subpart in the cooling water from the leaking heat exchanger by the flowrate of the cooling water from the leaking heat exchanger by the expected duration of the delay. The owner or operator may calculate potential emissions using total organic carbon concentration instead of total hazardous air pollutants listed in table 4 of this subpart.

(B) The owner or operator shall determine emissions from purging and depressurizing the equipment that will result from the unscheduled shutdown for the repair.

(ii) If repair is delayed for reasons other than those specified in paragraph (e)(2)(i) of this section, the owner or operator may delay repair up to a maximum of 120 calendar days. The owner shall demonstrate that the necessary parts or personnel were not available.

(f)(1) *Required records*. The owner or operator shall retain the records identified in paragraphs (f)(1)(i) through (f)(1)(iv) of this section as specified in § 63.103(c)(1).

(i) Monitoring data required by this section indicating a leak and the date when the leak was detected, and if demonstrated not to be a leak, the basis for that determination;

(ii) Records of any leaks detected by procedures subject to paragraph (c)(2) of this section and the date the leak was discovered;

(iii) The dates of efforts to repair leaks; and

(iv) The method or procedure used to confirm repair of a leak and the date repair was confirmed.

(2) *Reports.* If an owner or operator invokes the delay of repair provisions for a heat exchange system, the following information shall be submitted in the next semi-annual periodic report required by § 63.152(c) of subpart G of this part. If the leak remains unrepaired, the information shall also be submitted in each subsequent periodic report, until repair of the leak is reported.

(i) The owner or operator shall report the presence of the leak and the date that the leak was detected.

(ii) The owner or operator shall report whether or not the leak has been repaired.

(iii) The owner or operator shall report the reason(s) for delay of repair. If delay of repair is invoked due to the reasons described in paragraph (e)(2) of this section, documentation of emissions estimates must also be submitted.

(iv) If the leak remains unrepaired, the owner or operator shall report the expected date of repair.

(v) If the leak is repaired, the owner or operator shall report the date the leak was successfully repaired.

7. Current tables 2 and 3 of subpart F are revised and table 4 is added to read as follows:

TABLE 2 TO SUPBART F—ORGANIC HAZARDOUS AIR POLLUTANTS

Chemical name [a,b]	CAS No.[c]
Acenaphthene	83329
Acetaldehyde	75070
Acetamide	60355
Acetonitrile	75058
Acetophenone	98862
Acrolein	107028
Acrylamide	79061
Acrylic acid	79107
Acrylonitrile	107131
Alizarin	72480
Allyl chloride	107051
Aniline	62533
Anisidine (o-)	90040
Anthracene	120127
Anthraquinone	84651
Benzene	71432
Benzotrichloride	98077
Benzyl chloride	100447
Biphenyl	92524
Bis(chloromethyl)ether	542881
Bromoform	75252
Bromonaphthalene	27497514
Butadiene (1,3-)	106990
Carbon disulfide	75150
Carbon tetrachloride	56235
Chloroacetic acid	79118
Chloroacetophenone (2-)	532274
Chlorobenzene	108907
2–Chloro-,1,3-butadiene (Chloroprene)	126998
Chloroform	67663
Chloronaphthalene	25586430
Chrysene	218019
Cresols and cresylic acids (mixed)	1319773
Cresol and cresylic acid (o-)	95487
Cresol and cresylic acid (m-)	108394

TABLE 2 TO SUBPART F—ORGANIC HAZARDOUS AIR POLLUTANTS—Continued

Chemical name [a,b]	CAS No.[c]
Cresol and cresylic acid (p-)	106445
Cumene	98828
Dichlorobenzene (p-)	106467
Dichlorobenzidine (3,3′-)	91941
Dichloroethane (1,2-) (Ethylene dichloride) (EDC)	107062
Dichloroethylether (Bis(2-chloroethyl)ether)	111444
Dichloropropene (1,3-)	542756
Diethanolamine (2,2′-Iminodiethanol)	111422
Dimethylaniline (N,N-)	121697
Diethyl sulfate	64675
Dimethylbenzidine (3,3′-)	119937
Dimethylformamide (N,N-)	68122
Dimethylhydrazine (1,1-)	58147
Dimethylphthalate	131113
Dimethylsulfate	77781
Dinitrophenol (2,4-)	51285
Dinitrotoluene (2,4-)	121142
Dioxane (1,4-) (1,4–Diethyleneoxide)	123911
1,2–Diphenylhydrazine	122667
Epichlorohydrin (1–Chloro-2,3-epoxypropane)	106898
Ethyl acrylate	140885
Ethylbenzene	100414
Ethyl chloride (Chloroethane)	75003
Ethylene dibromide (Dibromoethane)	106934
Ethylene glycol	107211
Ethylene oxide	75218
Ethylidene dichloride (1,1–Dichloroethane)	75343
Fluoranthene	206440
Formaldehyde	50000
Glycol ethers[d].	
Hexachlorobenzene	118741
Hexachlorobutadiene	87683
Hexachloroethane	67721
Hexane	110543
Hydroquinone	123319
Isophorone	78591
Maleic anhydride	108316
Methanol	67561
Methylbromide (Bromomethane)	74839
Methylchloride (Chloromethane)	74873
Methyl ethyl ketone (2–Butanone)	78933
Methyl hydrazine	60344
Methyl isobutyl ketone (Hexone)	108101
Methyl isocyanate	624839
Methyl methacrylate	80626
Methyl tert-butyl ether	1634044
Methylene chloride (Dichloromethane)	75092
Methylene diphenyl diisocyanate (4,4′-) (MDI)	101688
Methylenedianiline (4,4′-)	101779
Naphthalene	91203
Naphthalene sulfonic acid (α)	85472
Naphthalene sulfonic acid (β)	120183
Naphthol (α)	90153
Naphthol (β)	135193
Naphtholsulfonic acid (1-)	567180
Naphthylamine sulfonic acid (1,4-)	84866
Naphthylamine sulfonic acid (2,1-)	81163
Naphthylamine (1-)	134327
Naphthylamine (2-)	91598
Nitronaphthalene (1-)	86577
Nitrobenzene	98953
Nitrophenol (p-)	100027
Nitropropane (2-)	79469
Phenanthrene	85018
Phenol	108952
Phenylenediamine (p-)	106503
Phosgene	75445
Phthalic anhydride	85449
Propiolactone (beta-)	57578
Propionaldehyde	123386
Propylene dichloride (1,2–Dichloropropane)	78875
Propylene oxide	75569

TABLE 2 TO SUPBART F—ORGANIC HAZARDOUS AIR POLLUTANTS—Continued

Chemical name [a,b]	CAS No.[c]
Pyrene	129000
Quinone	106514
Styrene	100425
Tetrachloroethane (1,1,2,2-)	79345
Tetrachloroethylene (Perchloroethylene)	127184
Tetrahydronaphthalene	119642
Toluene	108883
Toluene diamine (2,4-)	95807
Toluene diisocyanate (2,4-)	584849
Toluidine (o-)	95534
Trichlorobenzene (1,2,4-)	120821
Trichloroethane (1,1,1-) (Methyl chloroform)	71556
Trichloroethane (1,1,2-) (Vinyl trichloride)	79005
Trichloroethylene	79016
Trichlorophenol (2,4,5-)	95954
Triethylamine	121448
Trimethylpentane (2,2,4-)	540841
Vinyl acetate	108054
Vinyl chloride (Chloroethylene)	75014
Vinylidene chloride (1,1–Dichloroethylene)	75354
Xylenes (NOS)	1330207
Xylene (m-)	108383
Xylene (o-)	95476
Xylene (p-)	106423

[a] For all Listings above containing the word ''Compounds,'' the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (i.e., antimony, arsenic) as part of that chemical's infrastructure.

[b] Isomer means all structural arrangements for the same number of atoms of each element and does not mean salts, esters, or derivatives.

[c] CAS No.=Chemical Abstract Service number.

[d] Includes mono- and di- ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-$(OCH_2CH_2)_n$-OR where:
n=1, 2, or 3;
R=alkyl or aryl groups; and
R′=R, H or groups which, when removed, yield glycol ethers with the structure:
R-$(OCH_2CH_2)_n$-OH
Polymers are excluded from the glycol category.

TABLE 3.—GENERAL PROVISIONS APPLICABILITY TO SUBPARTS F, G, AND H[a]

Reference	Applies to subparts F, G, and H	Comment
63.1(a)(1)	Yes	Overlap clarified in §63.101, §63.111, §63.161.
63.1(a)(2)	Yes.	
63.1(a)(3)	Yes	§63.110 and §63.160(b) of subparts G and H identify which standards are overridden.
63.1(a)(4)	No	Subpart F specifies applicability of each paragraph in subpart A to subparts F, G, and H.
63.1 (a)(5)—(a)(9)	No.	
63.1(a)(10)	No	Subparts F, G, and H specify calendar or operating day.
63.1(a)(11)	No	Subpart F §63.103(d) specifies acceptable methods for submitting reports.[a]
63.1 (a)(12)—(a)(14)	Yes.	
63.1(b)(1)	No	Subpart F specifies applicability.
63.1(b)(2)	Yes.	
63.1(b)(3)	No.	
63.1(c)(1)	No	Subpart F specifies applicability.
63.1(c)(2)	No	Area sources are not subject to subparts F, G, and H.
63.1(c)(3)	No.	
63.1(c)(4)	Yes.	
63.1(c)(5)	No	Subparts G and H specify applicable notification requirements.
63.1(d)	No.	
63.1(e)	No	Subparts F, G, and H established before permit program.
63.2	Yes	Subpart F §63.101(a) specifies those subpart A definitions that apply to the HON. Subpart F definition of ''source'' is equivalent to subpart A definition of ''affected source.''
63.3	No	Units of measure are spelled out in subparts F, G, and H.
63.4 (a)(1)—(a)(3)	Yes.	
63.4(a)(4)	No	This is a reserved paragraph in subpart A of part 63.
63.4(a)(5)	Yes.	
63.4(b)	Yes.	
63.4(c)	Yes.	
63.5(a)(1)	Yes	Except the terms ''source'' and ''stationary source'' in §63.5(a)(1) should be interpreted as having the same meaning as ''affected source.''

TABLE 3.—GENERAL PROVISIONS APPLICABILITY TO SUBPARTS F, G, AND H[a]—Continued

Reference	Applies to subparts F, G, and H	Comment
63.5(a)(2)	Yes.	
63.5(b)(1)	Yes	Except § 63.100(l) defines when construction or reconstruction is subject to standards for new sources.
63.5(b)(2)	No	This is a reserved paragraph in subpart A of part 63.
63.5(b)(3)	Yes.	
63.5(b)(4)	Yes	Except the cross reference to § 63.9(b) is limited to § 63.9(b) (4) and (5). Subpart F overrides § 63.9 (b)(1) through (b)(3).
63.5(b)(5)	Yes.	
63.5(b)(6)	Yes	Except § 63.100(l) defines when construction or reconstruction is subject to standards for new sources.
63.5(c)	No	This is a reserved paragraph in subpart A of part 63.
63.5(d)(1)(i)	No	For subpart G, see § 63.151(b) (2)(ii) and (2)(iii) for the applicability and timing of this submittal; for subpart H, see § 63.182(b) (2)(ii) and (b)(2)(iii) for applicability and timing of this submittal.
63.5(d)(1)(ii)	Yes	Except § 63.5(d)(1)(ii)(H) does not apply.
63.5(d)(1)(iii)	No	Subpart G requires submittal of the Notification of Compliance Status in § 63.152(b); subpart H specifies requirements in § 63.182(c).
63.5(d)(2)	No.	
63.5(d)(3)	Yes—subpart G No—subpart H.	Except § 63.5(d)(3)(ii) does not apply to subpart G.
63.5(d)(4)	Yes.	
63.5(e)	Yes.	
63.5(f)(1)	Yes.	
63.5(f)(2)	Yes	Except the cross-reference to § 63.5(d)(1) is changed to § 63.151(b)(2)(ii) of subpart G and to § 63.182(b)(2)(ii) of subpart H. The cross-reference to § 63.5(b)(2) does not apply.
63.6(a)	Yes.	
63.6(b)(1)	No	Subparts F and H specify compliance dates for sources subject to subparts F, G, and H.
63.6(b)(2)	No.	
63.6(b)(3)	Yes.	
63.6(b)(4)	No	May apply when standards are proposed under Section 112(f) of the Clean Air Act.
63.6(b)(5)	No	Subparts G and H include notification requirements.
63.6(b)(6)	No.	
63.6(b)(7)	No.	
63.6(c)(1)	No	Subpart F specifies the compliance dates for subparts G and H.
63.6(c)(2)	No.	
63.6(c)(3)	No.	
63.6(c)(4)	No.	
63.6(c)(5)	Yes.	
63.6(d)	No.	
63.6(e)	Yes	Except as otherwise specified for individual paragraphs. Does not apply to Group 2 emission points unless they are included in an emissions average.[b]
63.6(e)(1)(i)	No	This is addressed by § 63.102(a)(4) of subpart F.
63.6(e)(1)(ii)	Yes.	
63.6(e)(1)(iii)	Yes.	
63.6(e)(2)	Yes.	
63.6(e)(3)(i)	Yes	For subpart H, the startup, shutdown, and malfunction plan requirement of § 63.6(e)(3)(i) is limited to control devices subject to the provisions of subpart H and is optional for other equipment subject to subpart H. The startup, shutdown, and malfunction plan may include written procedures that identify conditions that justify a delay of repair.
63.6(e)(3)(i)(A)	No	This is addressed by § 63.102(a)(4).
63.6(e)(3)(i)(B)	Yes.	
63.6(e)(3)(i)(C)	Yes.	
63.6(e)(3)(ii)	Yes.	
63.6(e)(3)(iii)	No	Recordkeeping and reporting are specified in § 63.103(c)(2) of subpart F and § 63.152(d)(1) of subpart G.
63.6(e)(3)(iv)	No	Recordkeeping and reporting are specified in § 63.103(c)(2) of subpart F and § 63.152(d)(1) of subpart G.
63.6(e)(3)(v)	No	Records retention requirements are specified in § 63.103(c).
63.6(e)(3)(vi)	Yes.	
63.6(e)(3)(vii)	Yes.	
63.6(e)(3)(vii)(A)	Yes.	
63.6(e)(3)(vii)(B)	Yes	Except the plan must provide for operation in compliance with § 63.102(a)(4).
63.6(e)(3)(vii)(C)	Yes.	
63.6(e)(3)(viii)	Yes.	
63.6(f)(1)	No	§ 63.102(a) of subpart F specifies when the standards apply.

TABLE 3.—GENERAL PROVISIONS APPLICABILITY TO SUBPARTS F, G, AND H[a]—Continued

Reference	Applies to subparts F, G, and H	Comment
63.6(f)(2)(i)	Yes.	
63.6(f)(2)(ii)	Yes—subpart G No—subpart H.	§ 63.152(c)(2) of subpart G specifies the use of monitoring data in determining compliance with subpart G.
63.6(f)(2)(iii) (A), (B), and (C)	Yes.	
63.6(f)(2)(iii)(D)	No.	
63.6(f)(2)(iv)	Yes.	
63.6(f)(2)(v)	Yes.	
63.6(f)(3)	Yes.	
63.6(g)	No	Procedures specified in § 63.102(b) of subpart F.
63.6(h)	No.	
63.6(i)(1)	Yes.	
63.6(i)(2)	Yes.	
63.6(i)(3)	No	For subpart G, § 63.151(a)(6) specifies procedures; for subpart H, § 63.182(a)(6) specifies procedures.
63.6(i)(4)(i)(A)	Yes.	
63.6(i)(4)(i)(B)	No	Dates are specified in § 63.151(a)(6)(i) of subpart G and § 63.182(a)(6)(i) of subpart H.
63.6(i)(4)(ii)	No.	
63.6(i) (5)—(14)	Yes.	
63.6(i)(15)	No.	
63.6(i)(16)	Yes.	
63.6(j)	Yes.	
63.7(a)(1)	No	Subparts F, G, and H specify required testing and compliance demonstration procedures.
63.7(a)(2)	No	For subpart G, test results must be submitted in the Notification of Compliance Status due 150 days after compliance date, as specified in § 63.152(b); for subpart H, all test results subject to reporting are reported in periodic reports.
63.7(a)(3)	Yes.	
63.7(b)	No.	
63.7(c)	No.	
63.7(d)	Yes.	
63.7(e)(1)	Yes.	
63.7(e)(2)	Yes.	
63.7(e)(3)	No	Subparts F, G, and H specify test methods and procedures.
63.7(e)(4)	Yes.	
63.7(f)	No	Subparts F, G, and H specify applicable methods and provide alternatives.
63.7(g)	No	Performance test reporting specified in § 63.152(b) of subpart G: Not applicable to subpart H because no performance test required by subpart H.
63.7(h)(1)	Yes.	
63.7(h)(2)	Yes.	
63.7(h)(3)	No	§ 63.103(b)(5) of subpart F specifies provisions for requests to waive performance tests.
63.7(h)(4)	No.	
63.7(h)(5)	Yes.	
63.8(a)(1)	Yes.	
63.8(a)(2)	No.	
63.8(a)(3)	No.	
63.8(a)(4)	Yes.	
63.8(b)(1)	Yes.	
63.8(b)(2)	No	Subparts G and H specify locations to conduct monitoring.
63.8(b)(3)	Yes.	
63.8(c)(1)(i)	Yes.	
63.8(c)(1)(ii)	No	For subpart G, submit as part of periodic report required by § 63.152(c); for subpart H, retain as required by § 63.181(g)(2)(ii).
63.8(c)(1)(iii)	Yes.	
63.8(c)(2)	Yes.	
63.8(c)(3)	Yes.	
63.8(c)(4)	No	Subpart G specifies monitoring frequency by kind of emission point and control technology used (e.g., § 63.111, § 63.120(d)(2), § 63.143, and § 63.152(f)); subpart H does not require use of continuous monitoring systems.
63.8 (c)(5)–(c)(8)	No.	
63.8(d)	No.	
63.8(e)	No.	
63.8 (f)(1)–(f)(3)	Yes.	
63.8(f)(4)(i)	No	Timeframe for submitting request specified in § 63.151(f) or (g) of subpart G; not applicable to subpart H because subpart H specifies acceptable alternative methods.

TABLE 3.—GENERAL PROVISIONS APPLICABILITY TO SUBPARTS F, G, AND H[a]—Continued

Reference	Applies to subparts F, G, and H	Comment
63.8(f)(4)(ii)	Yes.	
63.8(f)(4)(iii)	No.	
63.8(f)(5)(i)	Yes.	
63.8(f)(5)(ii)	No.	
63.8(f)(5)(iii)	Yes.	
63.8(f)(6)	No	Subparts G and H do not require continuous emission monitoring.
63.8(g)	No	Data reduction procedures specified in §63.152(f) and (g) of subpart G; not applicable to subpart H.
63.9(a)	Yes.	
63.9(b)(1)	No	Specified in §63.151(b)(2) of subpart G; specified in §63.182(b) of subpart H.
63.9(b)(2)	No	Initial Notification provisions are specified in §63.151(b) of subpart G; in §63.182(b) of subpart H.
63.9(b)(3)	No.	
63.9(b)(4)	Yes	Except that the notification in §63.9(b)(4)(i) shall be submitted at the time specified in §63.151(b)(2)(ii) of subpart G; in §63.182(b)(2) of subpart H.
63.9(b)(5)	Yes	Except that the notification in §63.9(b)(5) shall be submitted at the time specified in §63.151(b)(2)(ii) of subpart G; in §63.182 (b)(2) of subpart H.
63.9(c)	Yes.	
63.9(d)	Yes.	
63.9(e)	No.	
63.9(f)	No.	
63.9(g)	No.	
63.9(h)	No	§63.152(b) of subpart G and §63.182 (c) of subpart H specify Notification of Compliance Status requirements.
63.9(i)	Yes.	
63.9(j)	No.	
63.10(a)	Yes.	
63.10(b)(1)	No	§63.103(c) of subpart F specifies record retention requirements.
63.10(b)(2)	No	§63.103(c) of subpart F specifies required records.
63.10(b)(3)	No.	
63.10(c)	No.	
63.10(d)(1)	No.	
63.10(d)(2)	No	§63.152(b) of subpart G specifies performance test reporting; not applicable to subpart H.
63.10(d)(3)	No.	
63.10(d)(4)	Yes.	
63.10(d)(5)	Yes	Except that reports required by §63.10(d)(5) shall be submitted at the time specified in §63.152(d) of subpart G and in §63.182(d) of subpart H.
63.10(e)	No.	
63.10(f)	Yes.	
63.11–63.15	Yes.	

[a] Wherever subpart A specifies ''postmark'' dates, submittals may be sent by methods other than the U.S. Mail (e.g., by fax or courier). Submittals shall be sent by the specified dates, but a postmark is not necessarily required.

[b] The plan, and any records or reports of start-up, shutdown, and malfunction do not apply to Group 2 emission points unless they are included in an emissions average.

TABLE 4. TO SUBPART F.—ORGANIC HAZARDOUS AIR POLLUTANTS SUBJECT TO COOLING TOWER MONITORING REQUIREMENTS IN §63.104

Chemical name	CAS Number[a]
Acetaldehyde	75070
Acetonitrile	75058
Acetophenone	98862
Acrolein	107028
Acrylonitrile	107131
Allyl chloride	107051
Aniline	62533
Anisidine (o-)	90040
Benzene	71432
Benzyl chloride	100447
Biphenyl	92524
Bromoform	75252
Butadiene (1,3-)	106990
Carbon disulfide	75150

TABLE 4. TO SUBPART F.—ORGANIC HAZARDOUS AIR POLLUTANTS SUBJECT TO COOLING TOWER MONITORING REQUIREMENTS IN § 63.104—Continued

Chemical name	CAS Number [a]
Carbon tetrachloride	56235
Chloroacetophenone (2-)	532274
Chlorobenzene	108907
2–Chloro-1,3-butadiene (Chloroprene)	126998
Chloroform	67663
Cresol and cresylic acid (o-)	95487
Cresol and cresylic acid (m-)	108394
Cresol and cresylic acid (p-)	106445
Cumene	98828
Dichlorobenzene (p-)	106467
Dichlorobenzidine (3,3′-)	91941
Dichloroethane (1,2-) (Ethylene dichloride) (EDC)	107062
Dichloroethyl ether (Bis(2-chloroethyl)ether)	111444
Dichloropropene (1,3-)	542756
Diethylene glycol diethyl ether	112367
Diethylene glycol dimethyl ether	111966
Diethyl sulfate	64675
Dimethylaniline (N,N-)	121697
Dimethylhydrazine (1,1-)	57147
Dimethyl phthalate	131113
Dimethyl sulfate	77781
Dinitrophenol (2,4-)	51285
Dinitrotoluene (2,4-)	121142
Dioxane (1,4-) (1,4-Diethyleneoxide)	123911
Epichlorohydrin (1-Chloro-2,3-epoxypropane)	106898
Ethyl acrylate	140885
Ethylbenzene	100414
Ethyl chloride (Chloroethane)	75003
Ethylene dibromide (Dibromoethane)	106934
Ethylene glycol dimethyl ether	110714
Ethylene glycol monobutyl ether	111762
Ethylene glycol monobutyl ether acetate	112072
Ethylene glycol monoethyl ether acetate	111159
Ethylene glycol monoethyl ether	110805
Ethylene glycol monomethyl ether	109864
Ethylene glycol monomethyl ether acetate	110496
Ethylene glycol monopropyl ether	2807309
Ethylene oxide	75218
Ethylidene dichloride (1,1-Dichloroethane)	75343
Formaldehyde	50000
Hexachlorobenzene	118741
Hexachlorobutadiene	87683
Hexachloroethane	67721
Hexane	110543
Isophorone	78591
Methanol	67561
Methyl bromide (Bromomethane)	74839
Methyl chloride (Chloromethane)	74873
Methyl ethyl ketone (2–Butanone)	78933
Methyl hydrazine	60344
Methyl isobutyl ketone (Hexone)	108101
Methyl methacrylate	80626
Methyl tert-butyl ether	1634044
Methylene chloride (Dichloromethane)	75092
Methylenedianiline (4,4′-)	101779
Naphthalene	91203
Nitrobenzene	98953
Nitropropane (2-)	79469
Phenol	108952
Phenylenediamine (p-)	106503
Phosgene	75445
Propionaldehyde	123386
Propylene dichloride (1,2-Dichloropropane)	78875
Propylene oxide	75569
Quinone	106514
Styrene	100425
Tetrachloroethane (1,1,2,2-)	79345
Tetrachloroethylene (Perchloroethylene)	127184
Toluene	108883
Toluidine (o-)	95534

TABLE 4. TO SUBPART F.—ORGANIC HAZARDOUS AIR POLLUTANTS SUBJECT TO COOLING TOWER MONITORING REQUIREMENTS IN § 63.104—Continued

Chemical name	CAS Number [a]
Trichlorobenzene (1,2,4-)	120821
Trichloroethane (1,1,1-) (Methyl chloroform)	71556
Trichloroethane (1,1,2-) (Vinyl trichloride)	79005
Trichloroethylene	79016
Trichlorophenol (2,4,5-)	95954
Triethylamine	121448
Trimethylpentane (2,2,4-)	540841
Vinyl acetate	108054
Vinyl chloride (chloroethylene)	75014
Vinylidene chloride (1,1-Dichloroethylene)	75354
Xylene (m-)	108383
Xylene (o-)	95476
Xylene (p-)	106423

[a] CAS Number=Chemical Abstract Service number.

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

8. Section 63.110 is amended by adding paragraphs (d)(10) and (h) and by revising paragraph (e)(1) to read as follows:

§ 63.110 Applicability.

* * * * *

(d) * * *

(10) As an alternative to the requirements of paragraphs (d)(2), (d)(3), (d)(5), (d)(6), (d)(8), and/or (d)(9) of this section as applicable, if a chemical manufacturing process unit has equipment subject to the provisions of this subpart and equipment subject to the provisions of 40 CFR part 60, subpart III, NNN, or RRR, the owner or operator may elect to apply this subpart to all such equipment in the chemical manufacturing process unit. If the owner or operator elects this method of compliance, all total organic compounds minus methane and ethane, in such equipment shall be considered for purposes of applicability and compliance with this subpart, as if they were organic hazardous air pollutants. Compliance with the provisions of this subpart, in the manner described in this paragraph, shall be deemed to constitute compliance with 40 CFR part 60, subpart III, NNN, or RRR, as applicable.

(e) * * *

(1) After the compliance dates specified in § 63.100 of subpart F of this part, the owner or operator of a Group 1 or Group 2 wastewater stream that is also subject to the provisions of 40 CFR part 61, subpart FF is required to comply with the provisions of both this subpart and 40 CFR part 61, subpart FF. Alternatively, the owner or operator may elect to comply with the provisions of paragraphs (e)(1)(i) and (e)(1)(ii) of this section, which shall constitute compliance with the provisions of 40 CFR part 61, subpart FF.

(i) Comply with the provisions of this subpart; and

(ii) For any Group 2 wastewater stream or organic stream whose benzene emissions are subject to control through the use of one or more treatment processes or waste management units under the provisions of 40 CFR part 61, subpart FF on or after December 31, 1992, comply with the requirements of this subpart for Group 1 wastewater streams.

* * * * *

(h) *Overlap with other regulations for monitoring, recordkeeping, or reporting with respect to combustion devices, recovery devices, or recapture devices.* After the compliance dates specified in § 63.100 of subpart F of this part, if any combustion device, recovery device, or recapture device subject to this subpart is also subject to monitoring, recordkeeping, and reporting requirements in 40 CFR part 264, subpart AA or CC, or is subject to monitoring and recordkeeping requirements in 40 CFR part 265, subpart AA or CC and the owner or operator complies with the periodic reporting requirements under 40 CFR part 264, subpart AA or CC that would apply to the device if the facility had final-permitted status, the owner or operator may elect to comply either with the monitoring, recordkeeping, and reporting requirements of this subpart, or with the monitoring, recordkeeping, and reporting requirements in 40 CFR parts 264 and/or 265, as described in this paragraph, which shall constitute compliance with the monitoring, recordkeeping, and reporting requirements of this subpart. The owner or operator shall identify which option has been selected in the Notification of Compliance Status required by § 63.152(b).

9. Section 63.111 is amended by redesignating ''average concentration'' as ''annual average concentration'' and ''average flow rate'' as ''annual average flow rate''; revising the definition for ''boiler''; adding the definition for ''chemical manufacturing process unit''; adding the definition for ''closed biological treatment process''; revising the definitions for ''closed vent system,'' ''combustion device,'' ''continuous record,'' ''continuous seal,'' ''control device,'' and ''cover''; adding the definition for ''enhanced biological treatment system or enhanced biological treatment process''; revising the definitions for ''flame zone'' and ''flow indicator''; adding the definitions for ''fuel gas'' and ''fuel gas system''; revising the definitions for ''Group 1 wastewater stream,'' ''individual drain system,'' and ''junction box''; removing the definition for ''mass flow rate''; revising the definition for ''metallic shoe seal or mechanical shoe seal''; adding the definition for ''open biological treatment process''; removing the definition for ''point of generation''; adding the definition for ''point of determination''; revising the definition for ''process unit,'' adding the definition for ''recapture device''; revising the definitions for ''recovery device,'' ''reference control technology for process vents,'' ''reference control technology for transfer racks,'' ''reference control technology for wastewater'' and ''residual''; revising the definition for ''specific gravity monitoring device''; adding the definitions for ''Table 8 compound'' and ''Table 9 compound''; revising the definition for ''temperature monitoring

device''; removing the definitions for ''total volatile organic hazardous air pollutant concentration,'' ''volatile organic concentration or VO concentration,'' and ''volatile organic hazardous air pollutant concentration or VOHAP concentration''; and revising the definition of ''waste management unit'' to read as follows:

§ 63.111 Definitions.

* * * * *

Annual average concentration * * *

Annual average flow rate * * *

Boiler means any enclosed combustion device that extracts useful energy in the form of steam and is not an incinerator. Boiler also means any industrial furnace as defined in 40 CFR 260.10.

* * * * *

Chemical manufacturing process unit means the equipment assembled and connected by pipes or ducts to process raw materials and to manufacture an intended product. A chemical manufacturing process unit consists of more than one unit operation. For the purpose of this subpart, chemical manufacturing process unit includes air oxidation reactors and their associated product separators and recovery devices; reactors and their associated product separators and recovery devices; distillation units and their associated distillate receivers and recovery devices; associated unit operations; associated recovery devices; and any feed, intermediate and product storage vessels, product transfer racks, and connected ducts and piping. A chemical manufacturing process unit includes pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, and control devices or systems. A chemical manufacturing process unit is identified by its primary product.

Closed biological treatment process means a tank or surface impoundment where biological treatment occurs and air emissions from the treatment process are routed to either a control device by means of a closed vent system or to a fuel gas system by means of hard-piping. The tank or surface impoundment has a fixed roof, as defined in § 63.111 of this subpart, or a floating flexible membrane cover that meets the requirements specified in § 63.134 of this subpart.

Closed-vent system means a system that is not open to the atmosphere and is composed of piping, ductwork, connections, and, if necessary, flow inducing devices that transport gas or vapor from an emission point to a control device.

Combustion device means an individual unit of equipment, such as a flare, incinerator, process heater, or boiler, used for the combustion of organic hazardous air pollutant emissions.

* * * * *

Continuous record means documentation, either in hard copy or computer readable form, of data values measured at least once every 15 minutes and recorded at the frequency specified in § 63.152(f) or § 63.152(g) of this subpart.

* * * * *

Continuous seal means a seal that forms a continuous closure that completely covers the space between the wall of the storage vessel and the edge of the floating roof. A continuous seal may be a vapor-mounted, liquid-mounted, or metallic shoe seal. A continuous seal may be constructed of fastened segments so as to form a continuous seal.

* * * * *

Control device means any combustion device, recovery device, or recapture device. Such equipment includes, but is not limited to, absorbers, carbon adsorbers, condensers, incinerators, flares, boilers, and process heaters. For process vents, recapture devices are considered control devices but recovery devices are not considered control devices, and for a steam stripper, a primary condenser is not considered a control device.

Cover, as used in the wastewater provisions, means a device or system which is placed on or over a waste management unit containing wastewater or residuals so that the entire surface area is enclosed to minimize air emissions. A cover may have openings necessary for operation, inspection, and maintenance of the waste management unit such as access hatches, sampling ports, and gauge wells provided that each opening is closed when not in use. Examples of covers include a fixed roof installed on a wastewater tank, a lid installed on a container, and an air-supported enclosure installed over a waste management unit.

* * * * *

Enhanced biological treatment system or enhanced biological treatment process means an aerated treatment unit(s) that contains biomass suspended in water followed by a clarifier that removes biomass from the treated water and recycles recovered biomass to the aeration unit. The mixed liquor volatile suspended solids (biomass) is greater than 1 kilogram per cubic meter homogeneously distributed throughout each aeration unit. The biomass is suspended and aerated in the water of the aeration unit(s) by either submerged air flow or mechanical agitation.

* * * * *

Flame zone means the portion of the combustion chamber in a boiler or process heater occupied by the flame envelope.

* * * * *

Flow indicator means a device which indicates whether gas flow is, or whether the valve position would allow gas flow to be, present in a line.

Fuel gas means gases that are combusted to derive useful work or heat.

Fuel gas system means the offsite and onsite piping and control system that gathers gaseous stream(s) generated by onsite operations, may blend them with other sources of gas, and transports the gaseous stream for use as fuel gas in combustion devices, or in-process combustion equipment such as furnaces and gas turbines, either singly or in combination.

* * * * *

Group 1 wastewater stream means a wastewater stream consisting of process wastewater as defined in § 63.101 of subpart F at an existing or new source that meets the criteria for Group 1 status in § 63.132(c) of this subpart for Table 9 compounds and/or a wastewater stream consisting of process wastewater at a new source that meets the criteria for Group 1 status in § 63.132(d) of this subpart for Table 8 compounds.

* * * * *

Individual drain system means the stationary system used to convey wastewater streams or residuals to a waste management unit or to discharge or disposal. The term includes hard-piping, all process drains and junction boxes, together with their associated sewer lines and other junction boxes, manholes, sumps, and lift stations, conveying wastewater streams or residuals. A segregated stormwater sewer system, which is a drain and collection system designed and operated for the sole purpose of collecting rainfall runoff at a facility, and which is segregated from all other individual drain systems, is excluded from this definition.

* * * * *

Junction box means a manhole or access point to a wastewater sewer line or a lift station.

* * * * *

Metallic shoe seal or *mechanical shoe seal* means metal sheets that are held vertically against the wall of the storage

vessel by springs, weighted levers, or other mechanisms and 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.

* * * * *

Open biological treatment process means a biological treatment process that is not a closed biological treatment process as defined in this section.

* * * * *

Point of determination means each point where process wastewater exits the chemical manufacturing process unit.

Note to definition for point of determination: The regulation allows determination of the characteristics of a wastewater stream (1) at the point of determination or (2) downstream of the point of determination if corrections are made for changes in flow rate and annual average concentration of Table 8 or Table 9 compounds as determined in § 63.144 of this subpart. Such changes include losses by air emissions; reduction of annual average concentration or changes in flow rate by mixing with other water or wastewater streams; and reduction in flow rate or annual average concentration by treating or otherwise handling the wastewater stream to remove or destroy hazardous air pollutants.

* * * * *

Process unit has the same meaning as *chemical manufacturing process unit* as defined in this section.

* * * * *

Recapture device means an individual unit of equipment capable of and used for the purpose of recovering chemicals, but not normally for use, reuse, or sale. For example, a recapture device may recover chemicals primarily for disposal. Recapture devices include, but are not limited to, absorbers, carbon adsorbers, and condensers.

Recovery device means an individual unit of equipment capable of and normally used for the purpose of recovering chemicals for fuel value (i.e., net positive heating value), use, reuse or for sale for fuel value, use, or reuse. Examples of equipment that may be recovery devices include absorbers, carbon adsorbers, condensers, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units. For purposes of the monitoring, recordkeeping, and reporting requirements of this subpart, recapture devices are considered recovery devices.

* * * * *

Reference control technology for process vents means a combustion device or recapture device used to reduce organic hazardous air pollutant emissions by 98 percent, or to an outlet concentration of 20 parts per million by volume.

* * * * *

Reference control technology for transfer racks means a combustion device, recapture device, or recovery device used to reduce organic hazardous air pollutants emissions by 98 percent, or to an outlet concentration of 20 parts per million by volume; or a vapor balancing system.

Reference control technology for wastewater means the use of:

(1) Controls specified in § 63.133 through § 63.137;

(2) A steam stripper meeting the specifications of § 63.138(d) of this subpart or any of the other alternative control measures specified in § 63.138(b), (c), (e), (f), (g), or (h) of this subpart; and

(3) A control device to reduce by 95 percent (or to an outlet concentration of 20 parts per million by volume for combustion devices or for noncombustion devices controlling air emissions from waste management units other than surface impoundments or containers) the organic hazardous air pollutants emissions in the vapor streams vented from wastewater tanks, oil-water separators, containers, surface impoundments, individual drain systems, and treatment processes (including the design steam stripper) managing wastewater.

Residual means any liquid or solid material containing Table 9 compounds that is removed from a wastewater stream by a waste management unit or treatment process that does not destroy organics (nondestructive unit). Examples of residuals from nondestructive wastewater management units are: the organic layer and bottom residue removed by a decanter or organic-water separator and the overheads from a steam stripper or air stripper. Examples of materials which are not residuals are: silt; mud; leaves; bottoms from a steam stripper or air stripper; and sludges, ash, or other materials removed from wastewater being treated by destructive devices such as biological treatment units and incinerators.

* * * * *

Specific gravity monitoring device means a unit of equipment used to monitor specific gravity and having a minimum accuracy of ± 0.02 specific gravity units.

* * * * *

Table 8 compound means a compound listed in table 8 of this subpart.

Table 9 compound means a compound listed in table 9 of this subpart.

Temperature monitoring device means a unit of equipment used to monitor temperature and having a minimum accuracy of (a) ±1 percent of the temperature being monitored expressed in degrees Celsius (°C) or (b) ±0.5 degrees (°C), whichever is greater.

* * * * *

Waste management unit means the equipment, structure(s), and/or device(s) used to convey, store, treat, or dispose of wastewater streams or residuals. Examples of waste management units include: Wastewater tanks, surface impoundments, individual drain systems, and biological wastewater treatment units. Examples of equipment that may be waste management units include containers, air flotation units, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units. If such equipment is used for recovery, then it is part of a chemical manufacturing process unit and is not a waste management unit.

* * * * *

10. Section 63.112 is amended by revising the introductory text of paragraph (e) and adding paragraphs (e)(3) and (h) to read as follows:

§ 63.112 Emission standard.

* * * * *

(e) The owner or operator of an existing or new source may comply with the process vent provisions in §§ 63.113 through 63.118 of this subpart, the storage vessel provisions in §§ 63.119 through 63.123 of this subpart, the transfer operation provisions in §§ 63.126 through 63.130 of this subpart, the wastewater provisions in §§ 63.131 through 63.147 of this subpart, the leak inspection provisions in § 63.148, and the provisions in § 63.149 of this subpart.

* * * * *

(3) When emissions of different kinds (e.g., emissions from process vents, transfer operations, storage vessels, process wastewater, and/or in-process equipment subject to § 63.149 of this subpart) are combined, and at least one of the emission streams would be classified as Group 1 in the absence of combination with other emission streams, the owner or operator shall comply with the requirements of either paragraph (e)(3)(i) or paragraph (e)(3)(ii) of this section.

(i) Comply with the applicable requirements of this subpart for each kind of emissions in the stream (e.g., the

requirements in §§ 63.113 through 63.118 of this subpart G for process vents, and the requirements of §§ 63.126 through 63.130 for transfer operations); or

(ii) Comply with the first set of requirements identified in paragraphs (e)(3)(ii)(A) through (e)(3)(ii)(E) of this section which applies to any individual emission stream that is included in the combined stream, where either that emission stream would be classified as Group 1 in the absence of combination with other emission streams, or the owner chooses to consider that emission stream to be Group 1 for purposes of this paragraph. Compliance with the first applicable set of requirements identified in paragraphs (e)(3)(ii)(A) through (e)(3)(ii)(E) of this section constitutes compliance with all other requirements in paragraphs (e)(3)(ii)(A) through (e)(3)(ii)(E) of this section applicable to other types of emissions in the combined stream.

(A) The requirements of this subpart for Group 1 process vents, including applicable monitoring, recordkeeping, and reporting;

(B) The requirements of this subpart for Group 1 transfer racks, including applicable monitoring, recordkeeping, and reporting;

(C) The requirements of § 63.119(e) for control of emissions from Group 1 storage vessels, including monitoring, recordkeeping, and reporting;

(D) The requirements of § 63.139 for control devices used to control emissions from waste management units, including applicable monitoring, recordkeeping, and reporting; or

(E) The requirements of § 63.139 for closed vent systems for control of emissions from in-process equipment subject to § 63.149, including applicable monitoring, recordkeeping, and reporting.

* * * * *

(h) Where the provisions of this subpart require a performance test, waiver of that requirement shall be addressed only as provided in § 63.103(b)(5) of subpart F of this part.

11. Section 63.113 is amended by revising the introductory text of paragraph (a); revising paragraph (a)(2); revising the second sentence in paragraph (a)(3); and revising paragraphs (c)(1) and (c)(2) to read as follows:

§ 63.113 Process vent provisions.

(a) The owner or operator of a Group 1 process vent as defined in this subpart shall comply with the requirements of paragraph (a)(1), (a)(2), or (a)(3) of this section.

* * * * *

(2) Reduce emissions of total organic hazardous air pollutants by 98 weight-percent or to a concentration of 20 parts per million by volume, whichever is less stringent. For combustion devices, the emission reduction or concentration shall be calculated on a dry basis, corrected to 3-percent oxygen, and compliance can be determined by measuring either organic hazardous air pollutants or total organic carbon using the procedures in § 63.116 of this subpart.

(i) Compliance with paragraph (a)(2) of this section may be achieved by using any combination of combustion, recovery, and/or recapture devices, except that a recovery device may not be used to comply with paragraph (a)(2) of this section by reducing emissions of total organic hazardous air pollutants by 98 weight-percent, except as provided in paragraph (a)(2)(ii) of this section.

(ii) An owner or operator may use a recovery device, alone or in combination with one or more combustion or recapture devices, to reduce emissions of total organic hazardous air pollutants by 98 weight-percent if all the conditions of paragraphs (a)(2)(ii)(A) through (a)(2)(ii)(D) of this section are met.

(A) The recovery device (and any combustion device or recapture device which operates in combination with the recovery device to reduce emissions of total organic hazardous air pollutants by 98 weight-percent) was installed before the date of proposal of the subpart of this part 63 that makes this subpart G applicable to process vents in the chemical manufacturing process unit.

(B) The recovery device that will be used to reduce emissions of total organic hazardous air pollutants by 98 weight-percent is the last recovery device before emission to the atmosphere.

(C) The recovery device, alone or in combination with one or more combustion or recapture devices, is capable of reducing emissions of total organic hazardous air pollutants by 98 weight-percent, but is not capable of reliably reducing emissions of total organic hazardous air pollutants to a concentration of 20 parts per million by volume.

(D) If the owner or operator disposed of the recovered material, the recovery device would comply with the requirements of this subpart for recapture devices.

(3) * * * If the TRE index value is greater than 1.0, the vent shall comply with the provisions for a Group 2 process vent specified in either paragraph (d) or (e) of this section, whichever is applicable.

* * * * *

(c) * * *

(1) If a combustion device is used to comply with paragraph (a)(2) of this section for a halogenated vent stream, then the vent stream exiting the combustion device shall be ducted to a halogen reduction device, including but not limited to a scrubber, before it is discharged to the atmosphere.

(i) Except as provided in paragraph (c)(1)(ii) of this section, the halogen reduction device shall reduce overall emissions of hydrogen halides and halogens, as defined in § 63.111 of this subpart, by 99 percent or shall reduce the outlet mass of total hydrogen halides and halogens to less than 0.45 kilogram per hour, whichever is less stringent.

(ii) If a scrubber or other halogen reduction device was installed prior to December 31, 1992, the device shall reduce overall emissions of hydrogen halides and halogens, as defined in § 63.111 of this subpart, by 95 percent or shall reduce the outlet mass of total hydrogen halides and halogens to less than 0.45 kilograms per hour, whichever is less stringent.

(2) A halogen reduction device, such as a scrubber or other technique, may be used to reduce the vent stream halogen atom mass emission rate to less than 0.45 kilogram per hour prior to any combustion control device, and thus make the vent stream nonhalogenated; the vent stream must comply with the requirements of paragraph (a)(1) or (a)(2) of this section.

* * * * *

12. Section 63.114 is amended by revising the introductory text of paragraph (a); revising paragraph (a)(4)(ii); adding paragraph (a)(5); revising the introductory text of paragraph (b); revising paragraphs (b)(3), (c)(1), (c)(3), revising the first sentence of paragraph (d)(1), and revising paragraph (d)(2); and adding a sentence to the end of paragraph (e) to read as follows:

§ 63.114 Process vent provisions—monitoring requirements.

(a) Each owner or operator of a process vent that uses a combustion device to comply with the requirements in § 63.113 (a)(1) or (a)(2) of this subpart, or that uses a recovery device or recapture device to comply with the requirements in § 63.113(a)(2) of this subpart, shall install monitoring equipment specified in paragraph (a)(1), (a)(2), (a)(3), (a)(4), or (a)(5) of this section, depending on the type of device used. All monitoring equipment shall be installed, calibrated, maintained, and

operated according to manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

* * * * *

(4) * * *

(ii) A flow meter equipped with a continuous recorder shall be located at the scrubber influent for liquid flow. Gas stream flow shall be determined using one of the procedures specified in paragraphs (a)(4)(ii)(A) through (a)(4)(ii)(C) of this section.

(A) The owner or operator may determine gas stream flow using the design blower capacity, with appropriate adjustments for pressure drop.

(B) If the scrubber is subject to regulations in 40 CFR parts 264 through 266 that have required a determination of the liquid to gas (L/G) ratio prior to the applicable compliance date for this subpart specified in § 63.100(k) of subpart F of this part, the owner or operator may determine gas stream flow by the method that had been utilized to comply with those regulations. A determination that was conducted prior to the compliance date for this subpart may be utilized to comply with this subpart if it is still representative.

(C) The owner or operator may prepare and implement a gas stream flow determination plan that documents an appropriate method which will be used to determine the gas stream flow. The plan shall require determination of gas stream flow by a method which will at least provide a value for either a representative or the highest gas stream flow anticipated in the scrubber during representative operating conditions other than start-ups, shutdowns, or malfunctions. The plan shall include a description of the methodology to be followed and an explanation of how the selected methodology will reliably determine the gas stream flow, and a description of the records that will be maintained to document the determination of gas stream flow. The owner or operator shall maintain the plan as specified in § 63.103(c).

(5) Where a recovery device or recapture device is used to comply with the requirements of § 63.113(a)(2) of this subpart, the owner or operator shall utilize the appropriate monitoring device identified in paragraph (b), (b)(1), (b)(2), or (b)(3) of this section.

(b) Each owner or operator of a process vent with a TRE index value greater than 1.0 as specified under § 63.113(a)(3) or §63.113(d) of this subpart that uses one or more recovery devices shall install either an organic monitoring device equipped with a continuous recorder or the monitoring equipment specified in paragraph (b)(1), (b)(2), or (b)(3) of this section, depending on the type of recovery device used. All monitoring equipment shall be installed, calibrated, and maintained according to the manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately. Monitoring is not required for process vents with TRE index values greater than 4.0 as specified in § 63.113(e) of this subpart.

* * * * *

(3) Where a carbon adsorber is the final recovery device in the recovery system, an integrating regeneration stream flow monitoring device having an accuracy of ±10 percent or better, capable of recording the total regeneration stream mass or volumetric flow for each regeneration cycle; and a carbon bed temperature monitoring device, capable of recording the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle shall be used.

(c) * * *

(1) Uses a combustion device other than an incinerator, boiler, process heater, or flare; or

* * * * *

(3) Uses one of the combustion or recovery or recapture devices listed in paragraphs (a) and (b) of this section, but seeks to monitor a parameter other than those specified in paragraphs (a) and (b) of this section.

(d) * * *

(1) Properly install, maintain, and operate a flow indicator that takes a reading at least once every 15 minutes.

* * *

(2) Secure the bypass line valve in the non-diverting position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve is maintained in the non-diverting position and the vent stream is not diverted through the bypass line.

(e) * * * The range may be based upon a prior performance test conducted for determining compliance with a regulation promulgated by the EPA, and the owner or operator is not required to conduct a performance test under § 63.116 of this subpart, if the prior performance test was conducted using the same methods specified in § 63.116 and either no process changes have been made since the test, or the owner or operator can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

13. Section 63.115 is amended by revising the introductory text of paragraph (a) and the first sentence in the introductory text of paragraph (e) to read as follows:

§ 63.115 Process vent provisions—methods and procedures for process vent group determination.

(a) For purposes of determining process vent stream flow rate, total organic hazardous air pollutants or total organic carbon concentration or TRE index value, as specified under paragraph (b), (c), or (d) of this section, the sampling site shall be after the last recovery device (if any recovery devices are present) but prior to the inlet of any control device that is present and prior to release to the atmosphere.

* * * * *

(e) The owner or operator of a Group 2 process vent shall recalculate the TRE index value, flow, or organic hazardous air pollutants concentration for each process vent, as necessary to determine whether the vent is Group 1 or Group 2, whenever process changes are made that could reasonably be expected to change the vent to a Group 1 vent.

* * * * *

14. Section 63.116 is amended by revising paragraph (a)(1); by revising the introductory text of paragraph (b); revising paragraph (b)(3); adding paragraph (b)(5); revising the introductory text of paragraph (d); and revising paragraphs (d)(1), (d)(3), (d)(4), and (e) to read as follows:

§ 63.116 Process vent provisions—performance test methods and procedures to determine compliance.

(a) * * *

(1) The compliance determination shall be conducted using Method 22 of 40 CFR part 60, appendix A, to determine visible emissions.

* * * * *

(b) An owner or operator is not required to conduct a performance test when any control device specified in paragraphs (b)(1) through (b)(5) of this section is used.

* * * * *

(3) A control device for which a performance test was conducted for determining compliance with a regulation promulgated by the EPA and the test was conducted using the same methods specified in this section and either no process changes have been made since the test, or the owner or operator can demonstrate that the results of the performance test, with or

without adjustments, reliably demonstrate compliance despite process changes.

* * * * *

(5) A hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O, or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O.

* * * * *

(d) An owner or operator using a combustion device followed by a scrubber or other halogen reduction device to control halogenated process vent streams in compliance with § 63.113(c)(1) shall conduct a performance test to determine compliance with the control efficiency or emission limits for hydrogen halides and halogens.

(1) For an owner or operator determining compliance with the percent reduction of total hydrogen halides and halogens, sampling sites shall be located at the inlet and outlet of the scrubber or other halogen reduction device used to reduce halogen emissions. For an owner or operator determining compliance with the less than 0.45 kilogram per hour outlet emission limit for total hydrogen halides and halogens, the sampling site shall be located at the outlet of the scrubber or other halogen reduction device and prior to any releases to the atmosphere.

* * * * *

(3) To determine compliance with the percent removal efficiency, the mass emissions for any hydrogen halides and halogens present at the inlet of the scrubber or other halogen reduction device shall be summed together. The mass emissions of the compounds present at the outlet of the scrubber or other halogen reduction device shall be summed together. Percent reduction shall be determined by comparison of the summed inlet and outlet measurements.

(4) To demonstrate compliance with the less than 0.45 kilogram per hour outlet emission limit, the test results must show that the mass emission rate of total hydrogen halides and halogens measured at the outlet of the scrubber or other halogen reduction device is below 0.45 kilogram per hour.

* * * * *

(e) An owner or operator using a scrubber or other halogen reduction device to reduce the vent stream halogen atom mass emission rate to less than 0.45 kilogram per hour prior to a combustion control device in compliance with § 63.113(c)(2) of this subpart shall determine the halogen atom mass emission rate prior to the combustor according to the procedures in § 63.115(d)(2)(v) of this subpart.

15. Section 63.118 is amended by revising paragraph (a)(2); revising the introductory text of paragraph (b); and revising paragraph (b)(2) to read as follows:

§ 63.118 Process vents provisions—Periodic reporting and recordkeeping requirements.

(a) * * *

(2) Records of the daily average value of each continuously monitored parameter for each operating day determined according to the procedures specified in § 63.152(f). For flares, records of the times and duration of all periods during which all pilot flames are absent shall be kept rather than daily averages.

* * * * *

(b) Each owner or operator using a recovery device or other means to achieve and maintain a TRE index value greater than 1.0 but less than 4.0 as specified in § 63.113(a)(3) or § 63.113(d) of this subpart shall keep the following records up-to-date and readily accessible:

* * * * *

(2) Records of the daily average value of each continuously monitored parameter for each operating day determined according to the procedures specified in § 63.152(f). If carbon adsorber regeneration stream flow and carbon bed regeneration temperature are monitored, the records specified in table 4 of this subpart shall be kept instead of the daily averages.

* * * * *

16. Section 63.119 is amended by revising paragraphs (a)(1), (a)(2), (b)(2), and (c)(4); and by adding new paragraphs (e)(6) and (f) to read as follows:

§ 63.119 Storage vessel provisions—reference control technology.

(a) * * *

(1) For each Group 1 storage vessel (as defined in table 5 of this subpart for existing sources and table 6 for new sources) storing a liquid for which the maximum true vapor pressure of the total organic hazardous air pollutants in the liquid is less than 76.6 kilopascals, the owner or operator shall reduce hazardous air pollutants emissions to the atmosphere either by operating and maintaining a fixed roof and internal floating roof, an external floating roof, an external floating roof converted to an internal floating roof, or a closed vent system and control device, or routing the emissions to a process or a fuel gas system in accordance with the requirements in paragraph (b), (c), (d), (e), or (f) of this section, or equivalent as provided in § 63.121 of this subpart.

(2) For each Group 1 storage vessel (as defined in table 5 of this subpart for existing sources and table 6 of this subpart for new sources) storing a liquid for which the maximum true vapor pressure of the total organic hazardous air pollutants in the liquid is greater than or equal to 76.6 kilopascals, the owner or operator shall operate and maintain a closed vent system and control device meeting the requirements specified in paragraph (e) of this section, or route the emissions to a process or a fuel gas system as specified in paragraph (f) of this section, or equivalent as provided in § 63.121 of this subpart.

* * * * *

(b) * * *

(2) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be accomplished as soon as practical.

* * * * *

(c) * * *

(4) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be accomplished as soon as practical.

* * * * *

(e) * * *

(6) An owner or operator may use a combination of control devices to achieve the required reduction of total organic hazardous air pollutants specified in paragraph (e)(1) of this section. An owner or operator may use a combination of control devices installed on a storage vessel on or before December 31, 1992 to achieve the required reduction of total organic hazardous air pollutants specified in paragraph (e)(2) of this section.

(f) The owner or operator who elects to route emissions to a fuel gas system or to a process, as defined in § 63.111 of this subpart, to comply with the requirements of paragraph (a)(1) or (a)(2) of this section shall comply with the requirements in paragraphs (f)(1) through (f)(3) of this section, as applicable.

(1) If emissions are routed to a fuel gas system, there is no requirement to conduct a performance test or design evaluation. If emissions are routed to a process, the organic hazardous air pollutants in the emissions shall predominantly meet one of, or a combination of, the ends specified in paragraphs (f)(1)(i) through (f)(1)(iv) of

this section. The owner or operator shall comply with the compliance demonstration requirements in § 63.120(f).

(i) Recycled and/or consumed in the same manner as a material that fulfills the same function in that process;

(ii) Transformed by chemical reaction into materials that are not organic hazardous air pollutants;

(iii) Incorporated into a product; and/or

(iv) Recovered.

(2) If the emissions are conveyed by a system other than hard-piping, any conveyance system operated under positive pressure shall be subject to the requirements of § 63.148 of this subpart.

(3) The fuel gas system or process shall be operating at all times when organic hazardous air pollutants emissions are routed to it except as provided in § 63.102(a)(1) of subpart F of this part and in paragraphs (f)(3)(i) through (f)(3)(iii) of this section. Whenever the owner or operator by-passes the fuel gas system or process, the owner or operator shall comply with the recordkeeping requirement in § 63.123(h) of this subpart. Bypassing is permitted if the owner or operator complies with one or more of the conditions specified in paragraphs (f)(3)(i) through (f)(3)(iii) of this section.

(i) The liquid level in the storage vessel is not increased;

(ii) The emissions are routed through a closed-vent system to a control device complying with § 63.119(e) of this subpart; or

(iii) The total aggregate amount of time during which the emissions by-pass the fuel gas system or process during the calendar year without being routed to a control device, for all reasons (except start-ups/shutdowns/malfunctions or product changeovers of flexible operation units and periods when the storage vessel has been emptied and degassed), does not exceed 240 hours.

17. Section 63.120 is amended by revising the last sentence of paragraph (a)(4); revising the first sentence of paragraph (b)(2)(ii); revising the last sentence of paragraphs (b)(7)(ii) and (b)(8); revising the introductory text of paragraph (d); and adding paragraphs (d)(8) and (f) to read as follows:

§ 63.120 Storage vessel provisions—procedures to determine compliance.

(a) * * *

(4) * * * Documentation of a decision to utilize an extension shall include a description of the failure, shall document that alternate storage capacity is unavailable, and shall specify a schedule of actions that will ensure that the control equipment will be repaired or the vessel will be emptied as soon as practical.

* * * * *

(b) * * *

(2) * * *

(ii) Seal gaps, if any, shall be measured around the entire circumference of the vessel in each place where an 0.32 centimeter (⅛ inch) diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the storage vessel. * * *

* * * * *

(7) * * *

(ii) * * * Documentation of a decision to utilize an extension shall include an explanation of why it was unsafe to perform the inspection or seal gap measurement, shall document that alternate storage capacity is unavailable, and shall specify a schedule of actions that will ensure that the vessel will be emptied as soon as practical.

(8) * * * Documentation of a decision to utilize an extension shall include a description of the failure, shall document that alternate storage capacity is unavailable, and shall specify a schedule of actions that will ensure that the control equipment will be repaired or the vessel will be emptied as soon as practical.

* * * * *

(d) To demonstrate compliance with § 63.119(e) of this subpart (storage vessel equipped with a closed vent system and control device) using a control device other than a flare, the owner or operator shall comply with the requirements in paragraphs (d)(1) through (d)(7) of this section, except as provided in paragraph (d)(8) of this section.

* * * * *

(8) A design evaluation or performance test is not required, if the owner or operator uses a combustion device meeting the criteria in paragraph (d)(8)(i), (d)(8)(ii), (d)(8)(iii), or (d)(8)(iv) of this section.

(i) A boiler or process heater with a design heat input capacity of 44 megawatts or greater.

(ii) A boiler or process heater burning hazardous waste for which the owner or operator:

(A) Has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H, or

(B) Has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(iii) A hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O.

(iv) A boiler or process heater into which the vent stream is introduced with the primary fuel.

* * * * *

(f) To demonstrate compliance with § 63.119(f) of this subpart (storage vessel routed to a process), the owner or operator shall prepare a design evaluation (or engineering assessment) that demonstrates the extent to which one or more of the ends specified in § 63.119(f)(1)(i) through (f)(1)(iv) are being met. The owner or operator shall submit the design evaluation as part of the Notification of Compliance Status required by § 63.152(b) of this subpart.

18. Section 63.122 is amended by adding a sentence to the end of the introductory text of paragraph (c); and adding paragraph (c)(3) to read as follows:

§ 63.122 Storage vessel provisions—reporting.

* * * * *

(c) * * * An owner or operator who elects to comply with § 63.119(f) of this subpart by routing emissions to a process or to a fuel gas system shall submit, as part of the Notification of Compliance Status required by § 63.152(b) of this subpart, the information specified in paragraph (c)(3) of this section.

* * * * *

(3) If emissions are routed to a process, the owner or operator shall submit the information specified in § 63.120(f). If emissions are routed to a fuel gas system, the owner or operator shall submit a statement that the emission stream is connected to the fuel gas system and whether the conveyance system is subject to the requirements of § 63.148.

* * * * *

19. Section 63.123 is amended by adding paragraph (h) to read as follows:

§ 63.123 Storage vessel provisions—recordkeeping.

* * * * *

(h) An owner or operator who uses the by-pass provisions of § 63.119(f)(3) of this subpart shall keep in a readily accessible location the records specified in paragraphs (h)(1) through (h)(3) of this section.

(1) The reason it was necessary to by-pass the process equipment or fuel gas system;

(2) The duration of the period when the process equipment or fuel gas system was by-passed;

(3) Documentation or certification of compliance with the applicable provisions of § 63.119(f)(3)(i) through § 63.119(f)(3)(iii).

20. Section 63.126 is amended by revising paragraphs (a)(1) and (a)(3); revising the introductory text of paragraph (b), and revising paragraphs (b)(1) and (b)(3); adding paragraph (b)(4); and revising paragraphs (d)(1), (d)(2), (h), and (i) to read as follows:

§ 63.126 Transfer operations provisions—reference control technology.

(a) * * *

(1) Each vapor collection system shall be designed and operated to collect the organic hazardous air pollutants vapors displaced from tank trucks or railcars during loading, and to route the collected hazardous air pollutants vapors to a process, or to a fuel gas system, or to a control device as provided in paragraph (b) of this section.

* * * * *

(3) Whenever organic hazardous air pollutants emissions are vented to a process, fuel gas system, or control device used to comply with the provisions of this subpart, the process, fuel gas system, or control device shall be operating.

(b) For each Group 1 transfer rack the owner or operator shall comply with paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this section.

(1) Use a control device to reduce emissions of total organic hazardous air pollutants by 98 weight-percent or to an exit concentration of 20 parts per million by volume, whichever is less stringent. For combustion devices, the emission reduction or concentration shall be calculated on a dry basis, corrected to 3-percent oxygen. If a boiler or process heater is used to comply with the percent reduction requirement, then the vent stream shall be introduced into the flame zone of such a device. Compliance may be achieved by using any combination of combustion, recovery, and/or recapture devices.

* * * * *

(3) Reduce emissions of organic hazardous air pollutants using a vapor balancing system designed and operated to collect organic hazardous air pollutants vapors displaced from tank trucks or railcars during loading; and to route the collected hazardous air pollutants vapors to the storage vessel from which the liquid being loaded originated, or to another storage vessel connected to a common header, or to compress and route to a process collected hazardous air pollutants vapors.

(4) Route emissions of organic hazardous air pollutants to a fuel gas system or to a process where the organic hazardous air pollutants in the emissions shall predominantly meet one of, or a combination of, the ends specified in paragraphs (b)(4)(i) through (b)(4)(iv) of this section.

(i) Recycled and/or consumed in the same manner as a material that fulfills the same function in that process;

(ii) Transformed by chemical reaction into materials that are not organic hazardous air pollutants;

(iii) Incorporated into a product; and/or

(iv) Recovered.

* * * * *

(d) * * *

(1) If a combustion device is used to comply with paragraph (b)(1) of this section for a halogenated vent stream, then the vent stream exiting the combustion device shall be ducted to a halogen reduction device, including, but not limited to, a scrubber before it is discharged to the atmosphere.

(i) Except as provided in paragraph (d)(1)(ii) of this section, the halogen reduction device shall reduce overall emissions of hydrogen halides and halogens, as defined in § 63.111 of this subpart, by 99 percent or shall reduce the outlet mass emission rate of total hydrogen halides and halogens to 0.45 kilograms per hour or less, whichever is less stringent.

(ii) If a scrubber or other halogen reduction device was installed prior to December 31, 1992, the halogen reduction device shall reduce overall emissions of hydrogen halides and halogens, as defined in § 63.111 of this subpart, by 95 percent or shall reduce the outlet mass of total hydrogen halides and halogens to less than 0.45 kilograms per hour, whichever is less stringent.

(2) A halogen reduction device, such as a scrubber, or other technique may be used to make the vent stream non-halogenated by reducing the vent stream halogen atom mass emission rate to less than 0.45 kilograms per hour prior to any combustion control device used to comply with the requirements of paragraphs (b)(1) or (b)(2) of this section.

* * * * *

(h) The owner or operator of a transfer rack subject to the provisions of this subpart shall ensure that no pressure-relief device in the transfer rack's vapor collection system or in the organic hazardous air pollutants loading equipment of each tank truck or railcar shall begin to open during loading. Pressure relief devices needed for safety purposes are not subject to this paragraph.

(i) Each valve in the vent system that would divert the vent stream to the atmosphere, either directly or indirectly, shall be secured in a non-diverting position using a carseal or a lock-and-key type configuration, or shall be equipped with a flow indicator. Equipment such as low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and pressure relief devices needed for safety purposes is not subject to this paragraph.

21. Section 63.127 is amended by revising the introductory text of paragraph (a) and revising paragraph (a)(4)(ii); revising the introductory text of paragraph (b), revising paragraph (b)(3), and revising the first sentence of paragraph (d)(1) to read as follows:

§ 63.127 Transfer operations provisions—monitoring requirements.

(a) Each owner or operator of a Group 1 transfer rack equipped with a combustion device used to comply with the 98 percent total organic hazardous air pollutants reduction or 20 parts per million by volume outlet concentration requirements in § 63.126(b)(1) of this subpart shall install, calibrate, maintain, and operate according to the manufacturers' specifications (or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately) the monitoring equipment specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this section, as appropriate.

* * * * *

(4) * * *

(ii) A flow meter equipped with a continuous recorder shall be located at the scrubber influent for liquid flow. Gas stream flow shall be determined using one of the procedures specified in paragraphs (a)(4)(ii)(A) through (a)(4)(ii)(C) of this section.

(A) The owner or operator may determine gas stream flow using the design blower capacity, with appropriate adjustments for pressure drop.

(B) If the scrubber is subject to regulations in 40 CFR parts 264 through 266 that have required a determination of the liquid to gas (L/G) ratio prior to the applicable compliance date for this subpart specified in § 63.100(k) of subpart F of this part, the owner or operator may determine gas stream flow by the method that had been utilized to comply with those regulations. A determination that was conducted prior to the compliance date for this subpart may be utilized to comply with this subpart if it is still representative.

(C) The owner or operator may prepare and implement a gas stream

flow determination plan that documents an appropriate method which will be used to determine the gas stream flow. The plan shall require determination of gas stream flow by a method which will at least provide a value for either a representative or the highest gas stream flow anticipated in the scrubber during representative operating conditions other than start-ups, shutdowns, or malfunctions. The plan shall include a description of the methodology to be followed and an explanation of how the selected methodology will reliably determine the gas stream flow, and a description of the records that will be maintained to document the determination of gas stream flow. The owner or operator shall maintain the plan as specified in § 63.103(c).

(b) Each owner or operator of a Group 1 transfer rack that uses a recovery device or recapture device to comply with the 98-percent organic hazardous air pollutants reduction or 20 parts per million by volume hazardous air pollutants concentration requirements in § 63.126(b)(1) of this subpart shall install either an organic monitoring device equipped with a continuous recorder, or the monitoring equipment specified in paragraph (b)(1), (b)(2), or (b)(3) of this section, depending on the type of recovery device or recapture device used. All monitoring equipment shall be installed, calibrated, and maintained according to the manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

* * * * *

(3) Where a carbon adsorber is used, an integrating regeneration stream flow monitoring device having an accuracy of ±10 percent or better, capable of recording the total regeneration stream mass flow for each regeneration cycle; and a carbon bed temperature monitoring device, capable of recording the temperature of the carbon bed after regeneration and within 15 minutes of completing any cooling cycle shall be used.

* * * * *

(d) * * *

(1) Properly install, maintain, and operate a flow indicator that takes a reading at least once every 15 minutes.

* * *

* * * * *

22. Section 63.128 is amended by revising paragraph (a)(9)(iv); by revising the first sentence in the introductory text of paragraph (b)(1); by revising the introductory text of paragraph (c), revising paragraph (c)(3) and adding paragraph (c)(7); revising the introductory text of paragraph (d); and revising paragraphs (d)(1), (f)(2), and (g) to read as follows:

§ 63.128 Transfer operations provisions—test methods and procedures.

(a) * * *

(9) * * *

(iv) The emission rate correction factor or excess air, integrated sampling and analysis procedures of Method 3B of 40 CFR part 60, appendix A shall be used to determine the oxygen concentration. The sampling site shall be the same as that of the organic hazardous air pollutants or organic compound samples, and the samples shall be taken during the same time that the organic hazardous air pollutants or organic compound samples are taken.

* * * * *

(b) * * *

(1) The compliance determination shall be conducted using Method 22 of 40 CFR part 60, appendix A, to determine visible emissions. * * *

* * * * *

(c) An owner or operator is not required to conduct a performance test when any of the conditions specified in paragraphs (c)(1) through (c)(7) of this section are met.

* * * * *

(3) When emissions are routed to a fuel gas system or when a boiler or process heater is used and the vent stream is introduced with the primary fuel.

* * * * *

(7) When a hazardous waste incinerator is used for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O, or has certified compliance with the interim status requirements 40 CFR part 265, subpart O.

(d) An owner or operator using a combustion device followed by a scrubber or other halogen reduction device to control a halogenated transfer vent stream in compliance with § 63.126(d) of this subpart shall conduct a performance test to determine compliance with the control efficiency or emission limits for hydrogen halides and halogens.

(1) For an owner or operator determining compliance with the percent reduction of total hydrogen halides and halogens, sampling sites shall be located at the inlet and outlet of the scrubber or other halogen reduction device used to reduce halogen emissions. For an owner or operator complying with the 0.45 kilogram per hour outlet mass emission rate limit for total hydrogen halides and halogens, the sampling site shall be located at the outlet of the scrubber or other halogen reduction device and prior to release to the atmosphere.

* * * * *

(f) * * *

(2) A pressure measurement device which has a precision of #2.5 millimeters of mercury or better and which is capable of measuring above the pressure at which the tank truck or railcar is to be tested for vapor tightness.

(g) An owner or operator using a scrubber or other halogen reduction device to reduce the vent stream halogen atom mass emission rate to less than 0.45 kilograms per hour prior to a combustion device used to comply with § 63.126(d)(2) shall determine the halogen atom mass emission rate prior to the combustor according to the procedures in paragraph (d)(3) of this section.

* * * * *

23. Section 63.129 is amended by revising paragraph (a)(1) and the last sentence of paragraph (a)(4)(ii), and by adding paragraph (a)(8) to read as follows:

§ 63.129 Transfer operations provisions—reporting and recordkeeping for performance tests and Notification of Compliance Status.

(a) * * *

(1) Keep an up-to-date, readily accessible record of the data specified in paragraphs (a)(4) through (a)(8) of this section, as applicable.

* * * * *

(4) * * *

(ii) * * * For combustion devices, the concentration shall be reported on a dry basis corrected to 3-percent oxygen.

* * * * *

(8) Report that the emission stream is being routed to a fuel gas system or a process, when complying using § 63.126(b)(4).

* * * * *

24. Section 63.130 is amended by revising the introductory text of paragraph (a)(2); removing paragraphs (a)(2)(i) through (a)(2)(iv); redesignating paragraphs (a)(2)(v) through (a)(2)(vii) as (a)(2)(i) through (a)(2)(iii); and revising paragraph (b)(1), the last sentence of paragraph (b)(2), and revising paragraph (d)(4) to read as follows:

§ 63.130 Transfer operations provisions—periodic recordkeeping and reporting.

(a) * * *

(2) Records of the daily average value of each monitored parameter for each operating day determined according to

the procedures specified in § 63.152(f), except as provided in paragraphs (a)(2)(i) through (a)(2)(iii) of this section.

* * * * *

(b) * * *

(1) Hourly records of whether the flow indicator specified under § 63.127(d)(1) was operating and whether a diversion was detected at any time during the hour, as well as records of the times of all periods when the vent stream is diverted from the control device or the flow indicator is not operating.

(2) * * * In such cases, the owner or operator shall record that the monthly visual inspection of the seals or closure mechanisms has been done, and shall record the occurrence of all periods when the seal mechanism is broken, the by-pass line valve position has changed, or the key for a lock-and-key type lock has been checked out, and records of any car-seal that has broken, as listed in table 7 of this subpart.

* * * * *

(d) * * *

(4) Reports of all times recorded under paragraph (b)(2) of this section when maintenance is performed on car-sealed valves, when the car seal is broken, when the by-pass line valve position is changed, or the key for a lock-and-key type configuration has been checked out.

* * * * *

§ 63.131 [Removed and Reserved]

25. Section 63.131 is removed and reserved.

26. Sections 63.132 through 63.147 are revised to read as follows:

§ 63.132 Process wastewater provisions—general.

(a) *Existing sources.* This paragraph specifies the requirements applicable to process wastewater streams located at existing sources. The owner or operator shall comply with the requirements in paragraphs (a)(1) through (a)(3) of this section, no later than the applicable dates specified in § 63.100 of subpart F of this part.

(1) *Determine wastewater streams to be controlled for Table 9 compounds.* Determine whether each wastewater stream requires control for Table 9 compounds by complying with the requirements in either paragraph (a)(1)(i) or (a)(1)(ii) of this section, and comply with the requirements in paragraph (a)(1)(iii) of this section.

(i) Comply with paragraph (c) of this section, determining whether the wastewater stream is Group 1 or Group 2 for Table 9 compounds; or

(ii) Comply with paragraph (e) of this section, designating the wastewater stream as a Group 1 wastewater stream.

(iii) Comply with paragraph (f) of this section.

(2) *Requirements for Group 1 wastewater streams.* For wastewater streams that are Group 1 for Table 9 compounds, comply with paragraphs (a)(2)(i) through (a)(2)(iv) of this section.

(i) Comply with the applicable requirements for wastewater tanks, surface impoundments, containers, individual drain systems, and oil/water separators as specified in § 63.133 through § 63.137 of this subpart, except as provided in paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) of this section and § 63.138(a)(3) of this subpart.

(A) The waste management units may be equipped with pressure relief devices that vent directly to the atmosphere provided the pressure relief device is not used for planned or routine venting of emissions.

(B) The pressure relief device remains in a closed position at all times except when it is necessary for the pressure relief device to open for the purpose of preventing physical damage or permanent deformation of the waste management unit in accordance with good engineering and safety practices.

(ii) Comply with the applicable requirements for control of Table 9 compounds as specified in § 63.138 of this subpart. Alternatively, the owner or operator may elect to comply with the treatment provisions specified in § 63.132(g) of this subpart.

(iii) Comply with the applicable monitoring and inspection requirements specified in § 63.143 of this subpart.

(iv) Comply with the applicable recordkeeping and reporting requirements specified in §§ 63.146 and 63.147 of this subpart.

(3) *Requirements for Group 2 wastewater streams.* For wastewater streams that are Group 2, comply with the applicable recordkeeping and reporting requirements specified in §§ 63.146 and 63.147 of this subpart.

(b) *New sources.* This paragraph specifies the requirements applicable to process wastewater streams located at new sources. The owner or operator shall comply with the requirements in paragraphs (b)(1) through (b)(4) of this section, no later than the applicable dates specified in § 63.100 of subpart F of this part.

(1) *Determine wastewater streams to be controlled for Table 8 compounds.* Determine whether each wastewater stream requires control for Table 8 compounds by complying with the requirements in either paragraph (b)(1)(i) or (b)(1)(ii) of this section, and comply with the requirements in paragraph (b)(1)(iii) of this section.

(i) Comply with paragraph (d) of this section, determining whether the wastewater stream is Group 1 or Group 2 for Table 8 compounds; or

(ii) Comply with paragraph (e) of this section, designating the wastewater stream as a Group 1 wastewater stream for Table 8 compounds.

(iii) Comply with paragraph (f) of this section.

(2) *Determine wastewater streams to be controlled for Table 9 compounds.* Determine whether each wastewater stream requires control for Table 9 compounds by complying with the requirements in either paragraph (b)(2)(i) or (b)(2)(ii) of this section, and comply with the requirements in paragraph (b)(2)(iii) of this section.

(i) Comply with paragraph (c) of this section, determining whether the wastewater stream is Group 1 or Group 2 for Table 9 compounds; or

(ii) Comply with paragraph (e) of this section, designating the wastewater stream as a Group 1 wastewater stream.

(iii) Comply with paragraph (f) of this section.

(3) *Requirements for Group 1 wastewater streams.* For wastewater streams that are Group 1 for Table 8 compounds and/or Table 9 compounds, comply with paragraphs (b)(3)(i) through (b)(3)(iv) of this section.

(i) Comply with the applicable requirements for wastewater tanks, surface impoundments, containers, individual drain systems, and oil/water separators specified in the requirements of § 63.133 through § 63.137 of this subpart, except as provided in paragraphs (b)(3)(i)(A) and (b)(3)(i)(B) of this section and § 63.138(a)(3) of this subpart.

(A) The waste management units may be equipped with pressure relief devices that vent directly to the atmosphere provided the pressure relief device is not used for planned or routine venting of emissions.

(B) The pressure relief device remains in a closed position at all times except when it is necessary for the pressure relief device to open for the purpose of preventing physical damage or permanent deformation of the waste management unit in accordance with good engineering and safety practices.

(ii) Comply with the applicable requirements for control of Table 8 compounds specified in § 63.138 of this subpart. Alternatively, the owner or operator may elect to comply with the provisions specified in § 63.132(g) of this subpart.

(iii) Comply with the applicable monitoring and inspection requirements specified in § 63.143 of this subpart.

(iv) Comply with the applicable recordkeeping and reporting requirements specified in §§ 63.146 and 63.147 of this subpart.

(4) *Requirements for Group 2 wastewater streams.* For wastewater streams that are Group 2 for both Table 8 and Table 9 compounds, comply with the recordkeeping and reporting requirements specified in §§ 63.146 and 63.147 of this subpart.

(c) *How to determine Group 1 or Group 2 status for Table 9 compounds.* This paragraph provides instructions for determining whether a wastewater stream is Group 1 or Group 2 for Table 9 compounds. Total annual average concentration shall be determined according to the procedures specified in § 63.144(b) of this subpart. Annual average flow rate shall be determined according to the procedures specified in § 63.144(c) of this subpart.

(1) A wastewater stream is a Group 1 wastewater stream for Table 9 compounds if:

(i) The total annual average concentration of Table 9 compounds is greater than or equal to 10,000 parts per million by weight at any flow rate; or

(ii) The total annual average concentration of Table 9 compounds is greater than or equal to 1,000 parts per million by weight and the annual average flow rate is greater than or equal to 10 liters per minute.

(2) A wastewater stream is a Group 2 wastewater stream for Table 9 compounds if it is not a Group 1 wastewater stream for Table 9 compounds by the criteria in paragraph (c)(1) of this section.

(d) *How to determine Group 1 or Group 2 status for Table 8 compounds.* This paragraph provides instructions for determining whether a wastewater sream is Group 1 or Group 2 for Table 8 compounds. Annual average concentration for each Table 8 compound shall be determined according to the procedures specified in § 63.144(b) of this subpart. Annual average flow rate shall be determined according to the procedures specified in § 63.144(c) of this subpart.

(1) A wastewater stream is a Group 1 wastewater stream for Table 8 compounds if the annual average flow rate is 0.02 liter per minute or greater and the annual average concentration of any individual table 8 compound is 10 parts per million by weight or greater.

(2) A wastewater stream is a Group 2 wastewater stream for Table 8 compounds if the annual average flow rate is less than 0.02 liter per minute or the annual average concentration for each individual Table 8 compound is less than 10 parts per million by weight.

(e) *How to designate a Group 1 wastewater stream.* The owner or operator may elect to designate a wastewater stream a Group 1 wastewater stream in order to comply with paragraph (a)(1) or (b)(1) of this section. To designate a wastewater stream or a mixture of wastewater streams a Group 1 wastewater stream, the procedures specified in paragraphs (e)(1) and (e)(2) of this section and § 63.144(a)(2) of this subpart shall be followed.

(1) From the point of determination for each wastewater stream that is included in the Group 1 designation to the location where the owner or operator elects to designate such wastewater stream(s) as a Group 1 wastewater stream, the owner or operator shall comply with all applicable emission suppression requirements specified in §§ 63.133 through 63.137.

(2) From the location where the owner or operator designates a wastewater stream or mixture of wastewater streams to be a Group 1 wastewater stream, such Group 1 wastewater stream shall be managed in accordance with all applicable emission suppression requirements specified in §§ 63.133 through 63.137 and with the treatment requirements in § 63.138 of this part.

(f) Owners or operators of sources subject to this subpart shall not discard liquid or solid organic materials with a concentration of greater than 10,000 parts per million of Table 9 compounds (as determined by analysis of the stream composition, engineering calculations, or process knowledge, according to the provisions of § 63.144(b) of this subpart) from a chemical manufacturing process unit to water or wastewater, unless the receiving stream is managed and treated as a Group 1 wastewater stream. This prohibition does not apply to materials from the activities listed in paragraphs (f)(1) through (f)(4) of this section.

(1) Equipment leaks;

(2) Activities included in maintenance or startup/shutdown/malfunction plans;

(3) Spills; or

(4) Samples of a size not greater than reasonably necessary for the method of analysis that is used.

(g) *Off-site treatment or on-site treatment not owned or operated by the source.* The owner or operator may elect to transfer a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream to an on-site treatment operation not owned or operated by the owner or operator of the source generating the wastewater stream or residual, or to an off-site treatment operation.

(1) The owner or operator transferring the wastewater stream or residual shall:

(i) Comply with the provisions specified in §§ 63.133 through 63.137 of this subpart for each waste management unit that receives or manages a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream prior to shipment or transport.

(ii) Include a notice with the shipment or transport of each Group 1 wastewater stream or residual removed from a Group 1 wastewater stream. The notice shall state that the wastewater stream or residual contains organic hazardous air pollutants that are to be treated in accordance with the provisions of this subpart. When the transport is continuous or ongoing (for example, discharge to a publicly-owned treatment works), the notice shall be submitted to the treatment operator initially and whenever there is a change in the required treatment.

(2) The owner or operator may not transfer the wastewater stream or residual unless the transferee has submitted to the EPA a written certification that the transferee will manage and treat any Group 1 wastewater stream or residual removed from a Group 1 wastewater stream received from a source subject to the requirements of this subpart in accordance with the requirements of either §§ 63.133 through 63.147, or § 63.102(b) of subpart F, or subpart D of this part if alternative emission limitations have been granted the transferor in accordance with those provisions. The certifying entity may revoke the written certification by sending a written statement to the EPA and the owner or operator giving at least 90 days notice that the certifying entity is rescinding acceptance of responsibility for compliance with the regulatory provisions listed in this paragraph. Upon expiration of the notice period, the owner or operator may not transfer the wastewater stream or residual to the treatment operation.

(3) By providing this written certification to the EPA, the certifying entity accepts responsibility for compliance with the regulatory provisions listed in paragraph (g)(2) of this section with respect to any shipment of wastewater or residual covered by the written certification. Failure to abide by any of those provisions with respect to such shipments may result in enforcement action by the EPA against the certifying entity in accordance with the enforcement provisions applicable to violations of these provisions by owners or operators of sources.

(4) Written certifications and revocation statements, to the EPA from the transferees of wastewater or residuals shall be signed by the responsible official of the certifying entity, provide the name and address of the certifying entity, and be sent to the appropriate EPA Regional Office at the addresses listed in 40 CFR 63.13. Such written certifications are not transferable by the treater.

§ 63.133 Process wastewater provisions—wastewater tanks.

(a) For each wastewater tank that receives, manages, or treats a Group 1 wastewater stream or a residual removed from a Group 1 wastewater stream, the owner or operator shall comply with the requirements of either paragraph (a)(1) or (a)(2) of this section as specified in table 10 of this subpart.

(1) The owner or operator shall operate and maintain a fixed roof except that if the wastewater tank is used for heating wastewater, or treating by means of an exothermic reaction or the contents of the tank is sparged, the owner or operator shall comply with the requirements specified in paragraph (a)(2) of this section.

(2) The owner or operator shall comply with the requirements in paragraphs (b) through (h) of this section and shall operate and maintain one of the emission control techniques listed in paragraphs (a)(2)(i) through (a)(2)(iv) of this section.

(i) A fixed roof and a closed-vent system that routes the organic hazardous air pollutants vapors vented from the wastewater tank to a control device.

(ii) A fixed roof and an internal floating roof that meets the requirements specified in § 63.119(b) of this subpart;

(iii) An external floating roof that meets the requirements specified in §§ 63.119(c), 63.120(b)(5), and 63.120(b)(6) of this subpart; or

(iv) An equivalent means of emission limitation. Determination of equivalence to the reduction in emissions achieved by the requirements of paragraphs (a)(2)(i) through (a)(2)(iii) of this section will be evaluated according to § 63.102(b) of subpart F of this part. The determination will be based on the application to the Administrator which shall include the information specified in either paragraph (a)(2)(iv)(A) or (a)(2)(iv)(B) of this section.

(A) Actual emissions tests that use full-size or scale-model wastewater tanks that accurately collect and measure all organic hazardous air pollutants emissions from a given control technique, and that accurately simulate wind and account for other emission variables such as temperature and barometric pressure, or

(B) An engineering evaluation that the Administrator determines is an accurate method of determining equivalence.

(b) If the owner or operator elects to comply with the requirements of paragraph (a)(2)(i) of this section, the fixed roof shall meet the requirements of paragraph (b)(1) of this section, the control device shall meet the requirements of paragraph (b)(2) of this section, and the closed-vent system shall meet the requirements of paragraph (b)(3) of this section.

(1) The fixed-roof shall meet the following requirements:

(i) Except as provided in paragraph (b)(4) of this section, the fixed roof and all openings (e.g., access hatches, sampling ports, and gauge wells) shall be maintained in accordance with the requirements specified in § 63.148 of this subpart.

(ii) Each opening shall be maintained in a closed position (e.g., covered by a lid) at all times that the wastewater tank contains a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream except when it is necessary to use the opening for wastewater sampling, removal, or for equipment inspection, maintenance, or repair.

(2) The control device shall be designed, operated, and inspected in accordance with the requirements of § 63.139 of this subpart.

(3) Except as provided in paragraph (b)(4) of this section, the closed-vent system shall be inspected in accordance with the requirements of § 63.148 of this subpart.

(4) For any fixed roof tank and closed-vent system that is operated and maintained under negative pressure, the owner or operator is not required to comply with the requirements specified in § 63.148 of this subpart.

(c) If the owner or operator elects to comply with the requirements of paragraph (a)(2)(ii) of this section, the floating roof shall be inspected according to the procedures specified in § 63.120(a)(2) and (a)(3) of this subpart.

(d) Except as provided in paragraph (e) of this section, if the owner or operator elects to comply with the requirements of paragraph (a)(2)(iii) of this section, seal gaps shall be measured according to the procedures specified in § 63.120(b)(2)(i) through (b)(4) of this subpart and the wastewater tank shall be inspected to determine compliance with § 63.120(b)(5) and (b)(6) of this subpart.

(e) If the owner or operator determines that it is unsafe to perform the seal gap measurements specified in § 63.120(b)(2)(i) through (b)(4) of this subpart or to inspect the wastewater tank to determine compliance with § 63.120(b)(5) and (b)(6) of this subpart because the floating roof appears to be structurally unsound and poses an imminent or potential danger to inspecting personnel, the owner or operator shall comply with the requirements in either paragraph (e)(1) or (e)(2) of this section.

(1) The owner or operator shall measure the seal gaps or inspect the wastewater tank within 30 calendar days of the determination that the floating roof is unsafe, or

(2) The owner or operator shall empty and remove the wastewater tank from service within 45 calendar days of determining that the roof is unsafe. If the wastewater tank cannot be emptied within 45 calendar days, the owner or operator may utilize up to two extensions of up to 30 additional calendar days each. Documentation of a decision to utilize an extension shall include an explanation of why it was unsafe to perform the inspection or seal gap measurement, shall document that alternate storage capacity is unavailable, and shall specify a schedule of actions that will ensure that the wastewater tank will be emptied as soon as practical.

(f) Except as provided in paragraph (e) of this section, each wastewater tank shall be inspected initially, and semi-annually thereafter, for improper work practices in accordance with § 63.143 of this subpart. For wastewater tanks, improper work practice includes, but is not limited to, leaving open any access door or other opening when such door or opening is not in use.

(g) Except as provided in paragraph (e) of this section, each wastewater tank shall be inspected for control equipment failures as defined in paragraph (g)(1) of this section according to the schedule in paragraphs (g)(2) and (g)(3) of this section.

(1) Control equipment failures for wastewater tanks include, but are not limited to, the conditions specified in paragraphs (g)(1)(i) through (g)(1)(ix) of this section.

(i) The floating roof is not resting on either the surface of the liquid or on the leg supports.

(ii) There is stored liquid on the floating roof.

(iii) A rim seal is detached from the floating roof.

(iv) There are holes, tears, cracks or gaps in the rim seal or seal fabric of the floating roof.

(v) There are visible gaps between the seal of an internal floating roof and the wall of the wastewater tank.

(vi) There are gaps between the metallic shoe seal or the liquid mounted primary seal of an external floating roof and the wall of the wastewater tank that exceed 212 square centimeters per meter of tank diameter or the width of any portion of any gap between the primary seal and the tank wall exceeds 3.81 centimeters.

(vii) There are gaps between the secondary seal of an external floating roof and the wall of the wastewater tank that exceed 21.2 square centimeters per meter of tank diameter or the width of any portion of any gap between the secondary seal and the tank wall exceeds 1.27 centimeters.

(viii) Where a metallic shoe seal is used on an external floating roof, one end of the metallic shoe does not extend into the stored liquid or one end of the metallic shoe does not extend a minimum vertical distance of 61 centimeters above the surface of the stored liquid.

(ix) A gasket, joint, lid, cover, or door has a crack or gap, or is broken.

(2) The owner or operator shall inspect for the control equipment failures in paragraphs (g)(1)(i) through (g)(1)(viii) of this section according to the schedule specified in paragraphs (c) and (d) of this section.

(3) The owner or operator shall inspect for the control equipment failures in paragraph (g)(1)(ix) of this section initially, and semi-annually thereafter.

(h) Except as provided in § 63.140 of this subpart, when an improper work practice or a control equipment failure is identified, first efforts at repair shall be made no later than 5 calendar days after identification and repair shall be completed within 45 calendar days after identification. If a failure that is detected during inspections required by paragraphs (a)(2)(i) or (a)(3)(ii) of this section cannot be repaired within 45 calendar days and if the vessel cannot be emptied within 45 calendar days, the owner or operator may utilize up to two extensions of up to 30 additional calendar days each. Documentation of a decision to utilize an extension shall include a description of the failure, shall document that alternate storage capacity is unavailable, and shall specify a schedule of actions that will ensure that the control equipment will be repaired or the vessel will be emptied as soon as practical.

§ 63.134 Process wastewater provisions—surface impoundments.

(a) For each surface impoundment that receives, manages, or treats a Group 1 wastewater stream or a residual removed from a Group 1 wastewater stream, the owner or operator shall comply with the requirements of paragraphs (b), (c), and (d) of this section.

(b) The owner or operator shall operate and maintain on each surface impoundment either a cover (e.g., air-supported structure or rigid cover) and a closed-vent system that routes the organic hazardous air pollutants vapors vented from the surface impoundment to a control device in accordance with paragraph (b)(1) of this section, or a floating flexible membrane cover as specified in paragraph (b)(2) of this section.

(1) The cover and all openings shall meet the following requirements:

(i) Except as provided in paragraph (b)(4) of this section, the cover and all openings (e.g., access hatches, sampling ports, and gauge wells) shall be maintained in accordance with the requirements specified in § 63.148 of this subpart.

(ii) Each opening shall be maintained in a closed position (e.g., covered by a lid) at all times that a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream is in the surface impoundment except when it is necessary to use the opening for sampling, removal, or for equipment inspection, maintenance, or repair.

(iii) The cover shall be used at all times that a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream is in the surface impoundment except during removal of treatment residuals in accordance with 40 CFR 268.4 or closure of the surface impoundment in accordance with 40 CFR 264.228.

(2) Floating flexible membrane covers shall meet the requirements specified in paragraphs (b)(2)(i) through (b)(2)(vii) of this section.

(i) The floating flexible cover shall be designed to float on the liquid surface during normal operations, and to 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 (100 mils); 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 (b)(2)(i) 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 (b)(2)(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 organic hazardous air pollutants to the atmosphere, to the extent practical, and will maintain the integrity of the equipment throughout its intended service life. Factors to be considered in designing the closure devices shall include: 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.

(vii) Whenever a Group 1 wastewater stream or residual from a Group 1 wastewater stream 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. Opening of closure devices or removal of the cover is allowed to provide access to the surface impoundment for performing routine inspection, maintenance, or other activities needed for normal operations and/or to remove accumulated sludge or other residues from the bottom of surface impoundment. Openings shall be maintained in accordance with § 63.148 of this subpart.

(3) The control device shall be designed, operated, and inspected in accordance with § 63.139 of this subpart.

(4) Except as provided in paragraph (b)(5) of this section, the closed-vent system shall be inspected in accordance with § 63.148 of this subpart.

(5) For any cover and closed-vent system that is operated and maintained under negative pressure, the owner or operator is not required to comply with

the requirements specified in § 63.148 of this subpart.

(c) Each surface impoundment shall be inspected initially, and semi-annually thereafter, for improper work practices and control equipment failures in accordance with § 63.143 of this subpart.

(1) For surface impoundments, improper work practice includes, but is not limited to, leaving open any access hatch or other opening when such hatch or opening is not in use.

(2) For surface impoundments, control equipment failure includes, but is not limited to, any time a joint, lid, cover, or door has a crack or gap, or is broken.

(d) Except as provided in § 63.140 of this subpart, when an improper work practice or a control equipment failure is identified, first efforts at repair shall be made no later than 5 calendar days after identification and repair shall be completed within 45 calendar days after identification.

§ 63.135 Process wastewater provisions—containers.

(a) For each container that receives, manages, or treats a Group 1 wastewater stream or a residual removed from a Group 1 wastewater stream, the owner or operator shall comply with the requirements of paragraphs (b) through (f) of this section.

(b) The owner or operator shall operate and maintain a cover on each container used to handle, transfer, or store a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream in accordance with the following requirements:

(1) Except as provided in paragraph (d)(4) of this section, if the capacity of the container is greater than 0.42 m^3, the cover and all openings (e.g., bungs, hatches, sampling ports, and pressure relief devices) shall be maintained in accordance with the requirements specified in § 63.148 of this subpart.

(2) If the capacity of the container is less than or equal to 0.42 m^3, the owner or operator shall comply with either paragraph (b)(2)(i) or (b)(2)(ii) of this section.

(i) The container must meet existing Department of Transportation specifications and testing requirements under 49 CFR part 178; or

(ii) Except as provided in paragraph (d)(4) of this section, the cover and all openings shall be maintained without leaks as specified in § 63.148 of this subpart.

(3) The cover and all openings shall be maintained in a closed position (e.g., covered by a lid) at all times that a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream is in the container except when it is necessary to use the opening for filling, removal, inspection, sampling, or pressure relief events related to safety considerations.

(c) For containers with a capacity greater than or equal to 0.42 m^3, a submerged fill pipe shall be used when a container is being filled by pumping with a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream.

(1) The submerged fill pipe outlet shall extend to no more than 6 inches or within two fill pipe diameters of the bottom of the container while the container is being filled.

(2) The cover shall remain in place and all openings shall be maintained in a closed position except for those openings required for the submerged fill pipe and for venting of the container to prevent physical damage or permanent deformation of the container or cover.

(d) During treatment of a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream, including aeration, thermal or other treatment, in a container, whenever it is necessary for the container to be open, the container shall be located within an enclosure with a closed-vent system that routes the organic hazardous air pollutants vapors vented from the container to a control device.

(1) Except as provided in paragraph (d)(4) of this section, the enclosure and all openings (e.g., doors, hatches) shall be maintained in accordance with the requirements specified in § 63.148 of this subpart.

(2) The control device shall be designed, operated, and inspected in accordance with § 63.139 of this subpart.

(3) Except as provided in paragraph (d)(4) of this section, the closed-vent system shall be inspected in accordance with § 63.148 of this subpart.

(4) For any enclosure and closed-vent system that is operated and maintained under negative pressure, the owner or operator is not required to comply with the requirements specified in § 63.148 of this subpart.

(e) Each container shall be inspected initially, and semi-annually thereafter, for improper work practices and control equipment failures in accordance with § 63.143 of this subpart.

(1) For containers, improper work practice includes, but is not limited to, leaving open any access hatch or other opening when such hatch or opening is not in use.

(2) For containers, control equipment failure includes, but is not limited to, any time a cover or door has a gap or crack, or is broken.

(f) Except as provided in § 63.140 of this subpart, when an improper work practice or a control equipment failure is identified, first efforts at repair shall be made no later than 5 calendar days after identification and repair shall be completed within 15 calendar days after identification.

§ 63.136 Process wastewater provisions—individual drain systems.

(a) For each individual drain system that receives or manages a Group 1 wastewater stream or a residual removed from a Group 1 wastewater stream, the owner or operator shall comply with the requirements of paragraphs (b), (c), and (d) or with paragraphs (e), (f), and (g) of this section.

(b) If the owner or operator elects to comply with this paragraph, the owner or operator shall operate and maintain on each opening in the individual drain system a cover and if vented, route the vapors to a process or through a closed vent system to a control device. The owner or operator shall comply with the requirements of paragraphs (b)(1) through (b)(5) of this section.

(1) The cover and all openings shall meet the following requirements:

(i) Except as provided in paragraph (b)(4) of this section, the cover and all openings (e.g., access hatches, sampling ports) shall be maintained in accordance with the requirements specified in § 63.148 of this subpart.

(ii) The cover and all openings shall be maintained in a closed position at all times that a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream is in the drain system except when it is necessary to use the opening for sampling or removal, or for equipment inspection, maintenance, or repair.

(2) The control device shall be designed, operated, and inspected in accordance with § 63.139 of this subpart.

(3) Except as provided in paragraph (b)(4) of this section, the closed-vent system shall be inspected in accordance with § 63.148 of this subpart.

(4) For any cover and closed-vent system that is operated and maintained under negative pressure, the owner or operator is not required to comply with the requirements specified in § 63.148 of this subpart.

(5) The individual drain system shall be designed and operated to segregate the vapors within the system from other drain systems and the atmosphere.

(c) Each individual drain system shall be inspected initially, and semi-

annually thereafter, for improper work practices and control equipment failures, in accordance with the inspection requirements specified in table 11 of this subpart.

(1) For individual drain systems, improper work practice includes, but is not limited to, leaving open any access hatch or other opening when such hatch or opening is not in use for sampling or removal, or for equipment inspection, maintenance, or repair.

(2) For individual drain systems, control equipment failure includes, but is not limited to, any time a joint, lid, cover, or door has a gap or crack, or is broken.

(d) Except as provided in §63.140 of this subpart, when an improper work practice or a control equipment failure is identified, first efforts at repair shall be made no later than 5 calendar days after identification and repair shall be completed within 15 calendar days after identification.

(e) If the owner or operator elects to comply with this paragraph, the owner or operator shall comply with the requirements in paragraphs (e)(1) through (e)(3) of this section:

(1) Each drain shall be equipped with water seal controls or a tightly fitting cap or plug. The owner or operator shall comply with paragraphs (e)(1)(i) and (e)(1)(ii) of this section.

(i) For each drain equipped with a water seal, the owner or operator shall ensure that the water seal is maintained. For example, a flow-monitoring device indicating positive flow from a main to a branch water line supplying a trap or water being continuously dripped into the trap by a hose could be used to verify flow of water to the trap. Visual observation is also an acceptable alternative.

(ii) If a water seal is used on a drain receiving a Group 1 wastewater, the owner or operator shall either extend the pipe discharging the wastewater below the liquid surface in the water seal of the receiving drain, or install a flexible shield (or other enclosure which restricts wind motion across the open area between the pipe and the drain) that encloses the space between the pipe discharging the wastewater to the drain receiving the wastewater. (Water seals which are used on hubs receiving Group 2 wastewater for the purpose of eliminating cross ventilation to drains carrying Group 1 wastewater are not required to have a flexible cap or extended subsurface discharging pipe.)

(2) Each junction box shall be equipped with a tightly fitting solid cover (i.e., no visible gaps, cracks, or holes) which shall be kept in place at all times except during inspection and maintenance. If the junction box is vented, the owner or operator shall comply with the requirements in paragraph (e)(2)(i) or (e)(2)(ii) of this section.

(i) The junction box shall be vented to a process or through a closed vent system to a control device. The closed vent system shall be inspected in accordance with the requirements of §63.148 and the control device shall be designed, operated, and inspected in accordance with the requirements of §63.139.

(ii) If the junction box is filled and emptied by gravity flow (i.e., there is no pump) or is operated with no more than slight fluctuations in the liquid level, the owner or operator may vent the junction box to the atmosphere provided that the junction box complies with the requirements in paragraphs (e)(2)(ii)(A) and (e)(2)(ii)(B) of this section.

(A) The vent pipe shall be at least 90 centimeters in length and no greater than 10.2 centimeters in nominal inside diameter.

(B) Water seals shall be installed and maintained at the wastewater entrance(s) to or exit from the junction box restricting ventilation in the individual drain system and between components in the individual drain system. The owner or operator shall demonstrate (e.g., by visual inspection or smoke test) upon request by the Administrator that the junction box water seal is properly designed and restricts ventilation.

(3) Each sewer line shall not be open to the atmosphere and shall be covered or enclosed in a manner so as to have no visible gaps or cracks in joints, seals, or other emission interfaces.

(f) Equipment used to comply with paragraphs (e)(1), (e)(2), or (e)(3) of this section shall be inspected as follows:

(1) Each drain using a tightly fitting cap or plug shall be visually inspected initially, and semi-annually thereafter, to ensure caps or plugs are in place and that there are no gaps, cracks, or other holes in the cap or plug.

(2) Each junction box shall be visually inspected initially, and semi-annually thereafter, to ensure that there are no gaps, cracks, or other holes in the cover.

(3) The unburied portion of each sewer line shall be visually inspected initially, and semi-annually thereafter, for indication of cracks or gaps that could result in air emissions.

(g) Except as provided in §63.140 of this subpart, when a gap, hole, or crack is identified in a joint or cover, first efforts at repair shall be made no later than 5 calendar days after identification, and repair shall be completed within 15 calendar days after identification.

§63.137 Process wastewater provisions—oil-water separators.

(a) For each oil-water separator that receives, manages, or treats a Group 1 wastewater stream or a residual removed from a Group 1 wastewater stream, the owner or operator shall comply with the requirements of paragraphs (c) and (d) of this section and shall operate and maintain one of the following:

(1) A fixed roof and a closed vent system that routes the organic hazardous air pollutants vapors vented from the oil-water separator to a control device. The fixed roof, closed-vent system, and control device shall meet the requirements specified in paragraph (b) of this section;

(2) A floating roof meeting the requirements in 40 CFR part 60, subpart QQQ §§60.693–2(a)(1)(i), (a)(1)(ii), (a)(2), (a)(3), and (a)(4). For portions of the oil-water separator where it is infeasible to construct and operate a floating roof, such as over the weir mechanism, the owner or operator shall operate and maintain a fixed roof, closed vent system, and control device that meet the requirements specified in paragraph (b) of this section.

(3) An equivalent means of emission limitation. Determination of equivalence to the reduction in emissions achieved by the requirements of paragraphs (a)(1) and (a)(2) of this section will be evaluated according to §63.102(b) of subpart F of this part. The determination will be based on the application to the Administrator which shall include the information specified in either paragraph (a)(3)(i) or (a)(3)(ii) of this section.

(i) Actual emissions tests that use full-size or scale-model oil-water separators that accurately collect and measure all organic hazardous air pollutants emissions from a given control technique, and that accurately simulate wind and account for other emission variables such as temperature and barometric pressure, or

(ii) An engineering evaluation that the Administrator determines is an accurate method of determining equivalence.

(b) If the owner or operator elects to comply with the requirements of paragraphs (a)(1) or (a)(2) of this section, the fixed roof shall meet the requirements of paragraph (b)(1) of this section, the control device shall meet the requirements of paragraph (b)(2) of this section, and the closed-vent system shall meet the requirements of paragraph (b)(3) of this section.

(1) The fixed-roof shall meet the following requirements:

(i) Except as provided in paragraph (b)(4) of this section, the fixed roof and all openings (e.g., access hatches, sampling ports, and gauge wells) shall be maintained in accordance with the requirements specified in §63.148 of this subpart.

(ii) Each opening shall be maintained in a closed, sealed position (e.g., covered by a lid that is gasketed and latched) at all times that the oil-water separator contains a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream except when it is necessary to use the opening for sampling or removal, or for equipment inspection, maintenance, or repair.

(2) The control device shall be designed, operated, and inspected in accordance with the requirements of §63.139 of this subpart.

(3) Except as provided in paragraph (b)(4) of this section, the closed-vent system shall be inspected in accordance with the requirements of §63.148 of this subpart.

(4) For any fixed roof and closed-vent system that is operated and maintained under negative pressure, the owner or operator is not required to comply with the requirements of §63.148 of this subpart.

(c) If the owner or operator elects to comply with the requirements of paragraph (a)(2) of this section, seal gaps shall be measured according to the procedures specified in 40 CFR part 60, subpart QQQ §60.696(d)(1) and the schedule specified in paragraphs (c)(1) and (c)(2) of this section.

(1) Measurement of primary seal gaps shall be performed within 60 calendar days after installation of the floating roof and introduction of a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream and once every 5 years thereafter.

(2) Measurement of secondary seal gaps shall be performed within 60 calendar days after installation of the floating roof and introduction of a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream and once every year thereafter.

(d) Each oil-water separator shall be inspected initially, and semi-annually thereafter, for improper work practices in accordance with §63.143 of this subpart. For oil-water separators, improper work practice includes, but is not limited to, leaving open or ungasketed any access door or other opening when such door or opening is not in use.

(e) Each oil-water separator shall be inspected for control equipment failures as defined in paragraph (e)(1) of this section according to the schedule specified in paragraphs (e)(2) and (e)(3) of this section.

(1) For oil-water separators, control equipment failure includes, but is not limited to, the conditions specified in paragraphs (e)(1)(i) through (e)(1)(vii) of this section.

(i) The floating roof is not resting on either the surface of the liquid or on the leg supports.

(ii) There is stored liquid on the floating roof.

(iii) A rim seal is detached from the floating roof.

(iv) There are holes, tears, or other open spaces in the rim seal or seal fabric of the floating roof.

(v) There are gaps between the primary seal and the separator wall that exceed 67 square centimeters per meter of separator wall perimeter or the width of any portion of any gap between the primary seal and the separator wall exceeds 3.8 centimeters.

(vi) There are gaps between the secondary seal and the separator wall that exceed 6.7 square centimeters per meter of separator wall perimeter or the width of any portion of any gap between the secondary seal and the separator wall exceeds 1.3 centimeters.

(vii) A gasket, joint, lid, cover, or door has a gap or crack, or is broken.

(2) The owner or operator shall inspect for the control equipment failures in paragraphs (e)(1)(i) through (e)(1)(vi) of this section according to the schedule specified in paragraph (c) of this section.

(3) The owner or operator shall inspect for control equipment failures in paragraph (e)(1)(vii) of this section initially, and semi-annually thereafter.

(f) Except as provided in § 63.140 of this subpart, when an improper work practice or a control equipment failure is identified, first efforts at repair shall be made no later than 5 calendar days after identification and repair shall be completed within 45 calendar days after identification.

§ 63.138 Process wastewater provisions—Performance standards for treatment processes managing Group 1 wastewater streams and/or residuals removed from Group 1 wastewater streams.

(a) *General requirements.* This section specifies the performance standards for treating Group 1 wastewater streams. The owner or operator shall comply with the requirements as specified in paragraphs (a)(1) through (a)(6) of this section. Where multiple compliance options are provided, the options may be used in combination for different wastewater streams and/or for different compounds (e.g., Table 8 versus Table 9 compounds) in the same wastewater streams, except where otherwise provided in this section. Once a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream has been treated in accordance with this subpart, it is no longer subject to the requirements of this subpart.

(1) *Existing source.* If the wastewater stream, at an existing source, is Group 1 for Table 9 compounds, comply with § 63.138(b).

(2) *New source.* If the wastewater stream, at a new source, is Group 1 for Table 8 compounds, comply with § 63.138(c). If the wastewater stream, at a new source, is Group 1 for Table 9 compounds, comply with § 63.138(b). If the wastewater stream, at a new source, is Group 1 for Table 8 and Table 9 compounds, comply with both § 63.138(b) and § 63.138(c).

Note to paragraph (a)(2): The requirements for Table 8 and/or Table 9 compounds are similar and often identical.

(3) *Biological treatment processes.* Biological treatment processes in compliance with this section may be either open or closed biological treatment processes as defined in § 63.111. An open biological treatment process in compliance with this section need not be covered and vented to a control device as required in § 63.133 through § 63.137 of this subpart. An open or a closed biological treatment process in compliance with this section and using § 63.145(f) or § 63.145(g) of this subpart to demonstrate compliance is not subject to the requirements of § 63.133 through § 63.137 of this subpart. A closed biological treatment process in compliance with this section and using § 63.145(e) of this subpart to demonstrate compliance shall comply with the requirements of § 63.133 through § 63.137 of this subpart. Waste management units upstream of an open or closed biological treatment process shall meet the requirements of § 63.133 through § 63.137 of this subpart, as applicable.

(4) *Performance tests and design evaluations.* If design steam stripper option (§ 63.138(d)) or Resource Conservation and Recovery Act (RCRA) option (§ 63.138(h)) is selected to comply with this section, neither a design evaluation nor a performance test is required. For any other non-biological treatment process, and for closed biological treatment processes as defined in § 63.111 of this subpart, the owner or operator shall conduct either a design evaluation as specified in § 63.138(j), or a performance test as specified in § 63.145, of this subpart. For each open biological treatment

process as defined in § 63.111 of this subpart, the owner or operator shall conduct a performance test as specified in § 63.145 of this subpart.

Note to paragraph (a)(4): Some open biological treatment processes may not require a performance test. Refer to § 63.145(h) and table 36 of this subpart to determine whether the biological treatment process meets the criteria that exempt the owner or operator from conducting a performance test.

(5) *Control device requirements.* When gases are vented from the treatment process, the owner or operator shall comply with the applicable control device requirements specified in § 63.139 and § 63.145 (i) and (j), and the applicable leak inspection provisions specified in § 63.148, of this subpart. This requirement does not apply to any open biological treatment process that meets the mass removal requirements. Vents from anaerobic biological treatment processes may be routed through hard-piping to a fuel gas system.

(6) *Residuals: general.* When residuals result from treating Group 1 wastewater streams, the owner or operator shall comply with the requirements for residuals specified in § 63.138(k) of this subpart.

(7) *Treatment using a series of treatment processes.* In all cases where the wastewater provisions in this subpart allow or require the use of a treatment process or control device to comply with emissions limitations, the owner or operator may use multiple treatment processes or control devices, respectively. For combinations of treatment processes where the wastewater stream is conveyed by hard-piping, the owner or operator shall comply with either the requirements of paragraph (a)(7)(i) or (a)(7)(ii) of this section. For combinations of treatment processes where the wastewater stream is not conveyed by hard-piping, the owner or operator shall comply with the requirements of paragraph (a)(7)(ii) of this section. For combinations of control devices, the owner or operator shall comply with the requirements of paragraph (a)(7)(i) of this section.

(i)(A) For combinations of treatment processes, the wastewater stream shall be conveyed by hard-piping between the treatment processes. For combinations of control devices, the vented gas stream shall be conveyed by hard-piping between the control devices.

(B) For combinations of treatment processes, each treatment process shall meet the applicable requirements of § 63.133 through § 63.137 of this subpart except as provided in paragraph (a)(3) of this section.

(C) The owner or operator shall identify, and keep a record of, the combination of treatment processes or of control devices, including identification of the first and last treatment process or control device. The owner or operator shall include this information as part of the treatment process description reported in the Notification of Compliance Status.

(D) The performance test or design evaluation shall determine compliance across the combination of treatment processes or control devices. If a performance test is conducted, the ''inlet'' shall be the point at which the wastewater stream or residual enters the first treatment process, or the vented gas stream enters the first control device. The ''outlet'' shall be the point at which the treated wastewater stream exits the last treatment process, or the vented gas stream exits the last control device.

(ii)(A) For combinations of treatment processes, each treatment process shall meet the applicable requirements of § 63.133 through § 63.137 of this subpart except as provided in paragraph (a)(3) of this section.

(B) The owner or operator shall identify, and keep a record of, the combination of treatment processes, including identification of the first and last treatment process. The owner or operator shall include this information as part of the treatment process description reported in the Notification of Compliance Status.

(C) The owner or operator shall determine the mass removed or destroyed by each treatment process. The performance test or design evaluation shall determine compliance for the combination of treatment processes by adding together the mass removed or destroyed by each treatment process.

(b) *Control options: Group 1 wastewater streams for Table 9 compounds.* The owner or operator shall comply with either paragraph (b)(1) or (b)(2) of this section for the control of Table 9 compounds at new or existing sources.

(1) *50 ppmw concentration option.* The owner or operator shall comply with paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(i) Reduce, by removal or destruction, the total concentration of Table 9 compounds to a level less than 50 parts per million by weight as determined by the procedures specified in § 63.145(b) of this subpart.

(ii) This option shall not be used when the treatment process is a biological treatment process. This option shall not be used when the wastewater stream is designated as a Group 1 wastewater stream as specified in § 63.132(e). Dilution shall not be used to achieve compliance with this option.

(2) *Other compliance options.* Comply with the requirements specified in any one of paragraphs (d), (e), (f), (g), (h), or (i) of this section.

(c) *Control options: Group 1 wastewater streams for Table 8 compounds.* The owner or operator shall comply with either paragraph (c)(1) or (c)(2) of this section for the control of Table 8 compounds at new sources.

(1) *10 ppmw concentration option.* The owner or operator shall comply with paragraphs (c)(1)(i) and (c)(1)(ii) of this section.

(i) Reduce, by removal or destruction, the concentration of the individual Table 8 compounds to a level less than 10 parts per million by weight as determined in the procedures specified in § 63.145(b) of this subpart.

(ii) This option shall not be used when the treatment process is a biological treatment process. This option shall not be used when the wastewater stream is designated as a Group 1 wastewater stream as specified in § 63.132(e). Dilution shall not be used to achieve compliance with this option.

(2) *Other compliance options.* Comply with the requirements specified in any one of paragraphs (d), (e), (f), (g), (h), or (i) of this section.

(d) *Design steam stripper option.* The owner or operator shall operate and maintain a steam stripper that meets the requirements of paragraphs (d)(1) through (d)(6) of this section.

(1) Minimum active column height of 5 meters,

(2) Countercurrent flow configuration with a minimum of 10 actual trays,

(3) Minimum steam flow rate of 0.04 kilograms of steam per liter of wastewater feed within the column,

(4) Minimum wastewater feed temperature to the steam stripper of 95 °C, or minimum column operating temperature of 95 °C,

(5) Maximum liquid loading of 67,100 liters per hour per square meter, and

(6) Operate at nominal atmospheric pressure.

(e) *Percent mass removal/destruction option.* The owner or operator of a new or existing source shall comply with paragraph (e)(1) or (e)(2) of this section for control of Table 8 and/or Table 9 compounds for Group 1 wastewater streams. This option shall not be used for biological treatment processes.

(1) *Reduce mass flow rate of Table 8 and/or Table 9 compounds by 99 percent.* For wastewater streams that are Group 1, the owner or operator shall reduce, by removal or destruction, the

mass flow rate of Table 8 and/or Table 9 compounds by 99 percent or more. The removal/destruction efficiency shall be determined by the procedures specified in § 63.145(c), for noncombustion processes, or § 63.145(d), for combustion processes.

(2) *Reduce mass flow rate of Table 8 and/or Table 9 compounds by Fr value.* For wastewater streams that are Group 1 for Table 8 and/or Table 9 compounds, the owner or operator shall reduce, by removal or destruction, the mass flow rate by at least the fraction removal (Fr) values specified in Table 9 of this subpart. (The Fr values for Table 8 compounds are all 0.99.) The removal/destruction efficiency shall be determined by the procedures specified in § 63.145(c), for noncombustion treatment processes, or § 63.145(d), for combustion treatment processes.

(f) *Required mass removal (RMR) option.* The owner or operator shall achieve the required mass removal (RMR) of Table 8 compounds at a new source for a wastewater stream that is Group 1 for Table 8 compounds and/or of Table 9 compounds at a new or existing source for a wastewater stream that is Group 1 for Table 9 compounds. For nonbiological treatment processes compliance shall be determined using the procedures specified in § 63.145(e) of this subpart. For aerobic biological treatment processes compliance shall be determined using the procedures specified in § 63.145 (e) or (f) of this subpart. For closed anaerobic biological treatment processes compliance shall be determined using the procedures specified in § 63.145(e) of this subpart. For open biological treatment processes compliance shall be determined using the procedures specified in § 63.145(f) of this subpart.

(g) *95-percent RMR option, for biological treatment processes.* The owner or operator of a new or existing source using biological treatment for at least one wastewater stream that is Group 1 for Table 9 compounds shall achieve a RMR of at least 95 percent for all Table 9 compounds. The owner or operator of a new source using biological treatment for at least one wastewater stream that is Group 1 for Table 8 compounds shall achieve a RMR of at least 95 percent for all Table 8 compounds. All Group 1 and Group 2 wastewater streams entering a biological treatment unit that are from chemical manufacturing process units subject to subpart F shall be included in the demonstration of the 95-percent mass removal. The owner or operator shall comply with paragraphs (g)(1) through (g)(4) of this section.

(1) Except as provided in paragraph (g)(4) of this section, the owner or operator shall ensure that all Group 1 and Group 2 wastewater streams from chemical manufacturing process units subject to this rule entering a biological treatment unit are treated to destroy at least 95-percent total mass of all Table 8 and/or Table 9 compounds.

(2) For open biological treatment processes compliance shall be determined using the procedures specified in § 63.145(g) of this subpart. For closed aerobic biological treatment processes compliance shall be determined using the procedures specified in § 63.145 (e) or (g) of this subpart. For closed anaerobic biological treatment processes compliance shall be determined using the procedures specified in § 63.145(e) of this subpart.

(3) For each treatment process or waste management unit that receives, manages, or treats wastewater streams subject to this paragraph, from the point of determination of each Group 1 or Group 2 wastewater stream to the biological treatment unit, the owner or operator shall comply with §§ 63.133 through § 63.137 of this subpart for control of air emissions. When complying with this paragraph, the term Group 1, whether used alone or in combination with other terms, in § 63.133 through § 63.137 of this subpart shall mean both Group 1 and Group 2.

(4) If a wastewater stream is in compliance with the requirements in paragraph (b)(1), (c)(1), (d), (e), (f), or (h) of this section before entering the biological treatment unit, the hazardous air pollutants mass of that wastewater is not required to be included in the total mass flow rate entering the biological treatment unit for the purpose of demonstrating compliance.

(h) *Treatment in a RCRA unit option.* The owner or operator shall treat the wastewater stream or residual in a unit identified in, and complying with, paragraph (h)(1), (h)(2), or (h)(3) of this section. These units are exempt from the design evaluation or performance tests requirements specified in § 63.138(a)(3) and § 63.138(j) of this subpart, and from the monitoring requirements specified in § 63.132(a)(2)(iii) and § 63.132(b)(3)(iii) of this subpart, as well as recordkeeping and reporting requirements associated with monitoring and performance tests.

(1) The wastewater stream or residual is discharged to a hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O, or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O;

(2) The wastewater stream or residual is discharged to a process heater or boiler burning hazardous waste for which the owner or operator:

(i) Has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H; or

(ii) Has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(3) The wastewater stream or residual is discharged to an underground injection well for which the owner or operator has been issued a final permit under 40 CFR part 270 or 40 CFR part 144 and complies with the requirements of 40 CFR part 122. The owner or operator shall comply with all applicable requirements of this subpart prior to the point where the wastewater enters the underground portion of the injection well.

(i) *One megagram total source mass flow rate option.* A wastewater stream is exempt from the requirements of paragraphs (b) and (c) of this section if the owner or operator elects to comply with either paragraph (i)(1) or (i)(2) of this section.

(1) *All Group 1 wastewater streams at the source.* The owner or operator shall demonstrate that the total source mass flow rate for Table 8 and/or Table 9 compounds is less than 1 megagram per year using the procedures in paragraphs (i)(1)(i) and (i)(1)(ii) of this section. The owner or operator shall include all Group 1 wastewater streams at the source in the total source mass flow rate. The total source mass flow rate shall be based on the mass as calculated before the wastewater stream is treated.

(i) Calculate the annual average mass flow rate for each Group 1 wastewater stream by multiplying the annual average flow rate of the wastewater stream, as determined by procedures specified in § 63.144(c), times the total annual average concentration of Table 8 and/or Table 9 compounds, as determined by procedures specified in § 63.144(b) of this subpart. (The mass flow rate of compounds in a wastewater stream that is Group 1 for both Table 8 and Table 9 compounds should be included in the annual average mass flow rate only once.)

(ii) Calculate the total source mass flow rate from all Group 1 wastewater streams by adding together the annual average mass flow rate calculated for each Group 1 wastewater stream.

(2) *Untreated and partially treated Group 1 wastewater streams.* The owner or operator shall demonstrate that the total source mass flow rate for untreated

Group 1 wastewater streams and Group 1 wastewater streams treated to levels less stringent than required in paragraph (b) or (c) of this section is less than 1 megagram per year using the procedures in paragraphs (i)(2)(i) and (i)(2)(ii) of this section. The owner or operator shall manage these wastewater streams in accordance with paragraph (i)(2)(iii) of this section, and shall comply with paragraph (i)(2)(iv) of this section.

(i) Calculate the annual average mass flow rate in each wastewater stream by multiplying the annual average flow rate of the wastewater stream, as determined by procedures specified in § 63.144(c), times the total annual average concentration of Table 8 and/or Table 9 compounds, as determined by procedures specified in § 63.144(b). (The mass flow rate of compounds in a wastewater stream that are Group 1 for both Table 8 and Table 9 compounds should be included in the annual average mass flow rate only once.)

(A) For each untreated Group 1 wastewater stream, the annual average flow rate and the total annual average concentration shall be determined for that stream's point of determination.

(B) For each Group 1 wastewater stream that is treated to levels less stringent than those required by paragraph (b) or (c) of this section, the annual average flow rate and total annual average concentration shall be determined at the discharge from the treatment process or series of treatment processes.

(C) The annual average mass flow rate for Group 1 wastewater streams treated to the levels required by paragraph (b) or (c) of this section is not included in the calculation of the total source mass flow rate.

(ii) The total source mass flow rate shall be calculated by summing the annual average mass flow rates from all Group 1 wastewater streams, except those excluded by paragraph (i)(2)(i)(C) of this section.

(iii) The owner or operator of each waste management unit that receives, manages, or treats the wastewater stream prior to or during treatment shall comply with the requirements of §§ 63.133 through 63.137 of this subpart, as applicable.

(iv) Wastewater streams included in this option shall be identified in the Notification of Compliance Status required by §63.152(b).

(j) *Design evaluations or performance tests for treatment processes.* Except as provided in paragraph (j)(3) or (h) of this section, the owner or operator shall demonstrate by the procedures in either paragraph (j)(1) or (j)(2) of this section that each nonbiological treatment process used to comply with paragraphs (b)(1), (c)(1), (e), and/or (f) of this section achieves the conditions specified for compliance. The owner or operator shall demonstrate by the procedures in either paragraph (j)(1) or (j)(2) of this section that each closed biological treatment process used to comply with paragraphs (f) or (g) of this section achieves the conditions specified for compliance. If an open biological treatment unit is used to comply with paragraph (f) or (g) of this section, the owner or operator shall comply with § 63.145(f) or § 63.145(g), respectively, of this subpart. Some biological treatment processes may not require a performance test. Refer to § 63.145(h) and table 36 of this subpart to determine whether the open biological treatment process meets the criteria that exempt the owner or operator from conducting a performance test.

(1) A design evaluation and supporting documentation that addresses the operating characteristics of the treatment process and that is based on operation at a representative wastewater stream flow rate and a concentration under which it would be most difficult to demonstrate compliance. For closed biological treatment processes, the actual mass removal shall be determined by a mass balance over the unit. The mass flow rate of Table 8 or Table 9 compounds exiting the treatment process shall be the sum of the mass flow rate of Table 8 or Table 9 compounds in the wastewater stream exiting the biological treatment process and the mass flow rate of the vented gas stream exiting the control device. The mass flow rate entering the treatment process minus the mass flow rate exiting the process determines the actual mass removal.

(2) Performance tests conducted using test methods and procedures that meet the applicable requirements specified in § 63.145 of this subpart.

(3) The provisions of paragraphs (j)(1) and (j)(2) of this section do not apply to design stream strippers which meet the requirements of paragraph (d) of this section.

(k) *Residuals.* For each residual removed from a Group 1 wastewater stream, the owner or operator shall control for air emissions by complying with §§ 63.133–137 of this subpart and by complying with one of the provisions in paragraphs (k)(1) through (k)(4) of this section.

(1) Recycle the residual to a production process or sell the residual for the purpose of recycling. Once a residual is returned to a production process, the residual is no longer subject to this section.

(2) Return the residual to the treatment process.

(3) Treat the residual to destroy the total combined mass flow rate of Table 8 and/or Table 9 compounds by 99 percent or more, as determined by the procedures specified in § 63.145(c) or (d) of this subpart.

(4) Comply with the requirements for RCRA treatment options specified in § 63.138(h) of this subpart.

§ 63.139 Process wastewater provisions—control devices.

(a) For each control device or combination of control devices used to comply with the provisions in §§ 63.133 through 63.138 of this subpart, the owner or operator shall operate and maintain the control device or combination of control devices in accordance with the requirements of paragraphs (b) through (f) of this section.

(b) Whenever organic hazardous air pollutants emissions are vented to a control device which is used to comply with the provisions of this subpart, such control device shall be operating.

(c) The control device shall be designed and operated in accordance with paragraph (c)(1), (c)(2), (c)(3), (c)(4), or (c)(5) of this section.

(1) An enclosed combustion device (including but not limited to a vapor incinerator, boiler, or process heater) shall meet the conditions in paragraph (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this section, alone or in combination with other control devices. If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame zone of the boiler or process heater.

(i) Reduce the total organic compound emissions, less methane and ethane, or total organic hazardous air pollutants emissions vented to the control device by 95 percent by weight or greater;

(ii) Achieve an outlet total organic compound concentration, less methane and ethane, or total organic hazardous air pollutants concentration of 20 parts per million by volume on a dry basis corrected to 3 percent oxygen. The owner or operator shall use either Method 18 of 40 CFR part 60, appendix A, or any other method or data that has been validated according to the applicable procedures in Method 301 of appendix A of this part; or

(iii) Provide a minimum residence time of 0.5 seconds at a minimum temperature of 760° C.

(2) A vapor recovery system (including but not limited to a carbon adsorption system or condenser), alone

or in combination with other control devices, shall reduce the total organic compound emissions, less methane and ethane, or total organic hazardous air pollutants emissions vented to the control device of 95 percent by weight or greater or achieve an outlet total organic compound concentration, less methane and ethane, or total organic hazardous air pollutants concentration of 20 parts per million by volume, whichever is less stringent. The 20 parts per million by volume performance standard is not applicable to compliance with the provisions of § 63.134 or § 63.135 of this subpart.

(3) A flare shall comply with the requirements of § 63.11(b) of subpart A of this part.

(4) A scrubber, alone or in combination with other control devices, shall reduce the total organic compound emissions, less methane and ethane, or total organic hazardous air pollutants emissions in such a manner that 95 weight-percent is either removed, or destroyed by chemical reaction with the scrubbing liquid or achieve an outlet total organic compound concentration, less methane and ethane, or total organic hazardous air pollutants concentration of 20 parts per million by volume, whichever is less stringent. The 20 parts per million by volume performance standard is not applicable to compliance with the provisions of § 63.134 or § 63.135 of this subpart.

(5) Any other control device used shall, alone or in combination with other control devices, reduce the total organic compound emissions, less methane and ethane, or total organic hazardous air pollutants emissions vented to the control device by 95 percent by weight or greater or achieve an outlet total organic compound concentration, less methane and ethane, or total organic hazardous air pollutants concentration of 20 parts per million by volume, whichever is less stringent. The 20 parts per million by volume performance standard is not applicable to compliance with the provisions of § 63.134 or § 63.135 of this subpart.

(d) Except as provided in paragraph (d)(4) of this section, an owner or operator shall demonstrate that each control device or combination of control devices achieves the appropriate conditions specified in paragraph (c) of this section by using one or more of the methods specified in paragraphs (d)(1), (d)(2), or (d)(3) of this section.

(1) Performance tests conducted using the test methods and procedures specified in § 63.145(i) of this subpart for control devices other than flares; or

(2) A design evaluation that addresses the vent stream characteristics and control device operating parameters specified in paragraphs (d)(2)(i) through (d)(2)(vii) of this section.

(i) For a thermal vapor incinerator, the design evaluation shall consider the vent stream composition, constituent concentrations, and flow rate and shall establish the design minimum and average temperature in the combustion zone and the combustion zone residence time.

(ii) For a catalytic vapor incinerator, the design evaluation shall consider the vent stream composition, constituent concentrations, and flow rate and shall establish the design minimum and average temperatures across the catalyst bed inlet and outlet.

(iii) For a boiler or process heater, the design evaluation shall consider the vent stream composition, constituent concentrations, and flow rate; shall establish the design minimum and average flame zone temperatures and combustion zone residence time; and shall describe the method and location where the vent stream is introduced into the flame zone.

(iv) For a condenser, the design evaluation shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature and shall establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and the design average temperatures of the coolant fluid at the condenser inlet and outlet.

(v) For a carbon adsorption system that regenerates the carbon bed directly on-site in the control device such as a fixed-bed adsorber, the design evaluation shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature and shall establish the design exhaust vent stream organic compound concentration level, adsorption cycle time, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total regeneration stream mass or volumetric flow over the period of each complete carbon bed regeneration cycle, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon.

(vi) For a carbon adsorption system that does not regenerate the carbon bed directly on-site in the control device such as a carbon canister, the design evaluation shall consider the vent stream composition, constituent concentrations, mass or volumetric flow rate, relative humidity, and temperature and shall establish the design exhaust vent stream organic compound concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule.

(vii) For a scrubber, the design evaluation shall consider the vent stream composition; constituent concentrations; liquid-to-vapor ratio; scrubbing liquid flow rate and concentration; temperature; and the reaction kinetics of the constituents with the scrubbing liquid. The design evaluation shall establish the design exhaust vent stream organic compound concentration level and will include the additional information in paragraphs (d)(2)(vii)(A) and (d)(2)(vii)(B) of this section for trays and a packed column scrubber.

(A) Type and total number of theoretical and actual trays;

(B) Type and total surface area of packing for entire column, and for individual packed sections if column contains more than one packed section.

(3) For flares, the compliance determination specified in § 63.11(b) of subpart A of this part and § 63.145(j) of this subpart.

(4) An owner or operator using any control device specified in paragraphs (d)(4)(i) through (d)(4)(iv) of this section is exempt from the requirements in paragraphs (d)(1) through (d)(3) of this section and from the requirements in § 63.6(f) of subpart A of this part.

(i) A boiler or process heater with a design heat input capacity of 44 megawatts or greater.

(ii) A boiler or process heater into which the emission stream is introduced with the primary fuel.

(iii) A boiler or process heater burning hazardous waste for which the owner or operator:

(A) Has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H, or

(B) Has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(iv) A hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O, or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O.

(e) The owner or operator of a control device that is used to comply with the provisions of this section shall monitor the control device in accordance with § 63.143 of this subpart.

(f) Except as provided in § 63.140 of this subpart, if gaps, cracks, tears, or holes are observed in ductwork, piping, or connections to covers and control devices during an inspection, a first effort to repair shall be made as soon as practical but no later than 5 calendar days after identification. Repair shall be completed no later than 15 calendar days after identification or discovery of the defect.

§ 63.140 Process wastewater provisions—delay of repair.

(a) Delay of repair of equipment for which a control equipment failure or a gap, crack, tear, or hole has been identified, is allowed if the repair is technically infeasible without a shutdown, as defined in § 63.101 of subpart F of this part, or if the owner or operator determines that emissions of purged material from immediate repair would be greater than the emissions likely to result from delay of repair. Repair of this equipment shall occur by the end of the next shutdown.

(b) Delay of repair of equipment for which a control equipment failure or a gap, crack, tear, or hole has been identified, is allowed if the equipment is emptied or is no longer used to treat or manage Group 1 wastewater streams or residuals removed from Group 1 wastewater streams.

(c) Delay of repair of equipment for which a control equipment failure or a gap, crack, tear, or hole has been identified is also allowed if additional time is necessary due to the unavailability of parts beyond the control of the owner or operator. Repair shall be completed as soon as practical. The owner or operator who uses this provision shall comply with the requirements of § 63.147(c)(7) to document the reasons that the delay of repair was necessary.

§ 63.141 Reserved.

§ 63.142 Reserved.

§ 63.143 Process wastewater provisions—inspections and monitoring of operations.

(a) For each wastewater tank, surface impoundment, container, individual drain system, and oil-water separator that receives, manages, or treats a Group 1 wastewater stream, a residual removed from a Group 1 wastewater stream, a recycled Group 1 wastewater stream, or a recycled residual removed from a Group 1 wastewater stream, the owner or operator shall comply with the inspection requirements specified in table 11 of this subpart.

(b) For each design steam stripper and biological treatment unit used to comply with § 63.138 of this subpart, the owner or operator shall comply with the monitoring requirements specified in table 12 of this subpart.

(c) If the owner or operator elects to comply with Item 1 in table 12 of this subpart, the owner or operator shall request approval to monitor appropriate parameters that demonstrate proper operation of the biological treatment unit. The request shall be submitted according to the procedures specified in § 63.151(f) of this subpart, and shall include a discription of planned reporting and recordkeeping procedures. The owner or operator shall include as part of the submittal the basis for the selected monitoring frequencies and the methods that will be used. The Administrator will specify appropriate reporting and recordkeeping requirements as part of the review of the permit application or by other appropriate means.

(d) If the owner or operator elects to comply with Item 3 in table 12 of this subpart, the owner or operator shall request approval to monitor appropriate parameters that demonstrate proper operation of the selected treatment process. The request shall be submitted according to the procedures specified in § 63.151(f) of this subpart, and shall include a description of planned reporting and recordkeeping procedures. The Administrator will specify appropriate reporting and recordkeeping requirements as part of the review of the permit application or by other appropriate means.

(e) Except as provided in paragraphs (e)(4) and (e)(5) of this section, for each control device used to comply with the requirements of §§ 63.133 through 63.139 of this subpart, the owner or operator shall comply with the requirements in § 63.139(d) of this subpart, and with the requirements specified in paragraph (e)(1), (e)(2), or (e)(3) of this section.

(1) The owner or operator shall comply with the monitoring requirements specified in table 13 of this subpart; or

(2) The owner or operator shall use an organic monitoring device installed at the outlet of the control device and equipped with a continuous recorder. Continuous recorder is defined in § 63.111 of this subpart; or

(3) The owner or operator shall request approval to monitor parameters other than those specified in paragraphs (e)(1) and (e)(2) of this section. The request shall be submitted according to the procedures specified in § 63.151(f) of this subpart, and shall include a description of planned reporting and recordkeeping procedures. The Administrator will specify appropriate reporting and recordkeeping requirements as part of the review of the permit application or by other appropriate means.

(4) For a boiler or process heater in which all vent streams are introduced with primary fuel, the owner or operator shall comply with the requirements in § 63.139(d) of this subpart but the owner or operator is exempt from the monitoring requirements specified in paragraphs (e)(1) through (e)(3) of this section.

(5) For a boiler or process heater with a design heat input capacity of 44 megawatts or greater, the owner or operator shall comply with the requirements in § 63.139(d) of this subpart but the owner or operator is exempt from the monitoring requirements specified in paragraphs (e)(1) through (e)(3) of this section.

(f) For each parameter monitored in accordance with paragraph (c), (d), or (e) of this section, the owner or operator shall establish a range that indicates proper operation of the treatment process or control device. In order to establish the range, the owner or operator shall comply with the requirements specified in §§ 63.146(b)(7)(ii)(A) and (b)(8)(ii) of this subpart.

(g) Monitoring equipment shall be installed, calibrated, and maintained according to the manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

§ 63.144 Process wastewater provisions—test methods and procedures for determining applicability and Group 1/Group 2 determinations (determining which wastewater streams require control).

(a) *Procedures to determine applicability.* An owner or operator shall comply with paragraph (a)(1) or (a)(2) of this section for each wastewater stream to determine which wastewater streams require control for Table 8 and/or Table 9 compounds. The owner or operator may use a combination of the approaches in paragraphs (a)(1) and (a)(2) of this section for different wastewater streams generated at the source.

(1) *Determine Group 1 or Group 2 status.* Determine whether a wastewater stream is a Group 1 or Group 2 wastewater stream in accordance with paragraphs (b) and (c) of this section.

(2) *Designate as Group 1.* An owner or operator may designate as a Group 1 wastewater stream a single wastewater stream or a mixture of wastewater streams. The owner or operator is not

required to determine the concentration or flow rate for each designated Group 1 wastewater stream for the purposes of this section.

(b) *Procedures to establish concentrations, when determining Group status under paragraph (a)(1) of this section.* An owner or operator who elects to comply with the requirements of paragraph (a)(1) of this section shall determine the annual average concentration for Table 8 and/or Table 9 compounds according to paragraph (b)(1) of this section for existing sources or paragraph (b)(2) of this section for new sources. The annual average concentration shall be a flow weighted average representative of actual or anticipated operation of the chemical manufacturing process unit generating the wastewater over a designated 12 month period. For flexible operation units, the owner or operator shall consider the anticipated production over the designated 12 month period and include all wastewater streams generated by the process equipment during this period. The owner/operator is not required to determine the concentration of Table 8 or Table 9 compounds that are not reasonably expected to be in the process.

(1) *Existing sources.* An owner or operator of an existing source who elects to comply with the requirements of paragraph (a)(1) of this section shall determine the flow weighted total annual average concentration for Table 9 compounds. For the purposes of this section, the term concentration, whether concentration is used alone or with other terms, may be adjusted by multiplying by the compound-specific fraction measured (Fm) factors listed in table 34 of this subpart unless determined by the methods in § 63.144(b)(5)(i)(A) and/or (B). When concentration is determined by Method 305 as specified in § 63.144(b)(5)(i)(B), concentration may be adjusted by dividing by the compound-specific Fm factors listed in table 34 of this subpart. When concentration is determined by Method 25D as specified in § 63.144(b)(5)(i)(A), concentration may not be adjusted by the compound-specific Fm factors listed in table 34 of this subpart. Compound-specific Fm factors may be used only when concentrations of individual compounds are determined or when only one compound is in the wastewater stream. Flow weighted total annual average concentration for Table 9 compounds means the total mass of Table 9 compounds occurring in the wastewater stream during the designated 12-month period divided by the total mass of the wastewater stream during the same designated 12-month period. The total annual average concentration shall be determined for each wastewater stream either at the point of determination, or downstream of the point of determination with adjustment for concentration changes made according to paragraph (b)(6) of this section. The procedures specified in paragraphs (b)(3), (b)(4), and (b)(5) of this section are considered acceptable procedures for determining the annual average concentration. They may be used in combination, and no one procedure shall take precedence over another.

(2) *New sources.* An owner or operator of a new source who elects to comply with the requirements of paragraph (a)(1) of this section shall determine both the flow weighted total annual average concentration for Table 9 compounds and the flow weighted annual average concentration for each Table 8 compound. For the purposes of this section, the term concentration, whether concentration is used alone or with other terms, may be adjusted by multiplying by the compound-specific Fm factors listed in table 34 of this subpart unless determined by the methods in § 63.144(b)(5)(i)(A) and/or (B). When concentration is determined by Method 305 as specified in § 63.144(b)(5)(i)(B), concentration may be adjusted by dividing by the compound-specific Fm factors listed in table 34 of this subpart. When concentration is determined by Method 25D as specified in § 63.144(b)(5)(i)(A), concentration may not be adjusted by the compound-specific Fm factors listed in table 34 of this subpart. Compound-specific fraction measured factors are compound specific and shall be used only when concentration of individual compounds are determined or when only one compound is in the wastewater stream. The flow weighted annual average concentration of each Table 8 compound means the mass of each Table 8 compound occurring in the wastewater stream during the designated 12-month period divided by the total mass of the wastewater stream during the same designated 12-month period. Flow weighted total annual average concentration for Table 9 compounds means the total mass of Table 9 compounds occurring in the wastewater stream during the designated 12-month period divided by the total mass of the wastewater stream during the same designated 12-month period. The annual average concentration shall be determined for each wastewater stream either at the point of determination, or downstream of the point of determination with adjustment for concentration changes made according to paragraph (b)(6) of this section. Procedures specified in paragraphs (b)(3), (b)(4), and (b)(5) of this section are considered acceptable procedures for determining the annual average concentration. They may be used in combination, and no one procedure shall take precedence over another.

(3) *Knowledge of the wastewater.* Where knowledge is used to determine the annual average concentration, the owner or operator shall provide sufficient information to document the annual average concentration for wastewater streams determined to be Group 2 wastewater streams. Documentation to determine the annual average concentration is not required for Group 1 streams. Examples of acceptable documentation include material balances, records of chemical purchases, process stoichiometry, or previous test results. If test data are used, the owner or operator shall provide documentation describing the testing protocol and the means by which any losses of volatile compounds during sampling, and the bias and accuracy of the analytical method, were accounted for in the determination.

(4) *Bench-scale or pilot-scale test data.* Where bench-scale or pilot-scale test data are used to determine the annual average concentration, the owner or operator shall provide sufficient information to document that the data are representative of the actual annual average concentration, or are reliably indicative of another relevant characteristic of the wastewater stream that could be used to predict the annual average concentration. For concentration data, the owner or operator shall also provide documentation describing the testing protocol, and the means by which any losses of volatile compounds during sampling, and the bias and accuracy of the analytical method, were accounted for in the determination of annual average concentration.

(5) *Test data from sampling at the point of determination or at a location downstream of the point of determination.* Where an owner or operator elects to comply with paragraph (a)(1) of this section by measuring the concentration for the relevant Table 8 or Table 9 compounds, the owner or operator shall comply with the requirements of this paragraph. For each wastewater stream, measurements shall be made either at the point of determination, or downstream of the point of determination with adjustment for concentration changes made

according to paragraph (b)(6) of this section. A minimum of three samples from each wastewater stream shall be taken. Samples may be grab samples or composite samples.

(i) *Methods.* The owner or operator shall use any of the methods specified in paragraphs (b)(5)(i)(A) through (b)(5)(i)(F) of this section.

(A) *Method 25D.* Use procedures specified in Method 25D of 40 CFR part 60, appendix A.

(B) *Method 305.* Use procedures specified in Method 305 of 40 CFR part 63, appendix A.

(C) *Methods 624 and 625.* Use procedures specified in Methods 624 and 625 of 40 CFR part 136, appendix A and comply with the sampling protocol requirements specified in paragraph (b)(5)(ii) of this section. If these methods are used to analyze one or more compounds that are not on the method's published list of approved compounds, the Alternative Test Procedure specified in 40 CFR 136.4 and 136.5 shall be followed. For Method 625, make corrections to the compounds for which the analysis is being conducted based on the accuracy as recovery factors in Table 7 of the method.

(D) *Method 1624 and Method 1625.* Use procedures specified in Method 1624 and Method 1625 of 40 CFR part 136, appendix A and comply with the requirements specified in paragraph (b)(5)(ii) of this section. If these methods are used to analyze one or more compounds that are not on the method's published list of approved compounds, the Alternative Test Procedure specified in 40 CFR 136.4 and 136.5 shall be followed.

(E) *Other EPA method(s).* Use procedures specified in the method and comply with the requirements specified in paragraphs (b)(5)(ii) and either paragraph (b)(5)(iii)(A) or (b)(5)(iii)(B) of this section.

(F) *Method(s) other than EPA method.* Use procedures specified in the method and comply with the requirements specified in paragraphs (b)(5)(ii) and (b)(5)(iii)(A) of this section.

(ii) *Sampling plan.* The owner or operator who is expressly referred to this paragraph by provisions of this subpart shall prepare a sampling plan. Wastewater samples shall be collected using sampling procedures which minimize loss of organic compounds during sample collection and analysis and maintain sample integrity. The sample plan shall include procedures for determining recovery efficiency of the relevant hazardous air pollutants listed in table 8 or table 9 of this subpart. An example of an acceptable sampling plan would be one that incorporates similar sampling and sample handling requirements to those of Method 25D of 40 CFR part 60, appendix A. The sampling plan shall be maintained at the facility.

(iii) *Validation of methods.* The owner or operator shall validate EPA methods other than Methods 25D, 305, 624, 625, 1624, and 1625 using the procedures specified in paragraph (b)(5)(iii)(A) or (b)(5)(iii)(B) of this section. The owner or operator shall validate other methods as specified in paragraph (b)(5)(iii)(A) of this section.

(A) *Validation of EPA methods and other methods.* The method used to measure organic hazardous air pollutants concentrations in the wastewater shall be validated according to section 5.1 or 5.3, and the corresponding calculations in section 6.1 or 6.3, of Method 301 of appendix A of this part. The data are acceptable if they meet the criteria specified in section 6.1.5 or 6.3.3 of Method 301 of appendix A of this part. If correction is required under section 6.3.3 of Method 301 of appendix A of this part, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 of appendix A of this part are not required. The concentrations of the individual organic hazardous air pollutants measured in the water may be corrected to their concentrations had they been measured by Method 305 of appendix A of this part, by multiplying each concentration by the compound-specific fraction measured (Fm) factor listed in table 34 of this subpart.

(B) *Validation for EPA methods.* Follow the procedures as specified in ''Alternative Validation Procedure for EPA Waste Methods'' 40 CFR part 63, appendix D.

(iv) *Calculations of average concentration.* The average concentration for each individually speciated Table 8 compound shall be calculated by adding the individual values determined for the specific compound in each sample and dividing by the number of samples. The total average concentration of Table 9 compounds shall be calculated by first summing the concentration of the individual compounds to obtain a total hazardous air pollutants concentration for the sample; add the sample totals and then divide by the number of samples in the run to obtain the sample average for the run. If the method used does not speciate the compounds, the sample results should be added and this total divided by the number of samples in the run to obtain the sample average for the run.

(6) *Adjustment for concentrations determined downstream of the point of determination.* The owner or operator shall make corrections to the annual average concentration or total annual average concentration when the concentration is determined downstream of the point of determination at a location where: two or more wastewater streams have been mixed; one or more wastewater streams have been treated; or, losses to the atmosphere have occurred. The owner or operator shall make the adjustments either to the individual data points or to the final annual average concentration.

(c) *Procedures to determine flow rate, when evaluating Group status under paragraph (a)(1) of this section.* An owner or operator who elects to comply with paragraph (a)(1) of this section shall determine the annual average flow rate of the wastewater stream either at the point of determination for each wastewater stream, or downstream of the point of determination with adjustment for flow rate changes made according to paragraph (c)(4) of this section. These procedures may be used in combination for different wastewater streams at the source. The annual average flow rate for the wastewater stream shall be representative of actual or anticipated operation of the chemical manufacturing process unit generating the wastewater over a designated 12-month period. The owner or operator shall consider the total annual wastewater volume generated by the chemical manufacturing process unit. If the chemical manufacturing process unit is a flexible operation unit, the owner or operator shall consider all anticipated production in the process equipment over the designated 12-month period. The procedures specified in paragraphs (c)(1), (c)(2), and (c)(3) of this section are considered acceptable procedures for determining the flow rate. They may be used in combination, and no one procedure shall take precedence over another.

(1) *Knowledge of the wastewater.* The owner or operator may use knowledge of the wastewater stream and/or the process to determine the annual average flow rate. The owner or operator shall use the maximum expected annual average production capacity of the process unit, knowledge of the process, and/or mass balance information to either: Estimate directly the annual average wastewater flow rate; or estimate the total annual wastewater volume and then divide total volume by 525,600 minutes in a year. Where knowledge is used to determine the

annual average flow rate, the owner or operator shall provide sufficient information to document the flow rate for wastewater streams determined to be Group 2 wastewater streams. Documentation to determine the annual average flow rate is not required for Group 1 streams.

(2) *Historical Records.* The owner or operator may use historical records to determine the annual average flow rate. Derive the highest annual average flow rate of wastewater from historical records representing the most recent 5 years of operation or, if the process unit has been in service for less than 5 years but at least 1 year, from historical records representing the total operating life of the process unit. Where historical records are used to determine the annual average flow rate, the owner or operator shall provide sufficient information to document the flow rate for wastewater streams determined to be Group 2 wastewater streams. Documentation to determine the annual average flow rate is not required for Group 1 streams.

(3) *Measurements of flow rate.* Where an owner or operator elects to comply with paragraph (a)(1) of this section by measuring the flow rate, the owner or operator shall comply with the requirements of this paragraph. Measurements shall be made at the point of determination, or at a location downstream of the point of determination with adjustments for flow rate changes made according to paragraph (c)(4) of this section. Where measurement data are used to determine the annual average flow rate, the owner or operator shall provide sufficient information to document the flow rate for wastewater streams determined to be Group 2 wastewater streams. Documentation to determine the annual average flow rate is not required for Group 1 streams.

(4) *Adjustment for flow rates determined downstream of the point of determination.* The owner or operator shall make corrections to the annual average flow rate of a wastewater stream when it is determined downstream of the point of determination at a location where two or more wastewater streams have been mixed or one or more wastewater streams have been treated. The owner or operator shall make corrections for such changes in the annual average flow rate.

§63.145 Process wastewater provisions—test methods and procedures to determine compliance.

(a) *General.* This section specifies the procedures for performance tests that are conducted to demonstrate compliance of a treatment process or a control device with the control requirements specified in §63.138 of this subpart. Owners or operators conducting a design evaluation shall comply with the requirements of paragraph (a)(1) or (a)(2) of this section. Owners or operators conducting a performance test shall comply with the applicable requirements in paragraphs (a) through (i) of this section.

(1) *Performance tests and design evaluations for treatment processes.* If design steam stripper option (§63.138(d)) or RCRA option (§63.138(h)) is selected to comply with §63.138, neither a design evaluation nor a performance test is required. For any other non-biological treatment process, the owner or operator shall conduct either a design evaluation as specified in §63.138(j), or a performance test as specified in this section. For closed biological treatment processes, the owner or operator shall conduct either a design evaluation as specified in §63.138(j), or a performance test as specified in this section. For each open biological treatment process, the owner or operator shall conduct a performance test as specified in this section.

Note: Some open biological treatment processes may not require a performance test. Refer to §63.145(h) and table 36 of this subpart to determine whether the biological treatment process meets the criteria that exempt the owner or operator from conducting a performance test.

(2) *Performance tests and design evaluations for control devices.* The owner or operator shall conduct either a design evaluation as specified in §63.139(d), or a performance test as specified in paragraph (i) of this section for control devices other than flares and paragraph (j) of this section for flares.

(3) *Representative process unit operating conditions.* Compliance shall be demonstrated for representative operating conditions. Operations during periods of startup, shutdown, or malfunction and periods of nonoperation shall not constitute representative conditions. The owner or operator shall record the process information that is necessary to document operating conditions during the test.

(4) *Representative treatment process or control device operating conditions.* Performance tests shall be conducted when the treatment process or control device is operating at a representative inlet flow rate and concentration. If the treatment process or control device will be operating at several different sets of representative operating conditions, the owner or operator shall comply with paragraphs (a)(4)(i) and (a)(4)(ii) of this section. The owner or operator shall record information that is necessary to document treatment process or control device operating conditions during the test.

(i) *Range of operating conditions.* If the treatment process or control device will be operated at several different sets of representative operating conditions, performance testing over the entire range is not required. In such cases, the performance test results shall be supplemented with modeling and/or engineering assessments to demonstrate performance over the operating range.

(ii) *Consideration of residence time.* If concentration and/or flow rate to the treatment process or control device are not relatively constant (i.e., comparison of inlet and outlet data will not be representative of performance), the owner or operator shall consider residence time, when determining concentration and flow rate.

(5) *Testing equipment.* All testing equipment shall be prepared and installed as specified in the applicable test methods, or as approved by the Administrator.

(6) *Compounds not required to be considered in performance tests or design evaluations.* Compounds that meet the requirements specified in paragraph (a)(6)(i), (a)(6)(ii), or (a)(6)(iii) of this section are not required to be included in the performance test. Concentration measurements based on Method 305 shall be adjusted by dividing each concentration by the compound-specific Fm factor listed in table 34 of this subpart. Concentration measurements based on methods other than Method 305 shall not be adjusted by the compound-specific Fm factor listed in table 34 of this subpart.

(i) Compounds not used or produced by the chemical manufacturing process unit; or

(ii) Compounds with concentrations at the point of determination that are below 1 part per million by weight; or

(iii) Compounds with concentrations at the point of determination that are below the lower detection limit where the lower detection limit is greater than 1 part per million by weight. The method shall be an analytical method for wastewater which has that compound as a target analyte.

(7) *Treatment using a series of treatment processes.* In all cases where the wastewater provisions in this subpart allow or require the use of a treatment process to comply with emissions limitations, the owner or operator may use multiple treatment processes. The owner or operator complying with the requirements of §63.138(a)(7)(i), when wastewater is

conveyed by hard-piping, shall comply with either §63.145(a)(7)(i) or §63.145(a)(7)(ii) of this subpart. The owner or operator complying with the requirements of §63.138(a)(7)(ii) of this subpart shall comply with the requirements of §63.145(a)(7)(ii) of this subpart.

(i) The owner or operator shall conduct the performance test across each series of treatment processes. For each series of treatment processes, inlet concentration and flow rate shall be measured either where the wastewater stream enters the first treatment process in a series of treatment processes, or prior to the first treatment process as specified in § 63.145(a)(9) of this subpart. For each series of treatment processes, outlet concentration and flow rate shall be measured where the wastewater stream exits the last treatment process in the series of treatment processes, except when the last treatment process is an open or a closed aerobic biological treatment process demonstrating compliance by using the procedures in § 63.145 (f) or (g) of this subpart. When the last treatment process is either an open or a closed aerobic biological treatment process demonstrating compliance by using the procedures in § 63.145 (f) or (g) of this subpart, inlet and outlet concentrations and flow rates shall be measured as provided in paragraphs (a)(7)(i)(A) and (a)(7)(i)(B) of this section. The mass flow rates removed or destroyed by the series of treatment processes and by the biological treatment process are all used to calculate actual mass removal (AMR) as specified in § 63.145(f)(5)(ii) of this subpart.

(A) The inlet and outlet to the series of treatment processes prior to the biological treatment process are the points at which the wastewater enters the first treatment process and exits the last treatment process in the series, respectively, except as provided in paragraph (a)(9)(ii) of this section.

(B) The inlet to the biological treatment process shall be the point at which the wastewater enters the biological treatment process or the outlet from the series of treatment processes identified in paragraph (a)(7)(i)(A) of this section, except as provided in paragraph (a)(9)(ii) of this section.

(ii) The owner or operator shall conduct the performance test across each treatment process in the series of treatment processes. The mass flow rate removed or destroyed by each treatment process shall be added together to determine whether compliance has been demonstrated using § 63.145 (c), (d), (e), (f), and (g), as applicable. If a biological treatment process is one of the treatment processes in the series of treatment processes, the inlet to the biological treatment process shall be the point at which the wastewater enters the biological treatment process, or the inlet to the equalization tank if all the criteria of paragraph (a)(9)(ii) of this section are met.

(8) When using a biological treatment process to comply with § 63.138 of this subpart, the owner or operator may elect to calculate the AMR using a subset of Table 8 and/or Table 9 compounds determined at the point of determination or downstream of the point of determination with adjustment for concentration and flowrate changes made according to § 63.144(b)(6) and § 63.144(c)(4) of this subpart, respectively. All Table 8 and/or Table 9 compounds measured to determine the RMR, except as provided by § 63.145(a)(6), shall be included in the RMR calculation.

(9) The owner or operator determining the inlet for purposes of demonstrating compliance with § 63.145 (e), (f), or (g) of this subpart may elect to comply with paragraph (a)(9)(i) or (a)(9)(ii) of this section.

(i) When wastewater is conveyed exclusively by hard-piping from the point of determination to a treatment process that is either the only treatment process or the first in a series of treatment processes (i.e., no treatment processes or other waste management units are used upstream of this treatment process to store, handle, or convey the wastewater), the inlet to the treatment process shall be at any location from the point of determination to where the wastewater stream enters the treatment process. When samples are taken upstream of the treatment process and before wastewater streams have converged, the owner or operator shall ensure that the mass flow rate of all Group 1 wastewater streams is accounted for when using § 63.138 (e) or (f) to comply and that the mass flow rate of all Group 1 and Group 2 wastewater streams is accounted for when using § 63.138(g) to comply, except as provided in § 63.145(a)(6).

(ii) The owner or operator may consider the inlet to the equalization tank as the inlet to the biological treatment process if all the criteria in paragraphs (a)(9)(ii)(A) through (a)(9)(ii)(C) of this section are met. The outlet from the series of treatment processes prior to the biological treatment process is the point at which the wastewater exits the last treatment process in the series prior to the equalization tank, if the equalization tank and biological treatment process are part of a series of treatment processes. The owner or operator shall ensure that the mass flow rate of all Group 1 wastewater streams is accounted for when using § 63.138 (e) or (f) to comply and that the mass flow rate of all Group 1 and Group 2 wastewater streams is accounted for when using § 63.138(g) to comply, except as provided in § 63.145(a)(6).

(A) The wastewater is conveyed by hard-piping from either the last previous treatment process or the point of determination to the equalization tank.

(B) The wastewater is conveyed from the equalization tank exclusively by hard-piping to the biological treatment process and no treatment processes or other waste management units are used to store, handle, or convey the wastewater between the equalization tank and the biological treatment process.

(C) The equalization tank is equipped with a fixed roof and a closed vent system that routes emissions to a control device that meets the requirements of § 63.133(a)(2)(i) and § 63.133 (b)(1) through (b)(4) of this subpart.

(b) *Noncombustion treatment process—concentration limits.* This paragraph applies to performance tests that are conducted to demonstrate compliance of a noncombustion treatment process with the parts per million by weight wastewater stream concentration limits at the outlet of the treatment process. This compliance option is specified in § 63.138(b)(1) and § 63.138(c)(1). Wastewater samples shall be collected using sampling procedures which minimize loss of organic compounds during sample collection and analysis and maintain sample integrity per § 63.144(b)(5)(ii). Samples shall be collected and analyzed using the procedures specified in § 63.144 (b)(5)(i), (b)(5)(ii), and (b)(5)(iii) of this subpart. Samples may be grab samples or composite samples. Samples shall be taken at approximately equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs. Concentration measurements based on Method 305 may be adjusted by dividing each concentration by the compound-specific Fm factor listed in Table 34 of this subpart. Concentration measurements based on methods other than Method 305 may be adjusted by multiplying each concentration by the compound-specific Fm factor listed in table 34 of this subpart. (For wastewater streams that are Group 1 for both Table 8 and Table 9 compounds, compliance is

demonstrated only if the sum of the concentrations of Table 9 compounds is less than 50 ppmw, and the concentration of each Table 8 compound is less than 10 ppmw.)

(c) *Noncombustion, nonbiological treatment process: Percent mass removal/destruction option.* This paragraph applies to performance tests that are conducted to demonstrate compliance of a noncombustion, nonbiological treatment process with the percent mass removal limits specified in § 63.138(e) (1) and (2) for Table 8 and/or Table 9 compounds. The owner or operator shall comply with the requirements specified in § 63.145 (c)(1) through (c)(6) of this subpart.

(1) *Concentration.* The concentration of Table 8 and/or Table 9 compounds entering and exiting the treatment process shall be determined as provided in this paragraph. Wastewater samples shall be collected using sampling procedures which minimize loss of organic compounds during sample collection and analysis and maintain sample integrity per § 63.144(b)(5)(ii). The method shall be an analytical method for wastewater which has that compound as a target analyte. Samples may be grab samples or composite samples. Samples shall be taken at approximately equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs. Concentration measurements based on Method 305 shall be adjusted by dividing each concentration by the compound-specific Fm factor listed in Table 34 of this subpart. Concentration measurements based on methods other than Method 305 shall not adjust by the compound-specific Fm factor listed in Table 34 of this subpart.

(2) *Flow rate.* The flow rate of the entering and exiting wastewater streams shall be determined using inlet and outlet flow meters, respectively. Where the outlet flow is not greater than the inlet flow, a flow meter shall be used, and may be used at either the inlet or outlet. Flow rate measurements shall be taken at the same time as the concentration measurements.

(3) *Calculation of mass flow rate—for noncombustion, nonbiological treatment processes.* The mass flow rates of Table 8 and/or Table 9 compounds entering and exiting the treatment process are calculated as follows.

$$QMW_a = \frac{\rho}{p*10^6}\left(\sum_{k=1}^{p} Q_{a,k}C_{T,a,k}\right) \qquad \text{(Eqn WW1)}$$

$$QMW_b = \frac{\rho}{p*10^6}\left(\sum_{k=1}^{p} Q_{b,k}C_{T,b,k}\right) \qquad \text{(Eqn WW2)}$$

Where:

QMW_a, QMW_b=Mass flow rate of Table 8 or Table 9 compounds, average of all runs, in wastewater entering (QMW_a) or exiting (QMW_b) the treatment process, kilograms per hour.

ρ=Density of the wastewater, kilograms per cubic meter.

$Q_{a,k}$, $Qb_{b,k}$=Volumetric flow rate of wastewater entering ($Q_{a,k}$) or exiting ($Q_{b,k}$) the treatment process during each run k, cubic meters per hour.

$C_{T,a,k}$, $C_{T,b,k}$=Total concentration of Table 8 or Table 9 compounds in wastewater entering ($C_{T,a,k}$) or exiting ($C_{T,b,k}$) the treatment process during each run k, parts per million by weight.

p=Number of runs.

k=Identifier for a run.

10^6=conversion factor, mg/kg

(4) *Percent removal calculation for mass flow rate.* The percent mass removal across the treatment process shall be calculated as follows:

$$E = \frac{QMW_a - QMW_b}{QMW_a} \times 100 \qquad \text{(Eqn WW3)}$$

Where:

E=Removal or destruction efficiency of the treatment process, percent.

QMW_a, QMW_b=Mass flow rate of Table 8 or Table 9 compounds in wastewater entering (QMW_a) and exiting (QMW_b) the treatment process, kilograms per hour (as calculated using Equations WW1 and WW2).

(5) *Calculation of flow-weighted average of Fr values.* If complying with § 63.138(e)(2), use Equation WW8 to calculate the flow-weighted average of the Fr values listed in Table 9 of this subpart. When the term ''combustion'' is used in Equation WW8, the term ''treatment process'' shall be used for the purposes of this paragraph.

(6) *Compare mass removal efficiency to required efficiency.* Compare the mass removal efficiency (calculated in Equation WW3) to the required efficiency as specified in § 63.138(e) of this subpart. If complying with § 63.138(e)(1), compliance is demonstrated if the mass removal efficiency is 99 percent or greater. If complying with § 63.138(e)(2), compliance is demonstrated if the mass removal efficiency is greater than or equal to the flow-weighted average of the Fr values calculated in Equation WW8.

(d) *Combustion treatment processes: percent mass removal/destruction option.* This paragraph applies to performance tests that are conducted to demonstrate compliance of a combustion treatment process with the percent mass destruction limits specified in § 63.138(e) (1) and (2) for Table 9 compounds, and/or § 63.138(e)(1) for Table 8 compounds. The owner or operator shall comply with the requirements specified in § 63.145 (d)(1) through (d)(9) of this subpart. (Wastewater streams that are Group 1 for both Table 8 and Table 9 compounds need only do the compliance demonstration for Table 9 compounds.)

(1) *Concentration in wastewater stream entering the combustion treatment process.* The concentration of

Table 8 and/or Table 9 compounds entering the treatment process shall be determined as provided in this paragraph. Wastewater samples shall be collected using sampling procedures which minimize loss of organic compounds during sample collection and analysis and maintain sample integrity per § 63.144(b)(5)(ii). The method shall be an analytical method for wastewater which has that compound as a target analyte. Samples may be grab samples or composite samples. Samples shall be taken at approximately equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs. Concentration measurements based on Method 305 of appendix A of this part shall be adjusted by dividing each concentration by the compound-specific Fm factor listed in table 34 of this subpart. Concentration measurements based on methods other than Method 305 shall not adjust by the compound-specific Fm factor listed in table 34 of this subpart.

(2) *Flow rate of wastewater entering the combustion treatment process.* The flow rate of the wastewater stream entering the combustion treatment process shall be determined using an inlet flow meter. Flow rate measurements shall be taken at the same time as the concentration measurements.

(3) *Calculation of mass flow rate in wastewater stream entering combustion treatment processes.* The mass flow rate of Table 8 and/or Table 9 compounds entering the treatment process is calculated as follows:

$$QMW_a = \frac{\rho}{p*10^6}\left(\sum_{k=1}^{p} Q_{a,k} * C_{T,a,k}\right) \qquad \text{(Eqn WW4)}$$

Where:

QMW_a=Mass flow rate of Table 8 or Table 9 compounds entering the combustion unit, kilograms per hour.

ρ=Density of the wastewater stream, kilograms per cubic meter.

$Q_{a,k}$=Volumetric flow rate of wastewater entering the combustion unit during run k, cubic meters per hour.

$C_{T,a,k}$=Total concentration of Table 8 or Table 9 compounds in the wastewater stream entering the combustion unit during run k, parts per million by weight.

p=Number of runs.

k=Identifier for a run.

(4) *Concentration in vented gas stream exiting the combustion treatment process.* The concentration of Table 8 and/or Table 9 compounds exiting the combustion treatment process in any vented gas stream shall be determined as provided in this paragraph. Samples may be grab samples or composite samples. Samples shall be taken at approximately equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs. Concentration measurements shall be determined using Method 18 of 40 CFR part 60, appendix A. Alternatively, any other test method validated according to the procedures in Method 301 of appendix A of this part may be used.

(5) *Volumetric flow rate of vented gas stream exiting the combustion treatment process.* The volumetric flow rate of the vented gas stream exiting the combustion treatment process shall be determined using Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as appropriate. Volumetric flow rate measurements shall be taken at the same time as the concentration measurements.

(6) *Calculation of mass flow rate of vented gas stream exiting combustion treatment processes.* The mass flow rate of Table 8 and/or Table 9 compounds in a vented gas stream exiting the combustion treatment process shall be calculated as follows:

$$QMG_a = K_2\left(\sum_{i=1}^{n} CG_{a,i} MW_i\right) QG_a \qquad \text{(Eqn WW5)}$$

$$QMG_b = K_2\left(\sum_{i=1}^{n} CG_{b,i} MW_i\right) QG_b \qquad \text{(Eqn WW6)}$$

Where:

$CG_{a,i}$, $CG_{b,i}$=Concentration of total organic compounds (TOC) (minus methane and ethane) or total organic hazardous air pollutants, in vented gas stream, entering ($CG_{a,i}$) and exiting ($CG_{b,i}$) the control device, dry basis, parts per million by volume.

QMG_a, QMG_b=Mass rate of TOC (minus methane and ethane) or total organic hazardous air pollutants, in vented gas stream, entering (QMG_a) and exiting (QMG_b) the control device, dry basis, kilograms per hour.

MW_i=Molecular weight of a component, kilogram/kilogram-mole.

QG_a,QG_b=Flow rate of gas stream entering (QG_a) and exiting (QG_b) the control device, dry standard cubic meters per hour.

K_2=Constant, 41.57 x 10^{-9} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram/gram), where standard temperature (gram-mole per standard cubic meter) is 20° Celsius.

i=Identifier for a compound.

n=Number of components in the sample.

(7) *Destruction efficiency calculation.* The destruction efficiency of the combustion unit for Table 8 and/or Table 9 compounds shall be calculated as follows:

$$E = \frac{QMW_a - QMG_b}{QMW_a} * 100 \qquad \text{(Eqn WW7)}$$

Where:

E=Destruction efficiency of Table 8 or Table 9 compounds for the combustion unit, percent.

QMW_a=Mass flow rate of Table 8 or Table 9 compounds entering the combustion unit, kilograms per hour.

QMG_b=Mass flow rate of Table 8 or Table 9 compounds in vented gas stream exiting the combustion treatment process, kilograms per hour.

(8) *Calculation of flow-weighted average of Fr values.* Use Equation WW8 to calculate the flow-weighted average of the Fr values listed in table 9 of this subpart.

$$Fr_{avg} = \left[\frac{\sum_{i=1}^{n} \sum_{k=1}^{p} Fr_i * C_{i,a,k} * Q_{a,k}}{\sum_{k=1}^{p} \sum_{i=1}^{n} C_{i,a,k} * Q_{a,k}} \right] * 100 \qquad \text{(Eqn WW8)}$$

Where:

Fr_{avg}=Flow-weighted average of the Fr values.

$C_{i,a,k}$=Concentration of Table 8 and/or Table 9 compounds in wastewater stream entering the combustion unit, during run k, parts per million by weight.

$Q_{a,k}$=Volumetric flow rate of wastewater entering the combustion unit during run k, cubic meters per hour.

Fr_i=Compound-specific Fr value listed in table 9 of this subpart.

(9) *Calculate flow-weighted average of Fr values and compare to mass destruction efficiency.* Compare the mass destruction efficiency (calculated in Equation WW 7) to the required efficiency as specified in § 63.138(e). If complying with § 63.138(e)(1), compliance is demonstrated if the mass destruction efficiency is 99 percent or greater. If complying with § 63.138(e)(2), compliance is demonstrated if the mass destruction efficiency is greater than or equal to the flow-weighted average of the Fr value calculated in Equation WW8.

(e) *Non-combustion treatment processes including closed biological treatment processes: RMR option.* This paragraph applies to performance tests for non-combustion treatment processes other than open biological treatment processes to demonstrate compliance with the mass removal provisions for Table 8 and/or Table 9 compounds. Compliance options for noncombustion treatment processes are specified in § 63.138(f) of this subpart. Compliance options for closed aerobic or anaerobic biological treatment processes are specified in § 63.138(f) and § 63.138(g) of this subpart. When complying with § 63.138(f), the owner or operator shall comply with the requirements specified in § 63.145(e)(1) through (e)(6) of this subpart. When complying with § 63.138(g), the owner or operator shall comply with the requirements specified in § 63.145(e)(1) through (e)(6) of this subpart. (Wastewater streams that are Group 1 for both Table 8 and Table 9 compounds need only do the compliance demonstration for Table 9 compounds.)

(1) *Concentration in wastewater stream.* The concentration of Table 8 and/or Table 9 compounds shall be determined as provided in this paragraph. Concentration measurements to determine RMR shall be taken at the point of determination or downstream of the point of determination with adjustment for concentration change made according to § 63.144(b)(6) of this subpart. Concentration measurements to determine AMR shall be taken at the inlet and outlet to the treatment process and as provided in § 63.145(a)(7) for a series of treatment processes. Wastewater samples shall be collected using sampling procedures which minimize loss of organic compounds during sample collection and analysis and maintain sample integrity per § 63.144(b)(5)(ii). The method shall be an analytical method for wastewater which has that compound as a target analyte. Samples may be grab samples or composite samples. Samples shall be taken at approximately equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs. Concentration measurements based on Method 305 shall be adjusted by dividing each concentration by the compound-specific Fm factor listed in table 34 of this subpart. Concentration measurements based on methods other than Method 305 shall not adjust by the compound-specific Fm factor listed in table 34 of this subpart.

(2) *Flow rate.* Flow rate measurements to determine RMR shall be taken at the point of determination or downstream of the point of determination with adjustment for flow rate change made according to § 63.144(c)(4) of this subpart. Flow rate measurements to determine AMR shall be taken at the inlet and outlet to the treatment process and as provided in § 63.145(a)(7) for a series of treatment processes. Flow rate shall be determined using inlet and outlet flow measurement devices. Where the outlet flow is not greater than the inlet flow, a flow measurement device shall be used, and may be used at either the inlet or outlet. Flow rate measurements shall be taken at the same time as the concentration measurements.

(3) *Calculation of RMR for non-combustion treatment processes including closed biological treatment processes.* When using § 63.138(f) to comply, the required mass removal of Table 8 and/or Table 9 compounds for each Group 1 wastewater stream shall be calculated as specified in paragraph (e)(3)(i) of this section. When using § 63.138(g) to comply, the required mass removal shall be calculated as specified in paragraph (e)(3)(ii) of this section.

(i) When using § 63.138(f) to comply, the required mass removal of Table 8 and/or Table 9 compounds for each Group 1 wastewater stream shall be calculated using Equation WW9.

$$RMR = \frac{\rho}{10^9} Q \sum_{i=1}^{n} (C_i * Fr_i) \qquad \text{(Eqn WW9)}$$

Where:

RMR=Required mass removal for treatment process or series of treatment processes, kilograms per hour.

ρ=Density of the Group 1 wastewater stream, kilograms per cubic meter.

Q=Volumetric flow rate of wastewater stream at the point of determination, liters per hour.

i=Identifier for a compound.

n=Number of Table 8 or Table 9 compounds in stream.

C_i=Concentration of Table 8 or Table 9 compounds at the point of determination, parts per million by weight.

Fr_i=Fraction removal value of a Table 8 or Table 9 compound. Fr values are listed in table 9 of this subpart.

10^9=Conversion factor, mg/kg * l/m^3.

(ii) When using § 63.138(g) to comply, the required mass removal is 95 percent of the mass flow rate for all Group 1 and Group 2 wastewater streams combined for treatment. The required mass removal of Table 8 and/or Table 9 compounds for all Group 1 and Group 2 wastewater streams combined for treatment when complying with § 63.138(g) shall be calculated using the following equation:

$$RMR = \frac{0.95\rho}{10^9} Q \sum_{i=1}^{n} (C_i) \qquad \text{(Eqn WW9a)}$$

Where:

RMR=Required mass removal for treatment process or series of treatment processes, kilograms per hour.

ρ=Density of the Group 1 wastewater stream, kilograms per cubic meter.

Q=Volumetric flow rate of wastewater stream at the point of determination, liters per hour.

i=Identifier for a compound.

n=Number of Table 8 or Table 9 compounds in stream.

C_i=Concentration of Table 8 or Table 9 compounds at the point of determination, parts per million by weight.

10^9=Conversion factor, mg/kg * l/m^3

(4)(i) The required mass removal is calculated by summing the required mass removal for each Group 1 wastewater stream to be combined for treatment when complying with § 63.138(f).

(ii) The required mass removal is calculated by summing the required mass removal for all Group 1 and Group 2 wastewater streams combined for treatment when complying with § 63.138(g).

(5) *The AMR calculation procedure for non-combustion treatment processes including closed biological treatment processes.* The AMR shall be calculated as follows:

$$AMR = (QMW_a - QMW_b) \qquad \text{(Eqn WW10)}$$

Where:

AMR=Actual mass removal of Table 8 or Table 9 compounds achieved by treatment process or series of treatment processes, kilograms per hour.

QMW_a=Mass flow rate of Table 8 or Table 9 compounds in wastewater entering the treatment process or first treament process in a series of treatment processes, kilograms per hour.

QMW_b=Mass flow rate of Table 8 or Table 9 compounds in wastewater exiting the last treatment process in a series of treatment processes, kilograms per hour.

(6) *Compare RMR to AMR.* When complying with § 63.138(f), compare the RMR calculated in Equation WW9 to the AMR calculated in Equation WW10. Compliance is demonstrated if the AMR is greater than or equal to the RMR. When complying with § 63.138(g), compare the RMR calculated in Equation WW–9a to the AMR calculated in Equation WW10. Compliance is demonstrated if the AMR is greater than or equal to 95-percent mass removal.

(f) *Open or closed aerobic biological treatment processes: Required mass removal (RMR) option.* This paragraph applies to the use of performance tests that are conducted for open or closed aerobic biological treatment processes to demonstrate compliance with the mass removal provisions for Table 8 and/or Table 9 compounds. These compliance options are specified in § 63.138(f) of this subpart. The owner or operator shall comply with the requirements specified in § 63.145 (f)(1) through (f)(6) of this subpart. Some compounds may not require a performance test. Refer to § 63.145(h) and table 36 of this subpart to determine which compounds may be exempt from the requirements of this paragraph.

(1) *Concentration in wastewater stream.* The concentration of Table 8 and/or Table 9 compounds shall be determined as provided in this paragraph. Concentration measurements to determine RMR shall be taken at the point of determination or downstream of the point of determination with adjustment for concentration change made according to § 63.144(b)(6) of this subpart. Concentration measurements to determine AMR shall be taken at the inlet and outlet to the treatment process and as provided in § 63.145(a)(7) for a series of treatment processes. Wastewater samples shall be collected using sampling procedures which minimize loss of organic compounds during sample collection and analysis and maintain sample integrity per § 63.144(b)(5)(ii). The method shall be an analytical method for wastewater which has that compound as a target analyte. Samples may be grab samples or composite samples. Samples shall be taken at approximately equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs. Concentration measurements based on Method 305 shall be adjusted by dividing each concentration by the compound-specific Fm factor listed in table 34 of this subpart. Concentration measurements

based on methods other than Method 305 shall not adjust by the compound-specific Fm factor listed in table 34 of this subpart.

(2) *Flow rate.* Flow rate measurements to determine RMR shall be taken at the point of determination or downstream of the point of determination with adjustment for flow rate change made according to § 63.144(c)(4) of this subpart. Flow rate measurements to determine AMR shall be taken at the inlet and outlet to the treatment process and as provided in § 63.145(a)(7) for a series of treatment processes. Flow rate shall be determined using inlet and outlet flow measurement devices. Where the outlet flow is not greater than the inlet flow, a flow measurement device shall be used, and may be used at either the inlet or outlet. Flow rate measurements shall be taken at the same time as the concentration measurements.

(3) *Calculation of RMR for open or closed aerobic biological treatment processes.* The required mass removal of Table 8 and/or Table 9 compounds for each Group 1 wastewater stream shall be calculated using the following equation:

$$RMR = \frac{\rho}{10^9} Q \sum_{i=1}^{n} (C_i * Fr_i) \qquad \text{(Eqn WW11)}$$

Where:

RMR=Required mass removal for treatment process or series of treatment processes, kilograms per hour.

ρ=Density of the Group 1 wastewater stream, kilograms per cubic meter.

Q=Volumetric flow rate of wastewater stream at the point of determination, liters per hour.

i=Identifier for a compound.

n=Number of Table 8 or Table 9 compounds in stream.

C_i=Concentration of Table 8 or Table 9 compounds at the point of determination, parts per million by weight.

Fr_i=Fraction removal value of a Table 8 or Table 9 compound. Fr values are listed in table 9 of this subpart.

10^9=Conversion factor, mg/kg * l/m^3.

(4) The required mass removal is calculated by adding together the required mass removal for each Group 1 wastewater stream to be combined for treatment.

(5) *Actual mass removal calculation procedure for open or closed aerobic biological treatment processes.* The actual mass removal (AMR) shall be calculated using Equation WW12 as specified in paragraph (f)(5)(i) of this section when the performance test is performed across the open or closed aerobic biological treatment process only. If compliance is being demonstrated in accordance with § 63.145(a)(7)(i), the AMR for the series shall be calculated using Equation WW13 in § 63.145(f)(5)(ii). (This equation is for situations where treatment is performed in a series of treatment processes connected by hard-piping.) If compliance is being demonstrated in accordance with § 63.145(a)(7)(ii), the AMR for the biological treatment process shall be calculated using Equation WW12 in § 63.145(f)(5)(i). The AMR for the biological treatment process used in a series of treatment processes calculated using Equation WW12 shall be added to the AMR determined for each of the other individual treatment processes in the series of treatment processes.

(i) Calculate AMR for the open or closed aerobic biological treatment process as follows:

$$AMR = QMW_a * F_{bio} \qquad \text{(Eqn WW12)}$$

Where:

AMR=Actual mass removal of Table 8 or Table 9 compounds achieved by open or closed biological treatment process, kilograms per hour.

QMW_a=Mass flow rate of Table 8 or Table 9 compounds in wastewater entering the treatment process, kilograms per hour.

F_{bio}=Site-specific fraction of Table 8 or Table 9 compounds biodegraded. F_{bio} shall be determined as specified in § 63.145(h) and appendix C of this subpart.

(ii) Calculate AMR across a series of treatment units where the last treatment unit is an open or closed aerobic biological treatment process as follows:

$$AMR = QMW_a - (QMW_b)(1 - F_{bio}) \qquad \text{(Eqn WW13)}$$

Where:

AMR=Actual mass removal of Table 8 or Table 9 compounds achieved by a series of treatment processes, kilograms per hour.

QMW_a=Mass flow rate of Table 8 or Table 9 compounds in wastewater entering the first treatment process in a series of treatment processes, kilograms per hour.

QMW_b=Mass flow rate of Table 8 or Table 9 compounds in wastewater exiting the last treatment process in a series of treatment processes prior to the biological treatment process, kilograms per hour.

F_{bio}=Site-specific fraction of Table 8 or Table 9 compounds biodegraded. F_{bio} shall be determined as specified in § 63.145(h) and appendix C of this subpart.

(6) *Compare RMR to AMR.* Compare the RMR calculated in Equation WW11 to the AMR calculated in either Equation WW12 or WW13, as applicable. Compliance is demonstrated if the AMR is greater than or equal to the RMR.

(g) *Open or closed aerobic biological treatment processes: 95-percent mass removal option.* This paragraph applies to performance tests that are conducted for open or closed aerobic biological treatment processes to demonstrate compliance with the 95-percent mass removal provisions for Table 8 and/or Table 9 compounds. This compliance option is specified in § 63.138(g) of this subpart. The RMR for this option is 95-percent mass removal. The owner or operator shall comply with the requirements specified in § 63.145(g)(1) to determine AMR, § 63.145 (e)(3)(ii) and (e)(4)(ii) to determine RMR, and (g)(2) of this subpart to determine whether compliance has been demonstrated. Some compounds may not require a performance test. Refer to § 63.145(h) and table 36 of this subpart to determine which compounds may be exempt from the requirements of this paragraph. (Wastewater streams that are Group 1 for both Table 8 and Table 9 compounds need only do the compliance demonstration for Table 9 compounds.)

(1) The owner or operator shall comply with the requirements specified in paragraphs (f)(1), (f)(2), and (f)(5) of this section to determine AMR. References to Group 1 wastewater streams shall be deemed Group 1 and Group 2 wastewater streams for the purposes of this paragraph.

(2) *Compare RMR to AMR.* Compliance is demonstrated if the AMR is greater than or equal to RMR.

(h) *Site-specific fraction biodegraded* (F_{bio}). The compounds listed in table 9 of this subpart are divided into three sets for the purpose of determining whether F_{bio} must be determined, and if F_{bio} must be determined, which procedures may be used to determine compound-specific kinetic parameters. These sets are designated as lists 1, 2, and 3 in table 36 of this subpart.

(1) *Performance test exemption.* If a biological treatment process meets the requirements specified in paragraphs (h)(1)(i) and (h)(1)(ii) of this section, the owner or operator is not required to determine F_{bio} and is exempt from the applicable performance test requirements specified in § 63.138 of this subpart.

(i) The biological treatment process meets the definition of ''enhanced biological treatment process'' in § 63.111 of this subpart.

(ii) At least 99 percent by weight of all compounds on table 36 of this subpart that are present in the aggregate of all wastewater streams using the biological treatment process to comply with § 63.138 of this subpart are compounds on list 1 of table 36 of this subpart.

(2) F_{bio} *determination.* For wastewater streams that include one or more compounds on lists 2 and/or 3 of table 36 of this subpart that do not meet criteria in paragraph (h)(1)(ii) of this section, the owner or operator shall determine F_{bio} for the biological treatment process using the procedures in appendix C to part 63, and paragraph (h)(2)(i) or (h)(2)(ii) of this section. For biological treatment processes that do not meet the definition for enhanced biological treatment in § 63.111 of this subpart, the owner or operator shall determine the F_{bio} for the biological treatment process using any of the procedures in appendix C to part 63, except the batch tests procedure.

(i) *Wastewater streams without list 3 compounds that are treated in enhanced biological treatment processes.* For wastewater streams that include no compounds on list 3 of table 36 of this subpart and the biological treatment process meets the definition of enhanced biological treatment process in § 63.111 of this subpart, the owner or operator shall determine f_{bio} for the list 2 compounds using any of the procedures specified in appendix C of 40 CFR part 63. (The symbol ''f_{bio}'' represents the site specific fraction of an individual Table 8 or Table 9 compound that is biodegraded.) The owner or operator shall calculate f_{bio} for the list 1 compounds using the defaults for first order biodegradation rate constants (K_1) in table 37 of subpart G and follow the procedure explained in Form III of appendix C, 40 CFR part 63, or any of the procedures specified in appendix C, 40 CFR part 63.

(ii) *Wastewater streams with list 3 compounds that are treated in enhanced biological treatment processes.* For wastewater streams that include one or more compounds on list 3 of table 36 of this subpart, the owner or operator shall determine f_{bio} for the list 3 compounds using any of the procedures specified in appendix C, 40 CFR part 63, except the batch tests procedure. The owner or operator shall determine f_{bio} for the list 2 compounds using any of the procedures specified in appendix C, 40 CFR part 63. The owner or operator shall calculate f_{bio} for the list 1 compounds using the defaults for first order biodegradation rate constants (K_1) in table 37 of subpart G and follow the procedure explained in Form III of appendix C, 40 CFR part 63, or any of the procedures specified in appendix C, of 40 CFR part 63.

(iii) *Performance tests for control devices other than flares.* This paragraph applies to performance tests that are conducted to demonstrate compliance of a control device with the efficiency limits specified in § 63.139(c). If complying with the 95-percent reduction efficiency requirement, comply with the requirements specified in paragraphs (i)(1) through (i)(9) of this section. If complying with the 20 ppm by volume requirement, comply with the requirements specified in paragraphs (i)(1) through (i)(6) and (i)(9) of this section. The 20 ppm by volume limit or 95 percent reduction efficiency requirement shall be measured as either total organic hazardous air pollutants or as TOC minus methane and ethane.

(1) *Sampling sites.* Sampling sites shall be selected using Method 1 or 1A of 40 CFR part 60, appendix A, as appropriate. For determination of compliance with the 95 percent reduction requirement, sampling sites shall be located at the inlet and the outlet of the control device. For determination of compliance with the 20 parts per million by volume limit, the sampling site shall be located at the outlet of the control device.

(2) *Concentration in gas stream entering or exiting the control device.* The concentration of total organic hazardous air pollutants or TOC in a gas stream shall be determined as provided in this paragraph. Samples may be grab samples or composite samples (i.e., integrated samples). Samples shall be taken at approximately equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs. Concentration measurements shall be determined using Method 18 of 40 CFR part 60, appendix A. Alternatively, any other test method validated according to the procedures in Method 301 of appendix A of this part may be used.

(3) *Volumetric flow rate of gas stream entering or exiting the control device.* The volumetric flow rate of the gas stream shall be determined using Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as appropriate. Volumetric flow rate measurements shall be taken at the same time as the concentration measurements.

(4) *Calculation of TOC concentration.* The TOC concentration (CG_T) is the sum of the concentrations of the individual components. If compliance is being determined based on TOC, the owner or operator shall compute TOC for each run using the following equation:

$$CG_T = \frac{1}{m}\sum_{j=1}^{m}\left(\sum_{i=1}^{n} CGS_{i,j}\right) \qquad \text{(Eqn WW14)}$$

Where:

CG_T=Total concentration of TOC (minus methane and ethane) in vented gas stream, average of samples, dry basis, parts per million by volume.

$CGS^{i,j}$=Concentration of sample components in vented gas stream for sample j, dry basis, parts per million by volume.

i=Identifier for a compound.

n=Number of components in the sample.

j=Identifier for a sample.

m=Number of samples in the sample run.

(5) *Calculation of total organic hazardous air pollutants concentration.* The owner or operator determining compliance based on total organic hazardous air pollutants concentration (C_{HAP}) shall compute C_{HAP} according to the Equation WW14, except that only Table 9 compounds shall be summed.

(6) *Percent oxygen correction for combustion control devices.* If the control device is a combustion device, comply with the requirements specified in paragraph (i)(6)(i) of this section to determine oxygen concentration, and in paragraph (i)(6)(ii) of this section to calculate the percent oxygen correction.

(i) *Oxygen concentration.* The concentration of TOC or total organic hazardous air pollutants shall be corrected to 3 percent oxygen if the control device is a combustion device. The emission rate correction factor for excess air, composite sampling (i.e., integrated sampling) and analysis procedures of Method 3B of 40 CFR part 60, appendix A shall be used to determine the actual oxygen concentration ($\%0_{2d}$). The samples shall be taken during the same time that the TOC (minus methane or ethane) or total organic hazardous air pollutants samples are taken.

(ii) *3 percent oxygen calculation.* The concentration corrected to 3 percent oxygen (CG_c), when required, shall be computed using the following equation:

$$CG_C = CG_T\left(\frac{17.9}{20.9 - \%0_{2d}}\right) \qquad \text{(Eqn WW15)}$$

Where:

CG_c=Concentration of TOC or organic hazardous air pollutants corrected to 3 percent oxygen, dry basis, parts per million by volume.

CG_T=Total concentration of TOC (minus methane and ethane) in vented gas stream, average of samples, dry basis, parts per million by volume.

$\%0_{2d}$=Concentration of oxygen measured in vented gas stream, dry basis, percent by volume.

(7) *Mass rate calculation.* The mass rate of either TOC (minus methane and ethane) or total organic hazardous air pollutants shall be calculated using the following equations. Where the mass rate of TOC is being calculated, all organic compounds (minus methane and ethane) measured by methods specified in paragraph (i)(2) of this section are summed using Equations WW16 and WW17. Where the mass rate of total organic hazardous air pollutants is being calculated, only Table 9 compounds shall be summed using Equations WW16 and WW17.

$$QMG_a = K_2\left(\sum_{i=1}^{n} CG_{a,i}\, MW_i\right)QG_a \qquad \text{(Eqn WW16)}$$

$$QMG_b = K_2\left(\sum_{i=1}^{n} CG_{b,i}\, MW_i\right)QG_b \qquad \text{(Eqn WW17)}$$

Where:

$CG_{a,i}$, $CG_{b,i}$=Concentration of TOC (minus methane and ethane) or total organic hazardous air pollutants, in vented gas stream, entering ($CG_{a,i}$) and exiting ($CG_{b,i}$) the control device, dry basis, parts per million by volume.

QMG_a, QMG_b=Mass rate of TOC (minus methane and ethane) or total organic hazardous air pollutants, in vented gas stream, entering (QMG_a) and exiting (QMG_b) the control device, dry basis, kilograms per hour.

MW_i=Molecular weight of a component, kilogram/kilogram-mole.

QG_a, QG_b=Flow rate of gas stream entering (QG_a) and exiting (QG_b) the control device, dry standard cubic meters per hour.

K_2=Constant, 41.57 x 10^{-9} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram/gram), where standard temperature (gram-mole per standard cubic meter) is 20° Celsius.

i=Identifier for a compound.

n=Number of components in the sample.

(8) *Percent reduction calculation.* The percent reduction in TOC (minus methane and ethane) or total organic hazardous air pollutants shall be calculated as follows:

$$E = \frac{QMG_a - QMG_b}{QMG_a}(100\%) \qquad \text{(Eqn WW18)}$$

Where:

E=Destruction efficiency of control device, percent.

QMG_a, QMG_b=Mass rate of TOC (minus methane and ethane) or total organic hazardous air pollutants, in vented gas stream entering and exiting (QMG_b) the control device, dry basis, kilograms per hour.

(9) *Compare mass destruction efficiency to required efficiency.* If complying with the 95 percent reduction efficiency requirement, compliance is demonstrated if the mass destruction efficiency (calculated in Equation WW18) is 95 percent or greater. If complying with the 20 parts per million by volume limit in § 63.139 (c)(1)(ii) of this subpart, compliance is demonstrated if the outlet total organic compound concentration, less methane and ethane, or total organic hazardous

air pollutants concentration is 20 parts per million by volume, or less. For combustion control devices, the concentration shall be calculated on a dry basis, corrected to 3 percent oxygen.

(j) *Compliance demonstration for flares.* When a flare is used to comply with § 63.139 (c) of this subpart, the owner or operator shall comply with the flare provisions in § 63.11(b) of subpart A of this part.

(1) The compliance determination shall be conducted using Method 22 of 40 CFR part 60, appendix A, to determine visible emissions.

(2) An owner or operator is not required to conduct a performance test to determine percent emission reduction or outlet organic hazardous air pollutants or TOC concentration when a flare is used.

§ 63.146 Process wastewater provisions—reporting.

(a) For each waste management unit, treatment process, or control device used to comply with §§ 63.138 (b)(1), (c)(1), (d), (e), (f), or (g) of this subpart for which the owner or operator seeks to monitor a parameter other than those specified in table 11, table 12, or table 13 of this subpart, the owner or operator shall submit a request for approval to monitor alternative parameters according to the procedures specified in § 63.151(f) or (g) of this subpart.

(b) The owner or operator shall submit the information specified in paragraphs (b)(1) through (b)(9) of this section as part of the Notification of Compliance Status required by § 63.152(b) of this subpart.

(1) [Reserved]

(2) For each new and existing source, the owner or operator shall submit the information specified in table 15 of this subpart for Table 8 and/or Table 9 compounds.

(3) [Reserved]

(4) For each treatment process identified in table 15 of this subpart that receives, manages, or treats a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream, the owner or operator shall submit the information specified in table 17 of this subpart.

(5) For each waste management unit identified in table 15 of this subpart that receives or manages a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream, the owner or operator shall submit the information specified in table 18 of this subpart.

(6) For each residual removed from a Group 1 wastewater stream, the owner or operator shall report the information specified in table 19 of this subpart.

(7) For each control device used to comply with §§ 63.133 through 63.139 of this subpart, the owner or operator shall report the information specified in paragraphs (b)(7)(i) and (b)(7)(ii) of this section.

(i) For each flare, the owner or operator shall submit the information specified in paragraphs (b)(7)(i)(A) through (b)(7)(i)(C) of this section.

(A) Flare design (i.e., steam-assisted, air-assisted, or non-assisted);

(B) All visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the compliance determination required by § 63.139(c)(3) of this subpart; and

(C) Reports of the times and durations of all periods during the compliance determination when the pilot flame is absent or the monitor is not operating.

(ii) For each control device other than a flare, the owner or operator shall submit the information specified in paragraph (b)(7)(ii)(A) of this section and in either paragraph (b)(7)(ii)(B) or (b)(7)(ii)(C) of this section.

(A) The information on parameter ranges specified in § 63.152(b)(2) of this subpart for the applicable parameters specified in table 13 of this subpart, unless the parameter range has already been established in the operating permit; and either

(B) The design evaluation specified in § 63.139(d)(2) of this subpart; or

(C) Results of the performance test specified in § 63.139(d)(1) of this subpart. Performance test results shall include operating ranges of key process and control parameters during the performance test; the value of each parameter being monitored in accordance with § 63.143 of this subpart; and applicable supporting calculations.

(8) For each treatment process used to comply with § 63.138 (b)(1)(iii)(C), (c)(1)(iii)(D), (d), or (e) of this subpart, the owner or operator shall submit the information specified in paragraphs (b)(8)(i) and (b)(8)(ii) of this section.

(i) For Items 1 and 2 in table 12 of this subpart, the owner or operator shall submit the information specified in paragraphs (b)(8)(i)(A) and (b)(8)(i)(B) of this section.

(A) The information on parameter ranges specified in § 63.152(b)(2) of this subpart for the parameters approved by the Administrator, unless the parameter range has already been established in the operating permit.

(B) Results of the initial measurements of the parameters approved by the Administrator and any applicable supporting calculations.

(ii) For Item 3 in table 12 of this subpart, the owner or operator shall submit the information on parameter ranges specified in § 63.152(b)(2) of this subpart for the parameters specified in Item 3 of table 12 of this subpart, unless the parameter range has already been established in the operating permit.

(9) Except as provided in paragraph (b)(9)(iii) of this section, for each waste management unit or treatment process used to comply with § 63.138(b)(1), (c)(1), (d), (e), (f), (g), or (h)(3) of this subpart, the owner or operator shall submit the information specified in either paragraph (b)(9)(i) or (b)(9)(ii) of this section.

(i) The design evaluation and supporting documentation specified in § 63.138(j)(1) of this subpart.

(ii) Results of the performance test specified in § 63.138(j)(2) of this subpart. Performance test results shall include operating ranges of key process and control parameters during the performance test; the value of each parameter being monitored in accordance with § 63.143 of this subpart; and applicable supporting calculations.

(iii) If the owner or operator elects to use one of the technologies specified in § 63.138(h) of this subpart, the owner or operator is exempt from the requirements specified in paragraphs (b)(9)(i) and (b)(9)(ii) of this section.

(c) For each waste management unit that receives, manages, or treats a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream, the owner or operator shall submit as part of the next Periodic Report required by § 63.152(c) of this subpart the results of each inspection required by § 63.143(a) of this subpart in which a control equipment failure was identified. Control equipment failure is defined for each waste management unit in §§ 63.133 through 63.137 of this subpart. Each Periodic Report shall include the date of the inspection, identification of each waste management unit in which a control equipment failure was detected, description of the failure, and description of the nature of and date the repair was made.

(d) Except as provided in paragraph (f) of this section, for each treatment process used to comply with § 63.138(b)(1), (c)(1), or (e) of this subpart, the owner or operator shall submit as part of the next Periodic Report required by § 63.152(c) the information specified in paragraphs (d)(1), (d)(2), and (d)(3) of this section for the monitoring required by § 63.143(b) of this subpart.

(1) For Item 1 in table 12, the owner or operator shall submit the results of measurements that indicate that the biological treatment unit is outside the range established in the Notification of Compliance Status or operating permit.

(2) For Item 2 in table 12, the owner or operator shall submit the monitoring results for each operating day during which the daily average value of a continuously monitored parameter is outside the range established in the Notification of Compliance Status or operating permit.

(3) For Item 3 in table 12 of this subpart, the owner or operator shall submit the monitoring results for each operating day during which the daily average value of any monitored parameter approved in accordance with § 63.151 (f) was outside the range established in the Notification of Compliance Status or operating permit.

(e) Except as provided in paragraph (f) of this section, for each control device used to comply with §§ 63.133 through 63.139 of this subpart, the owner or operator shall submit as part of the next Periodic Report required by § 63.152(c) of this subpart the information specified in either paragraph (e)(1) or (e)(2) of this section.

(1) The information specified in table 20 of this subpart, or

(2) If the owner or operator elects to comply with § 63.143(e)(2) of this subpart, i.e., an organic monitoring device installed at the outlet of the control device, the owner or operator shall submit the monitoring results for each operating day during which the daily average concentration level or reading is outside the range established in the Notification of Compliance Status or operating permit.

(f) Where the owner or operator obtains approval to use a treatment process or control device other than one for which monitoring requirements are specified in § 63.143 of this subpart, or to monitor parameters other than those specified in table 12 or 13 of this subpart, the Administrator will specify appropriate reporting requirements.

(g) If an extension is utilized in accordance with § 63.133(e)(2) or § 63.133(h) of this subpart, the owner or operator shall include in the next periodic report the information specified in § 63.133 (e)(2) or § 63.133(h).

§ 63.147 Process wastewater provisions—recordkeeping.

(a) The owner or operator transferring a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream in accordance with § 63.132(g) of this subpart shall keep a record of the notice sent to the treatment operator stating that the wastewater stream or residual contains organic hazardous air pollutants which are required to be managed and treated in accordance with the provisions of this subpart.

(b) The owner or operator shall keep in a readily accessible location the records specified in paragraphs (b)(1) through (b)(7) of this section.

(1) A record that each waste management unit inspection required by §§ 63.133 through 63.137 of this subpart was performed.

(2) A record that each inspection for control devices required by § 63.139 of this subpart was performed.

(3) A record of the results of each seal gap measurement required by §§ 63.133(d) and 63.137(c) of this subpart. The records shall include the date of the measurement, the raw data obtained in the measurement, and the calculations described in § 63.120(b)(2), (3), and (4) of this subpart.

(4) For Item 1 and Item 2 of table 12 of this subpart, the owner or operator shall keep the records approved by the Administrator.

(5) Except as provided in paragraphs (e) and (g) of this section, continuous records of the monitored parameters specified in Item 3 of table 12 and table 13 of this subpart, and in § 63.143(e)(2) of this subpart.

(6) Documentation of a decision to use an extension, as specified in § 63.133(e)(2) or (h) of this subpart, which shall include a description of the failure, documentation that alternate storage capacity is unavailable, and specification of a schedule of actions that will ensure that the control equipment will be repaired or the vessel will be emptied as soon as practical.

(7) Documentation of a decision to use a delay of repair due to unavailability of parts, as specified in § 63.140(c), shall include a description of the failure, the reason additional time was necessary (including a statement of why replacement parts were not kept on site and when the manufacturer promised delivery), and the date when repair was completed.

(c) For each boiler or process heater used to comply with §§ 63.133 through 63.139 of this subpart, the owner or operator shall keep a record of any changes in the location at which the vent stream is introduced into the flame zone as required in § 63.139(c)(1) of this subpart.

(d) The owner or operator shall keep records of the daily average value of each continuously monitored parameter for each operating day as specified in § 63.152(f), except as provided in paragraphs (d)(1) and (d)(2) of this section.

(1) For flares, records of the times and duration of all periods during which the pilot flame is absent shall be kept rather than daily averages.

(2) For carbon adsorbers, the owner or operator shall keep the records specified in paragraphs (d)(2)(i) and (d)(2)(ii) of this section instead of daily averages.

(i) Records of the total regeneration stream mass flow for each carbon bed regeneration cycle.

(ii) Records of the temperature of the carbon bed after each regeneration cycle.

(e) Where the owner or operator obtains approval to use a control device other than one for which monitoring requirements are specified in § 63.143 of this subpart, or to monitor parameters other than those specified in table 12 or table 13 of this subpart, the Administrator will specify appropriate recordkeeping requirements.

(f) If the owner or operator uses process knowledge to determine the annual average concentration of a wastewater stream as specified in § 63.144(b)(3) of this subpart and/or uses process knowledge to determine the annual average flow rate as specified in § 63.144(c)(1) of this subpart, and determines that the wastewater stream is not a Group 1 wastewater stream, the owner or operator shall keep in a readily accessible location the documentation of how process knowledge was used to determine the annual average concentration and/or the annual average flow rate of the wastewater stream.

27. Section 63.148 is amended by revising paragraphs (c)(2), (c)(4)(ii), (c)(5), (i)(3)(i), (i)(3)(ii), and (j)(2) to read as follows:

§ 63.148 Leak inspection provisions.

* * * * *

(c) * * *

(2)(i) Except as provided in paragraph (c)(2)(ii) of this section, 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 process fluid not each individual volatile organic compound in the stream. For process streams that contain nitrogen, air, or other inerts which are not organic hazardous air pollutants or volatile organic compounds, the average stream response factor shall be calculated on an inert-free basis.

(ii) If no instrument is available at the plant site that will meet the performance criteria specified in paragraph (c)(2)(i) of this section, the

instrument readings may be adjusted by multiplying by the average response factor of the process fluid, calculated on an inert-free basis as described in paragraph (c)(2)(i) of this section.

* * * * *

(4) * * *

(ii) Mixtures of methane in air at a concentration less than 10,000 parts per million. A calibration gas other than methane in air may be used if the instrument does not respond to methane or if the instrument does not meet the performance criteria specified in paragraph (b)(2)(i) of this section. In such cases, the calibration gas may be a mixture of one or more of the compounds to be measured in air.

(5) An owner or operator may elect to adjust or not adjust instrument readings for background. If an owner or operator elects to not adjust readings for background, all such instrument readings shall be compared directly to the applicable leak definition to determine whether there is a leak. If an owner or operator elects to adjust instrument readings for background, the owner or operator shall measure background concentration using the procedures in §§ 63.180(b) and (c) of subpart H of this part. The owner or operator shall subtract background reading from the maximum concentration indicated by the instrument.

* * * * *

(i) * * *

(3) * * *

(i) Hourly records of whether the flow indicator specified under paragraph (f)(1) of this section was operating and whether a diversion was detected at any time during the hour, as well as records of the times of all periods when the vent stream is diverted from the control device or the flow indicator is not operating.

(ii) Where a seal mechanism is used to comply with paragraph (f)(2) of this section, hourly records of flow are not required. In such cases, the owner or operator shall record whether the monthly visual inspection of the seals or closure mechanisms has been done, and shall record the occurrence of all periods when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type configuration has been checked out, and records of any car-seal that has broken.

* * * * *

(j) * * *

(2) Reports of the times of all periods recorded under paragraph (i)(3)(i) of this section when the vent stream is diverted from the control device through a bypass line; and

* * * * *

28. Section 63.149 is added to read as follows:

§ 63.149 Control requirements for certain liquid streams in open systems within a chemical manufacturing process unit.

(a) The owner or operator shall comply with the provisions of table 35 of this subpart, for each item of equipment meeting all the criteria specified in paragraphs (b) through (d) and either paragraph (e)(1) or (e)(2) of this section.

(b) The item of equipment is of a type identified in table 35 of this subpart;

(c) The item of equipment is part of a chemical manufacturing process unit that meets the criteria of § 63.100(b) of subpart F of this part;

(d) The item of equipment is controlled less stringently than in table 35 and is not listed in § 63.100(f) of subpart F of this part, and the item of equipment is not otherwise exempt from controls by the provisions of subparts A, F, G, or H of this part; and

(e) The item of equipment:

(1) is a drain, drain hub, manhole, lift station, trench, pipe, or oil/water separator that conveys water with a total annual average concentration greater than or equal to 10,000 parts per million by weight of Table 9 compounds at any flowrate; or a total annual average concentration greater than or equal to 1,000 parts per million by weight of Table 9 compounds at an annual average flow rate greater than or equal to 10 liters per minute. At a chemical manufacturing process unit subject to the new source requirements of 40 CFR 63.100(l)(1) or 40 CFR 63.100(l)(2), the criteria of this paragraph are also met if the item of equipment conveys water with an annual average concentration greater than or equal to 10 parts per million by weight of any Table 8 compound at an annual average flow rate greater than or equal to 0.02 liter per minute, or

(2) Is a tank that receives one or more streams that contain water with a total annual average concentration greater than or equal to 1,000 ppm (by weight) of Table 9 compounds at an annual average flowrate greater than or equal to 10 liters per minute. At a chemical manufacturing process unit subject to the new source requirements of 40 CFR 63.100(l)(1) or 40 CFR 63.100 (l)(2), the criteria of this paragraph are also met if the tank receives one or more streams that contain water with an annual average concentration greater than or equal to 10 parts per million by weight of any Table 8 compound at an annual average flow rate greater than or equal to 0.02 liter per minute. The owner or operator of the source shall determine the characteristics of the stream as specified in paragraphs (e)(2) (i) and (ii) of this section.

(i) The characteristics of the stream being received shall be determined at the inlet to the tank.

(ii) The characteristics shall be determined according to the procedures in § 63.144 (b) and (c).

29. Section 63.152 is amended by revising the introductory text of paragraph (b)(1); revising paragraph (b)(2) introductory text and paragraphs (b)(2)(ii)(A) and (b)(2)(ii)(B); adding paragraph (b)(5); revising the introductory text of paragraphs (c)(2), (c)(2)(ii), and (c)(2)(ii)(A); revising paragraphs (c)(2)(ii)(A)(*2*) and (c)(2)(ii)(A)(*3*); revising the introductory text of paragraph (c)(2)(ii)(B); revising paragraphs (c)(2)(ii)(C) and (c)(2)(ii)(E); adding paragraph (c)(2)(iv); revising the introductory text of paragraph (c)(4); revising paragraph (c)(4)(iii) and adding paragraph (c)(4)(iv); adding a sentence to the end of paragraphs (c)(5)(iii) and (c)(6)(v); revising the introductory text of paragraph (f), revising paragraph (f)(2)(ii), revising the introductory text of paragraph (f)(5), revising paragraph (f)(7); and adding paragraph (g) to read as follows:

§ 63.152 General reporting and continuous records.

* * * * *

(b) * * *

(1) The notification shall include the results of any emission point group determinations, performance tests, inspections, continuous monitoring system performance evaluations, values of monitored parameters established during performance tests, and any other information used to demonstrate compliance or required to be included in the Notification of Compliance Status under § 63.110 (h) for regulatory overlaps, under § 63.117 for process vents, § 63.122 for storage vessels, § 63.129 for transfer operations, § 63.146 for process wastewater, and § 63.150 for emission points included in an emissions average.

* * * * *

(2) For each monitored parameter for which a range is required to be established under § 63.114 for process vents, § 63.127 for transfer, § 63.143 for process wastewater, § 63.150(m) for emission points in emissions averages, or § 63.151(f), or § 63.152(e), the Notification of Compliance Status shall include the information in paragraphs (b)(2)(i), (b)(2)(ii), and (b)(2)(iii) of this section, unless the range and the

operating day definition have been established in the operating permit. The recordkeeping and reporting requirements applicable to storage vessels are located in §§ 63.122 and 63.123.

* * * * *

(ii) * *

(A) If a performance test is required by this subpart for a control device, the range shall be based on the parameter values measured during the performance test and may be supplemented by engineering assessments and/or manufacturer's recommendations. Performance testing is not required to be conducted over the entire range of permitted parameter values.

(B) If a performance test is not required by this subpart for a control device, the range may be based solely on engineering assessments and/or manufacturer's recommendations.

* * * * *

(5) An owner or operator who transfers a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream for treatment pursuant to § 63.132(g) shall include in the Notification of Compliance Status the name and location of the transferee and a description of the Group 1 wastewater stream or residual sent to the treatment facility.

(c) * * *

(2) Except as provided in paragraph (c)(2)(iv) of this section, for an owner or operator of a source complying with the provisions of §§ 63.113 through 63.147 for any emission points, Periodic Reports shall include all information specified in §§ 63.117 and 63.118 for process vents, § 63.122 for storage vessels, §§ 63.129 and 63.130 for transfer operations, and § 63.146 for process wastewater, including reports of periods when monitored parameters are outside their established ranges.

* * * * *

(ii) The parameter monitoring data for Group 1 emission points and emission points included in emissions averages that are required to perform continuous monitoring shall be used to determine compliance with the required operating conditions for the monitored control devices or recovery devices. For each excursion, except for excused excursions, the owner or operator shall be deemed to have failed to have applied the control in a manner that achieves the required operating conditions.

(A) An excursion means any of the three cases listed in paragraph (c)(2)(ii)(A)(*1*), (c)(2)(ii)(A)(*2*), or (c)(2)(ii)(A)(*3*) of this section. For a control device or recovery device where multiple parameters are monitored, if one or more of the parameters meets the excursion criteria in paragraph (c)(2)(ii)(A)(*1*), (c)(2)(ii)(A)(*2*), or (c)(2)(ii)(A)(*3*) of this section, this is considered a single excursion for the control device or recovery device.

* * * * *

(*2*) When the period of control device or recovery device operation is 4 hours or greater in an operating day and monitoring data are insufficient to constitute a valid hour of data for at least 75 percent of the operating hours.

(*3*) When the period of control device or recovery device operation is less than 4 hours in an operating day and more than one of the hours during the period of operation does not constitute a valid hour of data due to insufficient monitoring data.

* * * * *

(B) The number of excused excursions for each control device or recovery device for each semiannual period is specified in paragraphs (c)(2)(ii)(B)(*1*) through (c)(2)(ii)(B)(*6*) of this section. This paragraph applies to sources required to submit Periodic Reports semiannually or quarterly. The first semiannual period is the 6-month period starting the date the Notification of Compliance Status is due.

* * * * *

(C) If a monitored parameter is outside its established range or monitoring data are not collected during periods of start-up, shutdown, or malfunction (and the source is operated during such periods in accordance with the source's start-up, shutdown, and malfunction plan as required by § 63.6(e)(3) of subpart A of this part) or during periods of nonoperation of the chemical manufacturing process unit or portion thereof (resulting in cessation of the emissions to which the monitoring applies), then the excursion is not a violation and, in cases where continuous monitoring is required, the excursion does not count toward the number of excused excursions for determining compliance.

* * * * *

(E) Paragraph (c)(2)(ii) of this section, except paragraph (c)(2)(ii)(C) of this section, shall apply only to emission points and control devices or recovery devices for which continuous monitoring is required by §§ 63.113 through 63.150.

* * * * *

(iv) The provisions of paragraphs (c)(2), (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this section do not apply to any storage vessel for which the owner or operator is not required, by the applicable monitoring plan established under § 63.120(d)(2), to keep continuous records. If continuous records are required, the owner or operator shall specify, in the monitoring plan, whether the provisions of paragraphs (c)(2), (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this section apply.

* * * * *

(4) Periodic Reports shall include the information in paragraphs (c)(4)(i) through (c)(4)(iv) of this section, as applicable:

* * * * *

(iii) Notification if any Group 2 emission point becomes a Group 1 emission point, including a compliance schedule as required in § 63.100 of subpart F of this part, and

(iv) For process wastewater streams sent for treatment pursuant to § 63.132 (g), reports of changes in the identity of the treatment facility or transferee.

* * * * *

(5) * * *

(iii) * * * For storage vessels to which the provisions of paragraphs (c)(2)(i) through (c)(2)(iii) of this section do not apply (as specified in paragraph (c)(2)(iv) of this section), the owner or operator is required to comply with the provisions of the applicable monitoring plan, and monitoring records may be used to determine compliance.

* * * * *

(6) * * *

(v) Paragraphs (c)(2)(i) through (c)(2)(iii) of this section shall govern the use of monitoring data to determine compliance for Group 1 emission points. For storage vessels to which the provisions of paragraphs (c)(2)(i) through (c)(2)(iii) of this section do not apply (as specified in paragraph (c)(2)(iv) of this section), the owner or operator is required to comply with the provisions of the applicable monitoring plan, and monitoring records may be used to determine compliance.

* * * * *

(f) Owners or operators required to keep continuous records by §§ 63.118, 63.130, 63.147, 63.150, or other sections of this subpart shall keep records as specified in paragraphs (f)(1) through (f)(7) of this section, unless an alternative recordkeeping system has been requested and approved under § 63.151(f) or (g) or § 63.152(e) or under § 63.8(f) of subpart A of this part, and except as provided in paragraph (c)(2)(ii)(C) of this section or in paragraph (g) of this section. If a monitoring plan for storage vessels pursuant to § 63.120(d)(2)(i) requires continuous records, the monitoring plan shall specify which provisions, if any, of

paragraphs (f)(1) through (f)(7) of this section apply.

* * * * *

(2) * * *

(ii) Block average values for 15-minute or shorter periods calculated from all measured data values during each period or at least one measured data value per minute if measured more frequently than once per minute.

* * * * *

(5) Daily average values of each continuously monitored parameter shall be calculated for each operating day, and retained for 5 years, except as specified in paragraphs (f)(6) and (f)(7) of this section.

* * * * *

(7) Monitoring data recorded during periods identified in paragraphs (f)(7)(i) through (f)(7)(v) of this section shall not be included in any average computed under this subpart. Records shall be kept of the times and durations of all such periods and any other periods during process or control device operation when monitors are not operating.

(i) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments;

(ii) Start-ups;

(iii) Shutdowns;

(iv) Malfunctions;

(v) Periods of non-operation of the chemical manufacturing process unit (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

(g) For any parameter with respect to any item of equipment, the owner or operator may implement the recordkeeping requirements in paragraph (g)(1) or (g)(2) of this section as alternatives to the continuous operating parameter monitoring and recordkeeping provisions listed in §§ 63.114, 63.117, and 63.118 for process vents, §§ 63.127, 63.129, and 63.130 for transfer operations, §§ 63.143, 63.146, and 63.147 for wastewater, and/or § 63.152(f), except that § 63.152(f)(7) shall apply. The owner or operator shall retain each record required by paragraph (g)(1) or (g)(2) of this section as provided in § 63.103(c) of subpart F of this part, except as provided otherwise in paragraph (g)(1) or (g)(2) of this section.

(1) The owner or operator may retain only the daily average value, and is not required to retain more frequent monitored operating parameter values, for a monitored parameter with respect to an item of equipment, if the requirements of paragraphs (g)(1)(i) through (g)(1)(vi) of this section are met. An owner or operator electing to comply with the requirements of paragraph (g)(1) of this section shall notify the Administrator in the Notification of Compliance Status or, if the Notification of Compliance Status has already been submitted, in the periodic report immediately preceding implementation of the requirements of paragraph (g)(1) of this section.

(i) The monitoring system is capable of detecting unrealistic or impossible data during periods of operation other than startups, shutdowns, or malfunctions (e.g., a temperature reading of −200° C on a boiler), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

(ii) The monitoring system generates, updated at least hourly throughout each operating day, a running average of the monitoring values that have been obtained during that operating day, and the capability to observe this average is readily available to the Administrator on-site during the operating day. The owner or operator shall record the occurrence of any period meeting the criteria in paragraphs (g)(1)(ii)(A) through (g)(1)(iii)(C) of this section. All instances in an operating day constitute a single occurrence.

(A) The running average is above the maximum or below the minimum established limits;

(B) The running average is based on at least 6 1-hour average values; and

(C) The running average reflects a period of operation other than a startup, shutdown, or malfunction.

(iii) The monitoring system is capable of detecting unchanging data during periods of operation other than startups, shutdowns, or malfunctions, except in circumstances where the presence of unchanging data is the expected operating condition based on past experience (e.g., pH in some scrubbers), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

(iv) The monitoring system will alert the owner or operator by an alarm or other means, if the running average parameter value calculated under paragraph (g)(1)(ii) of this section reaches a set point that is appropriately related to the established limit for the parameter that is being monitored.

(v) The owner or operator shall verify the proper functioning of the monitoring system, including its ability to comply with the requirements of paragraph (g)(1) of this section, at the times specified in paragraphs (g)(1)(v)(A) through (g)(1)(v)(C) of this section. The owner or operator shall document that the required verifications occurred.

(A) Upon initial installation.

(B) Annually after initial installation.

(C) After any change to the programming or equipment constituting the monitoring system, which might reasonably be expected to alter the monitoring system's ability to comply with the requirements of this section.

(vi) The owner or operator shall retain the records identified in paragraphs (g)(1)(vi) (A) through (C) of this section.

(A) Identification of each parameter, for each item of equipment, for which the owner or operator has elected to comply with the requirements of paragraph (g) of this section.

(B) A description of the applicable monitoring system(s), and of how compliance will be achieved with each requirement of paragraph (g)(1)(i) through (g)(1)(v) of this section. The description shall identify the location and format (e.g., on-line storage; log entries) for each required record. If the description changes, the owner or operator shall retain both the current and the most recent superseded description. The description, and the most recent superseded description, shall be retained as provided in § 63.103(c) of subpart F of this part, except as provided in paragraph (g)(1)(vi)(D) of this section.

(C) A description, and the date, of any change to the monitoring system that would reasonably be expected to affect its ability to comply with the requirements of paragraph (g)(1) of this section.

(D) Owners and operators subject to paragraph (g)(1)(vi)(B) of this section shall retain the current description of the monitoring system as long as the description is current, but not less than 5 years from the date of its creation. The current description shall, at all times, be retained on-site or be accessible from a central location by computer or other means that provides access within 2 hours after a request. The owner or operator shall retain the most recent superseded description at least until 5 years from the date of its creation. The superseded description shall be retained on-site (or accessible from a central location by computer that provides access within 2 hours after a request) at least 6 months after its creation. Thereafter, the superseded description may be stored off-site.

(2) If an owner or operator has elected to implement the requirements of paragraph (g)(1) of this section, and a period of 6 consecutive months has passed without an excursion as defined

in paragraph (g)(2)(iv) of this section, the owner or operator is no longer required to record the daily average value for that parameter for that unit of equipment, for any operating day when the daily average value is less than the maximum, or greater than the minimum established limit. With approval by the Administrator, monitoring data generated prior to the compliance date of this subpart shall be credited toward the period of 6 consecutive months, if the parameter limit and the monitoring was required and/or approved by the Administrator.

(i) If the owner or operator elects not to retain the daily average values, the owner or operator shall notify the Administrator in the next periodic report. The notification shall identify the parameter and unit of equipment.

(ii) If, on any operating day after the owner or operator has ceased recording daily averages as provided in paragraph (g)(2) of this section, there is an excursion as defined in paragraph (g)(2)(iv) of this section, the owner or operator shall immediately resume retaining the daily average value for each day, and shall notify the Administrator in the next periodic report. The owner or operator shall continue to retain each daily average value until another period of 6 consecutive months has passed without an excursion as defined in paragraph (g)(2)(iv) of this section.

(iii) The owner or operator shall retain the records specified in paragraphs (g)(1) (i), (ii), (iii), (iv), (v), and (vi) of this section. For any calendar week, if compliance with paragraphs (g)(1) (i), (ii), (iii), and (iv) of this section does not result in retention of a record of at least one occurrence or measured parameter value, the owner or operator shall record and retain at least one parameter value during a period of operation other than a startup, shutdown, or malfunction.

(iv) For purposes of paragraph (g) of this section, an excursion means that the daily average value of monitoring data for a parameter is greater than the maximum, or less than the minimum established value, except as provided in paragraphs (g)(2)(iv)(A) and (g)(2)(iv)(B) of this section.

(A) The daily average value during any start-up, shutdown, or malfunction shall not be considered an excursion for purposes of this paragraph (g)(2), if the owner or operator follows the applicable provisions of the startup, shutdown, and malfunction plan required by § 63.6(e)(3) of subpart A of this part.

(B) An excused excursion, as described in § 63.152(c)(2)(ii) (B) and (C), shall not be considered an excursion for purposes of this paragraph (g)(2).

30. The tables in the appendix to subpart G are amended by revising tables 3, 4, 7, 11, 12, and 13; removing and reserving tables 14a and 14b; removing tables 15a and 15b, and adding table 15; removing and reserving table 16; revising tables 17, 18, and 20; table 34 is amended by revising the F_m entry for chlorobenzene from ''0.96'' to ''1.00'', the F_m entry for isophorone from ''0.47'' to ''0.51,'' the F_m entry for trichloroethane (1,1,2-) (Vinyl trichloride) from ''0.98'' to ''1.00,'' and the F_m entry for trichlorophenol (2,4, 5-) from ''1.00'' to ''0.11''; and adding tables 35, 36, and 37 and by revising figure 1 and removing figures 2 through 10 to read as follows:

TABLE 3.—PROCESS VENTS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS FOR COMPLYING WITH 98 WEIGHT-PERCENT REDUCTION OF TOTAL ORGANIC HAZARDOUS AIR POLLUTANTS EMISSIONS OR A LIMIT OF 20 Parts Per Million by Volume

Control device	Parameters to be monitored [a]	Recordkeeping and reporting requirements for monitored parameters
Thermal incinerator	Firebox temperature [b] [63.114(a)(1)(i)]	1. Continuous records.[c] 2. Record and report the firebox temperature averaged over the full period of the performance test—NCS.[d] 3. Record the daily average firebox temperature for each operating day.[e] 4. Report all daily average temperatures that are outside the range established in the NCS or operating permit and all operating days when insufficient monitoring data are collected [f]—PR. [g]
Catalytic incinerator	Temperature upstream and downstream of the catalyst bed [63.114(a)(1)(ii)].	1. Continuous records. 2. Record and report the upstream and downstream temperatures and the temperature difference across the catalyst bed averaged over the full period of the performance test—NCS. 3. Record the daily average upstream temperature and temperature difference across the catalyst bed for each operating day.[e] 4. Report all daily average upstream temperatures that are outside the range established in the NCS or operating permit—PR. 5. Report all daily average temperature differences across the catalyst bed that are outside the range established in the NCS or operating permit—PR. 6. Report all operating days when insufficient monitoring data are collected.[f]
Boiler or process heater with a design heat input capacity less than 44 megawatts and vent stream is *not* introduced with or as the primary fuel.	Firebox temperature [b] [63.114(a)(3)] ..	1. Continuous records. 2. Record and report the firebox temperature averaged over the full period of the performance test—NCS. 3. Record the daily average firebox temperature for each operating day.[e] 4. Report all daily average firebox temperatures that are outside the range established in the NCS or operating permit and all operating days when insufficient monitoring data are collected [f]—PR.
Flare	Presence of a flame at the pilot light [63.114(a)(2)].	1. Hourly records of whether the monitor was continuously operating and whether the pilot flame was continuously present during each hour. 2. Record and report the presence of a flame at the pilot light over the full period of the compliance determination—NCS. 3. Record the times and durations of all periods when all pilot flames are absent or the monitor is not operating. 4. Report the times and durations of all periods when all pilot flames of a flare are absent—PR.

TABLE 3.—PROCESS VENTS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS FOR COMPLYING WITH 98 WEIGHT-PERCENT REDUCTION OF TOTAL ORGANIC HAZARDOUS AIR POLLUTANTS EMISSIONS OR A LIMIT OF 20 Parts Per Million by Volume—Continued

Control device	Parameters to be monitored [a]	Recordkeeping and reporting requirements for monitored parameters
Recapture devices	The appropriate monitoring device identified in table 4 when, in the table, the term ''recapture'' is substituted for ''recovery.'' [63.114(a)(5)].	1. The recordkeeping and reporting requirements for monitored parameters identified for the appropriate monitoring device in table 4 of this subpart.
Scrubber for halogenated vent streams (Note: Controlled by a combustion device other than a flare).	pH of scrubber effluent [63.114(a)(4)(i)], and.	1. Continuous records. 2. Record and report the pH of the scrubber effluent averaged over the full period of the performance test—NCS. 3. Record the daily average pH of the scrubber effluent for each operating day.[e] 4. Report all daily average pH values of the scrubber effluent that are outside the range established in the NCS or operating permit and all operating days when insufficient monitoring data are collected [f]—PR.
Scrubber for halogenated vent streams (Note: Controlled by a combustion device other than a flare) (Continued).	Scrubber liquid and gas flow rates [63.114(a)(4)(ii)].	1. Continuous records of scrubber liquid flow rate. 2. Record and report the scrubber liquid/gas ratio averaged over the full period of the performance test—NCS. 3. Record the daily average scrubber liquid/gas ratio for each operating day.[e] 4. Report all daily average scrubber liquid/gas ratios that are outside the range established in the NCS or operating permit and all operating days when insufficient monitoring data are collected [f]—PR.
All control devices	Presence of flow diverted to the atmosphere from the control device [63.114(d)(1)] *or*.	1. Hourly records of whether the flow indicator was operating and whether diversion was detected at any time during each hour. 2. Record and report the times and durations of all periods when the vent stream is diverted through a bypass line or the monitor is not operating—PR.
	Monthly inspections of sealed valves [63.114(d)(2)].	1. Records that monthly inspections were performed. 2. Record and report all monthly inspections that show the valves are moved to the diverting position or the seal has been changed—PR.

[a] Regulatory citations are listed in brackets.
[b] Monitor may be installed in the firebox or in the ductwork immediately downstream of the firebox before any substantial heat exchange is encountered.
[c] ''Continuous records'' is defined in § 63.111 of this subpart.
[d] NCS=Notification of Compliance Status described in § 63.152 of this subpart.
[e] The daily average is the average of all recorded parameter values for the operating day. If all recorded values during an operating day are within the range established in the NCS or operating permit, a statement to this effect can be recorded instead of the daily average.
[f] The periodic reports shall include the duration of periods when monitoring data is not collected for each excursion as defined in § 63.152(c)(2)(ii)(A) of this subpart.
[g] PR=Periodic Reports described in § 63.152 of this subpart.

TABLE 4.—PROCESS VENTS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS FOR MAINTAINING A TRE INDEX VALUE >1.0 AND ≤4.0

Final recovery device	Parameters to be monitored [a]	Recordkeeping and reporting requirements for monitored parameters
Absorber [b]	Exit temperature of the absorbing liquid [63.114(b)(1)], and.	1. Continuous records.[c] 2. Record and report the exit temperature of the absorbing liquid averaged over the full period of the TRE determination—NCS.[d] 3. Record the daily average exit temperature of the absorbing liquid for each operating day.[e] 4. Report all the daily average exit temperatures of the absorbing liquid that are outside the range established in the NCS or operating permit—PR.[f]
	Exit specific gravity [63.114(b)(1)]	1. Continuous records. 2. Record and report the exit specific gravity averaged over the full period of the TRE determination—NCS. 3. Record the daily average exit specific gravity for each operating day.[e] 4. Report all daily average exit specific gravity values that are outside the range established in the NCS or operating permit—PR.
Condenser [a]	Exit (product side) temperature [63.114(b)(2)].	1. Continuous records. 2. Record and report the exit temperature averaged over the full period of the TRE determination—NCS. 3. Record the daily average exit temperature for each operating day.[e] 4. Report all daily average exit temperatures that are outside the range established in the NCS or operating permit—PR.

TABLE 4.—PROCESS VENTS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS FOR MAINTAINING A TRE INDEX VALUE >1.0 AND ≤4.0—Continued

Final recovery device	Parameters to be monitored [a]	Recordkeeping and reporting requirements for monitored parameters
Carbon adsorber. [d]	Total regeneration stream mass or volumetric flow during carbon bed regeneration cycle(s) [63.114(b)(3)], and.	1. Record of total regeneration stream mass flow for each carbon bed regeneration cycle. 2. Record and report the total regeneration stream mass flow during each carbon bed regeneration cycle during the period of the TRE determination—NCS. 3. Report all carbon bed regeneration cycles when the total regeneration stream mass flow is outside the range established in the NCS or operating permit—PR.
	Temperature of the carbon bed after regeneration [and within 15 minutes of completing any cooling cycle(s)] [63.114(b)(3)].	1. Records of the temperature of the carbon bed after each regeneration. 2. Record and report the temperature of the carbon bed after each regeneration during the period of the TRE determination—NCS. 3. Report all carbon bed regeneration cycles during which temperature of the carbon bed after regeneration is outside the range established in the NCS or operating permit—PR.
All recovery devices (as an alternative to the above).	Concentration level or reading indicated by an organic monitoring device at the outlet of the recovery device [63.114 (b)].	1. Continuous records. 2. Record and report the concentration level or reading averaged over the full period of the TRE determination—NCS. 3. Record the daily average concentration level or reading for each operating day. [e] 4. Report all daily average concentration levels or readings that are outside the range established in the NCS or operating permit—PR.

[a] Regulatory citations are listed in brackets.
[b] Alternatively, these devices may comply with the organic monitoring device provisions listed at the end of this table under ''All Recovery Devices.''
[c] ''Continuous records'' is defined in § 63.111 of this subpart.
[d] NCS=Notification of Compliance Status described in § 63.152 of this subpart.
[e] The daily average is the average of all values recorded during the operating day. If all recorded values during an operating day are within the range established in the NCS or operating permit, a statement to this effect can be recorded instead of the daily average.
[f] PR=Periodic Reports described in § 63.152 of this subpart.

TABLE 7.—TRANSFER OPERATIONS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS FOR COMPLYING WITH 98 WEIGHT-PERCENT REDUCTION OF TOTAL ORGANIC HAZARDOUS AIR POLLUTANTS EMISSIONS OR A LIMIT OF 20 PARTS PER MILLION BY VOLUME

Control device	Parameters to be monitored [a]	Recordkeeping and reporting requirements for monitored parameters
Thermal incinerator	Firebox temperature [b] [63.127(a)(1)(i)]	1. Continuous records [c] during loading. 2. Record and report the firebox temperature averaged over the full period of the performance test—NCS. [d] 3. Record the daily average firebox temperature for each operating day. [e] 4. Report daily average temperatures that are outside the range established in the NCS or operating permit and all operating days when insufficient monitoring data are collected [f]—PR. [g]
Catalytic incinerator	Temperature upstream and downstream of the catalyst bed [63.127(a)(1)(ii)].	1. Continuous records during loading. 2. Record and report the upstream and downstream temperatures and the temperature difference across the catalyst bed averaged over the full period of the performance test—NCS. 3. Record the daily average upstream temperature and temperature difference across catalyst bed for each operating day. [e] 4. Report all daily average upstream temperatures that are outside the range established in the NCS or operating permit—PR. 5. Report all daily average temperature differences across the catalyst bed that are outside the range established in the NCS or operating permit—PR. 6. Report all operating days when insufficient monitoring data are collected. [f]
Boiler or process heater with a design heat input capacity less than 44 megawatts and vent stream is *not* introduced with or as the primary fuel.	Firebox temperature [b] [63.127(a)(3)] ..	1. Continuous records during loading. 2. Record and report the firebox temperature averaged over the full period of the performance test—NCS. 3. Record the daily average firebox temperature for each operating day. [e] 4. Report all daily average firebox temperatures that are outside the range established in the NCS or operating permit and all operating days when insufficient data are collected [f]—PR.

TABLE 7.—TRANSFER OPERATIONS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS FOR COMPLYING WITH 98 WEIGHT-PERCENT REDUCTION OF TOTAL ORGANIC HAZARDOUS AIR POLLUTANTS EMISSIONS OR A LIMIT OF 20 PARTS PER MILLION BY VOLUME—Continued

Control device	Parameters to be monitored [a]	Recordkeeping and reporting requirements for monitored parameters
Flare	Presence of a flame at the pilot light [63.127(a)(2)].	1. Hourly records of whether the monitor was continuously operating and whether the pilot flame was continuously present during each hour. 2. Record and report the presence of a flame at the pilot light over the full period of the compliance determination—NCS. 3. Record the times and durations of all periods when all pilot flames are absent or the monitor is not operating. 4. Report the duration of all periods when all pilot flames of a flare are absent—PR.
Scrubber for halogenated vent streams (Note: Controlled by a combustion device other than a flare).	pH of scrubber effluent [63.127(a)(4)(i)], and.	1. Continuous records during loading 2. Record and report the pH of the scrubber effluent averaged over the full period of the performance test—NCS 3. Record the daily average pH of the scrubber effluent for each operating day.[e] 4. Report all daily average pH values of the scrubber effluent that are outside the range established in the NCS or operating permit and all operating days when insufficient monitoring data are collected [f]—PR.
	Scrubber liquid and gas flow rates [63.127(a)(4)(ii)].	1. Continuous records during loading of scrubber liquid flow rate. 2. Record and report the scrubber liquid/gas ratio averaged over the full period of the performance test—NCS. 3. Record the daily average scrubber liquid/gas ratio for each operating day.[e] 4. Report all daily average scrubber liquid/gas ratios that are outside the range established in the NCS or operating permit and all operating days when insufficient monitoring data are collected [f]—PR.
Absorber [h]	Exit temperature of the absorbing liquid [63.127(b)(1)], and.	1. Continuous records during loading. 2. Record and report the exit temperature of the absorbing liquid averaged over the full period of the performance test—NCS. 3. Record the daily average exit temperature of the absorbing liquid for each operating day.[e] 4. Report all daily average exit temperatures of the absorbing liquid that are outside the range established in the NCS or operating permit and all operating days when insufficient monitoring data are collected [f]—PR.
	Exit specific gravity [63.127(b)(1)]	1. Continuous records during loading. 2. Record and report the exit specific gravity averaged over the full period of the performance test—NCS. 3. Record the daily average exit specific gravity for each operating day.[e] 4. Report all daily average exit specific gravity values that are outside the range established in the NCS or operating permit and all operating days when insufficient monitoring data are collected [f]—PR.
Condenser [h]	Exit (product side) temperature [63.127(b)(2)].	1. Continuous records during loading. 2. Record and report the exit temperature averaged over the full period of the performance test—NCS. 3. Record the daily average exit temperature for each operating day.[e] 4. Report all daily average exit temperatures that are outside the range established in the NCS or operating permit and all operating days when insufficient monitoring data are collected [f]—PR.
Carbon adsorber [h]	Total regeneration stream mass or volumetric flow during carbon bed regeneration cycle(s) [63.127(b)(3)], and.	1. Record of total regeneration stream mass flow for each carbon bed regeneration cycle. 2. Record and report the total regeneration stream mass flow during each carbon bed regeneration cycle during the period of the performance test—NCS. 3. Report all carbon bed regeneration cycles when the total regeneration stream mass flow is outside the range established in the NCS or operating permit and all operating days when insufficient monitoring data are collected [f]—PR.
	Temperature of the carbon bed after regeneration [and within 15 minutes of completing any cooling cycle(s)] [63.127(b)(3)].	1. Records of the temperature of the carbon bed after each regeneration. 2. Record and report the temperature of the carbon bed after each regeneration during the period of the performance test—NCS. 3. Report all the carbon bed regeneration cycles during which the temperature of the carbon bed after regeneration is outside the range established in the NCS or operating permit and all operating days when insufficient monitoring data are collected [f]—PR.

TABLE 7.—TRANSFER OPERATIONS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS FOR COMPLYING WITH 98 WEIGHT-PERCENT REDUCTION OF TOTAL ORGANIC HAZARDOUS AIR POLLUTANTS EMISSIONS OR A LIMIT OF 20 PARTS PER MILLION BY VOLUME—Continued

Control device	Parameters to be monitored [a]	Recordkeeping and reporting requirements for monitored parameters
All recovery devices (as an alternative to the above).	Concentration level or reading indicated by an organic monitoring device at the outlet of the recovery device [63.127(b)].	1. Continuous records during loading. 2. Record and report the concentration level or reading averaged over the full period of the performance test—NCS. 3. Record the daily average concentration level or reading for each operating day.[d] 4. Report all daily average concentration levels or readings that are outside the range established in the NCS or operating permit and all operating days when insufficient monitoring data are collected [f]—PR.
All control devices and vapor balancing systems.	Presence of flow diverted to the atmosphere from the control device [63.127(d)(1)] *or*.	1. Hourly records of whether the flow indicator was operating and whether a diversion was detected at any time during each hour. 2. Record and report the duration of all periods when the vent stream is diverted through a bypass line or the monitor is not operating—PR.
	Monthly inspections of sealed valves [63.127(d)(2)].	1. Records that monthly inspections were performed. 2. Record and report all monthly inspections that show the valves are moved to the diverting position or the seal has been changed.

[a] Regulatory citations are listed in brackets.
[b] Monitor may be installed in the firebox or in the ductwork immediately downstream of the firebox before any substantial heat exchange is encountered.
[c] ''Continuous records'' is defined in § 63.111 of this subpart.
[d] NCS = Notification of Compliance Status described in § 63.152 of this subpart.
[e] The daily average is the average of all recorded parameter values for the operating day. If all recorded values during an operating day are within the range established in the NCS or operating permit, a statement to this effect can be recorded instead of the daily average.
[f] The periodic reports shall include the duration of periods when monitoring data are not collected for each excursion as defined in § 63.152(c)(2)(ii)(A) of this subpart.
[g] PR = Periodic Reports described in § 63.152 of this subpart.
[h] Alternatively, these devices may comply with the organic monitoring device provisions listed at the end of this table under ''All Recovery Devices.''

TABLE 11.—WASTEWATER—INSPECTION AND MONITORING REQUIREMENTS FOR WASTE MANAGEMENT UNITS

To comply with	Inspection or monitoring requirement	Frequency of inspection or monitoring	Method
Tanks:			
63.133(b)(1)	Inspect fixed roof and all openings for leaks.	Initially Semi-annually	Visual.
63.133(c)	Inspect floating roof in accordance with §§ 63.120 (a)(2) and (a)(3).	See § 63.120 (a)(2) and (a)(3)	Visual.
63.133(d)	Measure floating roof seal gaps in accordance with §§ 63.120 (b)(2)(i) through (b)(4).		See § 63.120 (b)(2)(i) through (b)(4).
	—Primary seal gaps	Once every 5 years Initially Annually.	
	—Secondary seal gaps	.	
63.133(f) 63.133(g)	Inspect wastewater tank for control equipment failures and improper work practices.	Initially Semi-annually	Visual.
Surface impoundments:			
63.134(b)(1)	Inspect cover and all openings for leaks	Initially Semi-annually	Visual.
63.134(c)	Inspect surface impoundment for control equipment failures and improper work practices.	Initially Semi-annually	Visual.
Containers:			
63.135(b)(1), 63.135(b)(2)(ii).	Inspect cover and all openings for leaks	Initially Semi-annually	Visual.
63.135(d)(1)	Inspect enclosure and all openings for leaks.	Initially Semi-annually	Visual.
63.135(e)	Inspect container for control equipment failures and improper work practices.	Initially Semi-annually	Visual.
Individual Drain Systems[a]:			
63.136(b)(1)	Inspect cover and all openings to ensure there are no gaps, cracks, or holes.	Initially Semi-annually	Visual.
63.136(c)	Inspect individual drain system for control equipment failures and improper work practices.	Initially Semi-annually	Visual.
63.136(e)(1)	Verify that sufficient water is present to properly maintain integrity of water seals.	Initially Semi-annually	Visual.

TABLE 11.—WASTEWATER—INSPECTION AND MONITORING REQUIREMENTS FOR WASTE MANAGEMENT UNITS—Continued

To comply with	Inspection or monitoring requirement	Frequency of inspection or monitoring	Method
63.136(e)(2), 63.136(f)(1) ...	Inspect all drains using tightly-fitted caps or plugs to ensure caps and plugs are in place and properly installed.	Initially Semi-annually	Visual.
63.136(f)(2)	Inspect all junction boxes to ensure covers are in place and have no visible gaps, cracks, or holes.	Initially Semi-annually	Visual or smoke test or other means as specified.
63.136(f)(3)	Inspect unburied portion of all sewer lines for cracks and gaps.	Initially Semi-annually	Visual.
Oil-water separators:			
63.137(b)(1)	Inspect fixed roof and all openings for leaks.	Initially Semi-annually	Visual.
63.137(c)	Measure floating roof seal gaps in accordance with 40 CFR 60.696(d)(1).	Initially[b]	See 40 CFR 60.696(d)(1).
	—Primary seal gaps	Once every 5 years.	
63.137(c)	—Secondary seal gaps	Initially[b] Annually.	
63.137(d)	Inspect oil-water separator for control equipment failures and improper work practices.	Initially Semi-annually	Visual.

[a] As specified in §63.136(a), the owner or operator shall comply with either the requirements of §63.136 (b) and (c) or §63.136 (e) and (f).
[b] Within 60 days of installation as specified in §63.137(c).

TABLE 12.—MONITORING REQUIREMENTS FOR TREATMENT PROCESSES

To comply with	Parameters to be monitored	Frequency	Methods
1. Required mass removal of Table 8 and/or Table 9 compound(s) from wastewater treated in a properly operated biological treatment unit 63.138(f), 63.138(g).	Appropriate parameters as specified in §63.143(c) and approved by permitting authority.	Appropriate frequency as specified in §63.143 and as approved by permitting authority.	Appropriate methods as specified in §63.143 and as approved by permitting authority.
2. Design steam stripper 63.138(d).	Steam flow rate	Continuously	Integrating steam flow monitoring device equipped with a continuous recorder.
	Wastewater feed mass flow rate	Continuously	Liquid flow meter installed at stripper influent and equipped with a continuous recorder.
	Wastewater feed temperature	Continuously	Liquid temperature monitoring device installed at stripper influent and equipped with a continuous recorder.
3. Alternative monitoring parameters.	Other parameters may be monitored upon approval from the Administrator in accordance with the requirements specified in §63.151(f).	.	

TABLE 13.—WASTEWATER—MONITORING REQUIREMENTS FOR CONTROL DEVICES

Control Device	Monitoring equipment required	Parameters to be monitored	Frequency
All control devices	1. Flow indicator installed at all bypass lines to the atmosphere and equipped with continuous recorder[b] *or*.	1. Presence of flow diverted from the control device to the atmosphere *or*.	Hourly records of whether the flow indicator was operating and whether a diversion was detected at any time during each hour
	2. Valves sealed closed with car-seal or lock-and-key configuration.	2. Monthly inspections of sealed valves.	Monthly.
Thermal Incinerator	Temperature monitoring device installed in firebox or in ductwork immediately downstream of firebox[a] and equipped with a continuous recorder[b].	Firebox temperature	Continuous.
Catalytic Incinerator	Temperature monitoring device installed in gas stream immediately before and after catalyst bed and equipped with a continuous recorder[b].	1. Temperature upstream of catalyst bed *or*. 2. Temperature difference across catalyst bed.	Continuous.

TABLE 13.—WASTEWATER—MONITORING REQUIREMENTS FOR CONTROL DEVICES—Continued

Control Device	Monitoring equipment required	Parameters to be monitored	Frequency
Flare	Heat sensing device installed at the pilot light and equipped with a continuous recorder[a].	Presence of a flame at the pilot light.	Hourly records of whether the monitor was continuously operating and whether the pilot flame was continuously present during each hour.
Boiler or process heater <44 megawatts and vent stream is not mixed with the primary fuel.	Temperature monitoring device installed in firebox[a] and equipped with continuous recorder[b].	Combustion temperature	Continuous.
Condenser	Temperature monitoring device installed at condenser exit and equipped with continuous recorder[b].	Condenser exit (product side) temperature.	Continuous.
Carbon adsorber (regenerative)	Integrating regeneration stream flow monitoring device having an accuracy of ± 10 percent, *and*.	Total regeneration stream mass or volumetric flow during carbon bed regeneration cycle(s).	For each regeneration cycle, record the total regeneration stream mass or volumetric flow.
	Carbon bed temperature monitoring device.	Temperature of carbon bed after regeneration [and within 15 minutes of completing any cooling cycle(s)].	For each regeneration cycle and within 15 minutes of completing any cooling cycle, record the carbon bed temperature.
Carbon adsorber (Non-regenerative).	Organic compound concentration monitoring device.[c].	Organic compound concentration of adsorber exhaust.	Daily or at intervals no greater than 20 percent of the design carbon replacement interval, whichever is greater.
Alternative monitoring parameters.	Other parameters may be monitored upon approval from the Administrator in accordance with the requirements in §63.143(e)(3).		

[a] Monitor may be installed in the firebox or in the ductwork immediately downstream of the firebox before any substantial heat exchange is encountered.
[b] ''Continuous recorder'' is defined in §63.111 of this subpart.
[c] As an alternative to conducting this monitoring, an owner or operator may replace the carbon in the carbon adsorption system with fresh carbon at a regular predetermined time interval that is less than the carbon replacement interval that is determined by the maximum design flow rate and organic concentration in the gas stream vented to the carbon adsorption system.

Table 14a [Reserved]

Table 14b [Reserved]

TABLE 15.—WASTEWATER—INFORMATION ON TABLE 8 AND/OR TABLE 9 COMPOUNDS TO BE SUBMITTED WITH NOTIFICATION OF COMPLIANCE STATUS FOR PROCESS UNITS AT NEW AND/OR EXISTING SOURCES [a,b]

Process unit identification code [c]	Stream identification code	Concentration of table 8 and/or table 9 compound(s) (ppmw) [d,e]	Flow rate (lpm) [e,f]	Group 1 or Group 2 [g]	Compliance approach [h]	Treatment process(es) identification [i]	Waste management unit(s) identification	Intended control device

[a] The information specified in this table must be submitted; however, it may be submitted in any format. This table presents an example format.
[b] Other requirements for the NCS are specified in §63.152(b) of this subpart.
[c] Also include a description of the process unit (e.g., benzene process unit).
[d] Except when §63.132(e) is used, annual average concentration as specified in §63.132 (c) or (d) and §63.144.
[e] When §63.132(e) is used, indicate the wastewater stream is a designated Group 1 wastewater stream.
[f] Except when §63.132(e) is used, annual average flow rate as specified in §63.132 (c) or (d) and in §63.144.
[g] Indicate whether stream is Group 1 or Group 2. If Group 1, indicate whether it is Group 1 for Table 8 or Table 9 compounds or for both Table 8 and Table 9 compounds.
[h] Cite §63.138 compliance option used.

Table 16 [Reserved]

TABLE 17.—INFORMATION FOR TREATMENT PROCESSES TO BE SUBMITTED WITH NOTIFICATION OF COMPLIANCE STATUS [a,b]

Treatment process identification [c]	Description [d]	Wastewater stream(s) treated [e]	Monitoring parameters [f]

* * * * * * *

[c] Identification codes should correspond to those listed in Table 15.

* * * * * * *

[e] Stream identification code for each wastewater stream treated by each treatment unit. Identification codes should correspond to entries listed in Table 15.

[f] Parameter(s) to be monitored or measured in accordance with Table 12 and §63.143 of this Subpart.

TABLE 18.—INFORMATION FOR WASTE MANAGEMENT UNITS TO BE SUBMITTED WITH NOTIFICATION OF COMPLIANCE STATUS [a,b]

Waste management unit identification [c]	Description [d]	Wastewater stream(s) received or managed [e]

* * * * * * *

[c] Identification codes should correspond to those listed in Table 15.

* * * * * * *

[e] Stream identification code for each wastewater stream received or managed by each waste management unit. Identification codes should correspond to entries listed in Table 15.

TABLE 20.—WASTEWATER—PERIODIC REPORTING REQUIREMENTS FOR CONTROL DEVICES USED TO COMPLY WITH §§ 63.133–63.138

Control device	Reporting requirements
Thermal incinerator	1. Report all daily average [a] temperatures that are outside the range established in the NCS [a] or operating permit and all operating days when insufficient monitoring data are collected. [c]
Catalytic incinerator	1. Report all daily average [a] upstream temperatures that are outside the range established in the NCS [b] or operating permit. 2. Report all daily average [a] temperature differences across the catalyst bed that are outside the range established in the NCS [b] or operating permit. 3. Report all operating days when insufficient monitoring data are collected. [c]
Boiler or process heater with a design heat input capacity less than 44 megawatts and vent stream is not mixed with the primary fuel.	1. Report all daily average [a] firebox temperatures that are outside the range established in the NCS [b] or operating permit and all operating days when insufficient monitoring data are collected. [c]
Flare	1. Report the duration of all periods when all pilot flames are absent.
Condenser	1. Report all daily average [a] exit temperatures that are outside the range established in the NCS [b] or operating permit and all operating days when insufficient monitoring data are collected. [c]
Carbon adsorber	1. Report all carbon bed regeneration cycles when the total regeneration stream mass or volumetric flow is outside the range established in the NCS [b] or operating permit. 2. Report all carbon bed regeneration cycles during which the temperature of the carbon bed after regeneration is outside the range established in the NCS [b] or operating permit. 3. Report all operating days when insufficient monitoring data are collected. [c]
All control devices	1. Report the times and durations of all periods when the vent stream is diverted through a bypass line or the monitor is not operating, or 2. Report all monthly inspections that show the valves are moved to the diverting position or the seal has been changed.

[a] The daily average is the average of all values recorded during the operating day, as specified in § 63.147(d) of this subpart.

[b] NCS = Notification of Compliance Status described in § 63.152 of this subpart.

[c] The periodic reports shall include the duration of periods when monitoring data are not collected for each excursion as defined in § 63.152(c)(2)(ii)(A) of this subpart.

TABLE 35.—CONTROL REQUIREMENTS FOR ITEMS OF EQUIPMENT THAT MEET THE CRITERIA OF § 63.149 OF SUBPART G

Item of equipment	Control requirement [a]
Drain or drain hub	(a) Tightly fitting solid cover (TFSC); or (b) TFSC with a vent to either a process, or to a fuel gas system, or to a control device meeting the requirements of § 63.139(c); or (c) Water seal with submerged discharge or barrier to protect discharge from wind.

TABLE 35.—CONTROL REQUIREMENTS FOR ITEMS OF EQUIPMENT THAT MEET THE CRITERIA OF § 63.149 OF SUBPART G—Continued

Item of equipment	Control requirement [a]
Manhole [b]	(a) TFSC; or (b) TSFC with a vent to either a process, or to a fuel gas system, or to a control device meeting the requirements of § 63.139(c); or (c) If the item is vented to the atmosphere, use a TFSC with a properly operating water seal at the entrance or exit to the item to restrict ventilation in the collection system. The vent pipe shall be at least 90 cm in length and not exceeding 10.2 cm in nominal inside diameter.
Lift station	(a) TFSC; or (b) TFSC with a vent to either a process, or to a fuel gas system, or to a control device meeting the requirements of § 63.139(c); or (c) If the lift station is vented to the atmosphere, use a TFSC with a properly operating water seal at the entrance or exit to the item to restrict ventilation in the collection system. The vent pipe shall be at least 90 cm in length and not exceeding 10.2 cm in nominal inside diameter. The lift station shall be level controlled to minimize changes in the liquid level.
Trench	(a) TFSC; or (b) TFSC with a vent to either a process, or to a fuel gas system, or to a control device meeting the requirements of § 63.139(c); or (c) If the item is vented to the atmosphere, use a TFSC with a properly operating water seal at the entrance or exit to the item to restrict ventilation in the collection system. The vent pipe shall be at least 90 cm in length and not exceeding 10.2 cm in nominal inside diameter.
Pipe	Each pipe shall have no visible gaps in joints, seals, or other emission interfaces.
Oil/Water separator	(a) Equip with a fixed roof and route vapors to a process or to a fuel gas system, or equip with a closed vent system that routes vapors to a control device meeting the requirements of § 63.139(c); or (b) Equip with a floating roof that meets the equipment specifications of § 60.693 (a)(1)(i), (a)(1)(ii), (a)(2), (a)(3), and (a)(4).
Tank [c]	Maintain a fixed roof.[d] If the tank is sparged [e] or used for heating or treating by means of an exothermic reaction, a fixed roof and a system shall be maintained that routes the organic hazardous air pollutants vapors to other process equipment or a fuel gas system, or a closed vent system that routes vapors to a control device that meets the requirements of 40 CFR § 63.119 (e)(1) or (e)(2).

[a] Where a tightly fitting solid cover is required, it shall be maintained with no visible gaps or openings, except during periods of sampling, inspection, or maintenance.
[b] Manhole includes sumps and other points of access to a conveyance system.
[c] Applies to tanks with capacities of 38 m^3 or greater.
[d] A fixed roof may have openings necessary for proper venting of the tank, such as pressure/vacuum vent, j-pipe vent.
[e] The liquid in the tank is agitated by injecting compressed air or gas.

TABLE 36.—COMPOUND LISTS USED FOR COMPLIANCE DEMONSTRATIONS FOR ENHANCED BIOLOGICAL TREATMENT PROCESSES (SEE § 63.145(b))

List 1	List 2	List 3
Acetonitrile	Acetaldehyde	Allyl Chloride.
Acetophenone	Acrolein	Bromomethane.
Acrylonitrile	Benzene	Butadiene 1,3.
Biphenyl	Benzyl Chloride	Carbon Disulfide.
Chlorobenzene	Bromoform	Carbon Tetrachloride.
Dichloroethyl Ether	Cumene (isopropylbenzene)	Chloroethane (ethyl chloride).
Diethyl Sulfate	Dichlorobenzene 1,4	Chloroform.
Dimethyl Sulfate	Dichloroethane 1,2	Chloroprene.
Dimethyl Hydrazine 1,1	Dichloroethane 1,1 (ethylidenedichloride)	Dibromoethane 1,2.
Dinitrophenol 2,4	Dichloropropane 1,2	Dichloroethene 1,1 (vinylidene chloride).
Dinitrotoluene 2,4	Dimethylaniline N,N	Dichloropropene 1,3.
Dioxane 1,4	Epichlorohydrin	Hexane-n.
Ethylene Glycol Monobutyl Ether Acetate	Ethyl Acrylate	Methyl Chloride.
Ethylene Glycol Monomethyl Ether Acetate	Ethylbenzene	Methylene Chloride (dichloromethane).
Ethylene Glycol Dimethyl Ether	Ethylene Dibromide	Phosgene.
Hexachlorobenzene	Ethylene Oxide	Propylene Oxide.
Isophorone	Hexachlorobutadiene	Trichloroethane 1,12.
Methanol	Hexachloroethane	Trichloroethylene.
Methyl Methacrylate	Methyl Ethyl Ketone, (2 butanone)	Trimethylpentane 2,2,4.
Nitrobenzene	Methyl Isobutyl Ketone	Vinyl Chloride.
Toluidine	Methyl Tertiary Butyl Ether	
Trichlorobenzene 1,2,4	Naphathalene	
Trichlorophenol 2,4,6	Nitropropane 2	
Triethylamine	Propionaldehyde	
	Styrene.	
	Tetrachloroethane 1,1,2,2.	
	Toluene.	
	Trichloroethane 1,1,1 (methyl chloroform).	
	Vinyl Acetate	
	Xylene-m	
	Xylene-o	

TABLE 36.—COMPOUND LISTS USED FOR COMPLIANCE DEMONSTRATIONS FOR ENHANCED BIOLOGICAL TREATMENT PROCESSES (SEE § 63.145(b))—Continued

List 1	List 2	List 3
	Xylene-p	

TABLE 37.—DEFAULT BIORATES FOR LIST 1 COMPOUNDS

Compound name	Biorate, K1 L/g MLVSS-hr
ACETONITRILE	0.100
ACETOPHENONE	0.538
ACRYLONITRILE	0.750
BIPHENYL	5.643
CHLOROBENZENE	10.000
DICHLOROETHYL ETHER	0.246
DIETHYL SULFATE	0.105
DIMETHYL HYDRAZINE(1,1)	0.227
DIMETHYL SULFATE	0.178
DINITROPHENOL 2,4	0.620
DINITROTOLUENE(2,4)	0.784
DIOXANE(1,4)	0.393
ETHYLENE GLYCOL DIMETHYL ETHER	0.364
ETHYLENE GLYCOL MONOMETHYL ETHER ACETATE	0.159
ETHYLENE GLYCOL MONOBUTYL ETHER ACETATE	0.496
HEXACHLOROBENZENE	16.179
ISOPHORONE	0.598
METHANOL	0.200
METHYL METHACRYLATE	4.300
NITROBENZENE	2.300
TOLUIDINE (-0)	0.859
TRICHLOROBENZENE 1,2,4	4.393
TRICHLOROPHENOL 2,4,5	4.477
TRIETHYLAMINE	1.064

Figure 1.—Definitions of Terms Used in Wastewater Equations

Main Terms

AMR=Actual mass removal of Table 8 and/or Table 9 compounds achieved by treatment process or a series of treatment processes, kg/hr.

C=Concentration of Table 8 and/or Table 9 compounds in wastewater, ppmw.

CG=Concentration of TOC (minus methane and ethane) or total organic hazardous air pollutants, in vented gas stream, dry basis, ppmv.

CG_c=Concentration of TOC or organic hazardous air pollutants corrected to 3-percent oxygen, in vented gas stream, dry basis, ppmv.

CGS=Concentration of sample compounds in vented gas stream, dry basis, ppmv.

E=Removal or destruction efficiency, percent.

F_{bio}=Site-specific fraction of Table 8 and/or Table 9 compounds biodegraded, unitless.

f^{bio}=Site-specific fraction of an individual Table 8 or Table 9 compound biodegraded, unitless.

Fm=Compound-specific fraction measured factor, unitless (listed in table 34).

Fr=Fraction removal value for Table 8 and/or Table 9 compounds, unitless (listed in Table 9).

Fr_{avg}=Flow-weighted average of the Fr values.

i=Identifier for a compound.

j=Identifier for a sample.

k=Identifier for a run.

K_2=Constant, 41.57 * 10^{-9}, $(ppm)^{-1}$ (gram-mole per standard m^3) (kg/g), where standard temperature (gram-mole per standard m^3) is 20 °C.

m=Number of samples.

M=Mass, kg.

MW=Molecular weight, kg/kg-mole.

n=Number of compounds.

p=Number of runs.

$\%O_{2d}$=Concentration of oxygen, dry basis, percent by volume.

Q=Volumetric flowrate of wastewater, m^3/hr.

QG=Volumetric flow rate of vented gas stream, dry standard, m^3/min.

QMG=Mass flowrate of TOC (minus methane and ethane) or organic hazardous air pollutants, in vented gas stream, kg/hr.

QMW=Mass flowrate of Table 8 and/or Table 9 compounds in wastewater, kg/hr.

ρ=Density, kg/m^3.

RMR=Required mass removal achieved by treatment process or a series of treatment processes, kg/hr.

t_T=Total time of all runs, hr.

Subscripts

a=Entering.

b=Exiting.

i=Identifier for a compound.

j=Identifier for a sample.

k=Identifier for a run.

m=Number of samples.

n=Number of compounds.

p=Number of runs.

T=Total; sum of individual.

Subpart H—National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks

31. Section 63.161 is amended by revising the definitions of ''control device'', ''first attempt at repair'', and ''repaired''; and by adding the definitions for ''combustion device,'' ''fuel gas,'' fuel gas system,'' ''on-site or on site,'' ''recapture device,'' and ''recovery device'', and ''routed to a process or route to a process'' to read as follows:

§ 63.161 Definitions.

* * * * *

Combustion device means an individual unit of equipment, such as a flare, incinerator, process heater, or boiler, used for the combustion of organic hazardous air pollutant emissions.

* * * * *

Control device means any equipment used for recovering, recapturing, or oxidizing organic hazardous air pollutant vapors. Such equipment includes, but is not limited to, absorbers, carbon adsorbers, condensers, flares, boilers, and process heaters.

* * * * *

First attempt at repair means to take action for the purpose of stopping or reducing leakage of organic material to the atmosphere, followed by monitoring as specified in §63.180(b) and (c), as appropriate, to verify whether the leak is repaired, unless the owner or operator determines by other means that the leak is not repaired.

* * * * *

Fuel gas means gases that are combusted to derive useful work or heat.

Fuel gas system means the offsite and onsite piping and control system that gathers gaseous stream(s) generated by onsite operations, may blend them with other sources of gas, and transports the gaseous stream for use as fuel gas in combustion devices or in in-process combustion equipment such as furnaces and gas turbines, either singly or in combination.

* * * * *

On-site or *On site* means, with respect to records required to be maintained by this subpart, that the records are stored at a location within a major source which encompasses the affected source. On-site includes, but is not limited to, storage at the chemical manufacturing process unit to which the records pertain, or storage in central files elsewhere at the major source.

* * * * *

Recapture device means an individual unit of equipment capable of and used for the purpose of recovering chemicals, but not normally for use, reuse, or sale. Recapture devices include, but are not limited to, absorbers, carbon absorbers, and condensers.

Recovery device means an individual unit of equipment capable of and normally used for the purpose of recovering chemicals for fuel value (i.e., net positive heating value), use, reuse, or for sale for fuel value, use or reuse. Recovery devices include, but are not limited to, absorbers, carbon absorbers, and condensers. For purposes of the monitoring, recordkeeping, and reporting requirements of this subpart, recapture devices are considered recovery devices.

Repaired means that equipment:

(1) is adjusted, or otherwise altered, to eliminate a leak as defined in the applicable sections of this subpart, and

(2) unless otherwise specified in applicable provisions of this subpart, is monitored as specified in § 63.180 (b) and (c), as appropriate, to verify that emissions from the equipment are below the applicable leak definition.

Routed to a process or route to a process means the emissions are conveyed by hard-piping or a closed vent system to any enclosed portion of a process unit where the emissions are predominately recycled and/or consumed in the same manner as a material that fulfills the same function in the process; and/or transformed by chemical reaction into materials that are not organic hazardous air pollutants; and/or incorporated into a product; and/or recovered.

* * * * *

32. Section 63.162 is amended by revising paragraphs (f)(2) and (f)(3); adding paragraphs (g) and (h) to read as follows:

§ 63.162 Standards: General.

* * * * *

(f) * * *

(2) The identification on a valve may be removed after it has been monitored as specified in §§ 63.168(f)(3), and 63.175(e)(7)(i)(D) of this subpart, and no leak has been detected during the follow-up monitoring. If the owner or operator elects to comply using the provisions of § 63.174(c)(1)(i) of this subpart, the identification on a connector may be removed after it is monitored as specified in § 63.174(c)(1)(i) and no leak is detected during that monitoring.

(3) The identification which has been placed on equipment determined to have a leak, except for a valve or for a connector that is subject to the provisions of § 63.174(c)(1)(i), may be removed after it is repaired.

(g) Except as provided in paragraph (g)(1) of this section, all terms in this subpart that define a period of time for completion of required tasks (e.g., weekly, monthly, quarterly, annual), refer to the standard calendar periods unless specified otherwise in the section or subsection that imposes the requirement.

(1) If the initial compliance date does not coincide with the beginning of the standard calendar period, an owner or operator may elect to utilize a period beginning on the compliance date, or may elect to comply in accordance with the provisions of paragraphs (g)(2) or (g)(3) of this section.

(2) Time periods specified in this subpart for completion of required tasks may be changed by mutual agreement between the owner or operator and the Administrator, as specified in subpart A of this part. For each time period that is changed by agreement, the revised period shall remain in effect until it is changed. A new request is not necessary for each recurring period.

(3) Except as provided in paragraph (g)(1) or (g)(2) of this section, where the period specified for compliance is a standard calendar period, if the initial compliance date does not coincide with the beginning of the calendar period, compliance shall be required according to the schedule specified in paragraphs (g)(3)(i) or (g)(3)(ii) of this section, as appropriate.

(i) Compliance shall be required before the end of the standard calendar period within which the compliance deadline occurs, if there remain at least 3 days for tasks that must be performed weekly, at least 2 weeks for tasks that must be performed monthly, at least 1 month for tasks that must be performed each quarter, or at least 3 months for tasks that must be performed annually; or

(ii) In all other cases, compliance shall be required before the end of the first full standard calendar period after the period within which the initial compliance deadline occurs.

(4) In all instances where a provision of this subpart requires completion of a task during each of multiple successive periods, an owner or operator may perform the required task at any time during each period, provided the task is conducted at a reasonable interval after completion of the task during the previous period.

(h) In all cases where the provisions of this subpart require an owner or operator to repair leaks by a specified time after the leak is detected, it is a violation of this subpart to fail to take action to repair the leaks within the specified time. If action is taken to repair the leaks within the specified time, failure of that action to successfully repair the leak is not a violation of this subpart. However, if the repairs are unsuccessful, a leak is detected and the owner or operator shall take further action as required by applicable provisions of this subpart.

33. Section 63.163 is amended by revising paragraphs (e)(1)(ii) and (g) to read as follows:

§ 63.163 Standards: Pumps in light liquid service.

* * * * *

(e) * * *

(1) * * *

(ii) Equipped with a barrier fluid degassing reservoir that is routed to a process or fuel gas system or connected by a closed-vent system to a control device that complies with the requirements of § 63.172 of this subpart; or

* * * * *

(g) Any pump equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a process or to a fuel gas system or to a control device that complies with the requirements of § 63.172 of this subpart is exempt from the requirements of paragraphs (b) through (e) of this section.

* * * * *

34. Section 63.164 is amended by revising paragraphs (b)(2) and (h) to read as follows:

§ 63.164 Compressors.

* * * * *

(b) * * *

(2) Equipped with a barrier fluid system degassing reservoir that is routed to a process or fuel gas system or connected by a closed-vent system to a control device that complies with the requirements of § 63.172 of this subpart; or

* * * * *

(h) A compressor is exempt from the requirements of paragraphs (a) through (f) of this section if it is equipped with a closed-vent system to capture and transport leakage from the compressor drive shaft seal back to a process or a fuel gas system or to a control device that complies with the requirements of § 63.172 of this subpart.

* * * * *

35. Section 63.165 is amended by revising paragraph (c) to read as follows:

§ 63.165 Standards: Pressure relief devices in gas/vapor service.

* * * * *

(c) Any pressure relief device that is routed to a process or fuel gas system or equipped with a closed-vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in § 63.172 of this subpart is exempt from the requirements of paragraphs (a) and (b) of this section.

* * * * *

36. Section 63.168 is amended by revising the meaning of $\%V_L$ in paragraph (e)(1) and revising paragraph (f)(3) to read as follows:

§ 63.168 Standards: Valves in gas/vapor service and in light liquid service.

* * * * *

(e)(1) * * *

$\%V_L$=Percent leaking valves as determined through periodic monitoring required in paragraphs (b) through (d) of this section.

* * * * *

(f) * * *

(3) When a leak has been repaired, the valve shall be monitored at least once within the first 3 months after its repair.

(i) The monitoring shall be conducted as specified in § 63.180 (b) and (c), as appropriate, to determine whether the valve has resumed leaking.

(ii) Periodic monitoring required by paragraphs (b) through (d) of this section may be used to satisfy the requirements of this paragraph (f)(3), if the timing of the monitoring period coincides with the time specified in this paragraph (f)(3). Alternatively, other monitoring may be performed to satisfy the requirements of this paragraph (f)(3), regardless of whether the timing of the monitoring period for periodic monitoring coincides with the time specified in this paragraph (f)(3).

(iii) If a leak is detected by monitoring that is conducted pursuant to paragraph (f)(3) of this section, the owner or operator shall follow the provisions of paragraphs (f)(3)(iii)(A) and (f)(3)(iii)(B) of this section, to determine whether that valve must be counted as a leaking valve for purposes of § 63.168(e) of this subpart.

(A) If the owner or operator elected to use periodic monitoring required by paragraphs (b) through (d) of this section to satisfy the requirements of paragraph (f)(3) of this section, then the valve shall be counted as a leaking valve.

(B) If the owner or operator elected to use other monitoring, prior to the periodic monitoring required by paragraphs (b) through (d) of this section, to satisfy the requirements of paragraph (f)(3) of this section, then the valve shall be counted as a leaking valve unless it is repaired and shown by periodic monitoring not to be leaking.

* * * * *

37. Section 63.169 is amended by revising paragraph (c)(3) to read as follows:

§ 63.169 Standards: Pumps, valves, connectors, and agitators in heavy liquid service; instrumentation systems; and pressure relief devices in liquid service.

* * * * *

(c) * * *

(3) For equipment identified in paragraph (a) of this section that is not monitored by the method specified in § 63.180(b), repaired shall mean that the visual, audible, olfactory, or other indications of a leak to the atmosphere have been eliminated; that no bubbles are observed at potential leak sites during a leak check using soap solution; or that the system will hold a test pressure.

* * * * *

38. Section 63.172 is amended by revising paragraphs (b), (c), (h)(2), and (j)(2), and adding paragraph (n) to read as follows:

§ 63.172 Standards: Closed-vent systems and control devices.

* * * * *

(b) Recovery or recapture devices (e.g., condensers and absorbers) shall be designed and operated to recover the organic hazardous air pollutant emissions or volatile organic compounds emissions vented to them with an efficiency of 95 percent or greater, or to an exit concentration of 20 parts par million by volume, whichever is less stringent. The 20 parts per million by volume performance standard is not applicable to the provisions of § 63.179.

(c) Enclosed combustion devices shall be designed and operated to reduce the organic hazardous air pollutant emissions or volatile organic compounds emissions vented to them with an efficiency of 95 percent or greater, or to an exit concentration of 20 parts per million by volume, on a dry basis, corrected to 3 percent oxygen, whichever is less stringent, or to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760 °C.

* * * * *

(h) * * *

(2) Repair shall be completed no later than 15 calendar days after the leak is detected, except as provided in paragraph (i) of this section.

* * * * *

(j) * * *

(2) Secure the bypass line valve in the non-diverting position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure the valve is maintained in the non-diverting position and the vent stream is not diverted through the bypass line.

* * * * *

(n) After the compliance dates specified in § 63.100 of subpart F of this part, the owner or operator of any control device subject to this subpart that is also subject to monitoring, recordkeeping, and reporting requirements in 40 CFR part 264, subpart BB, or is subject to monitoring and recordkeeping requirements in 40 CFR part 265, subpart BB, may elect to

comply either with the monitoring, recordkeeping, and reporting requirements of this subpart, or with the monitoring, recordkeeping, and reporting requirements in 40 CFR parts 264 and/or 265, as described in this paragraph, which shall constitute compliance with the monitoring, recordkeeping and reporting requirements of this subpart. The owner or operator shall identify which option has been chosen, in the next periodic report required by § 63.182(d).

39. Section 63.173 is amended by revising paragraphs (d)(1)(ii), (f), and (g) to read as follows:

§ 63.173 Standards: Agitators in gas/vapor service and in light liquid service.

* * * * *

(d) * * *

(1) * * *

(ii) Equipped with a barrier fluid degassing reservoir that is routed to a process or fuel gas system or connected by a closed-vent system to a control device that complies with the requirements of § 63.172 of this subpart; or

* * * * *

(f) Any agitator equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a process or fuel gas system or to a control device that complies with the requirements of § 63.172 of this subpart is exempt from the requirements of paragraphs (a) through (c) of the section.

(g) Any agitator that is located within the boundary of an unmanned plant site is exempt from the weekly visual inspection requirement of paragraphs (b)(1) and (d)(4) of this section, and the daily requirements of paragraph (d)(5) of this section, provided that each agitator is visually inspected as often as practical and at least monthly.

* * * * *

40. Section 63.174 is amended by revising paragraphs (c)(1)(i), (c)(1)(ii), the introductory text of paragraph (c)(2), revising paragraph (c)(2)(ii); adding paragraphs (c)(2)(iii) and (c)(2)(iv); removing and reserving paragraph (e); revising paragraph (h)(2); and revising paragraphs (i)(1) and (i)(2) to read as follows:

§ 63.174 Standards: Connectors in gas/vapor service and in light liquid service.

* * * * *

(c)(1)(i) Except as provided in paragraph (c)(1)(ii) of this section, each connector that has been opened or has otherwise had the seal broken shall be monitored for leaks when it is reconnected or within the first 3 months after being returned to organic hazardous air pollutants service. If the monitoring detects a leak, it shall be repaired according to the provisions of paragraph (d) of this section, unless it is determined to be nonrepairable, in which case it is counted as a nonrepairable connector for the purposes of paragraph (i)(2) of this section.

(ii) As an alternative to the requirements in paragraph (c)(1)(i) of this section, an owner or operator may choose not to monitor connectors that have been opened or otherwise had the seal broken. In this case, the owner or operator may not count nonrepairable connectors for the purposes of paragraph (i)(2) of this section. The owner or operator shall calculate the percent leaking connectors for the monitoring periods described in paragraph (b) of this section, by setting the nonrepairable component, C_{AN}, in the equation in paragraph (i)(2) of this section to zero for all monitoring periods.

* * * * *

(2) As an alternative to the requirements of paragraph (b)(3) of this section, each screwed connector 2 inches or less in nominal inside diameter installed in a process unit before the dates specified in paragraph (c)(2)(iii) or (c)(2)(iv) of this section may:

* * * * *

(ii) Be monitored for leaks within the first 3 months after being returned to organic hazardous air pollutants service after having been opened or otherwise had the seal broken. If that monitoring detects a leak, it shall be repaired according to the provisions of paragraph (d) of this section.

(iii) For sources subject to subparts F and I of this part, the provisions of paragraph (c)(2) of this section apply to screwed connectors installed before December 31, 1992.

(iv) For sources not identified in paragraph (c)(2)(iii) of this section, the provisions of paragraph (c)(2) of this section apply to screwed connectors installed before the date of proposal of the applicable subpart of this part that references this subpart.

* * * * *

(e) [Reserved]

* * * * *

(h) * * *

(2) If any inaccessible or ceramic or ceramic-lined connector is observed by visual, audible, olfactory, or other means to be leaking, the leak shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in § 63.171 of this subpart and paragraph (g) of this section.

* * * * *

(i) * * *

(1) For the first monitoring period, use the following equation:

$$\% C_L = C_L/(C_t + C_C) \times 100$$

where:

$\% C_L$ = Percent leaking connectors as determined through periodic monitoring required in paragraphs (a) and (b) of this section.

C_L = Number of connectors measured at 500 parts per million or greater, by the method specified in § 63.180(b) of this subpart.

C_t = Total number of monitored connectors in the process unit.

C_C = Optional credit for removed connectors = 0.67 × net (i.e., total removed—total added) number of connectors in organic hazardous air pollutants service removed from the process unit after the compliance date set forth in the applicable subpart for existing process units, and after the date of initial start-up for new process units. If credits are not taken, then $C_C = 0$.

(2) For subsequent monitoring periods, use the following equation:

$$\% C_L = [(C_L - C_{AN})/(C_t + C_C)] \times 100$$

where:

$\% C_L$ = Percent leaking connectors as determined through periodic monitoring required in paragraphs (a) and (b) of this section.

C_L = Number of connectors, including nonrepairables, measured at 500 parts per million or greater, by the method specified in § 63.180(b) of this subpart.

C_{AN} = Number of allowable nonrepairable connectors, as determined by monitoring required in paragraphs (b)(3) and (c) of this section, not to exceed 2 percent of the total connector population, C_t.

C_t = Total number of monitored connectors, including nonrepairables, in the process unit.

C_C = Optional credit for removed connectors = 0.67 × net number (i.e., total removed—total added) of connectors in organic hazardous air pollutants service removed from the process unit after the compliance date set forth in the applicable subpart for existing process units, and after the date of initial start-up for new process units. If credits are not taken, then $C_C = 0$.

* * * * *

41. Section 63.180 is amended by revising paragraphs (b)(4)(ii), the introductory text of paragraph (c), and paragraph (c)(2) to read as follows:

§ 63.180 Test methods and procedures.

* * * * *

(b) * * *

(4) * * *

(ii) Mixtures of methane in air at the concentrations specified in paragraphs (b)(4)(ii)(A) through (b)(4)(ii)(C) of this section. A calibration gas other than methane in air may be used if the instrument does not respond to methane or if the instrument does not meet the performance criteria specified in paragraph (b)(2)(i) of this section. In such cases, the calibration gas may be a mixture of one or more of the compounds to be measured in air.

(A) For Phase I, a mixture of methane or other compounds, as applicable, in air at a concentration of approximately, but less than, 10,000 parts per million.

(B) For Phase II, a mixture of methane or other compounds, as applicable, and air at a concentration of approximately, but less than, 10,000 parts per million for agitators, 5,000 parts per million for pumps, and 500 parts per million for all other equipment, except as provided in paragraph (b)(4)(iii) of this section.

(C) For Phase III, a mixture of methane or other compounds, as applicable, and air at a concentration of approximately, but less than, 10,000 parts per million methane for agitators; 2,000 parts per million for pumps in food/medical service; 5,000 parts per million for pumps in polymerizing monomer service; 1,000 parts per million for all other pumps; and 500 parts per million for all other equipment, except as provided in paragraph (b)(4)(iii) of this section.

* * * * *

(c) When equipment is monitored for compliance as required in §§ 63.164(i), 63.165(a), and 63.172(f) or when equipment subject to a leak definition of 500 ppm is monitored for leaks as required by this subpart, the owner or operator may elect to adjust or not to adjust the instrument readings for background. If an owner or operator elects to not adjust instrument readings for background, the owner or operator shall monitor the equipment according to the procedures specified in paragraphs (b)(1) through (b)(4) of this section. In such case, all instrument readings shall be compared directly to the applicable leak definition to determine whether there is a leak. If an owner or operator elects to adjust instrument readings for background, the owner or operator shall monitor the equipment according to the procedures specified in paragraphs (c)(1) through (c)(4) of this section.

* * * * *

(2) The background level shall be determined, using the same procedures that will be used to determine whether the equipment is leaking.

* * * * *

42. Section 63.181 is amended by revising paragraphs (d)(7)(i) and (d)(7)(ii), revising the introductory text of paragraphs (g)(2) and (g)(3), and revising paragraph (i) to read as follows:

§ 63.181 Recordkeeping requirements.

* * * * *

(d) * * *

(7)(i) Identification, either by list, location (area or grouping), or tagging of connectors that have been opened or otherwise had the seal broken since the last monitoring period required in § 63.174(b) of this subpart, as described in § 63.174(c)(1) of this subpart, unless the owner or operator elects to comply with the provisions of § 63.174(c)(1)(ii) of this subpart.

(ii) The date and results of monitoring as required in § 63.174(c) of this subpart. If identification of connectors that have been opened or otherwise had the seal broken is made by location under paragraph (d)(7)(i) of this section, then all connectors within the designated location shall be monitored.

* * * * *

(g) * * *

(2) Records of operation of closed-vent systems and control devices, as specified in paragraphs (g)(2)(i) through (g)(2)(iii) of this section.

* * * * *

(3) Records of inspections of closed-vent systems subject to the provisions of § 63.172, as specified in paragraphs (g)(2)(i) through (g)(2)(iii) of this section.

* * * * *

(i) The owner or operator of equipment in heavy liquid service shall comply with the requirements of either paragraph (i)(1) or (i)(2) of this section, as provided in paragraph (i)(3) of this section.

(1) Retain information, data, and analyses used to determine that a piece of equipment is in heavy liquid service.

(2) When requested by the Administrator, demonstrate that the piece of equipment or process is in heavy liquid service.

(3) A determination or demonstration that a piece of equipment or process is in heavy liquid service shall include an analysis or demonstration that the process fluids do not meet the definition of ''in light liquid service.'' Examples of information that could document this include, but are not limited to, records of chemicals purchased for the process, analyses of process stream composition, engineering calculations, or process knowledge.

* * * * *

43. Section 63.182 is amended by adding paragraph (d)(2)(xvii) to read as follows:

§ 63.182 Reporting requirements.

* * * * *

(d) * * *

(2) * * *

(xvii) If applicable, the compliance option that has been selected under § 63.172(n).

* * * * *

Subpart I—National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks

44. Section 63.190 is amended by adding a sentence to the end of paragraph (d) and revising the last sentence in paragraphs (e)(5)(i) and (e)(5)(ii) to read as follows:

§ 63.190 Applicability and designation of source.

* * * * *

(d) * * * If specific items of equipment, comprising part of a process unit subject to this subpart, are managed by different administrative organizations (e.g., different companies, affiliates, departments, divisions, etc.) those items of equipment may be aggregated with any process unit within the source for all purposes under subpart H of this part, providing there is no delay in the applicable compliance date in paragraph (e) of this section.

(e) * * *

(5)(i) * * * The owner or operator who elects to use this provision shall also comply with the requirements of § 63.192(m) of this subpart.

(ii) * * * The owner or operator who elects to use this provision shall also comply with the requirements of § 63.192(m) of this subpart.

* * * * *

45. Section 63.191 is amending by adding the definition for ''on-site or on site'' to read as follows:

§ 63.191 Definitions.

* * * * *

On-site or *On site* means, with respect to records required to be maintained by this subpart, that the records are stored at a location within a major source which encompasses the affected source. On-site includes, but is not limited to, storage at the process unit to which the records pertain, or storage in central files elsewhere at the major source.

* * * * *

46. Section 63.192 is amended by adding two sentences to the end of the introductory text of paragraph (f); revising paragraph (f)(1); adding a sentence to the end of paragraph (f)(2)(iii) and paragraph (g)(1); removing paragraphs (g)(1(i) and (g)(1)(ii); and revising paragraph (k) to read as follows:

§ 63.192 Standard.

* * * * *

(f) * * * If an owner or operator submits copies of reports to the applicable EPA Regional Office, the owner or operator is not required to maintain copies of reports. If the EPA Regional Office has waived the requirement of § 63.10(a)(4)(ii) for submittal of copies of reports, the owner or operator is not required to maintain copies of reports.

(1) All applicable records shall be maintained in such a manner that they can be readily accessed. The most recent 6 months of records shall be retained on site or shall be accessible from a central location by computer or other means that provides access within 2 hours after a request.

(2) * * *

(iii) * * * These records may take the form of a ''checklist,'' or other form of recordkeeping that confirms conformance with the startup, shutdown, and malfunction plan for the event.

(g) * * *

(1) * * * Submittals shall be sent on or before the specified date.

* * * * *

(k) The owner or operator of a process unit which meets the criteria of § 63.190 (c), shall comply with the requirements of either paragraph (k)(1) or (k)(2) of this section.

(1) Retain information, data, and analysis used to determine that the process unit does not have the designated organic hazardous air pollutant present in the process. Examples of information that could document this include, but are not limited to, records of chemicals purchased for the process, analyses of process stream composition, engineering calculations, or process knowledge.

(2) When requested by the Administrator, demonstrate that the chemical manufacturing process unit does not have the designated organic hazardous air pollutant present in the process.

* * * * *

47. Section 63.193 is revised to read as follows:

§ 63.193 Delegation of authority.

In delegating implementation and enforcement authority to a State under section 112(l) of the Clean Air Act, the authority for § 63.177 of subpart H of this part shall be retained by the Administrator and not transferred to a State.

48. Appendix A of part 63 is amended by revising Methods 304A and 304B to read as follows:

Appendix A to Part 63—Test Methods

Method 304A: Determination of Biodegradation Rates of Organic Compounds (Vent Option)

1. Applicability and Principle

1.1 *Applicability.* This method is applicable for the determination of biodegradation rates of organic compounds in an activated sludge process. The test method is designed to evaluate the ability of an aerobic biological reaction system to degrade or destroy specific components in waste streams. The method may also be used to determine the effects of changes in wastewater composition on operation. The biodegradation rates determined by utilizing this method are not representative of a full-scale system. The rates measured by this method shall be used in conjunction with the procedures listed in appendix C of this part to calculate the fraction emitted to the air versus the fraction biodegraded.

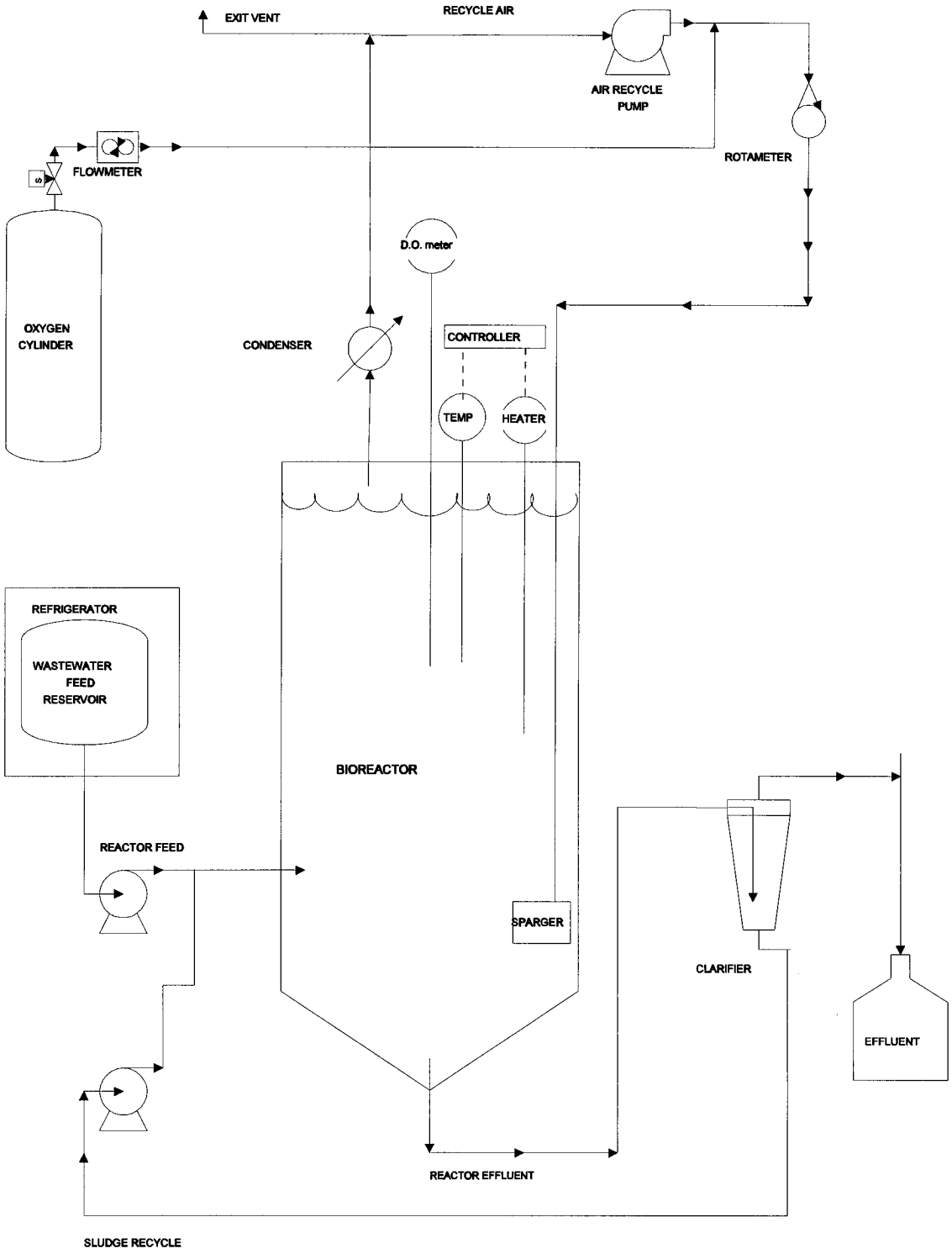
1.2 *Principle.* A self-contained benchtop bioreactor system is assembled in the laboratory. A sample of mixed liquor is added and the waste stream is then fed continuously. The benchtop bioreactor is operated under conditions nearly identical to the target full-scale activated sludge process. Bioreactor temperature, dissolved oxygen concentration, average residence time in the reactor, waste composition, biomass concentration, and biomass composition of the full-scale process are the parameters which are duplicated in the benchtop bioreactor. Biomass shall be removed from the target full-scale activated sludge unit and held for no more than 4 hours prior to use in the benchtop bioreactor. If antifoaming agents are used in the full-scale system, they shall also be used in the benchtop bioreactor. The feed flowing into and the effluent exiting the benchtop bioreactor are analyzed to determine the biodegradation rates of the target compounds. The flow rate of the exit vent is used to calculate the concentration of target compounds (utilizing Henry's law) in the exit gas stream. If Henry's law constants for the compounds of interest are not known, this method cannot be used in the determination of the biodegradation rate and Method 304B is the suggested method. The choice of analytical methodology for measuring the compounds of interest at the inlet and outlet to the benchtop bioreactor are left to the discretion of the source, except where validated methods are available.

2. Apparatus

Figure 1 illustrates a typical laboratory apparatus used to measure biodegradation rates. While the following description refers to Figure 1, the EPA recognizes that alternative reactor configurations, such as alternative reactor shapes and locations of probes and the feed inlet, will also meet the intent of this method. Ensure that the benchtop bioreactor system is self-contained and isolated from the atmosphere (except for the exit vent stream) by leak-checking fittings, tubing, etc.

2.1 *Laboratory apparatus.*

2.1.1 *Benchtop Bioreactor.* The biological reaction is conducted in a biological oxidation reactor of at least 6 liters capacity. The benchtop bioreactor is sealed and equipped with internal probes for controlling and monitoring dissolved oxygen and internal temperature. The top of the reactor is equipped for aerators, gas flow ports, and instrumentation (while ensuring that no leaks to the atmosphere exist around the fittings).



EPA METHOD 304A VENT BIOREACTOR SYSTEM

2.1.2 *Aeration gas.* Aeration gas is added to the benchtop bioreactor through three diffusers, which are glass tubes that extend to the bottom fifth of the reactor depth. A pure oxygen pressurized cylinder is recommended in order to maintain the specified oxygen concentration. Install a blower (e.g., Diaphragm Type, 15 SCFH capacity) to blow the aeration gas into the reactor diffusers. Measure the aeration gas flow rate with a rotameter (e.g., 0–15 SCFH recommended). The aeration gas will rise through the benchtop bioreactor, dissolving oxygen into the mixture in the process. The aeration gas must provide sufficient agitation to keep the solids in suspension. Provide an exit for the aeration gas from the top flange of the benchtop bioreactor through a water-cooled (e.g., Allihn-type) vertical condenser. Install the condenser through a gas-tight fitting in the benchtop bioreactor closure. Install a splitter which directs a portion of the gas to an exit vent and the rest of the gas through an air recycle pump back to the benchtop bioreactor. Monitor and record the flow rate through the exit vent at least 3 times per day throughout the day.

2.1.3 *Wastewater Feed.* Supply the wastewater feed to the benchtop bioreactor in a collapsible low-density polyethylene container or collapsible liner in a container (e.g., 20 L) equipped with a spigot cap (collapsible containers or liners of other material may be required due to the permeability of some volatile compounds through polyethylene). Obtain the wastewater feed by sampling the wastewater feed in the target process. A representative sample of wastewater shall be obtained from the piping leading to the aeration tank. This sample may be obtained from existing sampling valves at the discharge of the wastewater feed pump, or collected from a pipe discharging to the aeration tank, or by pumping from a well-mixed equalization tank upstream from the aeration tank. Alternatively, wastewater can be pumped continuously to the laboratory apparatus from a bleed stream taken from the equalization tank of the full-scale treatment system.

2.1.3.1 *Refrigeration System.* Keep the wastewater feed cool by ice or by refrigeration to 4 °C. If using a bleed stream from the equalization tank, refrigeration is not required if the residence time in the bleed stream is less than five minutes.

2.1.3.2 *Wastewater Feed Pump.* The wastewater is pumped from the refrigerated container using a variable-speed peristaltic pump drive equipped with a peristaltic pump head. Add the feed solution to the benchtop bioreactor through a fitting on the top flange. Determine the rate of feed addition to provide a retention time in the benchtop bioreactor that is numerically equivalent to the retention time in the full-scale system. The wastewater shall be fed at a rate sufficient to achieve 90 to 100 percent of the full-scale system residence time.

2.1.3.3 *Treated wastewater feed.* The benchtop bioreactor effluent exits at the bottom of the reactor through a tube and proceeds to the clarifier.

2.1.4 *Clarifier.* The effluent flows to a separate closed clarifier that allows separation of biomass and effluent (e.g., 2-liter pear-shaped glass separatory funnel, modified by removing the stopcock and adding a 25-mm OD glass tube at the bottom). Benchtop bioreactor effluent enters the clarifier through a tube inserted to a depth of 0.08 m (3 in.) through a stopper at the top of the clarifier. System effluent flows from a tube inserted through the stopper at the top of the clarifier to a drain (or sample bottle when sampling). The underflow from the clarifier leaves from the glass tube at the bottom of the clarifier. Flexible tubing connects this fitting to the sludge recycle pump. This pump is coupled to a variable speed pump drive. The discharge from this pump is returned through a tube inserted in a port on the side of the benchtop bioreactor. An additional port is provided near the bottom of the benchtop bioreactor for sampling the reactor contents. The mixed liquor from the benchtop bioreactor flows into the center of the clarifier. The clarified system effluent separates from the biomass and flows through an exit near the top of the clarifier. There shall be no headspace in the clarifier.

2.1.5 *Temperature Control Apparatus.* Capable of maintaining the system at a temperature equal to the temperature of the full-scale system. The average temperature should be maintained within ±2 °C of the set point.

2.1.5.1 *Temperature Monitoring Device.* A resistance type temperature probe or a thermocouple connected to a temperature readout with a resolution of 0.1 °C or better.

2.1.5.2 *Benchtop Bioreactor Heater.* The heater is connected to the temperature control device.

2.1.6 *Oxygen Control System.* Maintain the dissolved oxygen concentration at the levels present in the full-scale system. Target full-scale activated sludge systems with dissolved oxygen concentration below2 mg/L are required to maintain the dissolved oxygen concentration in the benchtop bioreactor within 0.5 mg/L of the target dissolved oxygen level. Target full-scale activated sludge systems with dissolved oxygen concentration above 2 mg/L are required to maintain the dissolved oxygen concentration in the benchtop bioreactor within 1.5 mg/L of the target dissolved oxygen concentration; however, for target full-scale activated sludge systems with dissolved oxygen concentrations above 2 mg/L, the dissolved oxygen concentration in the benchtop bioreactor may not drop below 1.5 mg/L. If the benchtop bioreactor is outside the control range, the dissolved oxygen is noted and the reactor operation is adjusted.

2.1.6.1 *Dissolved Oxygen Monitor.* Dissolved oxygen is monitored with a polarographic probe (gas permeable membrane) connected to a dissolved oxygen meter (e.g., 0 to 15 mg/L, 0 to 50 °C).

2.1.6.2 *Benchtop bioreactor Pressure Monitor.* The benchtop bioreactor pressure is monitored through a port in the top flange of the reactor. This is connected to a gauge control with a span of 13-cm water vacuum to 13-cm water pressure or better. A relay is activated when the vacuum exceeds an adjustable setpoint which opens a solenoid valve (normally closed), admitting oxygen to the system. The vacuum setpoint controlling oxygen addition to the system shall be set at approximately 2.5 ± 0.5 cm water and maintained at this setting except during brief periods when the dissolved oxygen concentration is adjusted.

2.1.7 *Connecting Tubing.* All connecting tubing shall be Teflon or equivalent in impermeability. The only exception to this specification is the tubing directly inside the pump head of the wastewater feed pump, which may be Viton, Silicone or another type of flexible tubing. Note: Mention of trade names or products does not constitute endorsement by the U.S. Environmental Protection Agency.

2.2 *Analysis.* If the identity of the compounds of interest in the wastewater is not known, a representative sample of the wastewater shall be analyzed in order to identify all of the compounds of interest present. A gas chromatography/mass spectrometry screening method is recommended.

2.2.1 After identifying the compounds of interest in the wastewater, develop and/or use one or more analytical techniques capable of measuring each of those compounds (more than one analytical technique may be required, depending on the characteristics of the wastewater). Test Method 18, found in appendix A of 40 CFR part 60, may be used as a guideline in developing the analytical technique. Purge and trap techniques may be used for analysis providing the target components are sufficiently volatile to make this technique appropriate. The limit of quantitation for each compound shall be determined.[1] If the effluent concentration of any target compound is below the limit of quantitation determined for that compound, the operation of the Method 304 unit may be altered to attempt to increase the effluent concentration above the limit of quantitation. Modifications to the method shall be approved prior to the test. The request should be addressed to Method 304 contact, Emissions Measurement Center, Mail Drop 19, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

2.2.2 *Calibration Standards.* Prepare calibration standards from pure certified standards in an aqueous medium. Prepare and analyze three concentrations of calibration standards for each target component (or for a mixture of components) in triplicate daily throughout the analyses of the test samples. At each concentration level, a single calibration shall be within 5 percent of the average of the three calibration results. The low and medium calibration standards shall bracket the expected concentration of the effluent (treated) wastewater. The medium and high standards shall bracket the expected influent concentration.

3. *Reagents*

3.1 *Wastewater.* Obtain a representative sample of wastewater at the inlet to the full-scale treatment plant if there is an existing full-scale treatment plant (see section 2.1.3).

If there is no existing full-scale treatment plant, obtain the wastewater sample as close to the point of determination as possible. Collect the sample by pumping the wastewater into the 20–L collapsible container. The loss of volatiles shall be minimized from the wastewater by collapsing the container before filling, by minimizing the time of filling, and by avoiding a headspace in the container after filling. If the wastewater requires the addition of nutrients to support the biomass growth and maintain biomass characteristics, those nutrients are added and mixed with the container contents after the container is filled.

3.2 *Biomass.* Obtain the biomass or activated sludge used for rate constant determination in the bench-scale process from the existing full-scale process or from a representative biomass culture (e.g., biomass that has been developed for a future full-scale process). This biomass is preferentially obtained from a thickened acclimated mixed liquor sample. Collect the sample either by bailing from the mixed liquor in the aeration tank with a weighted container, or by collecting aeration tank effluent at the effluent overflow weir. Transport the sample to the laboratory within no more than 4 hours of collection. Maintain the biomass concentration in the benchtop bioreactor at the level of the full-scale system +10 percent throughout the sampling period of the test method.

4. *Procedure.* Safety Note: If explosive gases are produced as a byproduct of biodegradation and could realistically pose a hazard, closely monitor headspace concentration of these gases to ensure laboratory safety. Placement of the benchtop bioreactor system inside a laboratory hood is recommended regardless of byproducts produced.

4.1 *Benchtop Bioreactor Operation.* Charge the mixed liquor to the benchtop bioreactor, minimizing headspace over the liquid surface to minimize entrainment of mixed liquor in the circulating gas. Fasten the benchtop bioreactor headplate to the reactor over the liquid surface. Maintain the temperature of the contents of the benchtop bioreactor system at the temperature of the target full-scale system, +2 °C, throughout the testing period. Monitor and record the temperature of the benchtop bioreactor contents at least to the nearest 0.1 °C.

4.1.1 *Wastewater Storage.* Collect the wastewater sample in the 20–L collapsible container. Store the container at 4 °C throughout the testing period. Connect the container to the benchtop bioreactor feed pump.

4.1.2 *Wastewater Flow Rate.* The hydraulic residence time of the aeration tank is calculated as the ratio of the volume of the tank (L) to the flow rate (L/min). At the beginning of a test, the container shall be connected to the feed pump and solution shall be pumped to the benchtop bioreactor at the required flow rate to achieve the calculated hydraulic residence time of wastewater in the aeration tank.

$$Q_{test} = Q_{fs}\frac{L}{V_{fs}} \qquad \text{Eqn 304A} - 1$$

Where:

Q_{test}=wastewater flow rate (L/min)

Qf_{fs}=average flow rate of full-scale process (L/min)

V_{fs}=volume of full-scale aeration tank (L)

The target flow rate in the test apparatus is the same as the flow rate in the target full-scale process multiplied by the ratio of benchtop bioreactor volume (e.g., 6 L) to the volume of the full-scale aeration tank. The hydraulic residence time shall be maintained at 90 to 100 percent of the residence time maintained in the full-scale unit. A nominal flow rate is set on the pump based on a pump calibration. Changes in the elasticity of the tubing in the pump head and the accumulation of material in the tubing affect this calibration. The nominal pumping rate shall be changed as necessary based on volumetric flow measurements. Discharge the benchtop bioreactor effluent to a wastewater storage, treatment, or disposal facility, except during sampling or flow measurement periods.

4.1.3 *Sludge Recycle Rate.* Set the sludge recycle rate at a rate sufficient to prevent accumulation in the bottom of the clarifier. Set the air circulation rate sufficient to maintain the biomass in suspension.

4.1.4 *Benchtop Bioreactor Operation and Maintenance.* Temperature, dissolved oxygen concentration, exit vent flow rate, benchtop bioreactor effluent flow rate, and air circulation rate shall be measured and recorded three times throughout each day of benchtop bioreactor operation. If other parameters (such as pH) are measured and maintained in the target full-scale unit, these parameters, where appropriate, shall be monitored and maintained to target full-scale specifications in the benchtop bioreactor. At the beginning of each sampling period (section 4.2), sample the benchtop bioreactor contents for suspended solids analysis. Take this sample by loosening a clamp on a length of tubing attached to the lower side port. Determine the suspended solids gravimetrically by the Gooch crucible/glass fiber filter method for total suspended solids, in accordance with Standard Methods [3] or equivalent. When necessary, sludge shall be wasted from the lower side port of the benchtop bioreactor, and the volume that is wasted shall be replaced with an equal volume of the reactor effluent. Add thickened activated sludge mixed liquor as necessary to the benchtop bioreactor to increase the suspended solids concentration to the desired level. Pump this mixed liquor to the benchtop bioreactor through the upper side port (Item 24 in Figure 1). Change the membrane on the dissolved oxygen probe before starting the test. Calibrate the oxygen probe immediately before the start of the test and each time the membrane is changed.

4.1.5 *Inspection and Correction Procedures.* If the feed line tubing becomes clogged, replace with new tubing. If the feed flow rate is not within 5 percent of target flow any time the flow rate is measured, reset pump or check the flow measuring device and measure flow rate again until target flow rate is achieved.

4.2 *Test Sampling.* At least two and one half hydraulic residence times after the system has reached the targeted specifications shall be permitted to elapse before the first sample is taken. Effluent samples of the clarifier discharge (Item 20 in Figure 1) and the influent wastewater feed are collected in 40-mL septum vials to which two drops of 1:10 hydrochloric acid (HCl) in water have been added. Sample the clarifier discharge directly from the drain line. These samples will be composed of the entire flow from the system for a period of several minutes. Feed samples shall be taken from the feed pump suction line after temporarily stopping the benchtop bioreactor feed, removing a connector, and squeezing the collapsible feed container. Store both influent and effluent samples at 4 °C immediately after collection and analyze within 8 hours of collection.

4.2.1 *Frequency of Sampling.* During the test, sample and analyze the wastewater feed and the clarifier effluent at least six times. The sampling intervals shall be separated by at least 8 hours. During any individual sampling interval, sample the wastewater feed simultaneously with or immediately after the effluent sample. Calculate the relative standard deviation (RSD) of the amount removed (i.e., effluent concentration—wastewater feed concentration). The RSD values shall be < 15 percent. If an RSD value is > 15 percent, continue sampling and analyzing influent and effluent sets of samples until the RSD values are within specifications.

4.2.2 *Sampling After Exposure of System to Atmosphere.* If, after starting sampling procedures, the benchtop bioreactor system is exposed to the atmosphere (due to leaks, maintenance, etc.), allow at least one hydraulic residence time to elapse before resuming sampling.

5. Operational Checks and Calibration

5.1 *Dissolved Oxygen.* Fluctuation in dissolved oxygen concentration may occur for numerous reasons, including undetected gas leaks, increases and decreases in mixed liquor suspended solids resulting from cell growth and solids loss in the effluent stream, changes in diffuser performance, cycling of effluent flow rate, and overcorrection due to faulty or sluggish dissolved oxygen probe response. Control the dissolved oxygen concentration in the benchtop bioreactor by changing the proportion of oxygen in the circulating aeration gas. Should the dissolved oxygen concentration drift below the designated experimental condition, bleed a small amount of aeration gas from the system on the pressure side (i. e., immediately upstream of one of the diffusers). This will create a vacuum in the system, triggering the pressure sensitive relay to open the solenoid valve and admit oxygen to the system. Should the dissolved oxygen concentration drift above the designated experimental condition, slow or stop the oxygen input to the system until the dissolved oxygen concentration approaches the correct level.

5.2 *Sludge Wasting.* Determine the suspended solids concentration (section 4.1.4) at the beginning of a test, and once per day thereafter during the test. If the test is completed within a two day period, determine the suspended solids concentration after the final sample set is taken. If the suspended solids concentration

exceeds the specified concentration, remove a fraction of the sludge from the benchtop bioreactor. The required volume of mixed liquor to remove is determined as follows:

$$V_W = V_r\left(\frac{S_m - S_s}{S_m}\right) \qquad \text{Eqn 304A} - 2$$

Where:
V_w is the wasted volume (Liters),
V_r is the volume of the benchtop bioreactor (Liters),
S_m is the measured solids (g/L), and
S_s is the specified solids (g/L).

Remove the mixed liquor from the benchtop bioreactor by loosening a clamp on the mixed liquor sampling tube and allowing the required volume to drain to a graduated flask. Clamp the tube when the correct volume has been wasted. Replace the volume of the liquid wasted by pouring the same volume of effluent back into the benchtop bioreactor. Dispose of the waste sludge properly.

5.3 *Sludge Makeup.* In the event that the suspended solids concentration is lower than the specifications, add makeup sludge back into the benchtop bioreactor. Determine the amount of sludge added by the following equation:

$$V_w = V_r\left(\frac{S_s - S_m}{S_w}\right) \qquad \text{Eqn 304A} - 3$$

Where:
V_w is the volume of sludge to add (Liters),
V_r is the volume of the benchtop bioreactor (Liters),
S_w is the solids in the makeup sludge (g/L),
S_m is the measured solids (g/L), and
S_s is the specified solids (g/L).

5.4 *Wastewater Pump Calibration.* Determine the wastewater flow rate by collecting the system effluent for a time period of at least one hour, and measuring the volume with a graduated cylinder. Record the collection time period and volume collected. Determine flow rate. Adjust the pump speed to deliver the specified flow rate.

6. Calculations

6.1 *Nomenclature.* The following symbols are used in the calculations.

C_i=Average inlet feed concentration for a compound of interest, as analyzed (mg/L)
C_o=Average outlet (effluent) concentration for a compound of interest, as analyzed (mg/L)
X=Biomass concentration, mixed liquor suspended solids (g/L)
t=Hydraulic residence time in the benchtop bioreactor (hours)
V=Volume of the benchtop bioreactor (L)
Q=Flow rate of wastewater into the benchtop bioreactor, average (L/hour)

6.2 *Residence Time.* The hydraulic residence time of the benchtop bioreactor is equal to the ratio of the volume of the benchtop bioreactor (L) to the flow rate (L/h)

$$t = \frac{V}{Q} \qquad \text{Eqn 304A} - 4$$

6.3 *Rate of Biodegradation.* Calculate the rate of biodegradation for each component with the following equation:

$$\text{Rate}\left(\frac{mg}{L - h}\right) = \frac{C_i - C_o}{t} \qquad \text{Eqn 304A} - 5$$

6.4 *First-Order Biorate Constant.* Calculate the first-order biorate constant (K1) for each component with the following equation:

$$K1\left(\frac{L}{g - h}\right) = \frac{C_i - C_o}{t\,C_o X} \qquad \text{Eqn 304A} - 6$$

6.5 *Relative Standard Deviation (RSD).* Determine the standard deviation of both the influent and effluent sample concentrations (S) using the following equation:

$$RSD = \frac{100}{\bar{S}}\left(\sum_{i=1}^{n}\frac{\left(S_i - \bar{S}\right)^2}{(n-1)}\right)^{1/2} \qquad \text{Eqn 304A} - 7$$

6.6 *Determination of Percent Air Emissions and Percent Biodegraded.* Use the results from this test method and follow the applicable procedures in appendix C of 40 CFR part 63, entitled, ''Determination of the Fraction Biodegraded (F_{bio}) in a Biological Treatment Unit'' to determine F_{bio}.

7. Bibliography

1. ''Guidelines for data acquisition and data quality evaluation in Environmental Chemistry'', Daniel MacDoughal, Analytical Chemistry, Volume 52, p. 2242, 1980.

2. Test Method 18, 40 CFR part 60, appendix A.

3. Standard Methods for the Examination of Water and Wastewater, 16th Edition, Method 209C, Total Suspended Solids Dried at 103–105 °C, APHA, 1985.

4. Water7, Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF)—Air Emission Models, U.S. Environmental Protection Agency, EPA–450/3–87–026, Review Draft, November 1989.

5. Chemdat7, Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF)—Air Emission Models, U.S. Environmental Protection Agency, EPA–450/3–87–026, Review Draft, November 1989.

Method 304B: Determination of Biodegradation Rates of Organic Compounds (Scrubber Option)

1. Applicability and Principle

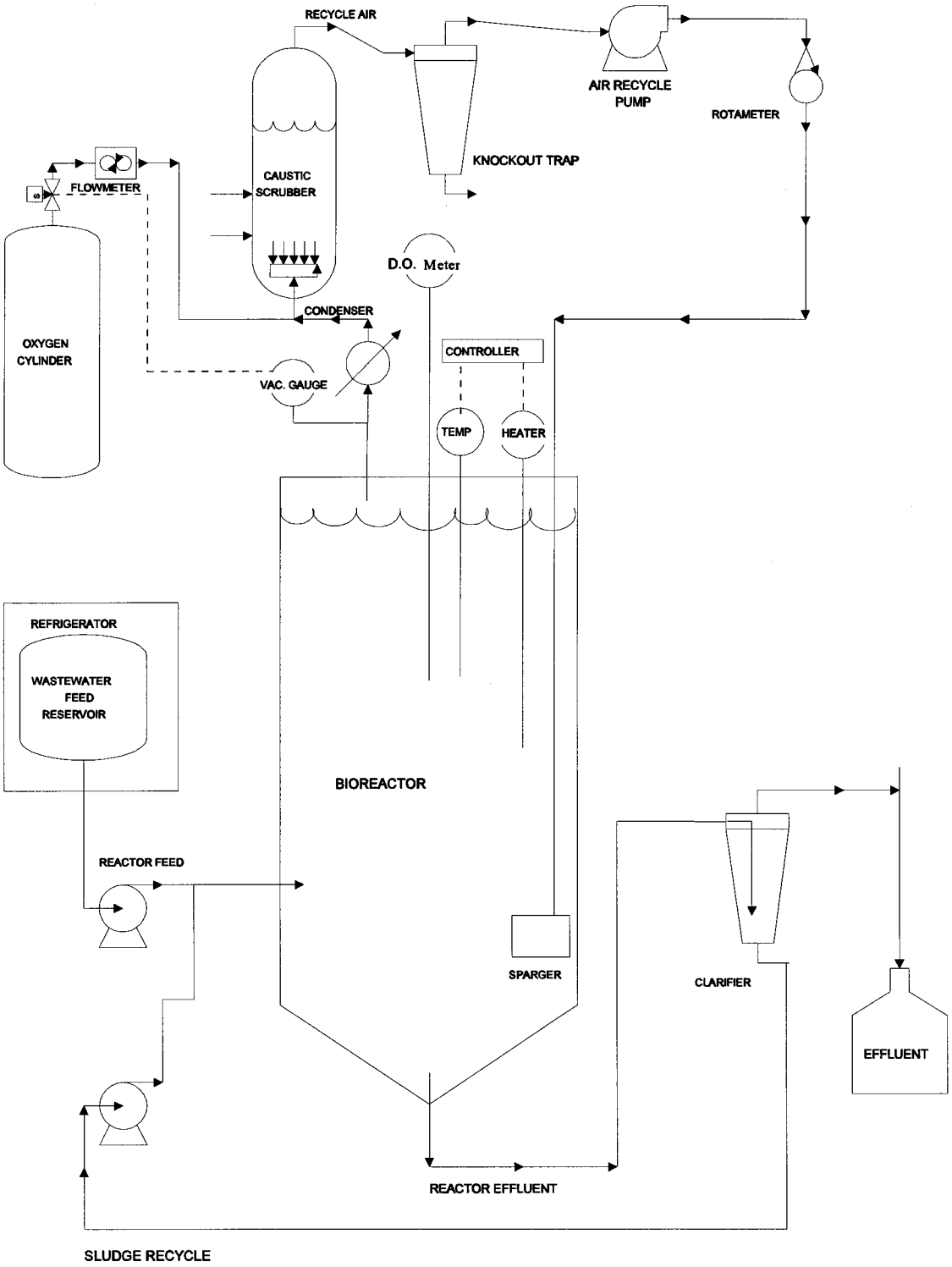
1.1 *Applicability.* This method is applicable for the determination of biodegradation rates of organic compounds in an activated sludge process. The test method is designed to evaluate the ability of an aerobic biological reaction system to degrade or destroy specific components in waste streams. The method may also be used to determine the effects of changes in wastewater composition on operation. The biodegradation rates determined by utilizing this method are not representative of a full-scale system. Full-scale systems embody biodegradation and air emissions in competing reactions. This method measures biodegradation in absence of air emissions. The rates measured by this method shall be used in conjunction with the procedures listed in appendix C of this part to calculate the fraction emitted to the air versus the fraction biodegraded.

1.2 *Principle.* A self-contained benchtop bioreactor system is assembled in the laboratory. A sample of mixed liquor is added and the waste stream is then fed continuously. The benchtop bioreactor is operated under conditions nearly identical to the target full-scale activated sludge process, except that air emissions are not a factor. The benchtop bioreactor temperature, dissolved oxygen concentration, average residence time in the reactor, waste composition, biomass concentration, and biomass composition of the target full-scale process are the parameters which are duplicated in the laboratory system. Biomass shall be removed from the target full-scale activated sludge unit and held for no more than 4 hours prior to use in the benchtop bioreactor. If antifoaming agents are used in the full-scale system, they shall also be used in the benchtop bioreactor. The feed flowing into and the effluent exiting the benchtop bioreactor are analyzed to determine the biodegradation rates of the target compounds. The choice of analytical methodology for measuring the compounds of interest at the inlet and outlet to the benchtop bioreactor

are left to the discretion of the source, except where validated methods are available.

2. Apparatus

Figure 1 illustrates a typical laboratory apparatus used to measure biodegradation rates. While the following description refers to Figure 1, the EPA recognizes that alternative reactor configurations, such as alternative reactor shapes and locations of probes and the feed inlet, will also meet the intent of this method. Ensure that the benchtop bioreactor system is self-contained and isolated from the atmosphere by leak-checking fittings, tubing, etc.



EPA METHOD 304B BIOREACTOR SYSTEM

2.1 *Laboratory apparatus.*

2.1.1 *Benchtop Bioreactor.* The biological reaction is conducted in a biological oxidation reactor of at least 6-liters capacity. The benchtop bioreactor is sealed and equipped with internal probes for controlling and monitoring dissolved oxygen and internal temperature. The top of the benchtop bioreactor is equipped for aerators, gas flow ports, and instrumentation (while ensuring that no leaks to the atmosphere exist around the fittings).

2.1.2 *Aeration gas.* Aeration gas is added to the benchtop bioreactor through three diffusers, which are glass tubes that extend to the bottom fifth of the reactor depth. A pure oxygen pressurized cylinder is recommended in order to maintain the specified oxygen concentration. Install a blower (e.g., Diaphragm Type, 15 SCFH capacity) to blow the aeration gas into the benchtop bioreactor diffusers. Measure the aeration gas flow rate with a rotameter (e.g., 0–15 SCFH recommended). The aeration gas will rise through the benchtop bioreactor, dissolving oxygen into the mixture in the process. The aeration gas must provide sufficient agitation to keep the solids in suspension. Provide an exit for the aeration gas from the top flange of the benchtop bioreactor through a water-cooled (e.g., Allihn-type) vertical condenser. Install the condenser through a gas-tight fitting in the benchtop bioreactor closure. Design the system so that at least 10 percent of the gas flows through an alkaline scrubber containing 175 mL of 45 percent by weight solution of potassium hydroxide (KOH) and 5 drops of 0.2 percent alizarin yellow dye. Route the balance of the gas through an adjustable scrubber bypass. Route all of the gas through a 1–L knock-out flask to remove entrained moisture and then to the intake of the blower. The blower recirculates the gas to the benchtop bioreactor.

2.1.3 *Wastewater Feed.* Supply the wastewater feed to the benchtop bioreactor in a collapsible low-density polyethylene container or collapsible liner in a container (e.g., 20 L) equipped with a spigot cap (collapsible containers or liners of other material may be required due to the permeability of some volatile compounds through polyethylene). Obtain the wastewater feed by sampling the wastewater feed in the target process. A representative sample of wastewater shall be obtained from the piping leading to the aeration tank. This sample may be obtained from existing sampling valves at the discharge of the wastewater feed pump, or collected from a pipe discharging to the aeration tank, or by pumping from a well-mixed equalization tank upstream from the aeration tank. Alternatively, wastewater can be pumped continuously to the laboratory apparatus from a bleed stream taken from the equalization tank of the full-scale treatment system.

2.1.3.1 *Refrigeration System.* Keep the wastewater feed cool by ice or by refrigeration to 4°C. If using a bleed stream from the equalization tank, refrigeration is not required if the residence time in the bleed stream is less than five minutes.

2.1.3.2 *Wastewater Feed Pump.* The wastewater is pumped from the refrigerated container using a variable-speed peristaltic pump drive equipped with a peristaltic pump head. Add the feed solution to the benchtop bioreactor through a fitting on the top flange. Determine the rate of feed addition to provide a retention time in the benchtop bioreactor that is numerically equivalent to the retention time in the target full-scale system. The wastewater shall be fed at a rate sufficient to achieve 90 to 100 percent of the target full-scale system residence time.

2.1.3.3 *Treated wastewater feed.* The benchtop bioreactor effluent exits at the bottom of the reactor through a tube and proceeds to the clarifier.

2.1.4 *Clarifier.* The effluent flows to a separate closed clarifier that allows separation of biomass and effluent (e.g., 2-liter pear-shaped glass separatory funnel, modified by removing the stopcock and adding a 25-mm OD glass tube at the bottom). Benchtop bioreactor effluent enters the clarifier through a tube inserted to a depth of 0.08 m (3 in.) through a stopper at the top of the clarifier. System effluent flows from a tube inserted through the stopper at the top of the clarifier to a drain (or sample bottle when sampling). The underflow from the clarifier leaves from the glass tube at the bottom of the clarifier. Flexible tubing connects this fitting to the sludge recycle pump. This pump is coupled to a variable speed pump drive. The discharge from this pump is returned through a tube inserted in a port on the side of the benchtop bioreactor. An additional port is provided near the bottom of the benchtop bioreactor for sampling the reactor contents. The mixed liquor from the benchtop bioreactor flows into the center of the clarifier. The clarified system effluent separates from the biomass and flows through an exit near the top of the clarifier. There shall be no headspace in the clarifier.

2.1.5 *Temperature Control Apparatus.* Capable of maintaining the system at a temperature equal to the temperature of the full-scale system. The average temperature should be maintained within ±2°C of the set point.

2.1.5.1 *Temperature Monitoring Device.* A resistance type temperature probe or a thermocouple connected to a temperature readout with a resolution of 0.1°C or better.

2.1.5.2 *Benchtop Bioreactor Heater.* The heater is connected to the temperature control device.

2.1.6 *Oxygen Control System.* Maintain the dissolved oxygen concentration at the levels present in the full-scale system. Target full-scale activated sludge systems with dissolved oxygen concentration below 2 mg/L are required to maintain the dissolved oxygen concentration in the benchtop bioreactor within 0.5 mg/L of the target dissolved oxygen level. Target full-scale activated sludge systems with dissolved oxygen concentration above 2 mg/L are required to maintain the dissolved oxygen concentration in the benchtop bioreactor within 1.5 mg/L of the target dissolved oxygen concentration; however, for target full-scale activated sludge systems with dissolved oxygen concentrations above 2 mg/L, the dissolved oxygen concentration in the benchtop bioreactor may not drop below 1.5 mg/L. If the benchtop bioreactor is outside the control range, the dissolved oxygen is noted and the reactor operation is adjusted.

2.1.6.1 *Dissolved Oxygen Monitor.* Dissolved oxygen is monitored with a polarographic probe (gas permeable membrane) connected to a dissolved oxygen meter (e.g., 0 to 15 mg/L, 0 to 50°C).

2.1.6.2 *Benchtop Bioreactor Pressure Monitor.* The benchtop bioreactor pressure is monitored through a port in the top flange of the reactor. This is connected to a gauge control with a span of 13-cm water vacuum to 13-cm water pressure or better. A relay is activated when the vacuum exceeds an adjustable setpoint which opens a solenoid valve (normally closed), admitting oxygen to the system. The vacuum setpoint controlling oxygen addition to the system shall be set at approximately 2.5 ± 0.5 cm water and maintained at this setting except during brief periods when the dissolved oxygen concentration is adjusted.

2.1.7 *Connecting Tubing.* All connecting tubing shall be Teflon or equivalent in impermeability. The only exception to this specification is the tubing directly inside the pump head of the wastewater feed pump, which may be Viton, Silicone or another type of flexible tubing. Note: Mention of trade names or products does not constitute endorsement by the U.S. Environmental Protection Agency.

2.2 *Analysis.* If the identity of the compounds of interest in the wastewater is not known, a representative sample of the wastewater shall be analyzed in order to identify all of the compounds of interest present. A gas chromatography/mass spectrometry screening method is recommended.

2.2.1 After identifying the compounds of interest in the wastewater, develop and/or use one or more analytical technique capable of measuring each of those compounds (more than one analytical technique may be required, depending on the characteristics of the wastewater). Method 18, found in appendix A of 40 CFR part 60, may be used as a guideline in developing the analytical technique. Purge and trap techniques may be used for analysis providing the target components are sufficiently volatile to make this technique appropriate. The limit of quantitation for each compound shall be determined.[1] If the effluent concentration of any target compound is below the limit of quantitation determined for that compound, the operation of the Method 304 unit may be altered to attempt to increase the effluent concentration above the limit of quantitation. Modifications to the method shall be approved prior to the test. The request should be addressed to Method 304 contact, Emissions Measurement Center, Mail Drop 19, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

2.2.2 *Calibration Standards.* Prepare calibration standards from pure certified standards in an aqueous medium. Prepare and analyze three concentrations of calibration standards for each target component (or for a mixture of components) in triplicate daily throughout the analyses of the test samples. At each concentration level,

a single calibration shall be within 5 percent of the average of the three calibration results. The low and medium calibration standards shall bracket the expected concentration of the effluent (treated) wastewater. The medium and high standards shall bracket the expected influent concentration.

3. Reagents

3.1 *Wastewater.* Obtain a representative sample of wastewater at the inlet to the full-scale treatment plant if there is an existing full-scale treatment plant (See Section 2.1.3). If there is no existing full-scale treatment plant, obtain the wastewater sample as close to the point of determination as possible. Collect the sample by pumping the wastewater into the 20–L collapsible container. The loss of volatiles shall be minimized from the wastewater by collapsing the container before filling, by minimizing the time of filling, and by avoiding a headspace in the container after filling. If the wastewater requires the addition of nutrients to support the biomass growth and maintain biomass characteristics, those nutrients are added and mixed with the container contents after the container is filled.

3.2 *Biomass.* Obtain the biomass or activated sludge used for rate constant determination in the bench-scale process from the existing full-scale process or from a representative biomass culture (e.g., biomass that has been developed for a future full-scale process). This biomass is preferentially obtained from a thickened acclimated mixed liquor sample. Collect the sample either by bailing from the mixed liquor in the aeration tank with a weighted container, or by collecting aeration tank effluent at the effluent overflow weir. Transport the sample to the laboratory within no more than 4 hours of collection. Maintain the biomass concentration in the benchtop bioreactor at the level of the target full-scale system +10 percent throughout the sampling period of the test method.

4. Procedure

Safety Note: If explosive gases are produced as a byproduct of biodegradation and could realistically pose a hazard, closely monitor headspace concentration of these gases to ensure laboratory safety. Placement of the benchtop bioreactor system inside a laboratory hood is recommended regardless of byproducts produced.

4.1 *Benchtop Bioreactor Operation.* Charge the mixed liquor to the benchtop bioreactor, minimizing headspace over the liquid surface to minimize entrainment of mixed liquor in the circulating gas. Fasten the benchtop bioreactor headplate to the reactor over the liquid surface. Maintain the temperature of the contents of the benchtop bioreactor system at the temperature of the target full-scale system, +2 °C, throughout the testing period. Monitor and record the temperature of the reactor contents at least to the nearest 0.1 °C.

4.1.1 *Wastewater Storage.* Collect the wastewater sample in the 20–L collapsible container. Store the container at 4 °C throughout the testing period. Connect the container to the benchtop bioreactor feed pump.

4.1.2 *Wastewater Flow Rate.* The hydraulic residence time of the aeration tank is calculated as the ratio of the volume of the tank (L) to the flow rate (L/min). At the beginning of a test, the container shall be connected to the feed pump and solution shall be pumped to the benchtop bioreactor at the required flow rate to achieve the calculated hydraulic residence time of wastewater in the aeration tank.

$$Q_{test} = Q_{fs}\frac{L}{V_{fs}} \qquad \text{Eqn 304B} - 1$$

Where:

Q_{test}=wastewater flow rate (L/min)

Q_{fs}=average flow rate of full-scale process (L/min)

V_{fs}=volume of full-scale aeration tank (L)

The target flow rate in the test apparatus is the same as the flow rate in the target full-scale process multiplied by the ratio of benchtop bioreactor volume (e.g., 6 L) to the volume of the full-scale aeration tank. The hydraulic residence time shall be maintained at 90 to 100 percent of the residence time maintained in the target full-scale unit. A nominal flow rate is set on the pump based on a pump calibration. Changes in the elasticity of the tubing in the pump head and the accumulation of material in the tubing affect this calibration. The nominal pumping rate shall be changed as necessary based on volumetric flow measurements. Discharge the benchtop bioreactor effluent to a wastewater storage, treatment, or disposal facility, except during sampling or flow measurement periods.

4.1.3 *Sludge Recycle Rate.* Set the sludge recycle rate at a rate sufficient to prevent accumulation in the bottom of the clarifier. Set the air circulation rate sufficient to maintain the biomass in suspension.

4.1.4 *Benchtop Bioreactor Operation and Maintenance.* Temperature, dissolved oxygen concentration, flow rate, and air circulation rate shall be measured and recorded three times throughout each day of testing. If other parameters (such as pH) are measured and maintained in the target full-scale unit, these parameters shall, where appropriate, be monitored and maintained to full-scale specifications in the benchtop bioreactor. At the beginning of each sampling period (section 4.2), sample the benchtop bioreactor contents for suspended solids analysis. Take this sample by loosening a clamp on a length of tubing attached to the lower side port. Determine the suspended solids gravimetrically by the Gooch crucible/glass fiber filter method for total suspended solids, in accordance with Standard Methods[3] or equivalent. When necessary, sludge shall be wasted from the lower side port of the benchtop bioreactor, and the volume that is wasted shall be replaced with an equal volume of the benchtop bioreactor effluent. Add thickened activated sludge mixed liquor as necessary to the benchtop bioreactor to increase the suspended solids concentration to the desired level. Pump this mixed liquor to the benchtop bioreactor through the upper side port (Item 24 in Figure 1). Change the membrane on the dissolved oxygen probe before starting the test. Calibrate the oxygen probe immediately before the start of the test and each time the membrane is changed. The scrubber solution shall be replaced each weekday with 175 mL 45 percent W/W KOH solution to which five drops of 0.2 percent alizarin yellow indicator in water have been added. The potassium hydroxide solution in the alkaline scrubber shall be changed if the alizarin yellow dye color changes.

4.1.5 *Inspection and Correction Procedures.* If the feed line tubing becomes clogged, replace with new tubing. If the feed flow rate is not within 5 percent of target flow any time the flow rate is measured, reset pump or check the flow measuring device and measure flow rate again until target flow rate is achieved.

4.2 *Test Sampling.* At least two and one half hydraulic residence times after the system has reached the targeted specifications shall be permitted to elapse before the first sample is taken. Effluent samples of the clarifier discharge (Item 20 in Figure 1) and the influent wastewater feed are collected in 40-mL septum vials to which two drops of 1:10 hydrochloric acid (HCl) in water have been added. Sample the clarifier discharge directly from the drain line. These samples will be composed of the entire flow from the system for a period of several minutes. Feed samples shall be taken from the feed pump suction line after temporarily stopping the benchtop bioreactor feed, removing a connector, and squeezing the collapsible feed container. Store both influent and effluent samples at 4°C immediately after collection and analyze within 8 hours of collection.

4.2.1 *Frequency of Sampling.* During the test, sample and analyze the wastewater feed and the clarifier effluent at least six times. The sampling intervals shall be separated by at least 8 hours. During any individual sampling interval, sample the wastewater feed simultaneously with or immediately after the effluent sample. Calculate the RSD of the amount removed (i.e., effluent concentration—wastewater feed concentration). The RSD values shall be < 15 percent. If an RSD value is > 15 percent, continue sampling and analyzing influent and effluent sets of samples until the RSD values are within specifications.

4.2.2 *Sampling After Exposure of System to Atmosphere.* If, after starting sampling procedures, the benchtop bioreactor system is exposed to the atmosphere (due to leaks, maintenance, etc.), allow at least one hydraulic residence time to elapse before resuming sampling.

5. Operational Checks and Calibration

5.1 *Dissolved Oxygen.* Fluctuation in dissolved oxygen concentration may occur for numerous reasons, including undetected gas leaks, increases and decreases in mixed liquor suspended solids resulting from cell growth and solids loss in the effluent stream, changes in diffuser performance, cycling of effluent flow rate, and overcorrection due to faulty or sluggish dissolved oxygen probe response. Control the dissolved oxygen concentration in the benchtop bioreactor by changing the proportion of oxygen in the circulating aeration gas. Should the dissolved oxygen concentration drift below the designated experimental condition, bleed a small amount of aeration gas from the system

on the pressure side (i.e., immediately upstream of one of the diffusers). This will create a vacuum in the system, triggering the pressure sensitive relay to open the solenoid valve and admit oxygen to the system. Should the dissolved oxygen concentration drift above the designated experimental condition, slow or stop the oxygen input to the system until the dissolved oxygen concentration approaches the correct level.

5.2 *Sludge Wasting.* Determine the suspended solids concentration (section 4.1.4) at the beginning of a test, and once per day thereafter during the test. If the test is completed within a two day period, determine the suspended solids concentration after the final sample set is taken. If the suspended solids concentration exceeds the specified concentration, remove a fraction of the sludge from the benchtop bioreactor. The required volume of mixed liquor to remove is determined as follows:

$$V_w = V_r\left(\frac{S_m - S_s}{S_m}\right) \qquad \text{Eqn 304B} - 2$$

Where:
V_w is the wasted volume (Liters),
V_r is the volume of the benchtop bioreactor (Liters),
S_m is the measured solids (g/L), and
S_s is the specified solids (g/L).

Remove the mixed liquor from the benchtop bioreactor by loosening a clamp on the mixed liquor sampling tube and allowing the required volume to drain to a graduated flask. Clamp the tube when the correct volume has been wasted. Replace the volume of the liquid wasted by pouring the same volume of effluent back into the benchtop bioreactor. Dispose of the waste sludge properly.

5.3 *Sludge Makeup*. In the event that the suspended solids concentration is lower than the specifications, add makeup sludge back into the benchtop bioreactor. Determine the amount of sludge added by the following equation:

$$V_w = V_r\left(\frac{S_s - S_m}{S_w}\right) \qquad \text{Eqn 304B} - 3$$

Where:
V_w is the volume of sludge to add (Liters),
V_r is the volume of the benchtop bioreactor (Liters),
S_w is the solids in the makeup sludge (g/L),
S_m is the measured solids (g/L), and
S_s is the specified solids (g/L).

5.4 *Wastewater Pump Calibration*. Determine the wastewater flow rate by collecting the system effluent for a time period of at least one hour, and measuring the volume with a graduated cylinder. Record the collection time period and volume collected. Determine flow rate. Adjust the pump speed to deliver the specified flow rate.

6. Calculations

6.1 *Nomenclature.* The following symbols are used in the calculations.

C_i=Average inlet feed concentration for a compound of interest, as analyzed (mg/L)
C_o=Average outlet (effluent) concentration for a compound of interest, as analyzed (mg/L)
X=Biomass concentration, mixed liquor suspended solids (g/L)
t=Hydraulic residence time in the benchtop bioreactor (hours)
V=Volume of the benchtop bioreactor (L)
Q=Flow rate of wastewater into the benchtop bioreactor, average (L/hour)

6.2 *Residence Time.* The hydraulic residence time of the benchtop bioreactor is equal to the ratio of the volume of the benchtop bioreactor (L) to the flow rate (L/h)

$$t = \frac{V}{Q} \qquad \text{Eqn 304B} - 4$$

6.3 *Rate of Biodegradation.* Calculate the rate of biodegradation for each component with the following equation:

$$\text{Rate}\left(\frac{mg}{L - h}\right) = \frac{C_i - C_o}{t} \qquad \text{Eqn 304B} - 5$$

6.4 *First-Order Biorate Constant.* Calculate the first-order biorate constant (K1) for each component with the following equation:

$$K1\left(\frac{L}{g - h}\right) = \frac{C_i - C_o}{t\,C_o X} \qquad \text{Eqn 304B} - 6$$

6.5 *Relative Standard Deviation (RSD).* Determine the standard deviation of both the influent and effluent sample concentrations (S) using the following equation:

$$RSD = \frac{100}{\bar{S}}\left(\sum_{i=1}^{n}\frac{\left(S_i - \bar{S}\right)^2}{(n-1)}\right)^{1/2} \qquad \text{Eqn 304B} - 7$$

6.6 *Determination of Percent Air Emissions and Percent Biodegraded*. Use the results from this test method and follow the applicable procedures in appendix C of 40 CFR part 63, entitled, ''Determination of the Fraction Biodegraded (F_{bio}) in a Biological Treatment Unit'' to determine F_{bio}.

7. Bibliography

1. ''Guidelines for data acquisition and data quality evaluation in Environmental Chemistry'', Daniel MacDoughal, Analytical Chemistry, Volume 52, p. 2242, 1980.

2. Test Method 18, 40 CFR part 60, Appendix A.

3. Standard Methods for the Examination of Water and Wastewater, 16th Edition, Method 209C, Total Suspended Solids Dried at 103–105 °C, APHA, 1985.

4. Water7, Hazardous Waste Treatment, Storage, and disposal Facilities (TSDF)—Air Emission Models, U.S. Environmental Protection Agency, EPA–450/3–87–026, Review Draft, November 1989.

5. Chemdat7, Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF)—Air Emission Models, U.S. Environmental Protection Agency, EPA–450/3–87–026, Review Draft, November 1989.

52. Appendix C of part 63 is revised to read as follows:

Appendix C to Part 63—Determination of the Fraction Biodegraded (F_{bio}) in a Biological Treatment Unit

I. Purpose

The purpose of this appendix is to define the procedures for an owner or operator to use to calculate the site specific fraction of organic compounds biodegraded (F_{bio}) in a biological treatment unit. If an acceptable level of organic compounds is destroyed rather than emitted to the air or remaining in the effluent, the biological treatment unit may be used to comply with the applicable treatment requirements without the unit being covered and vented through a closed vent system to an air pollution control device.

The determination of F_{bio} shall be made on a system as it would exist under the rule. The owner or operator should anticipate changes that would occur to the wastewater flow and concentration of organics, to be treated by the biological treatment unit, as a result of enclosing the collection and treatment system as required by the rule.

The forms presented in this appendix are designed to address uniform well-mixed or completely mixed systems. Uniform well-mixed or completely mixed systems are biological treatment activated sludge systems where measurements of parameters that indicate performance, e.g., MLVSS, organic compound concentration, and dissolved oxygen, are consistent throughout the system.

Systems that are not uniform well-mixed systems should be subdivided into a series of zones that have uniform characteristics within each zone.

The number of zones required to characterize a biological treatment system will depend on the design and operation of the treatment system. The number of zones could vary from one in a well-mixed conventional activated sludge tank to numerous zones in a large surface-aerated impoundment system. Each zone should then be modeled as a separate unit. The amount of air emissions and biodegradation from the modeling of these separate zones can then be added to reflect the entire system.

II. Definitions

Biological treatment unit = wastewater treatment unit designed and operated to promote the growth of bacteria to destroy organic materials in wastewater.

f_{bio} = The fraction of individual applicable organic compounds in the wastewater biodegraded in a biological treatment unit.

F_{bio} = The fraction of total applicable organic compounds in the wastewater biodegraded in a biological treatment unit.

Fe = The fraction of applicable organic compounds emitted from the wastewater to the atmosphere.

K1 = First order biodegradation rate constant, L/g MLVSS-hr

KL = liquid-phase mass transfer coefficient, m/s

M = compound specific mass flow weighted average of organic compounds in the wastewater, Mg/Yr

III. Procedures for Determination of f_{bio}

The first step in the analysis to determine if a biological treatment unit may be used without being covered and vented through a closed-vent system to an air pollution control device, is to determine the compound-specific f_{bio}. The following four procedures may be used to determine f_{bio}:

(1) EPA Test Method 304A or 304B (appendix A, part 63)—Method for the Determination of Biodegradation Rates of Organic Compounds,

(2) Performance data with and without biodegradation,

(3) Inlet and outlet concentration measurements,

(4) Batch Tests.

All procedures must be executed so that the resulting F_{bio} is based on the collection system and waste management units being in compliance with the regulation. If the collection system and waste management units meet the suppression requirements at the time of the test, any of the four procedures may be chosen. If the collection system and waste management units are not in compliance at the time of the performance test, then only Method 304A, 304B, or the Batch Test shall be chosen. If Method 304A, 304B, or the Batch Test is used, any anticipated changes to the influent of the full-scale biological treatment unit that will occur after the facility has enclosed the collection system must be represented in the influent feed to the benchtop bioreactor unit, or test unit.

Select one or more appropriate procedures from the four listed above based on the availability of site specific data. If the facility does not have site-specific data on the removal efficiency of its biological treatment unit, then Procedure 1 or Procedure 4 may be used. Procedure 1 allows the use of a benchtop bioreactor to determine the first-order biodegradation rate constant. For compounds that represent a small proportion of the mass of the regulated compounds in the wastewater, an owner or operator may elect to assume the first order biodegradation constant is zero. Procedure 4 explains two types of batch tests which may be used to estimate the first order biodegradation rate constant. For compounds that represent a small proportion of the mass of the regulated compounds in the wastewater, an owner or operator may elect to assume the first order biodegradation constant is zero. Procedure 3 would be used if the facility has, or measures to determine, data on the inlet and outlet individual organic compound concentration for the biological treatment unit. Procedure 3 may only be used on a uniform well-mixed or completely mixed system. Procedure 2 is used if a facility has or obtains performance data on a biotreatment unit prior to and after addition of the microbial mass. An example where Procedure 2 could be used, is an activated sludge unit where measurements have been taken on inlet and exit concentration of organic compounds in the wastewater prior to seeding with the microbial mass and start-up of the unit. The flow chart in Figure 1 outlines the steps to use for each of the procedures.

A. Method 304A or 304B (Procedure 1)

If the first procedure is selected, follow the instructions in appendix A of part 63 Method 304A ''Method for the Determination of Biodegradation Rates of Organic Compounds (Vented Option)'' or Method 304B ''Method for the Determination of Biodegradation Rates of Organic Compounds (Scrubber Option).'' Method 304A or 304B provides instruction on setting up and operating a self-contained benchtop bioreactor system which is operated under conditions representative of the target full-scale system. Method 304A uses a benchtop bioreactor system with a vent, and uses modeling to estimate any air emissions. Method 304B uses a benchtop bioreactor system which is equipped with a scrubber and is not vented.

There are some restrictions on which method a source may use. If the facility is measuring the rate of biodegradation of compounds that may tend to react or hydrolyze in the scrubber of Method 304B, this method shall not be used and Method 304A is the required method. If a Henry's law value is not available to use with Form V, then Method 304A shall not be used and Method 304B is the required method. When using either method, the feed flow to the benchtop bioreactor shall be representative of the flow and concentration of the wastewater that will be treated by the full-scale biological treatment unit after the collection and treatment system has been enclosed as required under the applicable subpart.

The conditions under which the full-scale biological treatment unit is run establish the operating parameters of Method 304A or 304B. If the biological treatment unit is operated under abnormal operating conditions (conditions outside the range of critical parameters examined and confirmed in the laboratory), the EPA believes this will adversely affect the biodegradation rate and is an unacceptable treatment option. The facility would be making multiple runs of the test method to simulate the operating range for its biological treatment unit. For wide ranges of variation in operating parameters, the facility shall demonstrate the biological treatment unit is achieving an acceptable level of control, as required by the regulation, across the ranges and not only at the endpoints.

If Method 304A is used, complete Form V initially. Form V is used to calculate K1 from the Method 304A results. Form V uses the Henry's law constant to estimate the fraction lost from the benchtop reactor vent. The owner or operator shall use the Henry's law values in Table I. Form V also gives direction for calculating an equivalent KL. Note on Form V if the calculated number for line 11 is greater than the calculated value for line 13, this procedure shall not be used to demonstrate the compound is biodegradable. If line 11 is greater than line 13, this is an indication the fraction emitted from the vent is greater than the fraction biodegraded. The equivalent KL determined on Form V is used in Form II (line 6). Estimation of the Fe and f_{bio} must be done following the steps in Form III. Form III uses the previously calculated values of K1 and KL (equivalent KL), and site-specific parameters of the full-scale bioreactor as input to the calculations. Forms II, III, and V must be completed for each organic compound in the wastewater to determine Fe and f_{bio}.

If Method 304B is used, perform the method and use the measurements to determine K1, which is the first-order biodegradation rate constant. Form I lists the sequence of steps in the procedure for calculating K1 from the Method 304B results. Once K1 is determined, KL must be calculated by use of mass transfer equations. Form II outlines the procedure to follow for use of mass transfer equations to determine KL. A computer program which incorporates these mass transfer equations may be used. Water7 is a program that incorporates these mass transfer equations and may be used to determine KL. Refer to Form II–A to determine KL, if Water7 or the most recent update to this model is used. In addition, the Bay Area Sewage Toxics Emission (BASTE) model version 3.0 or equivalent upgrade and the TOXCHEM (Environment Canada's Wastewater Technology Centre and Environmega, Ltd.) model version 1.10 or equivalent upgrade may also be used to determine KL for the biological treatment unit with several stipulations. The programs must be altered to output a KL value which is based on the site-specific parameters of the unit modeled, and the Henry's law values listed in Table I must be substituted for the existing Henry's law values in the programs. Input values used in the model and corresponding output values shall become documentation of the f_{bio} determination. The owner or operator should be aware these programs do not allow modeling of certain

units. To model these units, the owner or operator shall use one of the other appropriate procedures as outlined in this appendix. The owner or operator shall not use a default value for KL. The KL value determined by use of these models shall be based on the site-specific parameters of the specific unit. This KL value shall be inserted in Form II (line 6). Estimation of the Fe and f_{bio} must be done following the steps in Form III. Form III uses the previously calculated values of K1 and KL, and site-specific parameters of the full-scale bioreactor as input to the calculations. Forms I, II, and III must be completed for each organic compound in the wastewater to determine Fe and $f_{bio.}$

B. Performance Data With and Without Biodegradation (Procedure 2)

Procedure 2 uses site-specific performance data that represents or characterizes operation of the unit both with and without biodegradation. As previously mentioned, proper determination of f_{bio} must be made on a system as it would exist under the rule. Using Form IV, calculate KL and K1. After KL and K1 are determined, Form III is used to calculate Fe and f_{bio} for each organic compound present in the wastewater.

C. Inlet and Outlet Concentration Measurements (Procedure 3)

Procedure 3 uses measured inlet and outlet organic compound concentrations for the unit. This procedure may only be used on a uniform well-mixed or completely mixed system. Again, proper determination of f_{bio} must be made on a system as it would exist under the rule. The first step in using this procedure is to calculate KL using Form II. A computer model may be used. If the Water7 model or the most recent update to this model is used, then use Form II–A to calculate KL. After KL is determined using field data, complete Form VI to calculate K1. The TOXCHEM or BASTE model may also be used to calculate KL for the biological treatment unit, with the stipulations listed in procedure 304B. After KL and K1 are determined, Form III is used to calculate Fe and f_{bio} for each organic compound.

D. Batch Tests (Procedure 4)

Two types of batch tests which may be used to determine kinetic parameters are: (1) The aerated reactor test and (2) the sealed reactor test. The aerated reactor test is also known as the BOX test (batch test with oxygen addition). The sealed reactor test is also known as the serum bottle test. These batch tests should be conducted only by persons familiar with procedures for determining biodegradation kinetics. Detailed discussions of batch procedures for determining biodegradation kinetic parameters can be found in references 1–4.

For both batch test approaches, a biomass sample from the activated sludge unit of interest is collected, aerated, and stored for no more than 4 hours prior to testing. To collect sufficient data when biodegradation is rapid, it may be necessary to dilute the biomass sample. If the sample is to be diluted, the biomass sample shall be diluted using treated effluent from the activated sludge unit of interest to a concentration such that the biodegradation test will last long enough to make at least six concentration measurements. It is recommended that the tests not be terminated until the compound concentration falls below the limit of quantitation (LOQ). Measurements that are below the LOQ should not be used in the data analysis. Biomass concentrations shall be determined using standard methods for measurement of mixed liquor volatile suspended solids (MLVSS) (reference 5).

The change in concentration of a test compound may be monitored by either measuring the concentration in the liquid or in the reactor headspace. The analytical technique chosen for the test should be as sensitive as possible. For the batch test procedures described in this section, equilibrium conditions must exist between the liquid and gas phases of the experiments because the data analysis procedures are based on this premise. To use the headspace sampling approach, the reactor headspace must be in equilibrium with the liquid so that the headspace concentrations can be correlated with the liquid concentrations. Before the biodegradation testing is conducted, the equilibrium assumption must be verified. A discussion of the equilibrium assumption verification is given below in sections D.1 and D.2 since different approaches are required for the two types of batch tests.

To determine biodegradation kinetic parameters in a batch test, it is important to choose an appropriate initial substrate (compound(s) of interest) concentration for the test. The outcome of the batch experiment may be influenced by the initial substrate (S_O) to biomass (X_O) ratio (see references 3, 4, and 6). This ratio is typically measured in chemical oxygen demand (COD) units. When the S_O/X_O ratio is low, cell multiplication and growth in the batch test is negligible and the kinetics measured by the test are representative of the kinetics in the activated sludge unit of interest. The S_O/X_O ratio for a batch test is determined with the following equation:

$$\frac{S_0}{X_0} = \frac{S_i}{1.42\ X} \quad \text{(Eqn App. C – 1)}$$

Where:

S_O/X_O=initial substrate to biomass ratio on a COD basis

S_i=initial substrate concentration in COD units (g COD/L)

X=biomass concentration in the batch test (g MLVSS/L)

1.42 = Conversion factor to convert to COD units

For the batch tests described in this section, the S_O/X_O ratio (on a COD basis) must be initially less than 0.5.

1. *Aerated Reactor Test.* An aerated draft tube reactor may be used for the biokinetics testing (as an example see Figure 2 of appendix C). Other aerated reactor configurations may also be used. Air is bubbled through a porous frit at a rate sufficient to aerate and keep the reactor uniformly mixed. Aeration rates typically vary from 50 to 200 ml/min for a 1 liter system. A mass flow rate controller is used to carefully control the air flow rate because it is important to have an accurate measure of this rate. The dissolved oxygen (DO) concentration in the system must not fall below 2 mg/liter so that the biodegradation observed will not be DO-limited. Once the air flow rate is established, the test mixture (or compound) of interest is then injected into the reactor and the concentration of the compound(s) is monitored over time. Concentrations may be monitored in the liquid or in the headspace. A minimum of six samples shall be taken over the period of the test. However, it is necessary to collect samples until the compound concentration falls below the LOQ. If liquid samples are collected, they must be small enough such that the liquid volume in the batch reactor does not change by more than 10%.

Before conducting experiments with biomass, it is necessary to verify the equilibrium assumption. The equilibrium assumption can be verified by conducting a stripping experiment using the effluent (no biomass) from the activated sludge unit of interest. Effluent is filtered with a 0.45 um or smaller filter and placed in the draft tube reactor. Air is sparged into the system and the compound concentration in the liquid or headspace is monitored over time. This test with no biomass may provide an estimate of the Henry's law constant. If the system is at equilibrium, the Henry's law constant may be estimated with the following equation:

$$-\ln\left(C / C_0\right) = \left(GK_{eq} / V\right)t \quad \text{(Eqn App. C – 2)}$$

26Where:

C=cencentration at time, t (min)

C_O=concentration at t=0

G=volumetric gas flow rate (ml/min)

V=liquid volume in the batch reactor (ml)

K_{eq}=Henry's law constant (mg/L-gas)/(mg/L-liquid)

t=time (min)

A plot of—ln(C/C_o) as a function of t will have a slope equal to GK_{eq}/V. The equilibrium assumption can be verified by comparing the experimentally determined K_{eq} for the system to literature values of the Henry's Law constant (including those listed in this appendix). If K_{eq} does not match the Henry's law constant, K_{eq} shall be determined from analysis of the headspace and liquid concentration in a batch system.

The concentration of a compound decreases in the bioreactor due to both biodegradation and stripping. Biodegradation processes are typically described with a Monod model. This model and a stripping expression are combined to give a mass balance for the aerated draft tube reactor):

$$-\frac{ds}{dt}=\left(\frac{GK_{eq}}{V}\right)s+\left(\frac{Q_mX}{K_s+s}\right)s \qquad (\text{Eqn App. C}-3)$$

Where:

s=test compound concentration, mg/liter
G=volumetric gas flow rate, liters/hr
K_{eq}=Henry's Law constant measured in the system, (mg/liter gas)/(mg/liter liquid)
V=volume of liquid in the reactor, liters
X=biomass concentration (g MLVSS/liter)
Q_m=maximum rate of substrate removal, mg/g MLVSS/hr
K_S=Monod biorate constant at half the maximum rate, mg/liter

Equation App.C–3 has the analytical solution:

$$-t=\frac{VK_s}{A}\ln\left(\frac{s}{s_0}\right)+\frac{Q_mXV^2}{AB}\ln\left(\frac{A+Bs}{A+Bs_0}\right) \qquad (\text{Eqn App. C}-4)$$

Where:

$A=GK_{eq}K_S+Q_mVX$
$B=GK_{eq}$
S_O=test compound concentration at t=0

This equation is used along with the substrate concentration versus time data to determine the best fit parameters (Q_m and K_S) to describe the biodegradation process in the aerated reactor. If the aerated reactor test is used, the following procedure is used to analyze the data. Evaluate K_{eq} for the compound of interest with Form XI. The concentration in the vented headspace or liquid is measured as a function of time and the data is entered on Form XI. A plot is made from the data and attached to the Form XI. K_{eq} is calculated on Form XI and the results are contrasted with the expected value of Henry's law obtained from Form IX. If the comparison is satisfactory, the stripping constant is calculated from K_{eq}, completing Form XI. The values of K_{eq} may differ because the theoretical value of K_{eq} may not be applicable to the system of interest. If the comparison of the calculated K_{eq} from the form and the expected value of Henry's law is unsatisfactory, Form X can alternatively be used to validate K_{eq}. If the aerated reactor is demonstrated to not be at equilibrium, either modify the reactor design and/or operation, or use another type of batch test.

The compound-specific biorate constants are then measured using Form XII. The stripping constant that was determined from Form XI and a headspace correction factor of 1 are entered on Form XII. The aerated reactor biotest may then be run, measuring concentrations of each compound of interest as a function of time. If headspace concentrations are measured instead of liquid concentrations, then the corresponding liquid concentrations are calculated from the headspace measurements using the K_{eq} determined on Form XI and entered on Form XII.

The concentration data on Form XII may contain scatter that can adversely influence the data interpretation. It is possible to curve fit the concentration data and enter the concentrations on the fitted curve instead of the actual data. If curve fitting is used, the curve-fitting procedure must be based upon the Equation App. C–4. When curve fitting is used, it is necessary to attach a plot of the actual data and the fitted curve to Form XII.

If the stripping rate constant is relatively large when compared to the biorate at low concentrations, it may be difficult to obtain accurate evaluations of the first-order biorate constant. In these cases, either reducing the stripping rate constant by lowering the aeration rate, or increasing the biomass concentrations should be considered.

The final result of the batch testing is the measurement of a biorate that can be used to estimate the fraction biodegraded, f_{bio}. The number transferred to Form III is obtained from Form XII, line 9.

2. *Sealed Reactor Test.* This test uses a closed system to prevent losses of the test compound by volatilization. This test may be conducted using a serum bottle or a sealed draft tube reactor (for an example see Figure 3 of appendix C). Since no air is supplied, it is necessary to ensure that sufficient oxygen is present in the system. The DO concentration in the system must not fall below 2 mg/liter so that the biodegradation observed will not be DO-limited. As an alternative, oxygen may be supplied by electrolysis as needed to maintain the DO concentration above 2 mg/liter. The reactor contents must be uniformly mixed, by stirring or agitation using a shaker or similar apparatus. The test mixture (or compound) of interest is injected into the reactor and the concentration is monitored over time. A minimum of six samples shall be taken over the period of the test. However, it is necessary to monitor the concentration until it falls below the LOQ.

The equilibrium assumption must be verified for the batch reactor system. In this case, K_{eq} may be determined by simultaneously measuring gas and liquid phase concentrations at different times within a given experiment. A constant ratio of gas/liquid concentrations indicates that equilibrium conditions are present and K_{eq} is not a function of concentration. This ratio is then taken as the K_{eq} for the specific compound in the test. It is not necessary to measure K_{eq} for each experiment. If the ratio is not constant, the equilibrium assumption is not valid and it is necessary to (1) increase mixing energy for the system and retest for the equilibrium assumption, or (2) use a different type of test (for example, a collapsible volume reactor).

The concentration of a compound decreases in the bioreactor due to biodegradation according to Equation App. C–5:

$$\frac{ds}{dt}=\left[\frac{-V_1}{V_gK_{eq}+V_1}\right]\left[\left(\frac{Q_mX}{K_s+s}\right)s\right] \qquad (\text{Eqn App. C}-5)$$

Where:

s=test compound concentration (mg/liters)
V_l=the average liquid volume in the reactor (liters)
V_g=the average gas volume in the reactor (liters)
Q_m=maximum rate of substrate removal (mg/g *ML*VSS/hr)
K_{eq}=Henry's Law constant determined for the test, (mg/liter gas)/(mg/liter liquid)
K_s=Monod biorate constant at one-half the maximum rate (mg/liter)
t=time (hours)
X=biomass concentration (g *ML*VSS/liter)
s_o=test compound concentration at time t=0

Equation App. C–5 can be solved analytically to give:

$$t = \frac{-\left(V_s K_{eg} + V_l\right)}{V_l Q_m X}\left[\left(s - s_0\right) + K_s \ln\left(\frac{s}{s_0}\right)\right] \qquad \text{(Eqn App. C – 6)}$$

This equation is used along with the substrate concentration versus time data to determine the best fit parameters (Q_m and K_s) to describe the biodegradation process in the sealed reactor.

If the sealed reactor test is used, Form X is used to determine the headspace correction factor. The disappearance of a compound in the sealed reactor test is slowed because a fraction of the compound is not available for biodegradation because it is present in the headspace. If the compound is almost entirely in the liquid phase, the headspace correction factor is approximately one. If the headspace correction factor is substantially less than one, improved mass transfer or reduced headspace may improve the accuracy of the sealed reactor test. A preliminary sealed reactor test must be conducted to test the equilibrium assumption. As the compound of interest is degraded, simultaneous headspace and liquid samples should be collected and Form X should be used to evaluate K_{eq}. The ratio of headspace to liquid concentrations must be constant in order to confirm that equilibrium conditions exist. If equilibrium conditions are not present, additional mixing or an alternate reactor configuration may be required.

The compound-specific biorate constants are then calculated using Form XII. For the sealed reactor test, a stripping rate constant of zero and the headspace correction factor that was determined from Form X are entered on Form XII. The sealed reactor test may then be run, measuring the concentrations of each compound of interest as a function of time. If headspace concentrations are measured instead of liquid concentrations, then the corresponding liquid concentrations are calculated from the headspace measurements using K_{eq} from Form X and entered on Form XII.

The concentration data on Form XII may contain scatter that can adversely influence the data interpretation. It is possible to curve fit the concentration data and enter the concentrations on the fitted curve instead of the actual data. If curve fitting is used, the curve-fitting procedure must be based upon Equation App. C–6. When curve fitting is used, it is necessary to attach a plot of the actual data and the fitted curve to Form XII.

If a sealed collapsible reactor is used that has no headspace, the headspace correction factor will equal 1, but the stripping rate constant may not equal 0 due to diffusion losses through the reactor wall. The ratio of the rate of loss of compound to the concentration of the compound in the reactor (units of per hour) must be evaluated. This loss ratio has the same units as the stripping rate constant and may be entered as the stripping rate constant on line 1 of Form XII.

If the loss due to diffusion through the walls of the collapsible reactor is relatively large when compared to the biorate at low concentrations, it may be difficult to obtain accurate evaluations of the first-order biorate constant. In these cases, either replacing the materials used to construct the reactor with materials of low permeability or increasing the biomass concentration should be considered.

The final result of the batch testing is the measurement of a biorate that can be used to estimate the fraction biodegraded, f_{bio}. The number transferred to Form III is obtained from Form XII, line 9.

The number on Form XII line 9 will equal the Monod first-order biorate constant if the full-scale system is operated in the first-order range. If the full-scale system is operated at concentrations above that of the Monod first-order range, the value of the number on line 9 will be somewhat lower than the Monod first-order biorate constant. With supporting biorate data, the Monod model used in Form XII may be used to estimate the effective biorate constant K1 for use in Form III.

If a reactor with headspace is used, analysis of the data using equation App. C–6 is valid only if V_l and V_g do not change more than 10% (i.e., they can be approximated as constant for the duration of the test). Since biodegradation is occurring only in the liquid, as the liquid concentration decreases it is necessary for mass to transfer from the gas to the liquid phase. This may require vigorous mixing and/or reducing the volume in the headspace of the reactor.

If there is no headspace (e.g., a collapsible reactor), equation App. C–6 is independent of V_1 and there are no restrictions on the liquid volume. If a membrane or bag is used as the collapsible-volume reactor, it may be important to monitor for diffusion losses in the system. To determine if there are losses, the bag should be used without biomass and spiked with the compound(s) of interest. The concentration of the compound(s) in the reactor should be monitored over time. The data are analyzed as described above for the sealed reactor test.

3. *Quality Control/Quality Assurance (QA/QC).* A QA/QC plan outlining the procedures used to determine the biodegradation rate constants shall be prepared and a copy maintained at the source. The plan should include, but may not be limited to:

1. A description of the apparatus used (e.g., size, volume, method of supplying air or oxygen, mixing, and sampling procedures) including a simplified schematic drawing.

2. A description of how biomass was sampled from the activated sludge unit.

3. A description of how biomass was held prior to testing (age, etc.).

4. A description of what conditions (DO, gas-liquid equilibrium, temperature, etc.) are important, what the target values are, how the factors were controlled, and how well they were controlled.

5. A description of how the experiment was conducted, including preparation of solutions, dilution procedures, sampling procedures, monitoring of conditions, etc.

6. A description of the analytical instrumentation used, how the instruments were calibrated, and a summary of the precision for that equipment.

7. A description of the analytical procedures used. If appropriate, reference to an ASTM, EPA or other procedure may be used. Otherwise, describe how the procedure is done, what is done to measure precision, accuracy, recovery, etc., as appropriate.

8. A description of how data are captured, recorded, and stored.

9. A description of the equations used and their solutions, including a reference to any software used for calculations and/or curve-fitting.

IV. Calculation of F_{bio}

At this point, the individual f_{bios} determined by the previously explained procedures must be summed to obtain the total F_{bio}. To determine the F_{bio} multiply each compound specific f_{bio} by the compound-specific average mass flow rate of the organic compound in the wastewater stream (see regulation for instruction on calculation of average mass flow rate). Sum these products and divide by the total wastewater stream average mass flow rate of organic compounds.

$$F_{bio} = \frac{\sum_{i=1}^{N}\left(f_{bio}i \times M_i\right)}{\sum_{i=1}^{n} M_i} \qquad \text{(Eqn App. C – 7)}$$

M=compound specific average mass flow rate of the organic compounds in the wastewater (Mg/Yr)
n=number of organic compounds in the wastewater

The F_{bio} is then used in the applicable compliance equations in the regulation to determine if biodegradation may be used to comply with the treatment standard without covering and venting to an air pollution control device.

References

1. Rajagopalan, S. et al. ''Comparison of Methods for Determining Biodegradation Kinetics of Volatile Organic Compounds.'' Proceedings of Water Environment Federation. 67th Annual Conference, October 15–19, 1994.

2. Ellis, T.G. et al. ''Determination of Toxic Organic Chemical Biodegradation Kinetics Using Novel Respirometric Technique''. Proceedings Water Environment Federation, 67th Annual Conference, October 15–19, 1994.

3. Pitter, P. and J. Chudoba. Biodegradability of Organic Substances in the Aquatic Environment. CRC Press, Boca Raton, FL. 1990.

4. Grady, C.P.L., B. Smets, and D. Barbeau. Variability in kinetic parameter estimates: A review of possible causes and a proposed terminology. Wat. Res. 30 (3), 742–748, 1996.

5. Eaton, A.D., et al. eds., Standard Methods for the Examination of Water and Wastewater, 19th Edition, American Public Health Association, Washington, DC, 1995.

6. Chudoba P., B. Capdeville, and J. Chudoba. Explanation of biological meaning of the So/Xo ratio in batch cultivation. Wat. Sci. Tech. 26 (3/4), 743–751, 1992.

TABLE I

	Compound	H_L @ 25°C (atm/mole frac)	H_L @ 100°C (atm/mole frac)
1	Acetaldehyde	4.87e+00	5.64e+01
3	Acetonitrile	1.11e+00	1.78e+01
4	Acetophenone	5.09e−01	2.25e+01
5	Acrolein	4.57e+00	6.61e+01
8	Acrylonitrile	5.45e+00	6.67e+01
9	Allyl chloride	5.15e+02	2.26e+03
10	Aniline	9.78e−02	1.42e+00
12	Benzene	3.08e+02	1.93e+03
14	Benzyl chloride	1.77e+01	2.88e+02
15	Biphenyl	2.27e+01	1.27e+03
17	Bromoform	2.96e+01	3.98e+02
18	1,3-Butadiene	3.96e+03	1.56e+04
20	Carbon disulfide	1.06e+03	3.60e+03
21	Carbon tetrachloride	1.68e+03	1.69e+04
23	2-Chloroacetophenone	4.84e−02	1.43e+01
24	Chlorobenzene	2.09e+02	3.12e+03
25	Chloroform	2.21e+02	1.34e+03
26	Chloroprene	5.16e+01	1.74e+02
29	o-Cresol	9.12e−02	2.44e+01
31	Cumene	7.28e+02	7.15e+03
32	1,4-Dichlorobenzene(p)	1.76e+02	1.95e+03
33	Dichloroethyl ether	1.14e+00	3.57e+01
34	1,3-Dichloropropene	1.97e+02	1.44e+03
36	N,N-Dimethylaniline	7.70e−01	5.67e+02
37	Diethyl sulfate	3.41e−01	4.22e+01
38	3,3'-Dimethylbenzidine	7.51e−05	5.09e−01
40	1,1-Dimethylhydrazine	9.11e−02	1.57e+01
42	Dimethyl sulfate	2.23e−01	1.43e+01
43	2,4-Dinitrophenol	2.84e−01	1.50e+02
44	2,4-Dinitrotoluene	4.00e−01	9.62e+00
45	1,4-Dioxane	3.08e−01	9.53e+00
47	Epichlorohydrin	1.86e+00	4.34e+01
48	Ethyl acrylate	1.41e+01	3.01e+02
49	Ethylbenzene	4.38e+02	4.27e+03
50	Ethyl chloride (chloroethane)	6.72e+02	3.10e+03
51	Ethylene dibromide	3.61e+01	5.15e+02
52	Ethylene dichloride (1,2-Dichloroethane)	6.54e+01	5.06e+02
54	Ethylene oxide	1.32e+01	9.09e+01
55	Ethylidene dichloride (1,1-Dichloroethane)	3.12e+02	2.92e+03
57	Ethylene glycol dimethyl ether	1.95e+00	4.12e+01
60	Ethylene glycol monoethyl ether acetate	9.86e−02	6.03e+00
62	Ethylene glycol monomethyl ether acetate	1.22e−01	6.93e+00
64	Diethylene glycol dimethyl ether	8.38e−02	4.69e+00
69	Diethylene glycol diethyl ether	1.19e−01	7.71e+00
72	Ethylene glycol monobutyl ether acetate	2.75e−01	2.50e+01
73	Hexachlorobenzene	9.45e+01	2.57e+04
74	Hexachlorobutadiene	5.72e+02	6.92e+03
75	Hexachloroethane	4.64e+02	7.49e+04
76	Hexane	4.27e+04	9.44e+04
78	Isophorone	3.68e−01	1.68e+01
80	Methanol	2.89e−01	7.73e+00
81	Methyl bromide (Bromomethane)	3.81e+02	2.12e+03
82	Methyl chloride (Chloromethane)	4.90e+02	2.84e+03
83	Methyl chloroform (1,1,1-Trichloroethane)	9.67e+02	5.73e+03

TABLE I—Continued

	Compound	H_L @ 25°C (atm/mole frac)	H_L @ 100°C (atm/mole frac)
84	Methyl ethyl ketone (2-Butanone)	7.22e+00	5.92e+01
86	Methyl isobutyl ketone (Hexone)	2.17e+01	3.72e+02
88	Methyl methacrylate	7.83e+00	9.15e+01
89	Methyl tert-butyl ether	3.08e+01	2.67e+02
90	Methylene chloride (Dichloromethane)	1.64e+02	9.15e+02
93	Naphthalene	2.68e+01	7.10e+02
94	Nitrobenzene	1.33e+00	2.80e+01
96	2-Nitropropane	6.61e+00	8.76e+01
99	Phosgene	7.80e+02	3.51e+03
102	Propionaldehyde	3.32e+00	1.42e+02
103	Propylene dichloride	1.59e+02	1.27e+03
104	Propylene oxide	1.98e+01	1.84e+02
106	Styrene	1.45e+02	1.72e+03
107	1,1,2,2-Tetrachloroethane	1.39e+01	1.99e+02
108	Tetrachloroethylene (Perchloroethylene)	9.83e+02	1.84e+04
109	Toluene	3.57e+02	2.10e+03
112	o-Toluidine	1.34e−01	1.15e+01
113	1,2,4-Trichlorobenzene	1.07e+02	1.04e+03
114	1,1,2-Trichloroethane	4.58e+01	5.86e+02
115	Trichloroethylene	5.67e+02	7.66e+03
116	2,4,5-Trichlorophenol	4.84e−01	6.27e+01
117	Triethylamine	6.94e+00	2.57e+02
118	2,2,4-Trimethylpentane	1.85e+05	9.74e+05
119	Vinyl acetate	2.82e+01	2.80e+02
120	Vinyl chloride	1.47e+03	6.45e+03
121	Vinylidene chloride (1,1-Dichloroethylene)	1.44e+03	1.40e+04
123	m-Xylene	4.13e+02	3.25e+03
124	o-Xylene	2.71e+02	2.55e+03
125	p-Xylene	4.13e+02	3.20e+03

BILLING CODE 6560–50–P

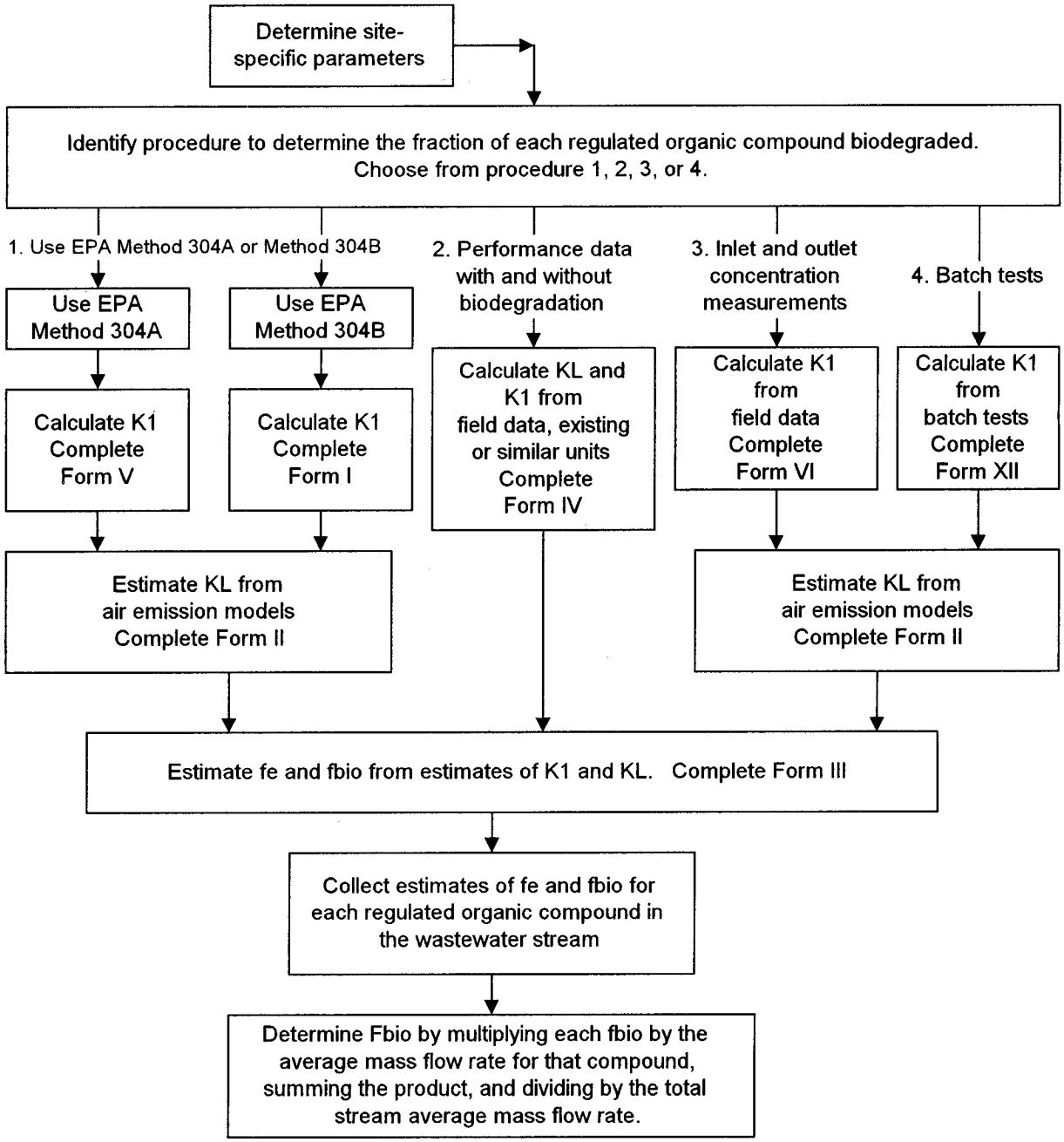


Figure 1. ALTERNATIVE EXPERIMENTAL METHODS FOR DETERMINING THE FRACTION OF ORGANIC COMPOUND BIODEGRADED (Fbio) IN A BIOLOGICAL TREATMENT UNIT

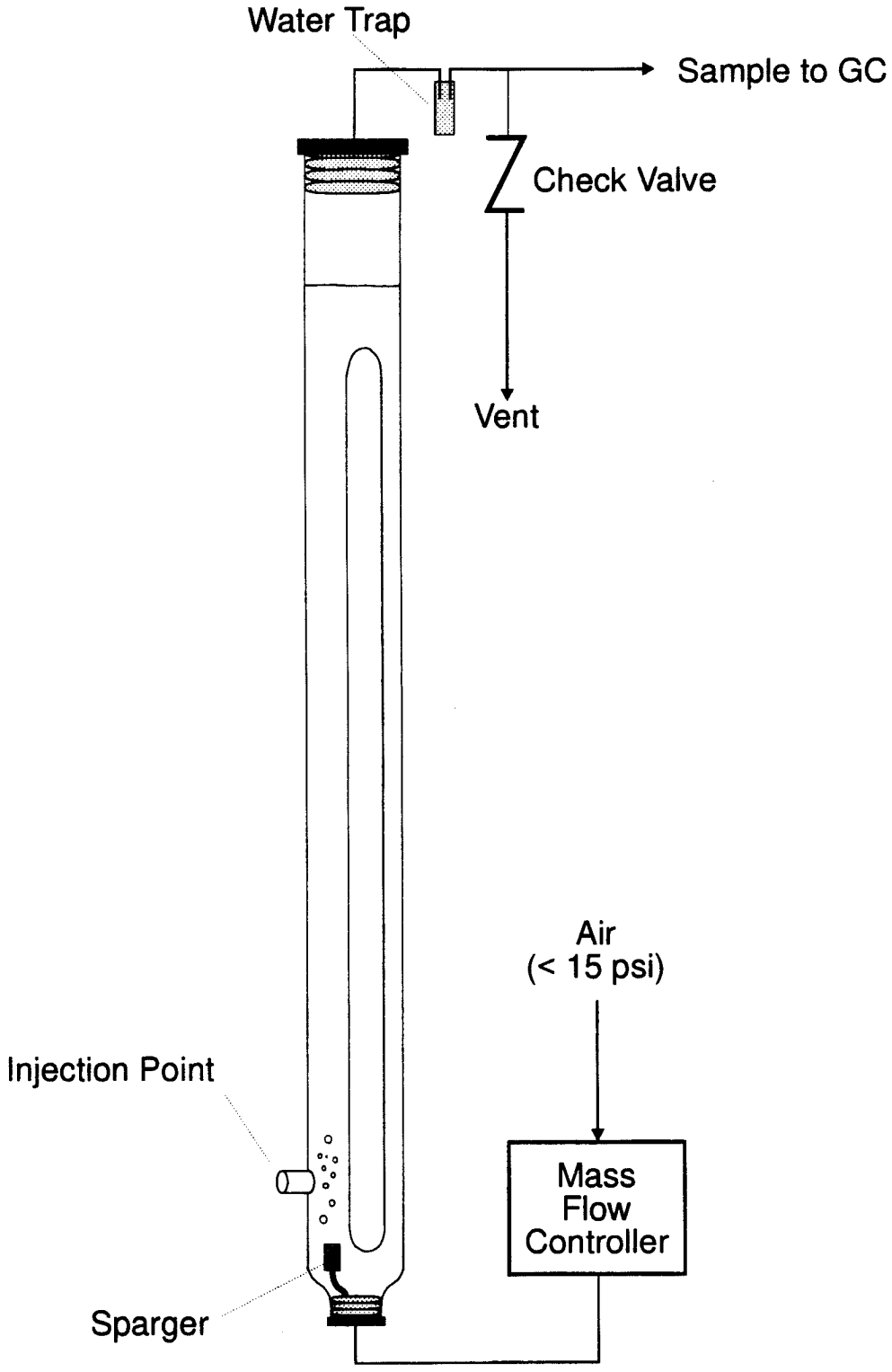


Figure 2. Example Aerated Draft Tube Reactor

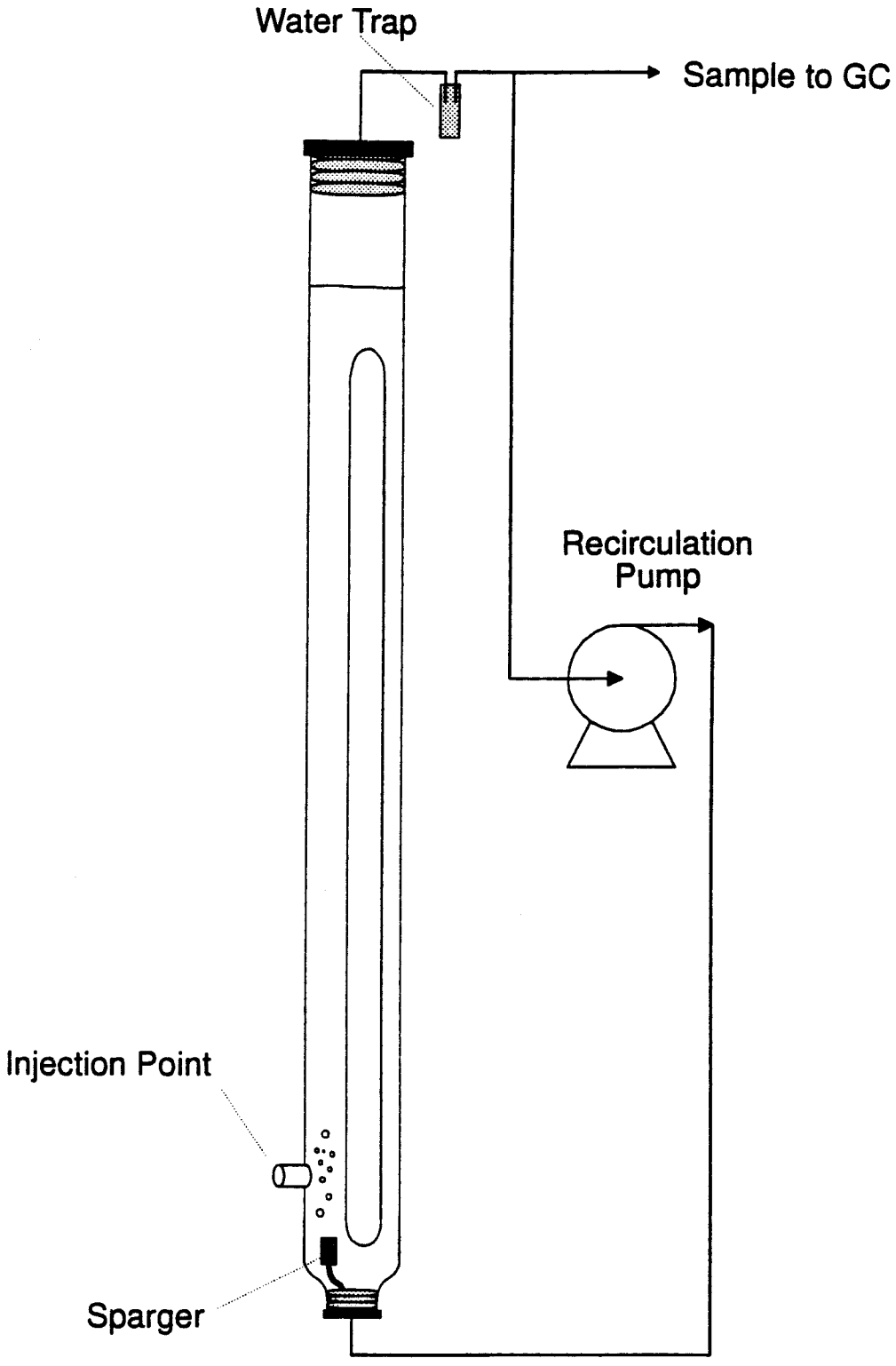


Figure 3. Example Sealed Draft Tube Reactor

Form I **DATA FORM FOR THE ESTIMATION OF THE EPA METHOD 304B FIRST ORDER BIORATE CONSTANT**			
NAME OF THE FACILITY for site specific biorate determination			Example
COMPOUND for site specific biorate determination			*METHANOL*
INLET CONCENTRATION used in EPA METHOD 304B	1		78
EXIT CONCENTRATION measured by EPA METHOD 304B	2		6
BIOMASS (g/L) This is the dried solids that are obtained from the mixed liquor suspended solids in the bench scale bioreactor.	3		0.075
TEMPERATURE OF BIOREACTOR (deg. C)	4		35
VOLUME of EPA METHOD 304B bench scale bioreactor (L)	5		6
FLOW RATE of waste treated in the bench scale bioreactor (L/hr)	6		0.146
CALCULATIONS FROM EPA METHOD 304B DATA MEASUREMENTS			
RESIDENCE TIME (hr) Divide the number on line 5 by the number on line 6 and enter the results here.	7		41.10
Concentration Decrease (g/m^3). Subtract the number on line 2 from the number on line 1 and enter the results here.	8		72.00
BIORATE (g/m^3-hr). Divide the number on line 8 by the number on line 7 and enter the results here.	9		1.75
Product of concentration and biomass. Multiply the number on line 2 by the number on line 3 and enter the results here.	10		0.45
BIORATE K1 (L/g bio-hr) Divide the number on line 9 by the number on line 10 and enter the results here.	11		3.89
Temperature adjustment. Subtract 25 deg. C from the number on line 4 and enter the results here.	12		10
Temperature adjustment factor. 1.046 is the default temperature adjustment factor. Enter the temperature adjustment factor here.	13		1.046
Biorate temperature ratio. Raise the number on line 13 to the power of the number on line 12.	14		1.567
BIORATE K1 at 25 deg. C (L/g MLVSS-hr) Divide the number on line 11 by the number on line 14 and enter the results here.	15		2.48

Note: With Monod kinetics, use Kmax=1000 to convert the Monod kinetics to first order. If a different temperature adjustment factor than the default is entered on line 13, make sure that the adjustment factor used in the calculations agrees with the value entered on line 13.

Form II	PROCEDURES FORM FOR THE ESTIMATION OF THE KL FROM UNIT SPECIFICATIONS		
NAME OF THE FACILITY for site specific biorate determination			
NAME OF UNIT for site specific biorate determination			
NAME OF COMPOUND			
HENRY'S LAW constant for the compound (mole fraction in gas per mole fraction in water at 25 degrees Celsius)			
IDENTIFY THE TYPE OF UNIT			(check one box below)
	Quiescent impoundment	1	
	Surface agitated impoundment	2	
	Surface agitated impoundment with submerged air	3	
	Unit agitated by submerged aeration gas	4	
	EPA Method 304A, Covered unit, UNOX system, or bench scale reactor	5	

PROCEDURES BASED UPON THE TYPE OF UNIT

UNIT	PROCEDURE TO FOLLOW
1	Use the quiescent impoundment model to determine KL. Use Kq as KL as determined from Form VII.
2	Use the quiescent impoundment model to determine KL for the quiescent zone, Form VII. Use the aerated impoundment model to determine KL for the agitated surface, Form VIII.
3	Use the quiescent impoundment model to determine Kq for the quiescent zone, Form VII. Use the aerated impoundment model to determine KL for the agitated surface, Form VIII. The total system KL is the sum of the KL from Form VIII and the equivalent KL from Form V. Use the submerged air rate as the vent rate in form V.
4	Use the aerated impoundment model to determine KL if the surface is agitated. Use the quiescent impoundment model if the surface is not agitated. KL includes the effect of volatilization in the air discharge. See section 5.6.1 in AIR EMISSIONS MODELS FOR WASTE AND WASTEWATER (EPA-453/R-94-080A). The total system KL is the sum of the KL from Form VIII and the equivalent KL from Form V. Use the submerged air rate as the vent rate in Form V.
5	KL for the surface is assumed to be equal zero. Determine equivalent KL based upon air discharge. Use Form V for EPA Method 304A or if the concentration in the vent is not measured. Use Form V-A if the concentration in the vent is measured.

Estimate of KL obtained from above procedures (m/s)	6	

Form II-A	**PROCEDURES FORM FOR THE ESTIMATION OF THE KL FROM WATER 7**		
NAME OF THE FACILITY for site specific biorate determination			
NAME OF UNIT for site specific biorate determination			
NAME OF COMPOUND			
HENRY'S LAW COMPOUND			
IDENTIFY THE TYPE OF UNIT			(check one box below)
	Quiescent impoundment	1	
	Surface agitated impoundment	2	
	Surface agitated impoundment with submerged air	3	
	Unit agitated by submerged aeration gas	4	
	Covered unit, UNOX system, bench scale reactor	5	

PROCEDURES BASED UPON THE TYPE OF UNIT

unit	procedure to follow
1	Use the quiescent impoundment model to determine KL.
2	Use the aerated impoundment model to determine KL for the combined agitated surfaces and quiescent surfaces.
3	Use the aerated impoundment model to determine KL for the combined agitated surfaces and quiescent surfaces.
4	Use the aerated impoundment model to determine KL if the surface is agitated. Use the quiescent impoundment model if the surface is not agitated. KL includes the effect of volatilization in the air discharge. See section 5.6.1 in AIR EMISSIONS MODELS FOR WASTE AND WASTEWATER (EPA-453/R-94-080A).
5	KL for the surface is assumed to equal zero. Select the covered unit option with the aerated impoundment model.

Form III **DATA FORM FOR THE ESTIMATION OF THE COMPOUND FRACTION BIODEGRADED AND AIR EMISSIONS**			
NAME OF THE FACILITY for site specific biorate determination			example
COMPOUND for site specific biorate determination			*methanol*
ESTIMATE OF K1 from Form I line 11, Form V line 15, Form V-A line 15, Form IV line 14, Form VI line 13, or Form XII line 9. (L/g MLVSS-hr)	1		3.89
BIOMASS (g/L) This is the dried solids that are obtained from the mixed liquor suspended solids in the full-scale bioreactor.	2		2.4
VOLUME of full-scale system (cubic meters)	3		2700
AREA of the liquid surface of the full-scale system (square meters)	4		1500
ESTIMATE OF KL from Form II, II-A, IV, V, V-A, or V-B (m/s)	5		0.0000036
FLOW RATE of waste treated in full-scale bioreactor (m^3/s)	6		0.1565
CALCULATIONS FROM ESTIMATES OF K1 AND KL			
BIORATE (m^3/s) Multiply the numbers on lines 1, 2, and 3 together and divide the results by 3600. Enter the results here.	7		7.0020000
AIR STRIPPING (m^3/s). Multiply the numbers on lines 4 and 5 together. Enter the results here.	8		0.0054000
EFFLUENT DISCHARGE (m^3/s). Enter the number on line 6 here.	9		0.1565000
TOTAL of the three loss mechanisms. Add the numbers on lines 7, 8, and 9. Enter the results here.	10		7.1639000
Fraction biodegraded: Divide the number on line 7 by the number on line 10 and enter the results here.	11		0.9774006
Fraction air emissions: Divide the number on line 8 by the number on line 10 and enter the results here.	12		0.0007538
Fraction remaining in unit effluent: Divide the number on line 9 by the number on line 10 and enter the results here.	13		0.0218456
Total: add the numbers on lines 11, 12, and 13. The sum should equal 1.0	14		1.0000000

Form IV	**DATA FORM FOR THE ESTIMATION OF K1 AND KL FROM FULL SCALE UNIT DATA WITH AND WITHOUT BIODEGRADATION**		
For a general discussion of this approach, see Air Emissions Models for Waste and Wastewater, EPA-453/R-94-080A, Chapter 5, November 1994.			
NAME OF THE FACILITY for site specific biorate determination			example
COMPOUND for site specific biorate determination			*methanol*
BIOMASS (g/L) This is the dried solids that are obtained from the mixed liquor suspended solids in the full-scale bioreactor.	1		2.4
VOLUME of full-scale system (cubic meters)	2		2700
AREA of the liquid surface of the full-scale system (square meters)	3		1500
INLET CONCENTRATION of compound (g/m^3 or ppmw)	4		133.5
EXIT CONCENTRATION of compound (g/m^3 or ppmw)	5		10.57
EXIT CONCENTRATION (NO BIODEGRADATION) of compound (g/m^3 or ppmw)	6		133
FLOW RATE of waste treated in the full-scale bioreactor (m^3/s)	7		0.1565
ESTIMATES OF K1 AND KL FROM FIELD DATA WITH AND WITHOUT BIODEGRADATION			
REMOVAL WITH BIODEGRADATION (g/s) Subtract the number on line 5 from the number on line 4 and multiply the results by the number on line 7. Enter the results here.	8		19.238545
REMOVAL WITHOUT BIODEGRADATION (g/s) Subtract the number on line 6 from the number on line 4 and multiply the results by the number on line 7. Enter the results here.	9		0.078250
KL A ESTIMATE (m^3/s) Divide the number on line 9 by the number on line 6. Enter the results here.	10		0.000588
K1 B V + KL A ESTIMATE (m^3/s) . Divide the number on line 8 by the number on line 5. Enter the results here.	11		1.820108
K1 B V ESTIMATE (m^3/s) Subtract the number on line 10 from the number on line 11. Enter the results here.	12		1.819520
Product of B and V. Multiply the number on line 1 by the number on line 2 and enter the results here.	13		6480
K1 ESTIMATE (L/gMLVSS-hr) Divide the number on line 12 by the number on line 13 and multiply by 3600 s/hr. Enter the results here.	14		1.010844
KL ESTIMATE (m/s) Divide the number on line 10 by the number on line 3. Enter the results here.	15		0.0000004

Form V	**DATA FORM FOR THE ESTIMATION OF K1 FOR EPA METHOD 304A OR FROM A COVERED, VENTED BIODEGRADATION UNIT.**		
For a general discussion of this approach, see Air Emissions Models for Waste and Wastewater, EPA-453/R-94-080A, Chapter 5, November 1994			
NAME OF THE FACILITY for site specific biorate determination			example
COMPOUND for site specific biorate determination			*methanol*
BIOMASS (g/L) This is the dried solids that are obtained from the mixed liquor suspended solids in the unit.	1		0.075
VENT RATE of total gas leaving the unit (G, m^3/s)	2		1
TEMPERATURE of the liquid in the unit (deg. C)	3		25
INLET CONCENTRATION of compound (g/m^3 or ppmw)	4		100
EXIT CONCENTRATION of compound (g/m^3 or ppmw)	5		5
ESTIMATE OF Henry's law constant (H, g/m^3 in gas / g/m^3 in liquid). Obtained from Form IX	6		0.00021
AREA OF REACTOR (m^2)	7		3400
VOLUME OF REACTOR (m^3)	8		10000
FLOW RATE of waste treated in the unit (m^3/s)	9		0.146
CALCULATION OF THE ESTIMATE OF K1			
TOTAL REMOVAL (g/s) Subtract the number on line 5 from the number on line 4 and multiply the result by the number on line 9. Enter the results here.	10		13.870000
[H G] ESTIMATE (m^3/s) Multiply the number on line 2 by the number on line 6. Enter the results here.	11		0.000021
[K1 B V + H G] (m^3/s) Divide the number on line 10 by the number on line 5. Enter the results here.	12		2.774000
[K1 B V] ESTIMATE (m^3/s) Subtract the number on line 11 from the number on line 12. Enter the results here.	13		2.773979
If the number on line 11 is greater than the number on line 13, this procedure cannot be used to demonstrate that the compound is biodegradable. Do not complete lines 14 and 15.			
Product of B and V. Multiply the number on line 1 by the number on line 8 and enter the results here.	14		750.000000
K1 ESTIMATE (L/g MLVSS-hr) Divide the number on line 13 by the number on line 14 and multiply by 3600 s/hr. Enter the results here.	15		13.315099
EQUIVALENT KL. Divide the number on line 11 by the number on line 7. Enter the results on line 16.	16		6.18e-09

This form may be used to estimate the Equivalent KL with input data for lines 2, 6, and 7.

Form V-A DATA FORM FOR THE CALCULATION OF K1 FROM A COVERED, VENTED BIODEGRADATIN UNIT. THE VENT CONCENTRATION IS MEASURED.			
For a general discussion of this approach, see Air Emissions Models for Waste and Wastewater, EPA-453/R-94-080A, Chapter 5, November 1994.			
NAME OF THE FACILITY for site specific biorate determination			example
COMPOUND for site specific biorate determination			*methanol*
BIOMASS (g/L) This is the dried solids that are obtained from the mixed liquor suspended solids in the unit.	1		0.075
VENT RATE of total gas leaving the unit (G, m^3/s)	2		.1
TEMPERATURE of the liquid in the unit (deg. C)	3		25
INLET CONCENTRATION of compound (Ci, g/m^3 or ppmw)	4		100
EXIT CONCENTRATION of compound (Ce, g/m^3 or ppmw)	5		5
VENT CONCENTRATION of compound (Cv, g/m^3)	6		0.001
AREA OF REACTOR SURFACE (m^2)	7		3400
VOLUME OF REACTOR (m^3)	8		10000
FLOW RATE of waste treated in the unit (m^3/s)	9		0.146
CALCULATION OF THE ESTIMATE OF K1			
TOTAL REMOVAL (g/s) Subtract the number on line 5 from the number on line 4 and multiply the results by the number on line 9. Enter the results here.	10		13.87
[G Cv/Ce] ESTIMATE (m^3/s) Multiply the number on line 2 by the number on line 6 and divide by the number on line 5. Enter the results here.	11		0.000020
[K1 B V + G Cv/Ce] (m^3/s) Divide the number on line 10 by the number on line 5. Enter the results here.	12		2.77
[K1 B V] ESTIMATE (m^3/s) Subtract the number on line 11 from the number on line 12. Enter the results here.	13		2.77
If the number on line 11 is greater than the number on line 13, this procedure cannot be used to demonstrate that the compound is biodegradable. Do not complete lines 14 and 15.			
Product of B and V. Multiply the number on line 1 by the number on line 8 and enter the results here.	14		750.00
K1 ESTIMATE (L/g MLVSS-hr) Divide the number on line 13 by the number on line 14 and multiply by 3600 s/hr. Enter the results here.	15		13.30
EQUIVALENT KL. Divide the number on line 11 by the number on line 7. Enter the results here.	16		5.9e-09

This form may be used to calculate the Equivalent KL with input data for lines 2, 5, 6, and 7.

Form V-B DATA FORM FOR THE CALCULATION OF EQUIVALENT KL FROM A VENTED BIODEGRADATIN UNIT WITH AN AIR SUPPORTED COVER. THE VENT CONCENTRATION IS MEASURED.			
NAME OF THE FACILITY for site specific biorate determination			example
COMPOUND for site specific biorate determination			*methanol*
Vent rate of total gas entering the cover (m^3/s)	1		120
Vent rate of total gas leaving the cover transferred to a control device (m^3/s)	2		100
TEMPERATURE of the liquid in the unit (deg. C)	3		25
Area of air supported cover (m^2)	4		1950
Permeability through the cover (cm/s)	5		5E-6
VENT CONCENTRATION of compound (g/m^3)	6		0.0022
EXIT CONCENTRATION of compound (g/m^3 or ppmw)	7		10.57
AREA OF REACTOR SURFACE (m^2)	8		1500
Performance of vent control device (% control)	9		95
CALCULATION OF THE ESTIMATE OF EQUIVALENT KL			
Loss of forced air in the cover due to leakage. (m^3/s) Subtract the number on line 2 from the number on line 1. Enter the results here.	10		20
Loss of compound in forced air (g/s) Multiply the number on line 10 by the number on line 6. Enter the results here.	11		0.044
Loss of compound by permeation through cover (g/s). Line 4 times line 5, line 6, and divide by 100. Enter the results here.	12		0
Loss of compound by permeation through vent (g/s). Line 2 times line 6. Enter the results here.	13		0.22
Treatment of compound in control device (g/s). Line 13 times line 9, divided by 100. Enter the results here.	14		0.209
Total removal from air phase (g/s). Sum of 11, 12, and 13.	15		0.264
Total treatment effectiveness (%) Line 14 divided by 15 times 100.	16		79.1666
[G Cv/Ce] ESTIMATE (m^3/s) Divide line 15 by line 7.	17		0.025
EQUIVALENT KL. Divide the number on line 17 by line 8.	18		1.67e-05

The permeability is the ratio of the flux (g/cm^2) to the gas concentration (g/cm^3).

If the gas is generated by the unit, the gas entering the cover may be estimated from an estimate of the cover leak rate and the total gas transferred to the control device.

Form VI **DATA FORM FOR THE ESTIMATION OF K1 FROM FULL SCALE UNIT DATA WITH BIODEGRADATION**			
NAME OF THE FACILITY for site specific biorate determination			example
COMPOUND for site specific biorate determination			*methanol*
BIOMASS (g/L) This is the dried solids that are obtained from the mixed liquor suspended solids in the full-scale bioreactor.	1		0.075
VOLUME of full-scale system (cubic meters)	2		100000
AREA of the liquid surface of the full-scale system (square meters)	3		10000
INLET CONCENTRATION of compound (g/m^3 or ppmw)	4		100
EXIT CONCENTRATION of compound (g/m^3 or ppmw)	5		5
ESTIMATE OF KL from Form II (m/s)	6		0.00001
FLOW RATE of waste treated in the full-scale bioreactor (m^3/s)	7		0.146
CALCULATION OF THE ESTIMATE OF K1 FROM FIELD DATA			
REMOVAL WITH BIODEGRADATION (g/s) Subtract the number on line 5 from the number on line 4 and multiply the results by the number on line 7. Enter the results here.	8		13.87
[KL A] ESTIMATE (m^3/s) Multiply the number on line 3 by the number on line 6. Enter the results here.	9		0.10
[K1 B V + KL A] (m^3/s) Divide the number on line 8 by the number on line 5. Enter the results here.	10		2.774
[K1 B V] ESTIMATE (m^3/s) Subtract the number on line 9 from the number on line 10. Enter the results here.	11		2.674
Product of B and V. Multiply the number on line 1 by the number on line 2 and enter the results here.	12		7500
K1 ESTIMATE (L/g MLVSS-hr) Divide the number on line 11 by the number on line 12 and multiply by 3600 s/hr. Enter the results here.	13		1.28352

FORM VII

DATA FORM FOR CALCULATING THE
MASS TRANSFER COEFFICIENT FOR A QUIESCENT SURFACE IMPOUNDMENT

Facility Name: _____

Waste Stream Compound: _____

Enter the following:

F - Impoundment fetch (m) _____
D - Impoundment depth (m) _____
U_{10} - Windspeed 10 m above liquid surface (m/s) _____
D_w - Diffusivity of compound in water (cm^2/s) _____
D_{ether} - Diffusivity of ether in water (cm^2/s) _____
μ_G - Viscosity of air, (g/cm-s) _____
ρ_G - Density of air, (g/cm^3) _____
D_a - Diffusivity of compound in air, (cm^2/s) _____
A - Area of impoundment, (m^2) _____
H - Henry's law constant, (atm-m^3/g mol) _____
R - Universal gas constant, (atm-m^3/g mol. °K) _____
μ_L - Viscosity of water, (g/cm-s) _____
ρ_L - Density of liquid, (g/cm^3) _____
T - Impoundment temperature, (°C) _____

Calculate the following:

Calculate F/D: _____

A. Calculate the liquid phase mass transfer coefficient, k_L, using one of the following procedures, (m/s)

1. Where F/D < 14 and U_{10} > 3.25 m/s, use the following procedure from MacKay and Yeun:

Calculate the Schmidt number on the liquid side, Sc_L, as follows:
$Sc_L = \mu_L/\rho_L D_w$ _____

Calculate the friction velocity, U^*, as follows, (m/s):
$U^* = 0.01 \times U_{10}(6.1 + 0.63\ U_{10})^{0.5}$ _____

Where U^* is > 0.3, calculate k_L as follows:
$k_L = (1.0 \times 10^{-6}) + (34.1 \times 10^{-4})U^* \times Sc_L^{-0.5}$ _____

Where U^* is < 0.3, calculate k_L as follows:
$k_L = (1.0 \times 10^{-6}) + (144 \times 10^{-4})(U^*)^{2.2} \times Sc_L^{-0.5}$ _____

2. For all other values of F/D and U_{10}, calculate k_L using the following procedure from Springer:[1]

[1]Springer, C., P. D. Lunney, and K. T. Valsaraj. Emission of Hazardous Chemicals from Surface and Near Surface Impoundments to Air. U.S. Environmental Protection Agency, Solid and Hazardous Waste Research Division. Cincinnati, OH. Project Number 808161-02. December 1984.

Where U_{10} is < 3.25 m/s, calculate k_L as follows:
$k_L = 2.78 \times 10^{-6}(D_w/D_{ether})^{2/3}$ _____

Where U_{10} is > 3.25 and 14 < F/D < 51.2, Calculate k_L as follows:
$k_L = [2.605 \times 10^{-9}(F/D) + 1.277 \times 10^{-7}] U_{10}^2 (D_w/D_{ether})^{2/3}$ _____

Where U_{10} > 3.25 m/s and F/D > 51.2, calculate k_L as follows:
$k_L = (2.611 \times 10^{-7})U_{10}^2 (D_w/D_{ether})^{2/3}$ _____

B. Calculate the gas phase mass transfer coefficient, k_G, using the following procedure from MacKay and Matsasugu, (m/s):[2]

Calculate the Schmidt number on the gas side, Sc_G, as follows: $Sc_G = \mu_G/\rho_G D_a$ _____

Calculate the effective diameter of the impoundment, d_e, as follows, (m):
$d_e = (4A/\pi)^{0.5}$ _____

Calculate k_G as follows, (m/s): $k_G = 4.82 \times 10^{-3} U_{10}^{0.78} Sc_G^{-0.67} d_e^{-0.11}$ _____

C. Calculate the partition coefficient, Keq, as follows: Keq = H/[R(T+273)]

_____

D. Calculate the overall mass transfer coefficient, K_q, as follows, (m/s):
$1/K_q = 1/k_L + 1/Keq\text{-}k_G$ _____

Where the total impoundment surface is quiescent:
$KL = K_q$

Where a portion of the impoundment surface is turbulent, continue with Form VIII.

[2]Hwang, S. T. Toxic Emissions from Land Disposal Facilities. Environmental Progress. 1:46-52. February 1982.

FORM VIII

DATA FORM FOR CALCULATING THE
MASS TRANSFER COEFFICIENT FOR AN AERATED SURFACE IMPOUNDMENT

Facility Name: _____

Waste Stream Compound: _____

Enter the following:

J - Oxygen transfer rating of surface aerator, (lb O_2/hr-hp) _____
POWR - Total power to aerators, (hp) _____
T - Water temperature, (°C) _____
O_t - Oxygen transfer correction factor _____
MW_L - Molecular weight of liquid _____
A_t - Turbulent surface area of impoundment, (ft^2) _____
(If unknown, use values from Table 1)
A - Total surface area of impoundment, (ft^2) _____
ρ_L - Density of liquid, (lb/ft^3) _____
D_w - Diffusivity of constituent in water, (cm^2/s) _____
$D_{O_2,w}$ - Diffusivity of oxygen in water, (cm^2/s) _____

d - Impeller diameter, (cm) _____
w - Rotational speed of impeller, (rad/s) _____
ρ_a - Density of air, (gm/cm^3) _____
N - Number of aerators _____
g_c - Gravitation constant, (lb_m-$ft/s^2/lb_f$) _____
d^* - Impeller diameter, (ft) _____
D_a - Diffusivity of constituent in air, (cm^2/s) _____
MW_a - Molecular weight of air _____
R - Universal gas constant, (atm-m^3/g mol.°C) _____
H = Henry's law constant, (atm-m^3/g mol) _____

Calculate the following:

A. Calculate the liquid phase mass transfer coefficient, k_L, using the following Equation from Thibodeaux:[3],[4]

$$k_L = [8.22 \times 10^{-9}\ J\ (POWR)(1.024)^{T-20}\ O_t\ 10^6\ MW_L/(Va_v\rho_L)]\ (D_w/\ D_{O_2,w}\ )^{0.5}, (m/s)$$

_____

[3]GCA Corporation. Emissions Data and Model Review for Wastewater Treatment Operations. Draft Technical Note. Prepared for U.S. Environmental Protection Agency. Contract No. 68-01-6871, Assignment 49. August 1985. p. 4-2.

[4]Hwang, S. T. Toxic Emissions from Land Disposal Facilities. Environmental Progress. 1:46-52. February 1982.

B. Calculate the gas phase mass transfer coefficient, k_G, using the following procedure from Reinhardt:[5,6]

Calculate the viscosity of air, μ_a, as follows, (g/cm.s):
$\mu_a = 4.568 \times 10^{-7} T + 1.7209 \times 10^{-4}$ _____

Calculate the Reynold's number as follows:
$R_e = d^2 w \rho_a / \mu_a$ _____

Calculate power to impeller, P_I, as follows, ($ft.lb_f/s$):
$P_I = 0.85 (POWR) 550/N$ _____

Calculate the power number, p, as follows:
$p = P_I g_c / (\rho_L d^{-5} w^3)$ _____

Calculate the Schmidt number, Sc_G, as follows:
$Sc_G = \mu_a / \rho_a D_a$ _____

Calculate the Fronde number, F_r, as follows:
$F_r = d w^2 / g_c$ _____

Calculate k_G as follows:
$k_G = 1.35 \times 10^{-7} R_e^{1.42} p^{0.4} Sc_G^{0.5} F_r^{-0.21} D_a MW_a / d$, (m/s) _____

C. Calculate the partition coefficient, Keq, as follows:
$Keq = H/[R(T+273)]$ _____

D. Calculate the overall turbulent mass transfer coefficient, K_t, as follows, (m/s):
$1/K_t = 1/k_L + 1/Keq.k_G$ _____

E. Calculate the quiescent mass transfer coefficient, K_q, for the impoundment using Form VII.
_____

F. Calculate the overall mass transfer coefficient, KL, for the impoundment as follows:

$$KL = \frac{K_q (A - A_t) + K_t A_t}{A}$$ _____

[5]GCA Corporation. Emissions Data and Model Review for Wastewater Treatment Operations. Draft Technical Note. Prepared for U.S. Environmental Protection Agency. Contract No. 68-01-6871, Assignment 49. August 1985. p. 4-3.

[6]Reinhardt, J. R. Gas-Side Mass-Transfer Coefficient and Interfacial Phenomena of Flat-Bladed Surface Agitators. Ph.D. dissertation, University of Arkansas, Fayetteville, Ar. 1977. p. 48.

Table 1. Turbulent Areas and Volumes for Surface Agitators[a]

ω, Motor horsepower, hp	A_t, Turbulent area, ft^2	A_t, Turbulent area, m^2	Effective depth, ft	V, Agitated volume, ft^3	a_V, Area per volume ft^2/ft^3
5	177	16.4	10	1,767	0.100
7.5	201	18.7	10	2,010	0.100
10	227	21	10.5	2,383	0.0952
15	284	26.4	11	3,119	0.0909
20	346	32.1	11.5	3,983	0.0870
25	415	38.6	12	4,986	0.0833
30	491	45.7	12	5,890	0.0833
40	661	61.4	13	8,587	0.0769
50	855	79.5	14	11,970	0.0714
60	1,075	100	15	16,130	0.0666
75	1,452	135	16	23,240	0.0625
100	2,206	205	18	39,710	0.0555

[a]Data for a high speed (1,200) rpm) aerator with 60 cm propeller diameter (d).

Form IX **DATA FORM FOR THE ESTIMATION OF THE HENRY'S LAW CONSTANT FOR A COMPOUND IN THE BIOLOGICAL TREATMENT UNIT**			
NAME OF THE FACILITY for site specific biorate determination			example
COMPOUND for site specific biorate determination			*methanol*
LISTED HENRY'S LAW VALUE AT 25 degrees Celsius. (Table 1, ratio of mol fraction in gas to mole fraction in water)	1		.2885
TEMPERATURE of the liquid in the unit (deg.C)	2		25
CALCULATION OF K			
Temperature adjusted Henry's law value (equals the value on line 1 if the temperature on line 2 is 25)	3		0.2885
Discuss basis of temperature adjustment			
Temperature in degrees Kelvin. Add 273.16 to the number on line 2. Enter the results here.	4		298.1600
Temperature ratio. Divide 273.16 by the number on line 4. Enter the results here.	5		0.9162
Henry's Law adjustment factor. Multiply the number on line 5 by 0.804 and enter the results here.	6		0.7366
Henry's Law value (g/m3 gas per g/m3 liquid) Multiply the number on line 3 by the number on line 6 and divide the results by 1000. Enter the results here and on Form V line 6.	7		0.000213
Henry's Law value (atm m3 per mol) Divide the number on line 3 by 55555 and enter the results here.	8		0.000005

Form X **DATA FORM FOR THE CALCULATION OF THE HENRY'S LAW CONSTANT FOR A COMPOUND IN A SEALED BATCH TEST**

NAME OF THE FACILITY for site specific biorate determination			example
COMPOUND for site specific biorate determination			*methanol*
REACTOR HEADSPACE VOLUME, (L)	1		1
REACTOR LIQUID VOLUME (L)	2		10
TEMPERATURE of the liquid in the unit (deg.C)	3		25

Wastewater compounds are biodegraded by biomass in a sealed batch test. For the compound listed above, a data set of liquid and gas concentrations is measured at four different times during the sealed batch test. The data are entered below, and the ratio of the concentrations for each data set is entered in column E.

A	B	C	D	E	
Data set	Time (hr)	Liquid Conc. (mg/L)	Gas Conc. (mg/L)	K_{eq} D/C	.0002108
1					
2					
3					
4					

Temperature in degrees Kelvin. Add 273.16 to the number on line 3. Enter the results here	4		298.16
Molar ratio. Multiply the number on line 4 by 4.555. Enter the results on line 5.	5		1,358.12
Henry's law value (mg/L gas per mg/L liquid). Enter the average value in column E above on line 6.	6		0.000211
Henry's law value (mole fraction gas per mole fraction liquid) Multiply the number on line 6 by the number on line 5. Enter the results on line 7.	7		0.286563
Expected Henry's law value. Enter the number from Form IX line 3.	8		0.288500

Precision: Discuss any variability of the numbers in column E.
Accuracy: Discuss any difference between the numbers on line 7 and line 8. Identify which value will be used for evaluating the biodegradation rate data. Divide the Henry's law value by the number on line 5 and enter the results on line 9.

K_{eq} value (mg/L gas per mg/L liquid)	9		0.000211
HEADSPACE CORRECTION FACTOR. Divide the number on line 2 by the sum of the number on line 2 and the product of the numbers on line 9 and line 1. Enter the result on line 10.	10		0.999979

The headspace correction factor should equal approximately 1 if the headspace is relatively small. Reducing the headspace volume may improve the test data quality if the headspace correction factor is substantially less than one.

Form XI **DATA FORM FOR THE CALCULATION OF THE HENRY'S LAW CONSTANT AND THE STRIPPING CONSTANT FOR A COMPOUND IN AN AERATED BATCH TEST**

NAME OF THE FACILITY for site specific biorate determination			example
COMPOUND for site specific biorate determination			*methanol*
Concentration basis (liquid or gas)			gas
TEMPERATURE of the liquid in the unit (deg.C)	1		25
GAS FLOW RATE (L/hr)	2		1
LIQUID VOLUME (L)	3		10
Co concentration measurement at time=0 (mg/L)	4		

A	B	C	D	E
data point	time (hr)	Concentration, C (mg/L)	C/Co	-ln(C/Co)
1				
2				
3				
4				
5				

CALCULATIONS. Use additional lines as needed in an expansion of the above table. Plot the values in column E (y axis) vs the data in column B (x axis). Reject outliers. Curve fit with a straight line. Calculate the slope and enter the slope on line 7. Attach the plot and table to this form.

Temperature in degrees Kelvin. Add 273.16 to the number on line 1. Enter the results here	5		298.16
MOLAR RATIO. Multiply the number on line 5 by 4.555. Enter the results on line 6.	6		1,358.12
Slope of the plot of -ln(C/Co) vs time (per hour)	7		2.10e-05
Calculated K_{eq} value (mg/L gas per mg/L liquid). Divide the number on line 7 by the number on line 2 and multiply the results by the number on line 3. Enter the results on line 8.	8		0.000210
Expected K_{eq} value. Divide the number from Form IX line 3 by the number on line 6 and enter the results on line 9.	9		0.000212

Discuss any differences between the numbers on line 8 and line 9. Identify which value will be used for the evaluation of the stripping constant (line 10). Problems can sometimes be resolved by system redesign, changing the bubble size, or confirming the experimental value of K_{eq} by using Form X.

K_{eq} value (mg/L gas per mg/L liquid)	10		0.000210
STRIPPING CONSTANT(per hour). Divide the number on line 10 by number on line 3 and multiply by the number on line 2. Enter the final result on line 11.	11		0.000021

The headspace correction factor equals one for an aerated batch test.

Form XII — DATA FORM FOR THE CALCULATION OF BATCH RATES AND THE DETERMINATION OF THE MONOD CONSTANTS

Complete this table with measured liquid concentrations from the batch test. If headspace concentrations were measured and equilibrium has been verified, convert them to liquid concentrations by using K_{eq}. If the data are scattered, plot the concentration vs. time data, and fit the data with a curve based on Equation Appendix C-4 for the Aerated Batch test or Equation Appendix C-6 for the Sealed Batch test. Complete this form with concentrations obtained from that fitted curve. If the curve fitting approach is used, attach a plot of the data and the associated fitted curve to this form. Note: If the initial results appear to be anomalous, do not use the initial results.

COMPOUND for site specific biorate determination			Methanol
Stripping rate constant (/hr) Form XI, line 11	1		2.1e-5
Enter the batch test Biomass concentration (g/L) on line 2.	2		.258
Headspace correction factor. For a Sealed Batch test use Form X line 10 or 1.00 for an Aerated Batch test.	3		0.999979

A	B	C	D	E	F	G
concentration S (mg/L)	time (hr)	Rate for interval (mg/L-hr) $(a_i-a_{i-1})/(b_{i+1}-b_i)$	Log Mean S for interval (mg/L) $(a_i-a_{i-1})/\ln(a_i/a_{i+1})$	Ratio of rate to S (/hr) (C/D)	Adjusted rate (/hr) (E-line 1)	Reciprocal of adj. rate (hr) (1/F)
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						

Continue table on attached sheet as needed. Plot values in column G on y axis, values in column D on x axis. Extrapolate the trend of data points to the y intercept (S=0). Attach the plot to the form.

Slope of line near intercept (hr-L/mg)	4		.4845
Y intercept from plot (hr)	5		1.938
First order rate constant K1 (or Qm/Ks, L/g-hr). The number 1.00 divided by the products of the values on line 5, line 2, and line 3.	6		2.000026
Zero order rate constant (Qm, /hr). The number 1.00 divided by the products of the values on line 4, line 2, and line 3.	7		8.000104
Concentration applicable to full-scale unit. Enter on line 8.	8		5
Effective biorate K1 ESTIMATE (L/g MLVSS-hr)*	9		0.9606

*Match the concentration on line 8 to the values in Column D and look up the equivalent rate in Column F. Divide the result with both the biomass concentration (line 2) and the headspace correction factor (line 3). Enter this value on line 9. Do not use this method to estimate K1 for line 9 if the data quality is poor in Column F. The number on line 9 is multiplied by the biomass and the system concentration to estimate the full scale biorate. Alternatively, the Monod model parameters may be used.

[FR Doc. 97–143 Filed 1–16–97; 8:45 am]
BILLING CODE 6560–50–P

Federal Register

Friday
January 17, 1997

Part III

Department of Education

Bilingual Education: Program Enhancement Projects; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.289P]

Bilingual Education: Program Enhancement Projects; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this program.

The statutory authorization for this program, and the application requirements that apply to this competition, are set out in sections 7113 and 7116 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994 (the Act) (20 U.S.C. 7423 and 7426)).

Purpose of Program: This program provides grants to carry out highly focused, innovative, locally designed projects to expand or enhance existing bilingual education or special alternative instructional programs for limited English proficient (LEP) students.

Eligible Applicants: (1) One or more local educational agencies (LEAs); (2) one or more LEAs in collaboration with an institution of higher education, community-based organization, other LEAs, or a State educational agency; or (3) a community-based organization or an institution of higher education which has an application approved by the local educational agency to enhance early childhood education or family education programs or to conduct an instructional program which supplements the educational services provided by a local educational agency.

Deadline for Transmittal of Applications: March 14, 1997.

Deadline for Intergovernmental Review: May 13, 1997.

Available Funds: $10.8 million.

Estimated Range of Awards: $100,000–$150,000.

Estimated Average Size of Awards: $125,000.

Estimated Number of Awards: 86.

Note: The Department of Education is not bound by any estimates in this notice.

Project Period: 24 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Description of Program

Funds under this program are to carry out highly focused, innovative, locally designed projects to expand or enhance existing bilingual education or special alternative instructional programs for LEP students. Grantees shall provide inservice training to classroom teachers, administrators, and other school or community-based organization personnel to improve the instruction and assessment of language-minority and LEP students. In addition, grantees are authorized, under this program, to improve the education of LEP children and youth and their families by: implementing family education programs, improving the instructional program for LEP children, compensating personnel who have been trained—or are being trained—to serve LEP children and youth, providing tutorials and academic or career counseling for LEP children and youth, and providing intensified instruction.

Priority

Under 34 CFR 75.105(c)(1) and section 7113(b)(2)(A) of the Act, 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:

Applicants that consider the Department of Education Professional Development Principles in planning and designing required inservice training activities in their Program Enhancement proposal. Those Principles call for educator professional development that focuses on teachers as central to student learning, yet includes all other members of the school community; focuses on individual, collegial, and organizational improvement; respects and nurtures the intellectual and leadership capacity of teachers, principals, and others in the school community; reflects best available research and practice in teaching, learning, and leadership; enables teachers to develop further expertise in subject content, teaching strategies, uses of technologies, and other essential elements in teaching to high standards; promotes continuous inquiry and improvement embedded in the daily life of schools; is planned collaboratively by those who will participate in and facilitate that development; requires substantial time and other resources; is driven by a coherent long-term plan; is evaluated ultimately on the basis of its impact on teacher effectiveness and student learning; and uses this assessment to guide subsequent professional development efforts.

Selection Criteria

(a) (1) The Secretary uses the following selection criteria in 34 CFR 75.210 and Section 7116(i)(1) of the Act to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of section 7113 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994 (the Act)), including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the Act.

(2) *Extent of need for the project.* (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the Act, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (23 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including:

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) The quality of the applicant's plan to provide an opportunity for participation of students enrolled in private schools.

(4) *Proficiency in English and another language.* (5 points)

(i) The Secretary reviews each application to determine the extent to which the project will provide for the development of bilingual proficiency both in English and another language for all participating students.

(5) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(6) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(7) *Evaluation plan.* (12 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) Are, to the extent possible, objective and produce data that are quantifiable.

(8) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive order 12372. If you want to know the name and address of any State Single Point of Contact, see the list published in the Federal Register on August 20, 1996 (61 FR 43133 through 43135).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.289P, U.S. Department of Education, Room 6213, 600 Independence Avenue, SW., Washington, D.C. 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS. INSTRUCTIONS FOR TRANSMITTAL OF APPLICATIONS:*

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and three copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.289P), Washington, D.C. 20202–4725.

(2) Hand-deliver the original and three copies of the application by 4:30 p.m. (Washington, D.C. time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.289P), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708-9495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number and suffix letter, if any, of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts, plus a statement regarding estimated public reporting burden, additional non-regulatory guidance, and various assurances, certifications, and required documentation. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

Part III: Application Narrative.

Additional Materials:

a. Estimated Public Reporting Burden.

b. Group Application Certification.

c. Student Data.

d. Project Documentation.

e. Program Assurances.

f. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

g. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

h. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: This form is intended for the use of grantees and should not be transmitted to the Department.

i. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. The document has been marked to reflect statutory changes. See the notice published by the Office of Management and Budget at 61 FR 1413 (January 19, 1996).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. All applicants must submit *ONE* original signed application and *THREE* copies of the application. Please mark each application as ''original'' or ''copy''. No grant may be awarded unless a completed application has been received.

FOR FURTHER INFORMATION CONTACT: Ana Garcia (202) 205–8077, Patrick Smith (202) 205–9729, and Edia Velez (202) 205–9715, U.S. Department of Education, 600 Independence Avenue, SW., Room 5090, Switzer Building, Washington, D.C. 20202–6510. 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; 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. 7423.

Dated: January 14, 1997.

Delia Pompa,

Director, Office of Bilingual Education and Minority Languages Affairs.

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1885–0528, Exp. Date: 4/30/98. The time required to complete this information collection is estimated to average 80 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, D.C. 20202–4651. *If you have any comments or concerns regarding the status of your individual submission of this form, write directly to:* Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 600 Independence Avenue, SW., Washington, D.C. 20202–6510.

Program Enhancement Grants

The following forms and other items must be included in the application:

- ☐ 1. Application for Federal Assistance (SF 424)
- ☐ 2. Group Application Certification (if applicable)
- ☐ 3. Budget Information (ED Form No. 524)
- ☐ 4. Itemized Budget for each year
- ☐ 5. Student Data
- ☐ 6. Project Documentation Transmittal Letter to SEA Documentation of Consultation with Nonprofit Private School Officials (Check Section C)
- ☐ 7. Notice to all Applicants (OMB1801)
- ☐ 8. Program Assurances
- ☐ 9. Non-Construction Programs (SF 424B)
- ☐ 10. Certifications Regarding Lobbying; Debarment Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013)
- ☐ 11. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions (ED 80–0014)
- ☐ 12. Disclosure of Lobbying Activities (SF–LLL)
- ☐ 13. Table of Contents
- ☐ 14. Application Narrative (not to exceed 25 pages including Abstract, see instructions below)
- ☐ 15. One original and three copies of the application for transmittal to the Department's Application Control Center

Mandatory Page Limits for the Application Narrative

The application narrative must not exceed 25 pages. These pages must be double-spaced and printed on one side only. A legible font size and adequate margins should be used. The narrative must be paginated. The narrative portion of the application package, including abstract, charts, graphs, tables, position descriptions, illustrations, and appendices, must not exceed the 25 page limit. The narrative section should begin with an abstract that includes a short description of the population to be served by the project, project objectives, and planned project activities. The page limit applies only to item 14 and not to the other items in the checklist. APPLICATIONS WITH A NARRATIVE SECTION THAT EXCEEDS THE PAGE LIMIT WILL NOT BE CONSIDERED FOR FUNDING.

Table of Contents

The application should include a table of contents listing the sections in the order required.

Application Narrative

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Provide position descriptions, not resumes.

Budget

Budget line items must support the goals and objectives of the proposed project and be directly applicable to the instructional design and all other project components.

Final Application Preparation

Use the above checklist to verify that all items are addressed. Prepare one original with an original signature, and include three additional copies. Do not use elaborate bindings or covers. The application package must be mailed to the Application Control Center (ACC) and postmarked by the deadline date of February 28, 1997.

Notice to All Applicants

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant

proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirements of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct ''outreach'' efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801–0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

Additional Non-Regulatory Guidance

(Questions and Answers)

Program Enhancement Grants

Q. Are Program Enhancement Grants directed to single schools, groups of schools or entire school districts?

A. The grants are directed to all of the above, as long as the eligible applicant has an existing bilingual education or special alternative instructional program that is to be enhanced or expanded. To qualify for eligibility for a Program Enhancement Grant, the existing bilingual education or special alternative educational program does not necessarily have to be a Title VII project but could also be a State or local project.

Q. Are preschool/early childhood and adult education programs eligible?

A. Preschool/early childhood programs for limited English proficient (LEP) students are eligible for funding. Also, programs that serve adults are eligible for funding if the program is specifically designed as a family education program with parent outreach and training activities that will assist parents to become active participants in the education of their children. (Section 7113(b)(2)(B)(i); 20 U.S.C. 7423(b)(2)(B)(i)). All applicants must propose programs that expand or enhance ''existing bilingual education and/or special alternative instructional programs.'' The statute provides specific definitions for a bilingual education program, a special alternative instructional program, and a family education program that applicants should consult in preparing their proposals. (Section 7501(1)(6) and (15); 20 U.S.C. § 7601(1), (6), and (15)).

Q. When can a CBO or an IHE become the lead entity on a Program Enhancement Grant?

A. A CBO or IHE may become the lead entity only if the application is approved by an LEA, and if it proposes one or more of the following programs: (1) early childhood programs; (2) family education programs; and (3) instructional programs which supplement the educational services provided by the LEA. (Section 7113(c)(3); 20 U.S.C. 7423(c)(3)).

Q. What is meant by the provision that allows local educational agencies (LEA's) to apply ''in collaboration with an institution of higher education, community-based organization or local or State educational agency?''

A. Unless a community-based organization (CBO) or institution of higher education (IHE) is applying under the provision discussed in the previous question and answer, it must submit an application under this program in collaboration with an LEA. In order for a State educational agency (SEA) to participate in this program at all, it must submit an application in collaboration with an LEA. (Section 7113(c)(2); 20 U.S.C. 7423(c)(2)). The requirements for entering into a joint or group application, which would include a collaborative application, are set out in 34 CFR 75.127 to 75.129.

Q. Is there a requirement that preservice activities take place before a Program Enhancement Grant can be carried out?

A. No. Because Program Enhancement Grants expand or enhance existing bilingual education projects and only last for two years, there are no requirements regarding activities that must take place before a Program Enhancement Grant can be carried out.

Q. What should be included in the narrative of the application for the Program Enhancement Grants?

A. Since the narrative of the application has a mandatory 25 page limit, we recommend that it include a short, but thorough, discussion of the existing program's design and its progress in meeting its goals and objectives. We also suggest that the applicant address what components of the project are to be enhanced or expanded, plans for implementation, goals and objectives, etc.

Q. May we use the same title or name for a Program Enhancement Grant that was used for a previous Title VII grants?

A. Yes, you may keep the same name of your project or select a new one.

Q. Is there a requirement that the applicant must consult with the private schools in designing its application?

A. Yes. The statutory authority for this program requires applicants to take account, in designing the applications, of the needs of students with limited English proficiency enrolled in nonprofit private elementary and secondary schools in the area to be served by the proposed project. Consultation by the applicant with appropriate private school officials is part of the requirement.

The full requirement is set out at Section 7116(h)(2)(20 U.S.C. § 7426(h)(2)), and should be carefully reviewed by all applicants. The Department, before it can approve an application under this program, must determine that this requirement has been met. For that reason, applicants should address this requirement in their application and must include documentation of their efforts to comply with provision's requirement to consult with private school officials.

BILLING CODE 4000-01-P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 8 9P

TITLE: Bilingual Education: Program Enhancement Project

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

Authorized Representative					Name of Institution/ Organization
Typed Name	Title	Signature	Date Signed	Telephone Number (including Area Code)	

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

STUDENT DATA					
Name of Local Educational Agency					
SECTION A - PROGRAM ENHANCEMENT GRANT					
1. Total number of limited English proficient (LEP) students in the school district					
2. Total number of students in the school district					
3. Percentage of LEP students (line 1 divided by line 2)					**%**
SECTION B					
Name of project school	**Language group(s) to be served**	**Grade(s) to be served**	**Number of students to be served**		
			LEP	**Non-LEP**	**Total**
Total number of students to be served					

PROJECT DOCUMENTATION

NOTE: Submit the appropriate documents and information as specified below for the following programs:

PROGRAM ENHANCEMENT PROJECT

SECTION A

A copy of applicant's transmittal letter requesting the appropriate State educational agency to comment on the application. This requirement does not apply to schools funded by the Bureau of Indian Affairs. (See 34 CFR 75.155 and 75.156 below.)

§75.155 Review procedure if State may comment on applications: Purpose of §§75.156-75.158. If the authorizing statute for a program requires that a specific State agency be given an opportunity to comment on each application, the State and the applicant shall use the procedures in §§75.156-75.158 for that purpose.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Cross-Reference: See 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities) for the regulations implementing the application review procedures that States may use under E.O. 12372. (In addition to the requirement in §75.155 for review by the State educational agency, the application is subject to review by State Executive Order 12372 process. Applicants must complete item 16 of the application face sheet (Standard Form 424, Application for Federal Assistance) by either (a) specifying the date when the application was made available to the State Single Point of Contact for review or (b) indicating that the program has not been selected by the State for review.)

§75.156 When an applicant under §75.155 must submit its application to the State: proof of submission.
(a) Each applicant under a program covered by §75.155 shall submit a copy of its application to the State on or before the deadline date for submitting its application to the Department.
(b) The applicant shall attach to its application a copy of its letter that requests the State to comment on the application.

(Authority: 20 U.S.C. 1221e-3(a)(1))

PROJECT DOCUMENTATION

(continued)

SECTION B

Evidence of compliance with the Federal requirements for participation of students enrolled in nonprofit private schools. (See section 7116(h)(2) of Public Law 103-382 and 34 CFR 75.119, 76.652, and 76.656 below.)

Sec. 7116. Applications. "(2) in designing the program for which application is made, the needs of children in nonprofit private elementary and secondary schools have been taken into account through consultation with appropriate private school officials and, consistent with the number of such children enrolled in such schools in the area to be served whose educational needs are of the type and whose language and grade levels are of a similar type to those which the program is intended to address, after consultation with appropriate private school officials, provision has been made for the participation of such children on a basis comparable to that provided for public school children."

(Authority: 20 U.S.C. 7426(h)(2))

§75.119 Information needed if private schools participate.
If a program requires the applicant to provide an opportunity for participation of students enrolled in private schools, the application must include the information required of subgrantees under 34 CFR 76.656.

(Approved by the Office of Management and Budget under control number 1880-0513)
(Authority: 20 U.S.C. 1221e-3(a)(1))

§76.652 Consultation with representatives of private school students.
(a) An applicant for a subgrant shall consult with appropriate representatives of students enrolled in private schools during all phases of the development and design of the project covered by the application, including consideration of:
(1) Which children will receive benefits under the project;
(2) How the children's needs will be identified;
(3) What benefits will be provided;
(4) How the benefits will be provided; and
(5) How the project will be evaluated.
(b) A subgrantee shall consult with appropriate representatives of students enrolled in private schools before the subgrantee makes any decision that affects the opportunities of those students to participate in the project.

PROJECT DOCUMENTATION

(continued)

(c) The applicant or subgrantee shall give the appropriate representatives a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this section.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§76.656 Information in an application for a subgrant.
An applicant for a subgrant shall include the following information in its application:
(a) A description of how the applicant will meet the Federal requirements for participation of students enrolled in private schools.
(b) The number of students enrolled in private schools who have been identified as eligible to benefit under the program.
(c) The number of students enrolled in private schools who will receive benefits under the program.
(d) The basis the applicant used to select the students.
(e) The manner and extent to which the applicant complied with §76.652 (consultation).
(f) The places and times that the students will receive benefits under the program.
(g) The differences, if any, between the program benefits the applicant will provide to public and private school students, and the reasons for the differences.

(Authority: 20 U.S.C. 1221e-3(a)(1))

SECTION C

Check the appropriate box below:

- **There are no eligible nonprofit private schools in the proposed service delivery area that wish to participate in the project.** ❑
- **One or more eligible nonprofit private schools in the proposed service delivery area wish to participate in the project and are listed on the enclosed Student Data form.** ❑
- **There are no eligible nonprofit private schools in the proposed service delivery area.** ❑

Certification of Agreement

NOTE: This form must be included in an application from a community-based organization or an institution of higher education for the following program:

PROGRAM ENHANCEMENT GRANT PROGRAM

Section 7112 of the Elementary and Secondary Education Act of 1965 as amended specifies that a community-based organization or an institution of higher education, to be an eligible applicant, must have its application "approved by the (appropriate) local educational agency to develop and implement early childhood education or family education programs or to conduct an instructional program which supplements the educational services provided by a local educational agency." (20 U.S.C.7422(c)(3))

In order to comply with this statutory requirement, an application from a community-based organization or an institution of higher education must include the following signed certification.

As the duly authorized representative of the local educational agency (LEA) named below, I certify that this application has been approved by the LEA named below.

Authorized Representative		**Name of Local Educational Agency**
Signature	**Title**	
Typed Name	**Date Signed**	

PROGRAM ASSURANCES

NOTE: **The authorizing statute requires applicants under certain programs to provide assurances. These assurances are specified below under the relevant programs. If your application pertains to any of these programs, this form must be completed.**

- As the duly authorized representative of the applicant, I certify that the applicant, in regard to the program relevant to this application:

• Program Enhancement Grants

- Will not reduce the level of State and local funds that the applicant expends for bilingual education or special alternative instructional programs if the applicant is awarded a grant under this program.
- Will employ in the proposed project teachers who are proficient in English, including written and oral communication skills.

(Authority: 20 U.S.C. 7426(g)(1))

Authorized Representative		Applicant Organization
Signature	**Title**	
Typed Name	**Date Signed**	

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended. declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. **Type of Federal Action:** ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. **Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	3. **Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter ____ date of last report ____

4. **Name and Address of Reporting Entity:** ☐ Prime ☐ Subawardee Tier ____, *if known:* **Congressional District,** *if known:*	5. **If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime:** **Congressional District,** *if known:*
6. **Federal Department/Agency:**	7. **Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. **Federal Action Number,** *if known:*	9. **Award Amount,** *if known:* $
10. a. **Name and Address of Lobbying ~~Entity~~ Registrant** *(if individual, last name, first name, MI):*	b. **Individuals Performing Services** *(including address if different from No. 10a) (last name, first name, MI):*
~~11. Amount of Payment *(check all that apply):*~~ ~~$ _____ ☐ actual ☐ planned~~ ~~12. Form of Payment *(check all that apply):*~~ ~~☐ a. cash~~ ~~☐ b. in kind; specify: nature _____ value _____~~	~~13. Type of Payment *(Check all that apply):*~~ ~~☐ a. retainer~~ ~~☐ b. one-time fee~~ ~~☐ c. commission~~ ~~☐ d. contingent fee~~ ~~○ e. deferred~~ ~~☐ f. other; specify: _____~~

~~14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:~~

~~*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*~~

~~15. Continuation Sheet(s) SF-LLL attached: ☐ Yes ☐ No~~

16. **Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.**	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____
Federal Use Only	**Authorized for Local Reproduction** **Standard Form - LLL**

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate.~~ Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and conract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the ~~lobbying entity~~ registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

~~11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this a material change report, enter the cumulative amount of payment made or planned to be made.~~

~~12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.~~

~~13. Check the appropriate box(es). Check all boxes that apply. If other specify nature.~~

~~14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~

~~15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

[FR Doc. 97–1243 Filed 1–16–97; 8:45 am]
BILLING CODE 4000–01–C

Federal Register

Friday
January 17, 1997

Part IV

Department of Defense

48 CFR Parts 225, 236, and 252

Defense Federal Acquisition Regulation Supplement; Preference for U.S. Firms on MILCON Overseas Construction and Restriction on MILCON Overseas Architect-Engineer Contracts; Interim Rules

DEPARTMENT OF DEFENSE

48 CFR Parts 225, 236, and 252

[DFARS Case 96-D328]

Defense Federal Acquisition Regulation Supplement; Preference for U.S. Firms on MILCON Overseas Construction

AGENCY: Department of Defense (D0D).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 112 of the Fiscal Year 1997 Military Construction Appropriations Act (Public Law 104–196). Section 112 provides a 20 percent preference for United States firms on all contracts estimated to exceed $1,000,000 for military construction projects in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf.

DATES: *Effective date*: January 17, 1997.

Comment Date: Comments on the interim rule should be submitted in writing to the address shown below on or before March 18, 1997, to be considered 9n the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 96-D328 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602-0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends the DFARS to implement Section 112 of the Fiscal Year 1997 Military Construction Appropriations Act (Public Law 104-196). The rule contains, at 236.274(a), the statutory restriction on award of overseas military construction contracts; and adds a solicitation provision at 252.236-7010, Overseas Military Construction-Preference for United States Firms.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to contracts estimated to exceed $1,000,000 for military construction projects in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf. It is estimated that only 12 such contracts are awarded per year. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 96-D328 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies. It is estimated that the new provision at DFARS 252.236-7010 will increase, by 5 hours, the annual paperwork burden associated with DFARS Part 236 and related provisions/clauses. The Office of Management and Budget (OMB) has approved this increase under OMB Control Number 0704-0255.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 112 of the Fiscal Year 1997 Military Construction Appropriations Act (Public Law 104-196). Section 112 provides a 20 percent preference for United States firms on all contracts estimated to exceed $1,000,000 for military construction projects in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf. Immediate publication of an interim rule is necessary to promptly comply with Section 112. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 225, 236, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 225, 236, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 225, 236, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.7000 is amended by revising paragraph (a) to read as follows:

225.7000 Scope of subpart.

(a) This subpart contains restrictions on the acquisition of foreign products and services, imposed by Defense appropriations and authorization acts and other statutes. Refer to the acts to verify current applicability of the restrictions.

* * * * *

3. Section 225.7003 is added to read as follows:

225.7003 Restriction on overseas military construction.

For restriction on award of military construction contracts to be performed in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf, see 236.274(a).

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

4. Section 236.274 is amended by redesignating the introductory text as paragraph (b); by redesignating paragraphs (a) and (b) as paragraphs (b)(1) and (b)(2), respectively; by redesignating paragraphs (b)(1) through (b)(8) as paragraphs (b)(2)(i) through (b)(2)(viii); and by adding a new paragraph (a) to read as follows:

236.274 Construction in foreign countries.

(a) In accordance with Section 112 of Public Law 104–32 and similar sections in subsequent military construction appropriations acts, military construction contracts that are estimated to exceed $1,000,000 and are to be performed in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf, shall be awarded only to United States firms, unless the lowest responsive and responsible offer of a United States firm exceeds the lowest responsive and responsible offer of a foreign firm by more than 20 percent.

* * * * *

5. Section 236.570 is amended by adding paragraph (c) to read as follows:

236.570 Additional provisions and clauses.

* * * * *

(c) Use the provision at 252.236–7010, Overseas Military Construction-Preference for United States Firms, in solicitations for military construction

contracts that are estimated to exceed $1,000,000 and are to be performed in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 252.236–7010 is added to read as follows:

252.236–7010 Overseas Military Construction—Preference for United States Firms.

As prescribed in 236.570(c), use the following provision:

Overseas Military Construction—Preference for United States Firms (Jan 1997)

(a) *Definition.*

''United States firm,'' as used in this provision, means a firm incorporated in the United States that complies with the following:

(1) The corporate headquarters are in the United States;

(2) The firm has filed corporate and employment tax returns in the United States for a minimum of 2 years (if required), has filed State and Federal income tax returns (if required) for 2 years, and has paid any taxes due as a result of these filings; and

(3) The firm employs United States citizens in key management positions.

(b) *Evaluation.* Offers from firms that do not qualify as United States firms will be evaluated by adding 20 percent to the offer.

(c) *Status.* The offeror _____ is, _____ is not a United States firm.

(End of provision)

[FR Doc. 97–1041 Filed 1–16–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 225, 236, and 252

[DFARS Case 96-D329]

Defense Federal Acquisition Regulation Supplement; Restriction on MILCON Overseas Architect-Engineer Contracts

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 111 of the Fiscal Year 1997 Military Construction Appropriations Act (Pub. L. 104–196). Section 111 restricts award of architect-engineer contracts estimated to exceed $500,000 for projects to be accomplished in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf, to United States firms or United States firms in joint venture with host nation firms.

DATES: *Effective date:* January 17, 1997.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before March 18, 1997, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 96-D329 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602-0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends the DFARS to implement Section 111 of the Fiscal Year 1997 Military Construction Appropriations Act (Public Law 104–196). The rule contains, at 236.602–70, the statutory restriction on award of overseas architect-engineer contracts; and adds a new solicitation provision at 252.236-7011, Overseas Architect-Engineer Services–Restriction to United States Firms.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule only applies to architect-engineer contracts estimated to exceed $500,000 for projects to be accomplished in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 96–D329 in correspondence.

C. Paperwork Reduction act

The Paperwork Reduction Act does not apply because this interim rule does not impose any information collection requirements that require approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 111 of the Fiscal Year 1997 Military Construction Appropriations Act (Public Law 104-196). Section 111 restricts award of architect-engineer contracts estimated to exceed $500,000 for projects to be accomplished in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf, to United States firms or United States firms in joint venture with host nation firms. Immediate publication of an interim rule is necessary to promptly comply with Section 111. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 225, 236, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 225, 236, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 225, 236, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.7004 is added to read as follows:

225.7004 Restriction on overseas architect-engineer services.

For restriction on award of architect-engineer contracts to be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf, see 236.602–70.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

3. Section 236.102 is amended by adding paragraph (4) to read as follows:

236.102 Definitions.

* * * * *

(4) *United States firm* is defined in the provisions at 252.236–7010, Overseas Military Construction-Preference for United States Firms, and 252.236–7011,

Overseas Architect-Engineer Services-Restriction to United States firms.

4. Section 236.602–70 is added to read as follows:

236.602–70 Restriction on award of overseas architect-engineer contracts to foreign firms.

In accordance with Section 111 of Public Law 104–32 and similar sections in subsequent military construction appropriations acts, A–E contracts funded by military construction appropriations that are estimated to exceed $500,000 and are to be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf, shall be awarded only to United States firms or to joint ventures of United States and host nation firms.

5. Section 236.609–70 is amended by revising the title; by redesignating paragraphs (a)(1) and (2)(2) as paragraphs (a)(1)(i) and (a)(1)(ii), respectively; by redesignating paragraph (a) introductory text as paragraph (a)(1); by redesignating paragraph (b) as paragraph (a)(2); and by adding a new paragraph (b) to read as follows:

236.609–70 Additional provisions and clauses.

* * * * *

(b) Use the provision 252.236–7011, Overseas Architect-Engineer Services—Restriction to United States Firms, in solicitations for A–E contracts that are estimated to exceed $500,000 and are to be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 252.236–7011 is added to read as follows:

252.236–7011 Overseas Architect-Engineer Services—Restriction to United States Firms.

As prescribed in 236.609–70(b), use the following provision:

Overseas Architect-Engineer Services—Restriction to United States Firms (Jan 1997)

(a) *Definition.*

United States firm, as used in this provision, means a firm incorporated in the United States that complies with the following:

(1) The corporate headquarters are in the United States;

(2) The firm has filed corporate and employment tax returns in the United States for a minimum of 12 years (if required), has filed State and Federal income tax returns (if required) for 2 years, and has paid any taxes due as a result of these filings; and

(3) The firm employs United States citizens in key management positions.

(b) *Restriction.* Military construction appropriations acts restrict award of a contract, resulting from this solicitation, to a United States firm or a joint venture of United States and host nation firms.

(c) *Status.* The offeror confirms, by submission of its offer, that it is a United States firm or a joint venture of United States and host nation firms.

(End of provision)

[FR Doc. 97–1042 Filed 1–16–97; 8:45 am]

BILLING CODE 5000–04–M

Federal Register

Friday
January 17, 1997

Part V

Department of Education

Bilingual Education: Comprehensive School Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.290U]

Bilingual Education: Comprehensive School Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this program. The statutory authorization for this program, and the application requirements that apply to this competition, are contained in sections 7114 and 7116 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994 (the Act) (20 U.S.C. 7424 and 7426)).

Purpose of Program: This program provides grants to implement schoolwide bilingual education programs or special alternative instruction programs for reforming, restructuring, and upgrading all relevant programs and operations, within an individual school, that serve all or virtually all limited English proficient (LEP) children and youth in one or more schools with significant concentrations of these children and youth.

Eligible Applicants: One or more local educational agencies (LEAs), or one or more LEAs in collaboration with an institution of higher education, community-based organizations, other LEAs, or a State educational agency.

Deadline for Transmittal of Applications: March 21, 1997.

Deadline for Intergovernmental Review: May 20, 1997.

Available Funds: $22.9 million.

Estimated Range of Awards: $150,000–$350,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 90.

Note: The Department is not bound by any estimates in this notice.

Project Period: 60 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Description of Program

Funds under this program are to be used to reform, restructure, and upgrade all relevant operations and programs, within a school, that serve LEP children and youth. Before carrying out a project assisted under this program, a grantee shall plan, train personnel, develop curriculum, and acquire or develop materials. In addition, grantees are authorized, under this program, to improve the education of LEP children and youth and their families by implementing family education programs, improving the instructional program for LEP children, compensating personnel who have been trained—or are being trained—to serve LEP children and youth, providing tutorials and academic or career counseling for LEP children and youth, and providing intensified instruction.

Priorities

Absolute Priority: The priority in the notice of final priority for this program, as published in the Federal Register on October 30, 1995 (60 FR 55245), applies to this competition.

Under 34 CFR 75.105(c)(3) and section 7114(a) of the Act, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that serve only schools in which the number of LEP students, in each school served, equals at least 25 percent of the total student enrollment.

Invitational Priority: Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Applicants that consider the Department of Education Professional Development Principles in planning and designing a Comprehensive School Grant project.

Those principles call for educator professional development that focuses on teachers as central to student learning, yet includes all other members of the school community; focuses on individual, collegial, and organizational improvement; respects and nurtures the intellectual and leadership capacity of teachers, principals, and others in the school community; reflects best available research and practice in teaching, learning, and leadership; enables teachers to develop further expertise in subject content, teaching strategies, uses of technologies, and other essential elements in teaching to high standards; promotes continuous inquiry and improvement embedded in the daily life of schools; is planned collaboratively by those who will participate in and facilitate that development; requires substantial time and other resources; is driven by a coherent long-term plan; is evaluated ultimately on the basis of its impact on teacher effectiveness and student learning; and uses this assessment to guide subsequent professional development efforts.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria in 34 CFR 75.210 and sections 7114 and 7116 of the Act to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria*—(1) *Meeting the purposes of the authorizing statute.* (15 points) The Secretary reviews each application to determine how well the project will implement schoolwide bilingual education programs or special alternative instruction programs for reforming, restructuring, and upgrading all relevant programs and operations, within an individual school, that serve all (or virtually all) children and youth of limited English proficiency in schools with significant concentrations of those children and youth.

(Authority: 20 U.S.C. 7424(a))

(2) *Extent of need for the project.* (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the authorizing statute, including consideration of—

(i) Data on the number of children and youth of limited English proficiency in the school or school district to be served and the characteristics of those children and youth, such as language spoken, dropout rates, proficiency in English and the native language, academic standing in relation to the English proficient peers of those children and youth, and, if applicable, the recency of immigration;

(ii) The needs addressed by the project;

(iii) How the applicant identified those needs;

(iv) How those needs will be met by the project; and

(v) The benefits to be gained by meeting those needs.

(Authority: 20 U.S.C. 7426(g)(1)(A); 34 CFR 75.210(b)(2))

(3) *Project activities.* (20 points) The Secretary reviews each application to determine—

(i) How well the project will improve the education of limited English

proficient students and their families by carrying out one or more of the following activities:

(A) Implementing family education programs and parent outreach and training activities designed to assist parents to become active participants in the education of their children.

(B) Improving the instructional program for limited English proficient students by identifying, acquiring, and upgrading curriculum, instructional materials, educational software, and assessment procedures, and, if appropriate, applying educational technology.

(C) Compensating personnel, including teacher aides who have been specifically trained, or are being trained, to provide services to children and youth of limited English proficiency.

(D) Providing training for personnel participating in or preparing to participate in the program that will assist that personnel in meeting State and local certification requirements and, to the extent possible, obtaining college or university credit.

(E) Providing tutorials and academic or career counseling for children and youth of limited English proficiency.

(F) Providing intensified instruction;

(ii) The degree to which the program for which assistance is sought involves the collaborative efforts of institutions of higher education, community-based organizations, and the appropriate local and State educational agency or businesses; and

(iii) How well the project will build the recipient's capacity to continue to offer high-quality bilingual and special alternative education programs and services to children and youth of limited English proficiency once Federal assistance is reduced or eliminated.

(Authority 20 U.S.C. 7424(b)(3), 7426(i)(4)-(5), and 7428)

(4) *Plan of operation*. (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) The quality of the applicant's plan to provide an opportunity for participation of students enrolled in private schools.

(Authority: 34 CFR 75.210(b)(3))

(5) *Proficiency in English and another language*. (5 points) The Secretary reviews each application to determine the extent to which the project will provide for the development of bilingual proficiency both in English and another language for all participating students.

(Authority: 20 U.S.C. 7426(i)(1))

(6) *Quality of key personnel*. (5 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (6)(i)(A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (6)(i)(A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(Authority: 34 CFR 75.210(b)(4))

(7) *Language skills of personnel.* (3 points) The Secretary reviews each application to determine how well the project meets the following requirements:

(i) The program will use qualified personnel, including personnel who are proficient in the language or languages used for instruction.

(ii) The applicant will employ teachers in the proposed program who, individually or in combination, are proficient in English, including written, as well as oral, communication skills.

(Authority: 20 U.S.C. 7426(g)(1)(E) and (h)(1))

(8) *Budget and cost effectiveness.* (3 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(Authority: 34 CFR 75.210(b)(5))

(9) *Integration of project funds.* (2 points) The Secretary reviews each application to determine how well funds received under this program will be integrated with all other Federal, State, local, and private resources that may be used to serve children and youth of limited English proficiency.

(Authority: 20 U.S.C. 7426(g)(2)(A)(iii))

(10) *Evaluation plan*. (13 points) The Secretary reviews each application to determine how well the project's evaluation will meet the following requirements. The evaluation must include—

(i) How students are achieving the State student performance standards, if any, including data comparing children and youth of limited English proficiency with nonlimited English proficient children and youth with regard to school retention, academic achievement, and gains in English (and, if applicable, native language) proficiency;

(ii) Program implementation indicators that provide information for informing and improving program management and effectiveness, including data on appropriateness of curriculum in relationship to grade and course requirements, appropriateness of program management, appropriateness of the program's staff professional development, and appropriateness of the language of instruction; and

(iii) Program context indicators that describe the relationship of the activities funded under the grant to the overall school program and other Federal, State, or local programs serving children and youth of limited English proficiency.

(Authority: 20 U.S.C. 7433(c)(1)–(3); 34 CFR 75.210(b)(6))

(11) *Adequacy of resources.* (4 points) The Secretary reviews each application to determine how well the project meets the following requirements:

(i) Student evaluation and assessment procedures must be valid, reliable, and fair for limited English proficient students.

(ii) The project must contribute toward building the capacity of the applicant to provide a program on a regular basis, similar to that proposed for assistance, that will be of sufficient size, scope, and quality to promise significant improvement in the education of students of limited English proficiency.

(iii) The applicant will have the resources and commitment to continue

the program when assistance under this program is reduced or no longer available.

(iv) The project must provide for utilization of the State and national dissemination sources for program design and in dissemination of results and products.

(Authority: 20 U.S.C. 7426(h)(3), (5)–(6); 34 CFR 75.210(b)(7))

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the Federal Register on August 20, 1996 (61 FR 43133 through 43135).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.290U, U.S. Department of Education, Room 6213, 600 Independence Avenue, SW., Washington, D.C. 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS. INSTRUCTIONS FOR TRANSMITTAL OF APPLICATIONS:*

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and three copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.290U), Washington, D.C. 20202–4725, or

(2) Hand-deliver the original and three copies of the application by 4:30 p.m. (Washington, D.C. time) on or before the deadline date to:

U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.290U), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this notice contains the following forms and instructions, plus a statement regarding estimated public reporting burden, a checklist for applicants, various assurances, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act, certifications, and required documentation:

a. Instructions for Application Narrative.

b. Additional Guidance.

c. Estimated Public Reporting Burden.

d. Notice to All Applicants (OMB No. 18010004).

e. Checklist for Applicants.

f. Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

g. Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

h. Group Application Certification.

i. Student Data.

j. Project Documentation.

k. Program Assurances.

l. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

m. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013, 6/90) and instructions.

n. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

o. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published in the Federal Register (61 FR 1413) by the Office of Management and Budget on January 19, 1996.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature.

All applicants must submit ONE original signed application, including ink signatures on all forms and assurances, and THREE copies of the application. Please mark each application as ''original'' or ''copy.'' No grant may be awarded unless a completed application has been received.

FOR FURTHER INFORMATION CONTACT: Brenda Compton-Turner ((202) 205–9839), Diane DeMaio ((202) 205–5716), or Ursula Lord ((202) 205–5709), U.S. Department of Education, 600 Independence Avenue, SW., Room 5090, Switzer Building, Washington, D.C. 20202–6510. 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; 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.

Note: Some of the forms in the Appendix to this notice may not be available from these electronic sources.

Program Authority: 20 U.S.C. 7424

Dated: January 14, 1997.

Delia Pompa,

Director, Office of Bilingual Education and Minority Languages Affairs.

Instructions for the Application Narrative

Mandatory Page Limit for the Application Narrative

The application narrative must not exceed 45 pages. These pages must be double-spaced and printed on one side only. A legible font size and adequate margins should be used. The narrative must be paginated. The narrative portion of the application package, including abstract, charts, graphs, tables, position descriptions, illustrations, and appendices, must not exceed the 45 page limit. The page limit applies only to item 14 and not to the other items in the Checklist for Applicants. APPLICATIONS WITH A NARRATIVE SECTION THAT EXCEEDS THE PAGE LIMIT WILL NOT BE CONSIDERED FOR FUNDING.

Abstract

The narrative section should begin with an abstract that includes a short description of the population to be served by the project, project objectives, and planned project activities.

Selection Criteria

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Provide position descriptions, not resumes, in addressing the selection criterion on quality of key personnel.

Additional Guidance

Table of Contents

The application should include a table of contents listing the sections in the order required.

Budget

Budget line items must support the goals and objectives of the proposed project and must be directly related to the instructional design and all other project components.

Final Application Preparation

Use the Checklist for Applicants to verify that your application is complete. Prepare one original with an original signature and include three additional copies. Do not use elaborate bindings or covers. The application package must be mailed or hand-delivered to the Application Control Center (ACC) and postmarked by the deadline date.

Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1885–0528, Exp. Date: 4/30/98. The time required to complete this information collection is estimated to average 120 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, D.C. 20202–4651. *If you have comments or concerns regarding the status of your individual submission of this form, write directly to:* Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 600 Independence Avenue, SW., Washington, D.C. 20202–6510.

Notice to all Applicants

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. *ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM. What Does This Provision Require?*

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys

to enroll in the course, might indicate how it tends to conduct ''outreach'' efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801–0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

Checklist for Applicants Comprehensive School Grants

The following forms and other items must be included in the application:

1. Application for Federal Assistance (SF 424)
2. Group Application Certification (if applicable)
3. Budget Information (ED Form No. 524)
4. Itemized Budget for each year
5. Student Data
6. Project Documentation
   Transmittal Letter to SEA
   Documentation of Consultation with Nonprofit Private School Officials
   Check Box in Section C
7. Program Assurances
8. Assurances—Non-Construction Programs (SF 424B)
9. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013)
10. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014)
11. Disclosure of Lobbying Activities (SF-LLL)
12. Notice to All Applicants (OMB No. 18010004)
13. Table of Contents
14. Application Narrative, including Abstract (See Instructions for the Application Narrative and Additional Guidance)
15. One original and three copies of the application for transmittal to the Department's Application Control Center

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☒ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

		–							

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 9 0U

TITLE: Bilingual Education: Comprehensive School Grants

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

Authorized Representative					Name of Institution/ Organization
Typed Name	Title	Signature	Date Signed	Telephone Number (including Area Code)	

STUDENT DATA			
Name of Local Educational Agency			

SECTION A

NOTE: This section must be completed by applicants under the following programs:

- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

1. Total number of limited English proficient (LEP) students in the school district	
2. Total number of students in the school district	
3. Percentage of LEP students (line 1 divided by line 2)	%

SECTION B

NOTE: This section must be completed by applicants under the following program:

- **Comprehensive School Grants**

Name of project school	(1) Total number of LEP students in the school	(2) Total number of students in the school	(3) % of LEP students (Column (1) divided by column (2))
			%
			%
			%
			%
			%
			%

Name of Local Educational Agency _____

STUDENT DATA
(continued)

SECTION C

NOTE: This section must be completed by applicants under the following programs:

- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

1. Circle the grade level(s) that will participate in the project: PreK K 1 2 3 4 5 6 7 8 9 10 11 12

2. Total number of language groups that will participate in the project. _____

3. List the five largest participating language groups and the approximate number of students in each group.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

PROJECT DOCUMENTATION

NOTE: Submit the appropriate documents and information as specified below for the following programs:

- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

SECTION A

A copy of applicant's transmittal letter requesting the appropriate State educational agency to comment on the application. This requirement does not apply to schools funded by the Bureau of Indian Affairs. (See 34 CFR 75.155 and 75.156 below.)

§75.155 Review procedure if State may comment on applications: Purpose of §§75.156-75.158. If the authorizing statute for a program requires that a specific State agency be given an opportunity to comment on each application, the State and the applicant shall use the procedures in §§75.156-75.158 for that purpose.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Cross-Reference: See 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities) for the regulations implementing the application review procedures that States may use under E.O. 12372. (In addition to the requirement in §75.155 for review by the State educational agency, the application is subject to review by State Executive Order 12372 process. Applicants must complete item 16 of the application face sheet (Standard Form 424, Application for Federal Assistance) by either (a) specifying the date when the application was made available to the State Single Point of Contact for review or (b) indicating that the program has not been selected by the State for review.)

§75.156 When an applicant under §75.155 must submit its application to the State: proof of submission.
(a) Each applicant under a program covered by §75.155 shall submit a copy of its application to the State on or before the deadline date for submitting its application to the Department.
(b) The applicant shall attach to its application a copy of its letter that requests the State to comment on the application.

(Authority: 20 U.S.C. 1221e-3(a)(1))

PROJECT DOCUMENTATION

(continued)

SECTION B

Evidence of compliance with the Federal requirements for participation of students enrolled in nonprofit private schools. (See section 7116(h)(2) of Public Law 103-382 and 34 CFR 75.119, 76.652, and 76.656 below.)

Sec. 7116. Applications. "(2) in designing the program for which application is made, the needs of children in nonprofit private elementary and secondary schools have been taken into account through consultation with appropriate private school officials and, consistent with the number of such children enrolled in such schools in the area to be served whose educational needs are of the type and whose language and grade levels are of a similar type to those which the program is intended to address, after consultation with appropriate private school officials, provision has been made for the participation of such children on a basis comparable to that provided for public school children."

(Authority: 20 U.S.C. 7426(h)(2))

§75.119 Information needed if private schools participate. If a program requires the applicant to provide an opportunity for participation of students enrolled in private schools, the application must include the information required of subgrantees under 34 CFR 76.656.

(Approved by the Office of Management and Budget under control number 1880-0513)
(Authority: 20 U.S.C. 1221e-3(a)(1))

§76.652 Consultation with representatives of private school students.
(a) An applicant for a subgrant shall consult with appropriate representatives of students enrolled in private schools during all phases of the development and design of the project covered by the application, including consideration of:
(1) Which children will receive benefits under the project;
(2) How the children's needs will be identified;
(3) What benefits will be provided;
(4) How the benefits will be provided; and
(5) How the project will be evaluated.
(b) A subgrantee shall consult with appropriate representatives of students enrolled in private schools before the subgrantee makes any decision that affects the opportunities of those students to participate in the project.

PROJECT DOCUMENTATION

(continued)

(c) The applicant or subgrantee shall give the appropriate representatives a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this section.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§76.656 Information in an application for a subgrant.
An applicant for a subgrant shall include the following information in its application:
(a) A description of how the applicant will meet the Federal requirements for participation of students enrolled in private schools.
(b) The number of students enrolled in private schools who have been identified as eligible to benefit under the program.
(c) The number of students enrolled in private schools who will receive benefits under the program.
(d) The basis the applicant used to select the students.
(e) The manner and extent to which the applicant complied with §76.652 (consultation).
(f) The places and times that the students will receive benefits under the program.
(g) The differences, if any, between the program benefits the applicant will provide to public and private school students, and the reasons for the differences.

(Authority: 20 U.S.C. 1221e-3(a)(1))

SECTION C

Check the appropriate box below:

- **There are no eligible nonprofit private schools in the proposed service delivery area that wish to participate in the project.** ❑
- **One or more eligible nonprofit private schools in the proposed service delivery area wish to participate in the project and are listed on the enclosed Student Data form.** ❑
- **There are no eligible nonprofit private schools in the proposed service delivery area.** ❑

PROGRAM ASSURANCES

NOTE: The authorizing statute requires applicants under certain programs to provide assurances. This form must be completed for applications under the following programs:

- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

As the duly authorized representative of the applicant, I certify that the applicant:

- Will not reduce the level of State and local funds that the applicant expends for bilingual education or special alternative instructional programs if the applicant is awarded a grant under the program.
- Will employ in the proposed project teachers who are proficient in English, including written and oral communication skills.
- Will integrate the proposed project with the applicant's overall educational program.
- Has developed this application in consultation with an advisory council, the majority of whose members are parents and other representatives of the children and youth to be served in the proposed project.

(Authority: 20 U.S.C. 7426(g))

Authorized Representative		Applicant Organization
Signature	Title	
Typed Name	Date Signed	

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted–

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application b. initial award c. post-award	3. Report Type: ☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report ____

4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	5. If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime: Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying ~~Entity~~ Registrant *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*

~~(attach Continuation Sheet(s) SF-LLL-A, if necessary)~~

~~11. Amount of Payment *(check all that apply):*~~ ~~$ _____ ☐ actual ☐ planned~~	~~13. Type of Payment *(Check all that apply):*~~ ~~☐ a. retainer~~ ~~☐ b. one-time fee~~ ~~☐ c. commission~~ ~~☐ d. contingent fee~~ ~~○ e. deferred~~ ~~☐ f. other; specify: _____~~
~~12. Form of Payment *(check all that apply):*~~ ~~☐ a. cash~~ ~~☐ b. in-kind; specify: nature _____ value _____~~	

~~14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:~~

~~(attach Continuation Sheet(s) SF-LLL-A, if necessary)~~

~~15. Continuation Sheet(s) SF-LLL attached: ☐ Yes ☐ No~~

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate.~~ Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and conract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the ~~lobbying entity~~ registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

~~11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this a material change report, enter the cumulative amount of payment made or planned to be made.~~

~~12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.~~

~~13. Check the appropriate box(es). Check all boxes that apply. If other specify nature.~~

~~14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~

~~15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

[FR Doc. 97–1242 Filed 1–16–97; 8:45 am]
BILLING CODE 4000–01–C

Federal Register

Friday
January 17, 1997

Part VI

Ounce of Prevention Council

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

The President's Crime Prevention Council; Ounce of Prevention Grant Program; Notice

OUNCE OF PREVENTION COUNCIL

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP(OJJDP) No. 1111]

[ZRIN No. 1121–ZA58]

The President's Crime Prevention Council; Ounce of Prevention Grant Program: Notice of Funding Availability for Youth Substance Use Prevention Program and Notice of Evaluation

AGENCIES: Ounce of Prevention Council (The President's Crime Prevention Council) and the United States Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of Funding Availability.

SUMMARY: The President's Crime Prevention Council (''Council'') and the United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention (''OJJDP'') are announcing that the Fiscal Year 1996 grant program has up to $1 million available to assist community-based, youth-led, and grassroots organizations that sponsor activities designed to combat youth drug and alcohol use.

DATES: The application period for funding under this grant program is 60 days and runs from January 17, 1997 through March 18, 1997. The deadline date for submission of an application is on or before 5:00 pm, Eastern Standard Time, on March 18, 1997.

CONTACT INFORMATION:

(1) To have the Application Kit or a copy of this Notice of Funding Availability (NOFA) faxed or mailed to you, *CALL OJJDP's Juvenile Justice Clearinghouse at 800–638–8736.*

(2) If you have questions about the grant program or need assistance in completing the Application Kit, you may *CALL the Department of Justice Response Center at 800–421–6770.*

(3) All required forms and documentation must be submitted by the application deadline to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 1600 Research Boulevard, Mail Stop 2K, Rockville, MD 20850. No faxes accepted.

SUPPLEMENTARY INFORMATION:

I. Letter From the Vice President

Dear Friend:

As Chair of the President's Crime Prevention Council, I am pleased to announce the Fiscal Year 1996 Ounce of Prevention Grant Program. You are being notified, along with others, because of your commitment to the prevention of youth drug and alcohol use.

As you know, drug and alcohol use is a significant problem among youth today. Traditional, adult-managed substance use prevention programs do not always address youth-specific problems. Youth may respond more favorably to substance use prevention programs, however, if other young people from the same community play substantial and meaningful roles in such programs. Based on this belief, the Ounce of Prevention Grant Program targets youth-led organizations. Specifically, the program requires that young people between the ages of 12 and 21 hold significant policy or management positions within the proposed projects. More youth leadership and participation may yield better program results—with a goal of preventing the nation's young people from turning to drugs and alcohol.

The members of the President's Crime Prevention Council and I hope you will consider applying for a grant under this competition. It was created—with you and your colleagues in mind—to provide assistance to those organizations involved with drug and alcohol prevention initiatives. Please share this information with others who may be interested. For additional announcements and applications, call toll-free at 800–638–8736.

Thank you for your commitment to our nation's youth. Together we can continue to help communities and families fight drug and alcohol use by our young people.

Sincerely,
Al Gore.

II. Overview of the Ounce of Prevention Grants

A. Eligible Applicants: Eligible applicants are organizations that (1) have at least 50 percent of their management or policy positions staffed by youth (between the ages of 12 and 21); (2) have been in operation for at least three years: (3) show that they do not expect to expend more than 15 percent of their total budget on administrative costs; (4) fund, on their own, 25 percent of the cost of the proposed activities; (5) are located in an economically distressed area; and (6) meet other eligibility requirements.

B. Award Amount: The Council and OJJDP may award up to $1 million in grant funds. Up to $100,000 per program is available for this program.

The Council and OJJDP retain the right to award more or less than $1 million and to continue this grant program beyond the prescribed award period set forth below, based upon the quality of the applications, grantee performance, and the availability of funds.

C. Award Period: The grant awards will be for a 12-month period.

III. Background

A. Drug and alcohol use is a significant problem among youth today. Traditional, adult-managed substance use prevention programs do not always address youth-specific problems. The Ounce of Prevention Grant Program is in response to this concern and supports the Administration's strong commitment to reverse the tide of youth substance use.

The Council believes that youth may respond more favorably to substance use prevention programs if other young people from the same community play substantial and meaningful roles in the management and operation of such programs. In light of these factors, this grant program targets organizations that are led by or involve in a substantial way young people between the ages of 12 and 21.

B. Goal: To enhance or expand existing youth-led activities that prevent substance use among youth. Such activities should seek to meet the following prevention goals:

(1) increase collaboration between community-based, youth-serving and youth-led groups and law enforcement, schools, houses of worship, health-care providers, cultural organizations, and government;

(2) assist and empower youth to help solve problems that affect them; and

(3) promote personal growth and social responsibility among our young people.

C. Program Strategy: This grant program will help fund youth-led activities devoted to helping youth combat substance use. If your organization has more than one mission, the component of your organization that focuses on youth substance use—or the entire organization—is eligible to apply for this grant. Proposed activities shall consist of specific, concrete services, including, but not limited to, peer-to-peer mentoring; counseling; parent involvement; and leadership development. These activities must include a specific plan to meet the substance use prevention goals identified above. For example, an applicant's goal might be to increase enrollment in its substance use prevention classes by 30 percent.

D. Eligibility Requirements: Applications will be accepted only if they meet all of the following five criteria:

(1) *Youth-Led/Youth-Involved Organizations and Activities.* The applicant must have at least 50 percent of their management or policy positions staffed by youth (between the ages of 12 and 21) for the proposed program. Such organizations include, but are not limited to school clubs, community groups, and programs administered through houses of worship, local agencies, and private non-profits.

(2) *Partnership with a Local Unit of Government or Established Entity.* The applicant must be a legally constituted non-profit organization or must jointly apply with a legal entity (i.e., Indian tribal government, city, county, or other municipality; a school board; a college or university; a private nonprofit 501(c)(3) organization; or a consortium of the aforementioned entities). Where the youth-led organization is not a legally constituted non-profit organization, the co-applicant shall be designated as the grant recipient and administering entity. The youth-led organization may be affiliated with or be part of a larger network of community organizations or foundations, but may not pay dues to or receive a majority of its funding from or through a national organization unless it is the sole provider for a large geographical area.

(3) Required Length of Existence. The applicant must have been continuously operational for at least three years.

(4) Substance Use Prevention Experience. The applicant must have engaged in activities related to substance use prevention activities for at least one year.

(5) Geographic Location. The applicant must be located within one of the following areas:

(a) a census tract with a poverty rate of 25 percent or more;

(b) a census tract that (a) has a population under 2,000 or is zoned for at least 75 percent industrial or commercial use and (b) is located next to a census tract with a poverty rate of at least 25 percent; or

(c) a locale designated as a Federal Empowerment Zone, Supplemental Empowerment Zone, Enterprise Community or Enhanced Enterprise Community.

Applicants may determine whether they are located in one of these geographic areas by calling 800–998–9999 and giving their address and zip code, or by accessing the electronic locator map on the World Wide Web at http://www.caliper.com/hud (then type in your street address and zip code).

E. Criteria for Review and Selection of Grant Applicant: The application review and evaluation process consists of three levels. First, all applications will be screened to determine if they meet the eligibility requirements. Second, those applications that meet the eligibility requirements will be evaluated and rated by a peer review panel consisting of experts in the field of youth drug and alcohol use. Third, the Council's review panel will evaluate the applications rated most highly by the peer review panel and will make final recommendations to the Council and OJJDP based on the criteria and geographic distribution factors.

Applications will be judged on a 100-point scale based on the following criteria:

(1) Problems to be Addressed (5 points). Applicants must concisely describe the nature and extent of the specific drug and alcohol problems in their community and provide a discussion of the possible causes of these problems. For example, applicants might state that lack of adult supervision and adequate recreational opportunities contribute to underage drinking.

(2) Goals and Objectives (10 points). Applicants must provide a clear discussion of the project goals and objectives as they relate to the stated problems. In developing the project goals and objectives, applicants should consider, ''If this program is successful, what will be different about the stated problems (project goals), and what will need to be done (project objectives) to make these changes occur?'' Applicants must provide clearly stated goals and objectives that logically address the problems described in section (1). For example, one of your project objectives may be to expand your mentoring or peer counseling program to service an additional 100 youth to address the lack of adult supervision.

(3) Program Design (25 points). Applicants must provide a detailed description of the proposed project activities and how these activities will achieve the goals and objectives specified in section (2).

The proposed activities should be practical and achievable. Applicants must present a plan that lays out how the proposed project activities will lead to achieving the goals and objectives and how work requirements will be met. This activity plan should demonstrate creativity in your approaches for engaging young people and combating substance use. For example, if you intend to expand your outreach services to seven additional youth recreation centers, you should describe exactly how you will go about expanding those services to achieve that project objective.

In addition, the Program Design must specifically describe how you will monitor progress toward achieving your goals and objectives, including the types of information you will collect and how you will collect it, so that you know the program is on track and working. For example, in order to measure whether you actually expanded your outreach services as described, you will need to compare the number of recreation centers involved before and after the project.

(4) Management and Organizational Capability (25 points). Applicants must indicate how long their organization has been in existence and demonstrate that their management, staffing, and experience are adequate and appropriate to implement and complete the project successfully, efficiently, and cost-effectively. Applicants must show that youth (individuals between the ages of 12 and 21) hold at least 50 percent of the management or policy positions in the operation of the component that will manage this project. In order to determine the extent of youth involvement, applicants must provide the job descriptions and current background information, including age information, for all key staff members.

(5) Collaboration (15 points). Preference shall be given to applicants that have a history of collaboration and are part of a coalition of a broad spectrum of community-based and social service organizations. Applications must show a coordinated approach to reducing the effects of substance use and providing alternatives for at-risk youth. Applicants must show how such collaboration and participation have enhanced their youth drug or alcohol prevention activities. For example, applicants might describe their collaboration with local law enforcement officials on a particular activity.

(6) Budget (20 points). Applicants must submit a detailed, reasonable, and cost-effective budget for the proposed program and evaluation activities. In addition, applicants must submit a budget narrative that describes and justifies proposed program and evaluation activities and costs. Administrative costs (defined as costs for non-program items, such as salaries, operation of space and property, and office supplies unrelated to the program) must not exceed 15 percent of the applicant's total budget.

Grant award amounts may not exceed 75 percent of the total cost of an applicant's activities for the 12-month

grant term. To meet this requirement, applicants must demonstrate that they will provide, from a source other than the grant program, 25 percent of their total cost in-kind (non-cash equivalent) for the proposed activities for this 12-month period.

The Council and OJJDP retain the right to waive the 15 percent minimum administrative budget requirement and/or the 25 percent non-federal share requirement upon demonstration of compelling financial hardship or need. Documentation may include financial statements about your organization's need for the waiver, including a supporting written report.

IV. Application Requirements

A. Page Limitation and Format: The narrative portion of the application, exclusive of appendices and exhibits, is strictly limited to 25 double-spaced pages in length, and must be submitted on 8½- by 11-inch paper, double-spaced on one side of the paper in a standard 10- or 12-point font.

Appendices shall be limited to the following three items:

Appendix A: Listing of individuals, their affiliations, signatures, and contact information for the persons participating in the development of this proposal.

Appendix B: Legislation, executive orders, memoranda of understanding, and other formal commitments of bona fide partnerships (e.g., combined funding or procedures for service coordination). Documentation should be provided.

Appendix C: Staff background information and position descriptions.

B. Application Instructions and Contact Information: To apply for this program, you must complete an Application Kit which includes detailed instructions, forms, checklists, worksheets, and application forms. To have the Application Kit or a copy of this Notice of Funding Availability (NOFA) faxed to you, *CALL OJJDP's Juvenile Justice Clearinghouse at 800–638–8736,* select option #1 for automated ordering services, then select option #2 for fax on demand, then select document #9023 for the Application Kit and/or document #9021 for the NOFA. Note: When you call, you will be asked to give a customer number. If you do not have one, be prepared to answer a few survey questions.

To have a copy of this NOFA and/or an Application Kit mailed to you, *CALL 800–638–8736,* select option #2 for publication ordering, then request publication #SL 000188 for the Application Kit and/or publication #SL 000186 for the NOFA.

If you have questions about the grant program or need assistance in completing the Application Kit, you may *CALL the Department of Justice Response Center at the toll free number, 800–421–6770,* Monday through Friday, 9:00 am to 5:00 pm Eastern Standard Time.

C. Application Submission and Deadline: All required forms and documentation must be submitted by the application deadline to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 1600 Research Boulevard, Mail Stop 2K, Rockville, MD 20850. (The following telephone number is to be used only for sending an express package: 301–251–5535). *Note: In the lower left-hand corner of the envelope, you must clearly write ''Substance Use Prevention Program.''* All applications must be received, not postmarked, by the submission deadline.

The application period for funding under this grant program is 60 days and runs from January 17, 1997 through March 18, 1997. The deadline date for submission of an application is on or before 5:00 pm, Eastern Standard Time, on March 18, 1997. Applicants are responsible for ensuring that the original and five copies of the application package are received at the OJJDP address by that deadline date. No faxes are allowed.

V. Report and Evaluation Requirements

A. Report Requirement: After awards have been made, grant recipients will be required to submit, in a form prescribed by OJJDP grant guidelines and the Council, two reports that describe the specific use of the grant funds, the activities conducted and the results and benefits achieved. The reports must be submitted 6 months and 12 months after the grant recipient receives funding.

B. Evaluation Requirement: Evaluation is a powerful tool that supports program planning, management, and our understanding of ''what works'' to prevent youth from using alcohol and drugs. By submitting an application for the Youth Substance Use Prevention Program, applicants agree to cooperate fully with the national evaluation that the Council and OJJDP will conduct (described below). At a minimum, grantees will be expected to maintain records on how the program is operating and the extent to which program objectives are being attained, as described in their Program Design. In addition, grantees will be expected to work with the national evaluator to develop an evaluation strategy, tailored to each grantee's program design, and to work with the national evaluator to collect key program information that will help assess the extent to which programs are meeting their objectives and achieving their goals. The types of information collected might include, but are not limited to: meeting agendas and minutes; attendance lists; client rosters; chronology of program events; numbers of clients served; number of contacts made; duration and frequency of prevention activities, for example, one hour per week for six weeks; etcetera.

VI. National Evaluation NOFA

OJJDP and the Council are ensuring that a thorough national evaluation of the Ounce of Prevention's Youth Substance Use Prevention Grant Program is conducted by an outside evaluator. OJJDP and the Council are announcing the availability of funding for a national evaluation of the Grant Program and will publish the Notice of Funding Availability (NOFA) in the Federal Register at a later date. The purpose of this evaluation will be to document and analyze the process of the youth-involvement collaboration and substance use prevention activities that have taken place during the course of the program.

The Council and OJJDP will invite applications from public and private agencies, organizations, institutions, or individuals who can demonstrate that they have experience in the design and implementation of this type of evaluation. Joint applications from two or more eligible applicants are welcome provided one is designated primary applicant and the other a co-applicant. Applicants will be asked to demonstrate their technical knowledge of evaluation methods and tools; their practical knowledge of substance use prevention among juveniles; and their skills for assisting those who must develop and make decisions about program directions. To have the Application Kit or the Evaluation Notice of Funding Availability (NOFA) faxed to you, call OJJDP's Juvenile Justice Clearinghouse at 800–638–8736, select option #1 for automated ordering services, then select option #2 for fax on demand, then select document #9023 for the Application Kit and/or document #9022 for the Evaluation NOFA.

To have the Application Kit or the Evaluation NOFA mailed to you, call 800–638–8736, select option #2 for publication ordering, then request publication #SL 000188 for the Application Kit and/or publication #SL 000187 for the Evaluation NOFA.

VII. Additional Information

A. Statutory Authority: Sections 30101 and 30102 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13741) (''Act'') authorize the Council's ''Ounce of Prevention Grant Program.'' Pursuant to Section 30101(a)(3) of the Act, the Council has delegated to OJJDP the authority to administer certain aspects of this program in consultation with the Council. Authority for OJJDP to administer this program is found in the Economy Act of 1932, as amended.

B. Appropriate Use of Grant Funds: The grant funds may not be used to replace program or administrative services funded by the state, local, or federal government.

Dated: January 14, 1997.

Nancy Hatamiya,

Chief of Staff, President's Crime Prevention Council.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

References

The following publications may assist in preparing your application and implementing your program. They are available from the Juvenile Justice Clearinghouse, by calling 800–638–8736, select option #2 for publication ordering, then reference the NCJ # associated with each title you want to order.

Delinquency Prevention Works. 1995 (May). Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice. NCJ 155006.

Evaluation of Boys and Girls Clubs in Public Housing. 1995 (November). Washington, D.C.: National Institute of Justice, U.S. Department of Justice. FS 000100.

Howell, J.C., ed. 1995 (May). *Guide for Implementing the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders.* Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice. NCJ 153681.

Huizinga, D. et al. 1995 (August). *Urban Delinquency and Substance Abuse.* Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice. NCJ 143454.

Harrell, A. 1996 (April). *Intervening with High-Risk Youth, Preliminary Findings from the Children-at-Risk Program.* Washington, D.C.: National Institute of Justice, U.S. Department of Justice. FS 000140.

Office of National Drug Control Policy. 1996 (February). *National Drug Control Strategy: 1996.* Washington, D.C.: Office of the President. NCJ 160086.

Partnerships To Prevent Youth Violence. 1994 (August). Washington, D.C.: National Crime Prevention Council and the Bureau of Justice Assistance, U.S. Department of Justice. NCJ 148459.

Preventing Crime and Promoting Responsibility: 50 Programs That Help Communities Help Their Youth. 1995 (September). Washington, D.C.: President's Crime Prevention Council. NCJ 158622.

Rosenbaum, D.P. et al. 1994. *Community Responses to Drug Abuse: A Program Evaluation.* Washington, D.C.: National Institute of Justice, U.S. Department of Justice. NCJ 145945.

Working as Partners With Community Groups. 1994 (September). Washington, D.C.: National Crime Prevention Council and the Bureau of Justice Assistance, U.S. Department of Justice. NCJ 148458.

[FR Doc. 97–1272 Filed 1–16–97; 9:06 am]

BILLING CODE 4410–18–P

Reader Aids

Federal Register

Vol. 62, No. 12

Friday, January 17, 1997

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202–523–5227**

Laws

For additional information **523–5227**

Presidential Documents

Executive orders and proclamations **523–5227**

The United States Government Manual **523–5227**

Other Services

Electronic and on-line services (voice) **523–4534**

Privacy Act Compilation **523–3187**

TDD for the hearing impaired **523–5229**

ELECTRONIC BULLETIN BOARD

Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. **202–275–0920**

FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: **301–713–6905**

FEDERAL REGISTER PAGES AND DATES, JANUARY

1–300 2
301–592 3
593–888 6
889–1030 7
1031–1238 8
1239–1382 9
1383–1658 10
1659–1826 13
1827–2006 14
2007–2264 15
2265–2546 16
2547–2890 17

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Presidential Determinations:
No. 97–11A of December 6, 1996 299
No. 97–14 of December 27, 1996 1379
No. 97–15 of December 27, 1996 1381

Executive Orders:
12543 (Continued by Notice of Jan. 2, 1997) 587
12544 (Continued by Notice of Jan. 2, 1997) 587

5 CFR

2640 1361

Proposed Rules:
213 1695
338 1695
831 2323
844 2323
2470 2547
2471 2547
2472 2547
2473 2547
2634 2048

7 CFR

2 1031
33 1032
210 889
226 889
300 593
319 593
457 2007
729 2719
925 2547
929 915
932 ..... 1239, 2549
944 1239
959 916
982 1035
985 1246
997 1249
998 1249
999 1249
1011 918
1049 918
1079 918
1124 1
1205 1659
1499 2719

Proposed Rules:
400 2052
401 333
414 2055
441 2059
443 48
445 338
457 ..... 48, 333
729 0000
906 55
985 942
1499 0000

8 CFR

Proposed Rules:
1 444
3 444
103 444
204 444
207 444
208 444
209 444
211 444
212 444
213 444
214 444
216 444
217 444
221 444
223 444
232 444
233 444
234 444
235 444
236 444
237 444
238 444
239 444
240 444
241 444
242 444
243 444
244 444
245 444
246 444
248 444
249 444
251 444
252 444
253 444
274a 444
286 444
287 444
299 444
316 444
318 444
329 444

9 CFR

78 2550
160 597
161 597
304 2551
308 2551
310 2551
320 2551
327 2551

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

DEFENSE DEPARTMENT
Acquisition regulations:
- Certification requirements for contractors and offerors not specifically imposed by statute; removal; published 1-17-97
- Foreign military sales; contingent fees; published 1-17-97
- Foreign purchase restrictions; authority to waive; published 1-17-97
- Metalworking machinery; trade agreements; published 1-17-97
- Overseas military construction; architect-engineer contracts; restriction; published 1-17-97
- Overseas military construction; preference for U.S. firms; published 1-17-97
- Procurement integrity; published 1-17-97

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
- Synthetic organic chemical manufacturing industry and other processes subject to equipment leaks negotiated regulation; published 1-17-97

Air programs:
- Fuels and fuel additives--
  - Minor revisions; published 11-18-96

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
- New York; published 12-17-96
- Ohio; published 12-17-96
- Oklahoma; published 12-17-96

GOVERNMENT ETHICS OFFICE
Conflict of interests; published 12-18-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Organization, functions, and authority delegations:
- Center for Drug Evaluation and Research; published 1-17-97

NUCLEAR REGULATORY COMMISSION
Environmental protection; domestic licensing and related regulatory functions:
- Nuclear power plant operating licenses; environmental review for renewal
  - Correction; published 12-30-96

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
- Aerospace Technologies of Australia; published 11-22-96
- Boeing; published 1-2-97
- New Piper Aircraft, Inc.; published 11-26-96

TREASURY DEPARTMENT
Comptroller of the Currency
Leasing:
- National banks; personal property lease financing transactions; published 12-18-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Vegetables; import regulations:
- Banana and fingerling potatoes and potatoes used to make fresh potato salad; removal and exemption; comments due by 1-22-97; published 12-23-96

AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Crop insurance regulations:
- Peach crop insurance provisions; comments due by 1-21-97; published 11-19-96

AGRICULTURE DEPARTMENT
Forest Service
National Forest System timber; disposal and sale:
- Market-related contract term additions; indices; comments due by 1-21-97; published 10-21-96

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone--
  - Recordkeeping and reporting requirements; revisions; comments due by 1-22-97; published 12-23-96
- Atlantic shark; comments due by 1-21-97; published 12-20-96
- Caribbean, Gulf, and South Atlantic fisheries--
  - Shrimp; comments due by 1-24-97; published 11-25-96
  - South Atlantic Fishery Management Council; hearings; comments due by 1-22-97; published 12-20-96
- Northeastern United States fisheries--
  - Atlantic mackerel, squid, and butterfish; comments due by 1-21-97; published 12-9-96
  - Atlantic mackerel, squid, and butterfish; comments due by 1-24-97; published 11-25-96

CONSUMER PRODUCT SAFETY COMMISSION
Hazardous substances:
- Fireworks devices; fuse burn time; comments due by 1-21-97; published 12-20-96

ENERGY DEPARTMENT
Acquisition regulations:
- Classification contract clause, security clearance procedures for contract personnel, new counterintelligence provisions; comments due by 1-21-97; published 11-20-96

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans:
- Preparation, adoption, and submittal--
  - Prevention of significant deterioration and nonattainment new source review; Federal regulatory review; comments due by 1-21-97; published 12-20-96

Air quality implementation plans; approval and promulgation; various States:
- Colorado; comments due by 1-22-97; published 12-23-96
- Illinois; comments due by 1-22-97; published 12-23-96
- Pennsylvania; comments due by 1-21-97; published 12-20-96

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
- Michigan; comments due by 1-21-97; published 12-6-96

Television broadcasting:
- Advanced television (ATV) systems; digital television service; comments due by 1-24-97; published 1-14-97

FEDERAL DEPOSIT INSURANCE CORPORATION
Securities transactions by State nonmember banks; recordkeeping and conrfirmation requirements; comments due by 1-23-97; published 12-24-96

FEDERAL TRADE COMMISSION
Fur Products Labeling Act regulations; regulatory review; comments due by 1-22-97; published 12-24-96
Wool Products Labeling Act regulations; costs, benefits, and regulatory and economic impact; comments due by 1-22-97; published 12-24-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
- New drug applications--
  - Investigational use; comments due by 1-21-97; published 11-21-96

INTERIOR DEPARTMENT
Land Management Bureau
Agency definitions; comments due by 1-21-97; published 11-19-96

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
- Alexander Archipelago wolf and Queen Charlotte goshawk; status reviews; comments due by 1-21-97; published 12-5-96

INTERIOR DEPARTMENT
National Park Service
Special regulations:
- Big Cypress National Preserve, FL; recreational frogging; comments due by 1-21-97; published 11-22-96

LABOR DEPARTMENT
Pension and Welfare Benefits Administration
Employee Retirement Income Security Act: