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# federal register

Thursday
September 4, 1997

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1011

**[DA–97–09]**

### Milk in the Tennessee Valley Marketing Area; Suspension of Certain Provisions of the Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule; suspension.

**SUMMARY:** This document suspends certain provisions of the Tennessee Valley Federal milk marketing order during the period of consideration of the termination of the Tennessee Valley order. The suspension deactivates the provisions that allow funds to be transferred from the Producer-Settlement Fund to the Transportation Credit Balancing Fund when the latter fund does not have sufficient funds to cover the amount of credits to be disbursed.

**EFFECTIVE DATE:** September 5, 1997.

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

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

Notice of Proposed Termination: Issued June 30, 1997; published July 3, 1997 (62 FR 36022).

Notice of Extension of Time for Filing Comments: Issued July 9, 1997; published July 14, 1997.

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

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

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), 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 request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

#### Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During the representative month of February 1997, the milk of 1,469 producers was pooled on the Tennessee Valley order. Of these producers, 1,442 are considered as small businesses.

There were 7 handlers operating 8 pool distributing plants regulated under the Tennessee Valley milk order for February 1997. Of these handlers, 3 are considered small businesses.

This rule lessens the regulatory impact of the order on dairy farmers by prohibiting an unwarranted reduction of their blend price to cover costs associated with obtaining supplemental milk.

#### Preliminary Statement

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Tennessee Valley marketing area.

After consideration of all relevant material and available information, it is hereby found and determined that during the period of consideration involving the termination of the Tennessee Valley milk order, the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1011.61, paragraph (a)(4); and
2. § 1011.81, paragraph (b).

#### Statement of Consideration

This suspension order removes a provision of the Tennessee Valley order that requires the market administrator to transfer money from the producer-settlement fund (psf) to the transportation credit balancing fund (TCBF) when the latter fund has an insufficient balance from which to pay the current month's transportation costs associated with supplemental milk obtained from outside the marketing area. This suspension is effective pending consideration of the termination of the Tennessee Valley milk order.

On May 12, 1997, the Department issued a partial final decision on proposed amendments to the Carolina, Southeast, Tennessee Valley, and Louisville-Lexington-Evansville milk orders which was published on May 20, 1997 (62 FR 27525). The final decision contained proposed amended orders for the 4 southeast marketing areas, including the Tennessee Valley order, and directed the respective market

administrators of the 4 orders to ascertain whether at least two-thirds of the producers marketing their milk under each of the orders approved the issuance of the amended orders. The final decision concluded that amended orders were needed to effectuate the declared policy of the Agricultural Marketing Agreement Act. That Act requires that at least two-thirds of the producers voting in a referendum must vote affirmatively before an order can be issued.

Less than two-thirds of the producers whose milk is pooled under the Tennessee Valley order approved the issuance of the proposed amended order. Consequently, on July 3 the Department issued a notice of proposed termination of the Tennessee Valley order. It is now evaluating comments received in response to that notice.

At the present time, the Tennessee Valley milk order is being administered under the interim provisions adopted in August 1996, whereas the surrounding orders with transportation credit provisions are being administered with revised provisions that became effective on August 1, 1997.

In July 1997, an extraordinary volume of supplemental milk was received in the neighboring Southeast order. As a result of these receipts, the transportation credit balancing fund for that order was virtually depleted in July. There is now good reason to believe that shipments of supplemental milk may be rerouted to handlers under the Tennessee Valley order in September since that order still has the interim provision allowing unlimited payments for transportation credits even if the money to pay for the credits must come from the producer-settlement fund. Although the Tennessee Valley order has a viable balance in the TCBF at the present time, it is likely that funds from the producer-settlement fund will be necessary for transportation credit payments for September's milk. Were this to happen, it would reduce blend prices to producers in the Tennessee Valley order while their counterparts in the surrounding markets with transportation credit provisions would suffer no such reduction under the revised August 1997 amendments. This situation would be inconsistent with the premises upon which the psf transfer provision was included in the Tennessee Valley order.

This suspension is necessary to ensure that producers' milk will not be moved in an uneconomic and inefficient manner simply to obtain unlimited transportation credits under the Tennessee Valley order and to ensure that producers in the Tennessee Valley order will be treated in an equitable manner in relation to producers supplying the adjacent Southeast, Carolina, and Louisville-Lexington-Evansville orders.

Accordingly, it is appropriate to suspend the aforesaid provisions during the period of consideration of terminating the Tennessee Valley milk order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk; and

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

### List of Subjects in 7 CFR Part 1011

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR Part 1011 is amended as follows:

## PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

1. The authority citation for 7 CFR Part 1011 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

### § 1011.61 [Suspended in part]

2. In § 1011.61, paragraph (a)(4) is suspended.

### § 1011.81 [Suspended in part]

3. In § 1011.81, paragraph (b) is suspended.

Dated: August 29, 1997.

**Lon Hatamiya,**

*Administrator.*

[FR Doc. 97–23568 Filed 9–3–97; 8:45 am]

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## CONSUMER PRODUCT SAFETY COMMISION

## 16 CFR Parts 1000, 1014, 1021, 1051, 1115, 1211, 1402, 1406, 1500, 1502, 1700, and 1702

## Address and Telephone Number Corrections

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is amending 16 CFR chapter II to correct errors in addresses and telephone numbers.

**EFFECTIVE DATE:** September 4, 1997.

**FOR FURTHER INFORMATION CONTACT:** Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207, telephone 301-504-0980.

**SUPPLEMENTARY INFORMATION:** Some addresses, office designations, and telephone numbers in various parts of 16 CFR chapter II are obsolete as a result of the Consumer Product Safety Commission's relocation to new headquarters in 1994. This rule makes the necessary corrections. It also revises some authority citations to conform to **Federal Register** recommendations.

Since this rule relates solely to internal agency management, pursuant to 5 U.S.C. 553(b), notice and other public procedures are not required and it is effective immediately on the specified effective date. Further, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612 and, thus, is exempt from the provisions of the Act. This action will have no effect on the environment.

### List of Subjects

*16 CFR Part 1000*

Organization and functions (Government agencies).

*16 CFR Part 1014*

Privacy

*16 CFR Part 1021*

Environmental impact statements.

*16 CFR Part 1051*

Administrative practice and procedure, consumer protection.

*16 CFR Part 1115*

Administrative practice and procedure, business and industry, consumer protection, reporting and recordkeeping requirements.

*16 CFR Part 1211*

Consumer protection, imports, labeling, reporting and recordkeeping requirements.

*16 CFR Part 1402*

Consumer protection, labeling, radio, television.

*16 CFR Part 1406*

Consumer protection, fire prevention, flammable materials, heaters, household appliances, labeling, reporting and recordkeeping requirements.

*16 CFR Part 1500*

Consumer protection, hazardous materials, imports, infants and children, labeling, law enforcement, reporting and recordkeeping requirements, toys.

*16 CFR Part 1502*

Administrative practice and procedure, consumer protection, hazardous substances, poison prevention.

*16 CFR Part 1700*

Consumer protection, drugs, infants and children, packaging and containers, poison prevention, reporting and recordkeeping requrements.

*16 CFR Part 1702*

Administrative practice and procedure, consumer protection, drugs, infants and children, packaging and containers, poison prevention.

Accordingly, 16 CFR chapter II is amended as follows:

## PART 1000—[AMENDED]

1. The authority citation for part 1000 continues to read as follows:

**Authority:** 5 U.S.C. 552(a).

2. In section 1000.8 remove the words ''5401 Westbard Avenue'' and add, in their place, ''4330 East West Highway''.

## PART 1014—[AMENDED]

1. The authority citation for part 1014 continues to read as follows:

**Authority:** 5 U.S.C. 552a.

2. In section 1014.3(a) remove the words ''5401 Westbard Avenue'' and add, in their place ''4330 East West Highway''.

3. In section 1014.3(c) remove the words ''Division of Personnel's Processing Unit in Room 337, 5401 Westbard Avenue'' and add, in their place, ''Office of Human Resources Management, Room 523, 4330 East West Highway''.

## PART 1021—[AMENDED]

1. The authority citation for part 1021 is revised to read as follows:

**Authority:** 42 U.S.C. 4321-4347; 40 CFR part 1500 et seq.

2. In section 1021.11 remove the words ''(301-492-6550)'' and add, in their place, ''(301-504-0550)''.

## PART 1051—[AMENDED]

1. The authority citation for part 1051 continues to read as follows:

**Authority:** 5 U.S.C. 553(e), 5 U.S.C. 555(e).

2. In section 1051.3 remove the words ''either, 5401 Westbard Avene (third floor) Bethesda, Maryland or 1111 18th Street, NW, (eighth floor), Washington, DC'' and add, in their place ''4330 East West Highway, Bethesda, Maryland''.

## PART 1115—[AMENDED]

1. The authority citation for part 1115 continues to read as follows:

**Authority:** 15 U.S.C. 2061, 2064, 2065, 2066(a), 2068, 2069, 2070, 2071, 2073, 2076, 2079, and 2084.

2. In section 1115.10(a) remove the words ''and Enforcement''.

3. In section 1115.10(a) remove the words ''301-492-6608''and add, in their place, ''301-504-0608''.

## PART 1211—[AMENDED]

1. The authority citation for part 1211 is revised to read as follows:

**Authority:** 15 U.S.C. 2063 and 2065.

2. In section 1211.2(c) remove the words ''5401 Westbard Avenue'' and add, in their place ''4330 East West Highway''.

3. In section 1211.4(c) remove the words ''5401 Westbard Avenue'' and add, in their place, ''4330 East West Highway''.

4. In section 1211.5(b)(3) remove the words ''5402 Westbard Avenue'' and add, in their place, ''4330 East West Highway''.

5. In section 1211.10(d) remove the words ''5401 Westbard Avenue'' and add, in their place, ''4330 East West Highway''.

6. In section 1211.12(c)(2) remove the words ''5401 Westbard Avenue'' and add, in their place, ''4330 East West Highway''.

## PART 1402—[AMENDED]

1. The authority citation for part 1402 is revised to read as follows:

**Authority:** 15 U.S.C. 2051, 2076.

2. In section 1402.4(b)(1) remove the words ''Associate Executive Director for Compliance and Enforcement, Consumer Product Safety Commission, 5401 Westbard Avenue'' and add, in their place, ''Assistant Executive Director for Compliance, Consumer Product Safety Commission, 4330 East West Highway''.

## PART 1406—[AMENDED]

1. The authority citation for part 1406 is revised to read as follows:

**Authority:** 15 U.S.C. 2051, 2076.

2. In section 1406.5(d)(2) remove the words ''Associate Executive Director for Compliance and Administrative Litigation, Consumer Product Safety Commission, 5401 Westbard Avenue, Bethesda, Maryland 20207'' and add, in their place, ''Assistant Executive Director for Compliance, Consumer Product Safety Commission, Washington, DC 20207''.

## PART 1500—[AMENDED]

1. The authority citation for part 1500 continues to read as follows:

**Authority:** 15 U.S.C. 1261-1278, 2079.

2. In section 1500.42, footnote 1, remove the words ''Directorate for Health Sciences, CPSC, Washington, D.C. 20207, (301) 492-6957''and add, in their place, '' Directorate for Epidemiology and Health Sciences, CPSC, Washington, DC 20207, (301) 504-0957''.

## PART 1502—[AMENDED]

1. The authority citation for part 1502 continues to read as follows:

**Authority:** 15 U.S.C. 1261(q)(1)(B), 1262(a), 1262(e), 1269(a); 15 U.S.C. 1474(a); 21 U.S.C. 371(e)-(g).''

2. In section 1502.4(b) remove the words ''Room 420, 5401 Westbard Avenue, Bethesda, Maryland 20816'' and add, in their place ''Room 502, 4330 East West Highway, Bethesda, Maryland 20814''.

3. In section 1502.4(c) remove the words ''(301) 492-6800'' and add, in their place, ''(301) 504-0800''.

4. In section 1502.16(a) remove the words ''Room 420, 5401 Westbard Ave.'' and add, in their place ''Room 502, 4330 East West Highway''.

5. In section 1502.17(a) remove the words ''(301) 492-6800'' and add, in their place ''(301) 504-0800''.

## PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

**Authority:** 15 U.S.C. 1471-1476. Secs. 1700.1 and 1700.14 also issued under 15 U.S.C. 2079(a).

2. In section 1700.14(b) remove the words ''Attention: Bureau of Compliance, 5401 Westbard Avenue'' and add, in their place, ''Office of Compliance, 4330 East West Highway''.

## PART 1702—[AMENDED]

1. The authority citation for part 1702 is revised to read as follows:

**Authority:** 15 U.S.C. 1471(4), 1472, 1474, 1269(a), 2079(a); 21 U.S.C. 371(a).

2. Section 1702.2(a)(1) is revised to read as follows:

**§ 1702.2 Procedural requirements and recommendations.**

(a) * * *

(1) Be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

* * * * *

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 97–23498 Filed 9–3–97; 8:45 am]

BILLING CODE 6355–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 520

## Oral Dosage Form New Animal Drugs; Tetracycline Hydrochloride Soluble Powder

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Med-Pharmex, Inc. The ANADA provides for oral use of tetracycline hydrochloride soluble powder in the drinking water of swine and calves for control and treatment of certain diseases caused by pathogens susceptible to tetracycline, and of chickens and turkeys for control of certain diseases caused by pathogens susceptible to tetracycline.

**EFFECTIVE DATE:** September 4, 1997.

**FOR FURTHER INFORMATION CONTACT:** Lonnie W. Luther, Center For Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

**SUPPLEMENTARY INFORMATION:** Med-Pharmex, Inc., 2727 Thompson Creek Rd., Pomona, CA 91767–1861, filed ANADA 200–234, which provides for oral use of tetracycline hydrochloride soluble powder in the drinking water of calves, swine, chickens, and turkeys, as follows: (1) For calves for control and treatment of bacterial enteritis (scours) caused by *Escherichia coli*, and bacterial pneumonia (shipping fever complex) associated with *Pasteurella* spp., *Actinobacillus pleuropneumoniae* (*Hemophilus* spp.), and *Klebsiella* spp. susceptible to tetracycline; (2) for swine for control and treatment of bacterial enteritis (scours) caused by *E. coli*, and bacterial pneumonia associated with *Pasteurella* spp., *Actinobacillus pleuropneumoniae* (*Hemophilus* spp.), and *Klebsiella* spp. susceptible to tetracycline; (3) for chickens for control of chronic respiratory disease (CRD or air-sac disease) caused by *Mycoplasma gallisepticum* and *E. coli*; infectious synovitis caused by *M. synoviae* susceptible to tetracycline; and (4) for turkeys for control of infectious synovitis caused by *M. synoviae* and bluecomb (transmissible enteritis or coronaviral enteritis) complicated by bacterial organisms susceptible to tetracycline.

Approval of Med-Pharmex's ANADA 200–234 tetracycline hydrochloride soluble powder is as a generic copy of Fermenta's NADA 65–496 tetracycline hydrochloride soluble powder. ANADA 200–234 is approved as of July 22, 1997, and the regulations are amended in 21 CFR 520.2345d(a)(1) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

### List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

**Authority:** Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

**§ 520.2345d [Amended]**

2. Section 520.2345d *Tetracycline hydrochloride soluble powder* is amended in paragraph (a)(1) by removing ''047864, 000010, 057561, and 059130'' and adding in its place ''047864, 051259, 054273, 057561, and 059130''.

Dated: August 22, 1997.

**Michael J. Blackwell,**

*Deputy Director, Center for Veterinary Medicine.*

[FR Doc. 97–23372 Filed 9–3–97; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 520

## Oral Dosage Form New Animal Drugs; Clindamycin Hydrochloride Liquid

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The ANADA provides for veterinary prescription use in dogs of clindamycin hydrochloride liquid for therapy of wounds, abscesses, and dental infections, and therapy of osteomyelitis.

**EFFECTIVE DATE:** September 4, 1997.

**FOR FURTHER INFORMATION CONTACT:** Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

**SUPPLEMENTARY INFORMATION:** Phoenix Scientific, Inc., 3915 South 48th St. Terrace, P.O. Box 6457, St. Joseph, MO 64506–0457, filed ANADA 200–193 that provides for veterinary prescription use in dogs of clindamycin hydrochloride liquid for therapy of wounds, abscesses, and dental infections when administered orally at 2.5 milligrams per pound (mg/lb) every 12 hours, and for therapy of osteomyelitis when administered orally at 5.0 mg/lb every 12 hours.

Phoenix Scientific, Inc.'s, ANADA 200–193 clindamycin hydrochloride liquid is approved as a generic copy of Pharmacia & Upjohn's NADA 135–940 Antirobe Aquadrops®. The ANADA is approved as of August 1, 1997, and the regulations are amended in 21 CFR 520.447(b) to reflect the approval. The

basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday to Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

### List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

**Authority:** Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.447 is amended by revising paragraph (b) to read as follows:

**§ 520.447 Clindamycin hydrochloride liquid.**

* * * * *

(b) *Sponsor*. See No. 000009 in § 510.600(c) of this chapter for use as in paragraphs (c) and (d) of this section. See No. 059130 for use as in paragraph (c) of this section.

* * * * *

Dated: August 22, 1997.

**Michael J. Blackwell,**

*Deputy Director, Center for Veterinary Medicine.*

[FR Doc. 97–23450 Filed 9–3–97; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 100

**[CGD 05–97–007]**

**RIN 2115–AE46**

## Special Local Regulations for Marine Events; Norfolk Harbor, Elizabeth River, Norfolk, Virginia and Portsmouth, Virginia

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is amending permanent special local regulations established for marine events held in the Norfolk Harbor, Elizabeth River, between Norfolk and Portsmouth, Virginia, by identifying specific annual events for which the regulated area will be in effect. This rule updates the regulation in order to enhance the safety of life and property during the events.

**EFFECTIVE DATE:** This final rule is effective on June 6, 1997.

**FOR FURTHER INFORMATION CONTACT:** S.L. Phillips, Project Manager, Search and Rescue Branch, at (757) 398–6204.

**SUPPLEMENTARY INFORMATION:**

### Regulatory History

On February 21, 1997, the Coast Guard published a notice of proposed rulemaking entitled Special Local Regulations for Marine Events; Norfolk Harbor, Elizabeth River, Norfolk, Virginia and Portsmouth, Virginia, in the **Federal Register** (62 FR 7969). The Coast Guard received no comments on the proposed rulemaking. No public hearing was requested, and none was held. The final rule was inadvertently published as a quarterly on 8 August 1997 (62 FR 42671).

### Background and Purpose

33 CFR 100.501 established special local regulations for marine events held in the Norfolk Harbor, Elizabeth River, between Norfolk and Portsmouth, Virginia. The effect of these regulations is the control of vessel traffic during marine events to enhance the safety of participants, spectators, and transiting vessels. The regulations are implemented at various times, for various events throughout the year by publishing notice in the **Federal Register** and the Fifth Coast Guard District Local Notice to Mariners. This rule updates the regulations to reflect specific events for which the regulated area will be in effect.

### Discussion of Comments and Changes

The Coast Guard received no comments on the proposed rulemaking; however, the Coast Guard has learned that the sponsoring organization for the Harborfest event will be Festevents, Ltd. Therefore, Table 1 of the proposed rule has been amended to reflect this change.

### Good Cause Statement

This final rule is effective in less than 30 days because it is contrary to the public interest to delay the effective date because timely action is required to protect vessel traffic and event participants during these events.

### Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This rule merely changes the effective period of an existing regulation and does not impose any new restrictions on vessel traffic.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). This rule does not impose any new restrictions on vessel traffic, but merely changes the effective period of the regulation. Therefore, the Coast Guard certifies under Section 605(b) of the Regulatory Flexibility Act ( 5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

### Collection of Information

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

### Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.b.2.e(34)(h) of Commandant Instruction M16475.1b (as amended, 61 FR 13564; 27 March 1996), this rule is categorically excluded from further environmental documentation.

### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

## PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.501 is amended by revising paragraph (c) and adding Table 1 to read as follows:

**§ 100.501 Norfolk Harbor, Elizabeth River, Norfolk, Virginia and Portsmouth, Virginia.**

* * * * *

(c) *Effective periods.* This section is effective annually for the duration of each marine event listed in Table 1, or as otherwise specified in the Coast Guard Local Notice to Mariners and a **Federal Register** notice. The Coast Guard Patrol Commander will announce by Broadcast Notice to Mariners the specific time periods during which the regulations will be enforced.

TABLE 1 OF § 100.501

| |
|---|
| Harborfest: |
| Sponsor: Festevents, Ltd. |
| Date: First Friday, Saturday, and Sunday in June |
| Great American Picnic: |
| Sponsor: Festevents, Ltd. |
| Date: July 4 |
| Cock Island Race: |
| Sponsor: Ports Events, Inc. |
| Date: Third Saturday in July |
| Rendezvous at Zero Mile Marker: |
| Sponsor: Ports Events, Inc. |
| Date: Third Saturday in August |
| US Navy Fleet Week Celebration: |
| Sponsor: U.S. Navy |
| Date: Second Friday in October |
| Holidays in the City: |

TABLE 1 OF § 100.501—Continued

| |
|---|
| Sponsor: Festevents, Ltd. |
| Date: Fourth Saturday in November |
| New Years Eve Fireworks Display: |
| Sponsor: Festevents, Ltd. |
| Date: December 31 |

Dated: May 30, 1997.

**Roger T. Rufe, Jr.,**

*Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.*

[FR Doc. 97–23445 Filed 9–3–97; 8:45 am]

BILLING CODE 4910–14–M

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[CGD01–97–089]**

**RIN 2115–AA97**

## Safety Zone: Harbor Festival Fireworks Display, Greenport, NY

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone, September 27, 1997, for the Harbor Festival Fireworks Display to be held in Greenport Harbor, Greenport, NY. This temporary safety zone is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with this fireworks display. Entry into this safety zone is prohibited unless authorized by the Capital of the Port or the Coast Guard Patrol Commander.

**EFFECTIVE DATE:** This regulation is effective September 27, 1997, from 8:45 p.m. until 10:15 p.m.

**ADDRESSES:** Documents relating to this temporary final rule are available for inspection and copying at U.S. Coast Guard Group Long Island Sound, 120 Woodward Ave., New Haven, CT 06512. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be faxed to this address. Our fax number is (203) 468–4445.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander T.J. Walker, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4444.

**SUPPLEMENTARY INFORMATION:**

### Regulatory History

Pursuant to 5 U.S.C. 553, good cause exists for not publishing a notice of proposed rulemaking (NPRM) and for making this rule effective in less than 30 days after **Federal Register** publication. The sponsor of the event did not provide the Coast Guard with the final details for the event in sufficient time to publish a NPRM or a final rule 30 days in advance. The delay encountered if normal rulemaking procedures were followed would effectively cancel the event. Cancellation of this event is contrary to the public interest since the fireworks display is for the benefit of the public.

### Background and Purpose

The sponsor, East End Maritime Museum, of Greenport, NY, requested that a fireworks display be permitted in Greenport Harbor, Greenport, NY. This regulation establishes a temporary safety zone in all waters of Greenport Harbor within a 600 foot radius of the fireworks barges. The safety zone is in effect on September 27, 1997, from 8:45 p.m. until 10:15 p.m. and is necessary to protect the maritime community from the safety hazards associated with this fireworks display. Entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port or the Coast Guard Patrol Commander.

### Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order.

It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Entry into this zone will be restricted for a brief period of time on September 27, 1997, the effect of this regulation will not be significant for several reasons: the duration of the event is limited; the event is at a late hour; and extensive, advance maritime advisories will be made.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposal will have a significant economic impact on a substantial number of small entities. Small entities include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and

governmental jurisdictions with populations less than 50,000.

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard finds that this rule will not have a significant impact on a substantial number of small entities.

### Collection of Information

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

### Federalism

The Coast Guard has analyzed this action under the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Environment

The Coast Guard has considered the environmental impact of this rule and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, as revised by 59 FR 38654, July 29, 1994, this rule is categorically excluded from further environmental documentation.

A Categorical Exclusion Determination and an Environmental Analysis Checklist are included in the docket and are available for inspection or copying at the location indicated under **ADDRESSES**. An appropriate environmental analysis of the fireworks program will be conducted in conjunction with the marine event permitting process.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A temporary § 165.T01–089, is added to read as follows:

#### § 165.T01–089 Harbor Festival Fireworks Display, Greenport, NY.

(a) *Location.* The safety zone includes all waters of Greenport Harbor, within an 600 foot radius of the fireworks barges, located in Greenport Harbor, Greenport, NY, at approximate position 41°02.6′ N, 072°21.3′ W. (NAD 1983)

(b) *Effective date.* This section is effective on September 27, 1997, from 8:45 p.m. until 10:15 p.m., unless terminated sooner by the Captain of the Port Long Island Sound.

(c) *Regulations.* The general regulations contained in § 165.23 apply.

Dated: August 8, 1997.

**P.K. Mitchell,**

*Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.*

[FR Doc. 97–23443 Filed 9–3–97; 8:45 am]

BILLING CODE 4910–14–M

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[COTP Honolulu 97–003]**

**RIN 2115–AA97**

## Safety Zone: Waimanalo Bay, Oahu, Hawaii

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone offshore of Bellows Air Force Base (AFB) in Waimanalo Bay on the island of Oahu, Hawaii. The safety zone is a square box approximately 4000 yards wide by 4000 yards long. This zone is needed to protect mariners and observers from possible safety and navigational hazards associated with a joint U.S. Navy and U.S. Marine Corps (USMC) amphibious landing of the USMC Thirteenth Marine Expeditionary Unit (MEU). Entry of vessels or persons into this temporary zone is prohibited unless authorized by the Captain of the Port (COTP).

**DATES:** This regulation is effective from September 3, 1997 through September 4, 1997.

**ADDRESSES:** Marine Safety Office, Honolulu, Hawaii 96813.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Michael Heisler, Port Safety and Security Branch, Marine Safety Office, Honolulu, Hawaii, (808) 522–8260.

**SUPPLEMENTARY INFORMATION:**

### Background and Purpose

A joint U.S. Navy and U.S. Marine Corps (USMC) amphibious landing of the USMC Thirteenth Marine Expeditionary Unit (MEU) will take place at Bellows AFB, Oahu, Hawaii. Four large U.S. Navy vessels will maintain station within the safety zone while launching and recovering various amphibious craft and vehicles to transport the Marines to Bellows AFB. This regulation is intended to minimize the risk to mariners and observers from the amphibious landing operations by keeping vessels and spectators at a safe distance. The zone will be seaward of Bellows AFB bounded by the coordinates: water's edge at approximately 21°22.8′N, 157°40.4′W; 21°22.8′N, 157°42.3′W; 21°20.8′N, 157°40.4′W; water's edge at approximately 21°20.8′N, 157°42.2′W.

The safety zone will be enforced only as long as is required for the landing operations. The public will be advised of the exact dates and times via broadcast notice to mariners.

In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** This rule is effective in less than 30 days because it would be impracticable to delay the effective date as the U.S. Coast Guard was notified of the event less than 30 days prior to the occurrence of the event.

### Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This regulation will be in effect for only a short period and within a limited area. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this final rule will not have a significant economic impact on a substantial number of small entities.

### Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory

Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard will assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If you need assistance in understanding this rule contact the Coast Guard where indicated under **FOR FURTHER INFORMATION CONTACT**.

### Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

### Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4 (109 Stat. 48), requires 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 the UMRA, the Coast Guard generally must prepare a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. The Act applies if those mandates cause State, local, and tribal governments, or the private sector, to spend, in the aggregate, $100 million or more in any one year.

Because this action does not impose new or additional enforceable duties on any State, local or tribal government or the private sector, it does not contain a ''Federal mandate.'' Even if the requirements in this proposed action were found to be Federal mandates, they will not result in annual expenditures of $100 million or more. Therefore, section 202 and 205 do not apply.

Section 203 of the UMRA also requires the Coast Guard to develop a small government agency plan before the Coast Guard establishes any regulatory requirements that may significantly or uniquely affect small governments. Because this rule contains no regulatory requirements that might significantly or uniquely affect small governments, Section 203 of the UMRA does not apply.

### Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2e(34)(g) of Commandant Instruction M16475.1B (as revised by 59 FR 38654, July 29, 1994), this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

## PART 165—(AMENDED)

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new temporary section is added to read as follows:

**§ 165.T14–002 Safety Zone; Waimanalo Bay, Oahu, Hawaii**

(a) Location. A safety zone is established within an area bounded by a line drawn between the following points: water's edge at approximately 21°22.8′N, 157°40.4′W; 21°22.8′N, 157°42.3′W; 21°20.8′N, 157°40.4′W; water's edge at approximately 21°20.8′N, 157°42.2′W.

(b) Effective date. This regulation is effective from September 3, 1997 through September 4, 1997.

(c) Regulations. In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited, except as authorized by the Captain of the Port, or the patrol commander, via marine radio channel 16, VHF–FM.

Dated: August 27, 1997.

**Frank L. Whipple,**

*Captain, U.S. Coast Guard, Captain of the Port.*

[FR Doc. 97–23637 Filed 9–2–97; 1:50 pm]

BILLING CODE 4910–14–M

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 46 CFR Part 28

**[CGD 96–046]**

**RIN 2115–AF35**

## Commercial Fishing Industry Vessel Regulations

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is adopting with some changes, as final, the interim rule which established requirements for safety equipment and vessel operating procedures on commercial fishing industry vessels. The Coast Guard issued these regulations to improve the overall safety of U.S. Commercial Fishing Industry Vessels pursuant to the Commercial Fishing Industry Vessel Safety Act of 1988.

**DATES:** This final rule is effective on October 6, 1997.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street, SW., room 3406, Washington, DC 20593–0001, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477.

**FOR FURTHER INFORMATION CONTACT:** Commander John J. Davin, Office of Operating and Environmental Standards (G–MSO), telephone 202–267–1181, fax 202–267–4570.

**SUPPLEMENTARY INFORMATION:**

### Regulatory History

*Commercial Fishing Industry Vessel Safety Act of 1988*

On September 9, 1988, title 46 United States Code, was amended in chapter 45 (Uninspected Commercial Fishing Industry Vessels, sections 4501 through 4508) by the Commercial Fishing Industry Vessel Safety Act of 1988, Public Law 100–424 (''the Act''). The Act requires the Secretary of Transportation to prescribe regulations for safety equipment and vessel operating procedures on commercial fishing industry vessels. The Secretary further delegated the authority to regulate commercial fishing vessels to the commandant of the Coast Guard. This rulemaking was initiated to implement certain provisions of the Act. This rulemaking does not include requirements pertaining to immersion

suits (found in CGD88–079c, Notice of Proposed Rulemaking dated May 20, 1993) or vessel stability; these provisions will be included in future rulemaking.

*Advance Notice of Proposed Rulemaking (ANPRM)*

An ANPRM was published in the **Federal Register** on December 29, 1988 (53 FR 52735), addressing potential requirements for uninspected fishing, fish processing, and fish tender vessels. In response to this ANPRM, nearly 200 comment letters were received and considered in developing the Notice of Proposed Rulemaking.

*Notice of Proposed Rulemaking (NPRM)*

On April 19, 1990, the Coast Guard published an NPRM in the **Federal Register** (55 FR 14924), addressing proposed requirements for uninspected fishing, fish processing, and fish tender vessels. In response to the NPRM, the Coast Guard received 500 comments. On August 14, 1991, in order to expedite the regulation package for commercial fishing industry vessels, the Coast Guard published a final rule.

*Final Rule (FR)*

A final rule entitled ''Commercial Fishing Industry Vessel Regulations'' was published in the **Federal Register** (56 FR 40364). These regulations are for U.S. documented or state numbered uninspected fishing, fish processing, and fish tender vessels to implement provisions of the Commercial Fishing Industry Vessel Safety Act of 1988. The final rule indicated that the below listed controversial topics would be the subject of a subsequent supplemental notice of proposed rulemaking (SNPRM).

*Supplemental Notice of Proposed Rulemaking (SNPRM)*

On October 27, 1992, the Coast Guard published an SNPRM in the **Federal Register** (57 FR 48670). The controversial topics addressed in the SNPRM included the Aleutian Trade Act of 1990 (Pub. L. 101–595); stability for fishing vessels less than 79 feet in length; administration of exemptions authorized by 46 U.S.C. 4506; termination of unsafe operations; requirements for survival craft on fishing vessels with 3 or fewer individuals on board operating within 12 miles of the coastline and outside the boundary line; and acceptance criteria for instructors and course curricula.

On October 24, 1995, the Coast Guard published a final rule relating only to the Aleutian Trade Act (60 FR 54441).

The Coast Guard is working with the Commercial Fishing Industry Vessel Advisory Committee to develop the stability section for vessels less than 79 feet in length.

*Interim Rule*

An interim rule with request for comments entitled ''Commercial Fishing Industry Vessel Regulations'', was published on November 5, 1996, in the **Federal Register** (61 FR 57268). The interim rule addressed the four items not included in the final rule of August 14, 1991 (56 FR 40364) and made several technical corrections.

The Coast Guard received 104 letters commenting on the interim rule. These include 72 form letters from commercial fishers and commercial fishing associations, 13 letters from commercial fishers, 9 letters from commercial fishing associations, 2 letters from a member of Congress, 2 letters from fishing publications, 2 letters from an insurance concern, 1 letter from a naval architect/engineer, 1 letter from an equipment manufacturer, 1 letter from a fishing vessel safety organization, and 1 letter from a riverboat operation. Many of the letters requested public meetings for their specific area. The Coast Guard determined that a public meeting was unnecessary for this rulemaking because the comments were substantive and represented all aspects of the fishing industry. Additionally, the interim rule had a comment period that ended on December 20, 1996. In response to many comments received, an extension was published in the **Federal Register** on December 27, 1996 (61 FR 68161) that extended the comment period until February 20, 1997.

*Discussion of Comments and Changes*

No comments were received for § 28.50 definitions, § 28.320 fixed gas fire extinguishing systems, and § 28.380 general structural fire protection. Two commercial fishers questioned if the freeing ports in § 28.555 were required for vessels less than 50 feet in length. This is a moot point since this requirement is in a subpart that applies only to commercial fishing industry vessels 79 feet or more in length. Additionally, we made a technical correction to § 28.225 and removed Note 2 from table 28.120(c) because it is not applicable to that table.

*Section 28.60 Exemption Letter*

This section prescribed the mechanism to obtain an exemption for commercial fishing industry vessels authorized under the Commercial Fishing Industry Vessel Safety Act (46 U.S.C. 4506). Many of the form letters and six letters commented that exemption granting authority should be delegated to Coast Guard District Commanders. As discussed in the interim rule, Coast Guard Headquarters, utilizing field unit and district inputs, has implemented this program since August, 1991. However, to expedite the approval process, this section is modified to allow District Commanders the authority to issue exemption letters.

*Section 28.65 Termination of Unsafe Operations*

This section contains criteria for the voyage termination of a commercial fishing industry vessel. Three comments were received concerning § 28.65(b)(11), which allows termination of the operations if the vessel has an expired load line certificate. The commenters pointed out that this is not sufficient to meet the requirements of 46 U.S.C. 4502(2), which requires termination of operations if the vessel does not have on board the certificate required by 46 U.S.C. 4503(1). This certificate indicates that the vessel meets all survey and classification requirements prescribed by the American Bureau of Shipping, or other qualified organization approved by the Secretary of Transportation. This certificate is more detailed than a load line certificate. We agree with the commenters. Load line requirements are already covered in § 28.65(c), so § 28.65(b)(11) has been modified to reflect the requirement of 46 U.S.C. 4505(2). Also, a comment was received that the wording of the load line requirement should not just be for a document check, but rather compliance with all the provisions of a load line certificate. The Coast Guard agrees and has revised the load line wording in this section.

A comment was received which emphasized the importance of Coast Guard Boarding Officer training and knowledge of the requirements before terminating a voyage. As stated in the interim rule, Coast Guard agrees that a vessel termination is an action that must be utilized with care. The Coast Guard has determined that no vessel operation should be terminated without the approval of the cognizant District Commander or a member of his/her staff authorized to make this determination. As a safeguard against any indiscriminate judgments, a Boarding Officer may not terminate a vessel's operations, but must objectively assess the vessel's condition and report the facts to superiors who, in turn, will evaluate the situation surrounding the case and make the final determination.

*Section 28.120 Survival Craft*

This section deals with the carriage of survival craft for vessels less than 36 feet in length with 3 or fewer persons onboard within 12 miles of the coastline, and vessels 36 feet or more in length operating within 12 miles of the coastline. A correction to table 28.120(a) was published in the **Federal Register** on December 27, 1996 (61 FR 68161) to include a ''see note 2'' to allow buoyant apparatus if a vessel over 36 feet in length stays within 12 miles of the coastline.

As with the SNPRM of October 1992, this section received the most comments, for and against the proposed provisions. The majority of comments came from letters contending that ''* * * Congress intended to exempt vessels less than 36 feet operating inside 3 miles from all types of survival craft, not just inflatable life rafts. This change will cost one fishery alone over $1,000,000.'' The Coast Guard agrees with the form letters in their monetary assessment of this rulemaking. In the regulatory assessment, the Coast Guard stated that if 20,000 commercial fishing vessels purchased a buoyant apparatus, it would cost the industry $9.8 million. Therefore, if a fishery of 2,000 vessels outfitted its vessels with a buoyant apparatus costing $500 apiece, the cost to the fishery could be one million dollars.

The Coast Guard does not concur with this interpretation that Congress intended to provide a blanket exemption to vessels less than 36 feet in length operating inside three miles from all types of survival craft. The Congressional exemption can be found in 46 U.S.C. 4506 which exempts vessels less than 36 feet in length not operating on the high seas (within 12 miles) from having to carry life rafts or lifeboats. Congress' intent in implementing this law was very specific in describing survival craft as illustrated by the requirement for a buoyant apparatus found in 46 U.S.C. 4502(a)(6). Additionally, five comments stated that a buoyant apparatus is too bulky and could impede the vessel's operation. Some inspected small passenger vessels carry this same equipment without impeding operations. As an option, an approved buoyant apparatus in the shape of a ring that can easily be mounted on a bulkhead or overhead and could not interfere with fishing operations is available commercially. Also, another equipment manufacturer offers an approved buoyant apparatus which forms a Bimini-style hard top over an open cockpit. Quick-release latches allow it to be rapidly launched in case of an emergency. Therefore, the Coast Guard has continued this requirement.

Five comments stated that day boats should not require any type of survival craft primarily because these boats normally operate in the vicinity of other such boats. This point was addressed in the SNPRM (57 FR 48674), in which the Coast Guard determined that every vessel is a separate entity and that relying on other vessels constitutes an unneccessary risk.

Three comments questioned why 36 feet in length was used, and one comment stated that the regulations should be changed to 50 feet in length. 46 U.S.C. 4506(b) establishes the length requirement that has been implemented into the regulations.

Two comments received recommended the use of a recreational inflatable craft as a survival craft. This issue was addressed extensively in the final rule published in the **Federal Register** (56 FR 40370) on August 14, 1991. In that rule, we discussed in depth our concerns about using unapproved rafts for survival craft and the reasons for not accepting these crafts.

Two comments noted that a buoyant apparatus would not be effective for smaller vessels in cold waters. The Coast Guard agrees that in cold water a vessel should carry a survival craft that will keep persons out of the water. However, when the Coast Guard proposed inflatable buoyant apparatus for this size of vessel, the proposal was found to be cost prohibitive due to initial cost, annual servicing costs, and space and weight considerations. The Coast Guard encourages vessel owners, operators, and insurance companies (through incentives), where safe, to exceed the minimum standards set forth in these regulations and outfit each vessel with an inflatable buoyant apparatus.

Two comments supported the carriage of buoyant apparatus as proposed. Also, two comments requested that the Coast Guard include the carriage substitution in note 2 to the 28.120 tables to the category ''Beyond Boundary Line, within 20 miles of coastline, warm waters'' listed in the ''Area'' column. At present, the Coast Guard requires a life float for this area. The Coast Guard agrees that for consistency between the areas, a buoyant apparatus may be carried if the vessel meets and follows the criteria found in note 2 and § 28.120(c).

*Section 28.270 Instruction, Drills, and Safety Orientation*

This section modified paragraph (c) to strengthen the instructor and training requirements for an individual licensed by the U.S. Coast Guard to operate a vessel of 100 gross tons or more. These individuals must comply with the requirements of § 28.275. One comment received wanted clarification to § 28.270(c) as to whether a licensed individual must meet all of § 28.275, or just § 28.275(a)(2). We agree that the second sentence does cause confusion and have removed it from the final rule to clarify that all individuals must meet the criteria found in § 28.275.

One comment stated that the weak link in these regulations is the lack of licensing operators of commercial fishing industry vessels. Both the Coast Guard and the Commercial Fishing Industry Vessel Advisory Committee (CFIVAC) have determined that the licensing of commercial fishing vessel operators, with emphasis on training, is necessary to reduce casualties caused by human error and to improve the historically poor safety record of the fishing vessel industry. The Coast Guard agrees, but lacks statutory authority to implement a licensing plan and notes that licensing of operators of commercial fishing industry vessels is beyond the scope of this rulemaking.

Another commenter urged the Coast Guard to make the logging of drills mandatory to supplement the drill requirements under our current regulations. The Coast Guard agrees, however, this would have to be addressed as a proposal in a future rulemaking.

*Section 28.275 Acceptance Criteria for Instructors and Course Curricula*

This section amended the experience and training provisions for persons with a Coast Guard issued license of 100 gross tons or more. One commenter, supporting our amendments, stated that this provision was overdue; and that a license was not necessarily an indicator that the holder knew the elements of safety and survival at sea, or was capable or training others. Further, two commenters requested that we include in this section a reasonable time frame, to enable licensed individuals to comply with the experience and training requirements. The Coast Guard agrees and has placed a note in this section to grandfather existing license holders without fishing experience until September 15, 1998. This allows them additional time to comply with these provisions.

Two commenters opposed the provision that requires training and fishing experience because an operator with the knowledge and experience to qualify for a Coast Guard license has the knowledge and wherewithal to conduct monthly safety drills aboard his/her vessel. While earning a Coast Guard license does show a certain degree of skill and knowledge, the license does not specifically cover the 10 contingencies required in § 28.270. Furthermore, § 28.270 applies to individuals that may not have Coast Guard licenses. Therefore, the Coast Guard continues to require this provision.

Two comments recommended that the 8 hour course curriculum (minimum) currently found in Navigation and Vessel Inspection Circular 7–93 be placed in this section of the regulations. The Coast Guard and the Commercial Fishing Industry Vessel Advisory Committee agree with this recommendation. However, because it is not Coast Guard policy to place specific course requirements in terms of hours in the regulations, we have not done so.

*Regulatory Assessment*

This rule is a non-significant regulatory action under 3(f) of Executive Order 12866 and is non-significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979). It has been reviewed by the Office of Management and Budget under that Order. The Coast Guard has prepared a regulatory assessment and placed it in the rulemaking docket. The assessment may be inspected and copied at the address listed under **ADDRESSES**.

Because this final rule represents administrative changes to the interim rule and in no way affects the costs or benefits described in the interim rule (61 FR 57271), this Regulatory Assessment is adopted with no changes.

*Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The economic impact on small entities by this rule will be with commercial fishing industry vessels either 10.97 meters (36 feet) or more in length that operate within 12 miles of the coast or less than 10.97 meters (36 feet) in length operating within 12 miles of the coastline with 4 or more persons. An estimated 20,000 state numbered or documented commercial fishing vessels might be affected by this rule. These vessels will incur a capital cost estimated to be between $400 and $500 with no annual recurring cost. The cost is the same for part-time and seasonal operators as it is for full-time operators. This rule has a minimal, nonrecurring cost and furthermore, no comments were received concerning this section. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

*Assistance for Small Entities*

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to help small entities understand this rule so that they can better evaluate its effects on them. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Commander John J. Davin, Office of Operating and Environmental Standards (G–MSO), telephone 202–267–1181 or fax 202–267–4570.

*Collection of Information*

This final rule provides for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). As required by 5 U.S.C. 3507(d), the Coast Guard submitted a copy of the interim rule to the Office of Management and Budget (OMB) for its review and approval of the collection of information. OMB approved the collection. The section numbers are §§ 28.60, 28.80, 28.90, and 28.275, and the corresponding approval number from OMB is OMB Control Number 2115–0582, which expires on August 31, 1998.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number.

*Federalism*

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

*Environment*

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. These rules are expected to have no significant effect on the environment. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

**List of Subjects in 46 CFR Part 28**

Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

Accordingly, the interim rule amending 46 CFR part 28 which was published in the **Federal Register** (61 FR 57268) on November 5, 1996, is adopted as a final rule with the following changes:

## PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

1. The authority citation for part 28 continues to read as follows:

**Authority:** 46 U.S.C. 3316, 4502, 4505, 4506, 6104, 10603; 49 CFR 1.46.

2. Revise § 28.60 to read as follows:

**§ 28.60 Exemption letter.**

(a) *Types of exemptions.* (1) *Specific exemption* means an exemption for an individual commercial fishing industry vessel.

(2) *Class exemption* means an exemption for a class or fleet of commercial fishing industry vessels.

(b) *Exemption procedure.* A request for an exemption of either type must be in writing, have specific reasons for the request, and be sent to the Coast Guard District Office having jurisdiction over the waters where the vessel(s) will be operating. Coast Guard District geographical areas are described in 33 CFR part 3. The District Commander will review the request to determine that:

(1) Good cause exists for granting an exemption; and

(2) The safety of the vessel and those on board will not be adversely affected.

(c) The District Commander will either approve or deny the request in writing. In granting a request, the District Commander will specify the terms under which the exemption is granted and distribute the letter describing these terms to the party or parties requesting the exemption.

(d) *Exemption letter.* Exemption letters, or suitable copies, describing the

terms under which the exemption is granted shall be maintained at all times on board each vessel to which any exemption applies.

(e) *Right of appeal.* Any person directly affected by a decision or action taken under this part may appeal in accordance with § 1.03 of this chapter.

(f) *Rescinding an exemption letter.* Exemptions granted may be rescinded by the District Commander if it is subsequently determined that the safety of the vessel and those onboard is adversely affected.

3. Amend § 28.65 by revising paragraphs (b)(11) and (c) to read as follows:

**§ 28.65 Termination of unsafe operations.**

* * * * *

(b) * * *

(11) A missing or expired certificate of class, as required by 46 U.S.C. 4503(1), for a fish processing vessel.

(c) A Coast Guard Boarding Officer may direct the individual in charge of a fish processing vessel that is missing a Load Line Certificate, or that does not comply with the provisions of the Load Line Certificate issued by the American Bureau of Shipping or a similarly qualified organization, to return the vessel to a mooring and to remain there until the vessel obtains such a certificate.

4. Amend § 28.120 by revising tables 28.120 (a), (b), and (c) to read as follows:

TABLE 28.120(a).—SURVIVAL CRAFT FOR DOCUMENTED VESSELS

| Area | Vessel type | Survival craft required |
|---|---|---|
| Beyond 50 miles of coastline | All | Inflatable liferaft with SOLAS A pack. |
| Between 20–50 miles of coastline, *cold* waters | All | Inflatable liferaft with SOLAS B pack |
| Between 20–50 miles of coastline, *warm* waters | All | Inflatable liferaft. |
| Beyond Boundary Line, between 12–20 miles of coastline, *cold* waters. | All | Inflatable liferaft. |
| Beyond Boundary Line, within 12 miles of coastline, *cold* waters. | 10.97 meters (36 ft) or more in length. | Inflatable buoyant apparatus. See note 2. |
| Beyond Boundary Line, within 12 miles of coastline, *cold* waters. | Less than 10.97 meters (36 ft) in length. | Buoyant apparatus. See note 2. |
| Beyond Boundary Line, within 20 miles of coastline, *warm* waters. | All | Life float. See note 2. |
| Inside Boundary Line, *cold* waters; or Lakes, bays, sounds, *cold* waters; or Rivers, *cold* waters. | 10.97 meters (36 ft) or more in length. | Inflatable buoyant apparatus. See note 2. |
| Inside Boundary Line, *cold* waters; or Lakes, bays, sounds, *cold* waters; or Rivers, *cold* waters. | Less than 10.97 meters (36 ft) in length. | Buoyant apparatus. See note 2. |
| Inside Boundary Line, *warm* waters; or Lakes, bays, sounds, *warm* waters; or Rivers, *warm* waters. | All | None. |
| Great Lakes, *cold* waters | 10.97 meters (36 ft) or more in length. | Inflatable buoyant apparatus. See note 2. |
| Great Lakes, *cold* waters | Less than 10.97 meters (36 ft) in length. | Buoyant apparatus. See note 2. |
| Great Lakes, beyond 3 miles of coastline, *warm* waters | All | Buoyant apparatus. See note 2. |
| Great Lakes, within 3 miles of coastline, *warm* waters | All | None. |

Note: 1. The hierarchy of survival craft in descending order is lifeboat, inflatable liferaft with SOLAS A pack, inflatable liferaft with SOLAS B pack, inflatable liferaft with coastal service pack, inflatable buoyant apparatus, life float, buoyant apparatus. A survival craft higher in the hierarchy may be substituted for any survival craft required in this table.

2. If a vessel carries 3 or fewer individuals within 12 miles of the coastline, see § 28.120 (b) and (c) for carriage substitution.

TABLE 28.120(b).—SURVIVAL CRAFT FOR UNDOCUMENTED VESSELS WITH NOT MORE THAN 16 INDIVIDUALS ON BOARD

| Area | Vessel type | Survival craft required |
|---|---|---|
| Beyond 20 miles of coastline | All | Inflatable buoyant apparatus. |
| Beyond Boundary Line, between 12–20 miles of coastline, *cold* waters. | All | Inflatable buoyant apparatus. |
| Beyond Boundary Line, within 12 miles of coastline, *cold* waters. | 10.97 meters (36 ft) or more in length. | Buoyant apparatus. |
| Beyond Boundary Line, within 12 miles of coastline, *cold* waters. | Less than 10.97 meters (36 ft) in length. | Buoyant apparatus. See note 2. |
| Beyond Boundary Line, within 20 miles of coastline, *warm* waters. | All | Life float. See note 2. |
| Inside Boundary Line, *cold* waters; or Lakes, bays, sounds, *cold* waters; or Rivers, *cold* waters. | 10.97 meters (36 ft) or more in length. | Buoyant apparatus. |
| Inside Boundary Line, *cold* waters; or Lakes, bays, sounds, *cold* waters; or Rivers, *cold* waters. | Less than 10.97 meters (36 ft) in length. | Buoyant apparatus. See note 2. |
| Inside Boundary Line, *warm* waters; or Lakes, bays, sounds, *warm* waters; or Rivers, *warm* waters. | All | None. |
| Great Lakes, *cold* waters | All | Buoyant apparatus. See note 2. |
| Great Lakes, beyond 3 miles of coastline, *warm* waters | All | Buoyant apparatus. See note 2. |
| Great Lakes, within 3 miles of coastline, *warm* waters | All | None. |

Note: 1. The hierarchy of survival craft in descending order is lifeboat, inflatable liferaft with SOLAS A pack, inflatable liferaft with SOLAS B pack, inflatable liferaft with coastal service pack, inflatable buoyant apparatus, life float, buoyant apparatus. A survival craft higher in the hierarchy may be substituted for any survival craft required in this table.

2. If a vessel carries 3 or fewer individuals within 12 miles of the coastline, see § 28.120 (b) and (c) for carriage substitution.

TABLE 28.120(c).—SURVIVAL CRAFT FOR UNDOCUMENTED VESSELS WITH MORE THAN 16 INDIVIDUALS ON BOARD

| Area | Vessel type | Survival craft required |
|---|---|---|
| Beyond 50 miles of coastline | All | Inflatable liferaft with SOLAS A pack. |
| Beyond 20–50 miles of coastline, *cold* waters | All | Inflatable liferaft with SOLAS B pack. |
| Beyond 20–50 miles of coastline, *warm* waters | All | Inflatable liferaft. |
| Beyond Boundary Line, between 12–20 miles of coastline, *cold* waters. | All | Inflatable liferaft. |
| Beyond Boundary Line, within 12 miles of coastline, *cold* waters. | 10.97 meters (36 ft) or more in length. | Inflatable buoyant apparatus. |
| Beyond Boundary Line, within 12 miles of coastline, *cold* waters. | Less than 10.97 (36 ft) in length. | Buoyant apparatus. |
| Beyond Boundary Line, within 20 miles of coastline, *warm* waters. | All | Life float. |
| Inside Boundary Line, *cold* waters; or Lakes, bays, sounds, *cold* waters; or Rivers, *cold* waters. | 10.97 meters (36 ft) or more in length. | Inflatable buoyant apparatus. |
| Inside Boundary Line, *cold* waters; or Lakes, bays, sounds, *cold* waters; or Rivers, *cold* waters. | Less than 10.97 meters (36 ft) in length. | Buoyant apparatus. |
| Inside Boundary Line, *warm* waters; or Lakes, bays, sounds, *warm* waters; or Rivers, *warm* waters. | All | None. |
| Great Lakes, *cold* waters | 10.97 meters (36 ft) or more in length. | Inflatable buoyant apparatus. |
| Great Lakes, *cold* waters | Less than 10.97 meters (36 ft) in length. | Buoyant apparatus. |
| Great Lakes, beyond 3 miles of coastline, *warm* waters | All | Buoyant apparatus. |
| Great Lakes, within 3 miles of coastline, *warm* waters | All | None. |

Note: 1. The hierarchy of survival craft in descending order is lifeboat, inflatable liferaft with SOLAS A pack, inflatable liferaft with SOLAS B pack, inflatable liferaft with coastal service pack, inflatable buoyant apparatus, life float, buoyant apparatus. A survival craft higher in the hierarchy may be substituted for any survival craft required in this table.

5. Amend § 28.225 by revising paragraphs (a)(3)(i) and (a)(3)(ii) to read as follows:

**§ 28.225 Navigational information.**

(a) * * *

(3) * * *

(i) Tide tables promulgated by the National Ocean Service; and

(ii) Tidal current tables promulgated by the National Ocean Service, or a river current publication issued by the U.S. Corps of Engineers or a river authority.

* * * * *

6. Amend § 28.270 by revising paragraph (c) to read as follows:

**§ 28.270 Instructions, drills, and safety orientation.**

* * * * *

(c) *Training.* No individual may conduct the drills or provide the instructions required by this section unless that individual has been trained in the proper procedures for conducting the activity.

* * * * *

7. Amend § 28.275 by revising paragraph (a)(2) and adding paragraph (a)(3) and a note following paragraph (a)(3)(ii) to this section to read as follows:

**§ 28.275 Acceptance criteria for instructors and course curricula.**

(a) * * *

(2) A valid merchant mariner's license issued by the Coast Guard authorizing service as master of uninspected fishing industry vessels and proof of experience that relates directly to the contingencies listed in 46 CFR 28.270(a) including—

(i) Experience as an instructor; or

(ii) Training received in instructional methods; or

(3) A valid merchant mariner's license issued by the Coast Guard authorizing service as a master of inspected vessels of 100 gross tons or more and proof of experience that relates directly to the contingencies listed in 46 CFR 28.270(a) including—

(i) Experience as an instructor; or

(ii) Training received in instructional methods. (See note 1.)

**Note 1:** Persons holding a license authorizing service as a master of inspected vessels of 100 gross tons or higher with an original issue date prior to May 1, 1997, have until September 15, 1998, to comply with the provisions listed in § 28.275(a)(3).

* * * * *

Dated: July 17, 1997.

**R.C. North,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine, Safety and Environmental Protection.*

[FR Doc. 97–23444 Filed 9–3–97; 8:45 am]

BILLING CODE 4910–14–M

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 622

**[Docket No. 970730185–7206–02; I.D. 070797B]**

**RIN 0648–AJ13**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement the provisions of a regulatory amendment prepared by the Gulf of Mexico Fishery Management Council (Council) in accordance with framework procedures for adjusting management measures of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). For the red snapper fishery in the Gulf of Mexico exclusive economic zone (EEZ), the regulatory amendment: Changes the opening date for the 1997 fall commercial fishing season from September 15 to September 2; restricts the harvest of red snapper during the 1997 fall commercial season to an initial period of September 2 to September 15

and, thereafter, to a period from the first to the 15th of each month until the commercial fishery is closed (all openings and closings will be at noon on the date indicated); establishes a recreational fishery quota; and authorizes the Regional Administrator, Southeast Region, NMFS, to close the recreational fishery for red snapper in the EEZ when the recreational quota is reached or is projected to be reached. The intended effect of this action is to maximize economic benefits from the fishery, and to comply with a requirement of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that separate Gulf red snapper recreational and commercial fishing quotas be established that result in fishery closures when quotas are taken.

**DATES:** This rule is effective October 6, 1997, except that the removal of § 622.42(a) introductory text and the revision of § 622.42 (a)(1) is effective September 2, 1997, and the revision of § 622.34(l) is effective September 15, 1997.

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

**SUPPLEMENTARY INFORMATION:** The reef fish fishery in the EEZ of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

The Council proposed adjusted management measures (a regulatory amendment) for the Gulf red snapper fishery for NMFS' review, approval, and implementation. These measures were developed and submitted to NMFS under the terms of the FMP's framework procedure for annual adjustments in total allowable catch (TAC) and related measures for the red snapper fishery (framework procedure). Additional background for these measures was published in the proposed rule (62 FR 42478, August 7, 1997) and is not repeated here.

## Comments and Responses

One written comment regarding timing aspects of the commercial red snapper fishing season was received during the comment period.

On August 26, 1997, the NOAA Assistant Administrator for Fisheries (Assistant Administrator) approved this final rule to implement the regulatory amendment as proposed and submitted by the Council. This approval decision was made after considering the regulatory amendment and the public comment received on the proposed rule.

*Comment*: One individual believes that there is insufficient time available before the fishery opening date to allow fishery participants to arrange for vessel crew and make necessary vessel preparations required for safe fishing in the fall season. This individual also believes that there is insufficient reason to change certain timing aspects of the commercial red snapper season (i.e., changing the fall fishery opening date from September 15 to September 2, 1997, followed by the 2-week fishery opening periods each month (monthly harvesting periods). *Response*: NMFS believes that sufficient time was provided fishermen to plan for participation in the fall fishery based on an opening date of September 2, 1997, followed by the monthly harvesting periods. The Council's Red Snapper Advisory Panel (AP), composed of industry participants, recommended the September 2 fishery opening date to avoid adverse weather and provide for better ex-vessel prices for red snapper. The Council heard public comment, reviewed the AP's recommendations, and considered various opening dates at its January 15–16, 1997, meeting in Corpus Christi, Texas. Furthermore, NMFS announced these possible management changes in the notice of proposed rulemaking for this action published on August 7, 1997, and in a news release mailed at that time to all fishery participants.

NMFS disagrees that there is no compelling reason to support the September 2 reopening and monthly harvesting periods. A 1997 fall commercial red snapper season beginning on September 2 instead of September 15 will allow the fishery to begin at a time with traditionally better weather, thereby minimizing potential adverse impacts on fishing operations, particularly those of smaller vessels. A continuous harvest of available quota during the fall fishery (status quo), rather than the monthly harvesting periods, would: Cause vessel crew fatigue that can reduce fishing productivity; increase the likelihood of accident or injury because of reduced crew alertness; and increase the incidence of vessel and gear breakdowns resulting in higher repair costs because normal, preventive maintenance is postponed. Also, specifying a two-week period that is closed each month should allow improved planning efforts for participation in other fisheries. For these reasons, NMFS approved the Council's proposed changes in the timing aspects of the fall fishery.

## Red Snapper TAC

In considering management adjustments for 1997, the Council did not propose any change to the current annual red snapper TAC of 9.12 million lb (4.13 million kg). This TAC is within the acceptable biological catch (ABC) range as identified under and required by the FMP's framework procedure. The ABC range assumes achieving a 33–percent reduction in the shrimp fishery bycatch mortality of juvenile red snapper by bycatch reduction devices (BRDs) in 1997 and an annual 44–percent reduction thereafter. The Council addressed this bycatch reduction objective through Amendment 9 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (Amendment 9), which requires the use of NMFS-certified (BRDs) in most shrimp trawls used in the Gulf EEZ. Considering that NMFS approved Amendment 9 on July 30, 1997, and that final regulations implementing Amendment 9 will not be issued until later this year, it is likely that bycatch reduction in 1997 will be less than 33 percent.

The Council contracted a scientific study to evaluate the minimum reduction in the 1997 red snapper shrimp bycatch mortality rate that would be consistent with the current program to rebuild the stock to 20 percent spawning potential ratio (SPR) by 2019. Results of this study indicated that a 33–percent reduction in red snapper bycatch by (BRDs) would be required in 1997 and 44 percent annually thereafter. However, according to the study, bycatch reduction of less than 33 percent in 1997 would not significantly compromise the current stock rebuilding program if a 44–percent reduction was achieved in subsequent years, i.e., SPR in 2019 would be between 19.6 and 19.8 percent rather than the 20–percent goal. These facts notwithstanding, NMFS has advised the Council that the current red snapper rebuilding program must be re-evaluated to ensure compliance with the Magnuson-Stevens Act requirements for rebuilding overfished stocks. NMFS and the Council will monitor the status of the red snapper stock closely and implement measures necessary to achieve required stock rebuilding consistent with the best available data.

## Classification

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

Before the proposed rule was published, 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 the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis was not prepared. Specific findings supporting that conclusion were summarized in the preamble to the proposed rule and are not repeated here. No public comments on the certification were received.

Opening the 1997 fall commercial red snapper season on September 2, instead of September 15, would allow the fishery to begin at a time with traditionally better weather, thereby minimizing potential adverse impacts on fishing operations, particularly those of smaller vessels. Allowing commercial harvest only during the first 15 days of each month would extend the length of the annual fishing season and thereby provide market (price) benefits. These benefits depend on the provisions for the earlier opening taking effect no later than September 2, 1997, and on the provisions for the initial monthly closure taking effect no later than September 15, 1997. The Assistant Administrator for Fisheries, NOAA, finds that attaining these benefits constitutes good cause under 5 U.S.C. 553(d)(3) of the Administrative Procedure Act to waive the normal 30-day delay in effectiveness of §§ 622.34(l) and 622.42(a)(1) of this rule.

**List of Subjects in 50 CFR Part 622**

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

Dated: August 27, 1997.

**David L. Evans,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

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

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

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.34, paragraph (l) is revised, effective September 15, 1997, to read as follows:

**§ 622.34 Gulf EEZ seasonal and/or area closures.**

* * * * *

(l) *1997 closures of the commercial fishery for red snapper.* During 1997, the possession of red snapper in or from the Gulf EEZ and on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), without regard to where such red snapper were harvested, is limited to the bag and possession limits, as specified in § 622.39(b)(1)(iii) and (b)(2), respectively, and such red snapper are subject to the prohibition on sale or purchase of red snapper possessed under the bag limit, as specified in § 622.45(c)(1), from noon on September 15 to noon on October 1, and thereafter from noon on the 15th of each month to noon on the first of each succeeding month until the commercial red snapper season is closed in accordance with § 622.43(a)(1). All times are local times.

3. In § 622.42, paragraph (a) introductory text is removed and paragraph (a)(1) is revised, effective September 2, 1997; and paragraph (a)(2) is revised, effective October 6, 1997, to read as follows:

**§ 622.42 Quotas.**

* * * * *

(a) *Gulf reef fish*—(1) *Commercial quotas.* The following quotas apply to persons who fish under commercial vessel permits for Gulf reef fish, as required under § 622.4(a)(2)(v).

(i) Red snapper—4.65 million lb (2.11 million kg), round weight, apportioned in 1997 as follows:

(A) 3.06 million lb (1.39 million kg) available February 1, 1997.

(B) The remainder available at noon on September 2, 1997, subject to the closure provisions of §§ 622.34(l) and 622.43(a)(1)(i).

(ii) Deep-water groupers (i.e., yellowedge grouper, misty grouper, warsaw grouper, snowy grouper, and speckled hind), and, after the quota for shallow-water grouper is reached, scamp, combined—1.60 million lb (0.73 million kg), round weight.

(iii) Shallow-water groupers (i.e., all groupers other than deep-water groupers, jewfish, and Nassau grouper), including scamp before the quota for shallow-water groupers is reached, combined—9.80 million lb (4.45 million kg), round weight.

(2) *Recreational quota for red snapper.* The following quota applies to persons who harvest red snapper other than under commercial vessel permits for Gulf reef fish and the commercial quota specified in paragraph (a)(1)(i) of this section—4.47 million lb (2.03 million kg), round weight.

* * * * *

4. In § 622.43, paragraph (a)(1) is revised, effective October 6, 1997, to read as follows:

**§ 622.43 Closures.**

(a) * * *

(1) *Gulf reef fish*—(i) *Commercial quotas.* The bag and possession limits specified in § 622.39(b) apply to all harvest or possession in or from the Gulf EEZ of the indicated species, and the sale or purchase of the indicated species taken from the Gulf EEZ is prohibited. In addition, the bag and possession limits for red snapper apply on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), without regard to where such red snapper were harvested. However, the bag and possession limits for red snapper apply only when the recreational quota for red snapper has not been reached and the bag and possession limit has not been reduced to zero under paragraph (a)(1)(ii) of this section.

(ii) *Recreational quota for red snapper.* The bag and possession limit for red snapper in or from the Gulf EEZ is zero.

* * * * *

[FR Doc. 97–23339 Filed 8-29-97; 3:41 pm]

BILLING CODE 3510–22–F

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 622

**[Docket No. 961226370–7074–02; I.D. 111896A]**

**RIN 0648–AI15**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery Off the Southern Atlantic States; Amendment 2; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** NMFS published in the **Federal Register** of April 16, 1997, the testing protocol for bycatch reduction devices (BRDs). The statistical approach section of that appendix contains errors. This document corrects those errors.

**DATES:** Effective September 4, 1997.

**FOR FURTHER INFORMATION CONTACT:** Peter J. Eldridge, 813–570–5305.

**SUPPLEMENTARY INFORMATION:** The shrimp fishery off the southern Atlantic states is managed under the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management

Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

**Background and Need for Correction**

Amendment 2 to the FMP, among other things, requires the use of certified BRDs in all penaeid shrimp trawls in the exclusive economic zone in the South Atlantic. The final rule to implement Amendment 2 contained as an appendix the Testing Protocol for BRD Certification. The Statistical Approach section of that appendix contained errors, primarily in the formulas for computing whether the BRD tested achieves the minimum required reduction rate for weakfish and Spanish mackerel.

For clarity and ease of use, this correction restates the entire corrected Statistical Approach section of the Testing Protocol for BRD Certification.

**Correction of Publication**

In FR Doc. 97–9816 published on April 16, 1997 (62 FR 18536), make the following correction. On page 18542, in the appendix to the document, which will not appear in the Code of Federal Regulations, remove the text beginning five lines from the bottom of the first column with the heading ''Statistical Approach'' and ending with the text on line 11 of the third column and replace it with the following:

**Statistical Approach**

You should start with the assumption that the BRD to be tested does not achieve the minimum required reduction rate, say $R_0$. This assumption will be rejected if the data provide sufficient evidence to do so. Hence, the hypotheses to be tested are as follows:

$H_0$: BRD does not achieve the minimum required reduction rate,

$$R = \frac{\mu_c - \mu_b}{\mu_c} \le R_0, \text{ i.e. } \left(1 - R_0\right) \mu_c - \mu_b \le 0.$$

$H_a$: BRD does achieve the minimum required reduction rate,

$$R = \frac{\mu_c - \mu_b}{\mu_c} > R_0, \text{ i.e. } \left(1 - R_0\right) \mu_c - \mu_b > 0.$$

Here R denotes the actual reduction rate (unknown), $R_0$ denotes the minimum required reduction rate, $\mu_c$ denotes the actual mean CPUE with the control, and $\mu_b$ denotes the actual mean CPUE with the BRD.

With any hypothesis testing, there are two risks involved, known as type I error (rejecting the true $H_0$) and type II error (accepting a false $H_0$). The probabilities of committing these errors are denoted by alpha and beta, respectively, and those are inversely related to each other. As alpha increases, beta decreases, and vice versa. The above test will be conducted with an alpha to be specified by the RA. The above hypotheses should be tested using a ''modified'' paired t-test.

The CPUE values for the control and BRD nets for each successful tow should be computed first and these will be used in the following computations. The test statistic to be used is given by:

$$t = \frac{\left(1 - R_0\right)\bar{x} - \bar{y}}{s_{d0}/\sqrt{n}},$$

Where:

$\bar{x}$ is the observed mean CPUE for the control,

$\bar{y}$ is the observed mean CPUE for the BRD,

$s_{d0}$ is the standard deviation of $d_i=\{(1-R_0)xi-yi\}$ values, n is the number of successful tows used in the analysis, and i=1, 2, . . . , n.

The $H_0$ will be rejected if $t>t_{alpha,n-1}$, where $t_{alpha,n-1}$ denotes the (1 − alpha) 100th percentile score in the t distribution with (n − 1) degrees of freedom.

The computation of beta (for various assumed reduction rates, $R_1>R_0$) is somewhat involved and requires the knowledge of unknown parameters (or at least good estimates) of $\mu_c$ and $\sigma^2_{d0}$. Note that $\sigma^2_{d0}$ is dependent on the $R_0$ specified (under $H_0$) and equals:

$(1-R_0)^2\ \sigma^2_{xi}+\sigma^2_{yi}-2(1-R_0)\ \rho \bullet \sigma_{xi} \bullet \sigma_{yi}$,

where ρ is the population correlation coefficient between $x_i$ and $y_i$ values. The computation of beta in advance (in the absence of any preliminary data, i.e., without good parameter estimates) is almost impossible. More work in this direction is still needed. However, it is clear that beta could be reduced by increasing alpha or n or both.

A (1 − alpha) 100% two-sided confidence interval on R consists of all values of $R_0$ for which

$H_0$: $R=R_0$ (versus $H_a$: $R\neq R_0$) cannot be rejected at the level of significance of alpha. One-sided confidence intervals on R could also be computed appropriately.

Dated: August 27, 1997.

**David L. Evans,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 97–23404 Filed 9–3–97; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 970613138–7138–01; I.D. 082897C]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Scallop Fishery; Closure in Registration Area O

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

**ACTION:** Closure.

**SUMMARY:** NMFS is closing the scallop fishery in Registration Area O (Dutch Harbor). This action is necessary to prevent exceeding the *C. bairdi* crab bycatch limit (CBL) in this area.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), August 28, 1997, until 2400 hrs, A.l.t., June 30, 1998.

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

**SUPPLEMENTARY INFORMATION:** The scallop fishery in the exclusive economic zone off Alaska is managed by NMFS according to the Fishery Management Plan for the Scallop Fishery off Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery

Conservation and Management Act. Fishing for scallops is governed by regulations appearing at subpart F of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.62(b) the 1997 *C. bairdi* CBL for Registration Area O was established by the Final 1997–98 Harvest Specifications of Scallops (62 FR 34182, June 25, 1997) as 10,700 crabs.

The Administrator, Alaska Region, NMFS, has determined, in accordance with 679.62(c), that the *C. bairdi* CBL for Registration Area O has been reached. Therefore, NMFS is prohibiting the taking and retention of scallops in Registration Area O.

## Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1997 *C. bairdi* CBL specified for Registration Area O. Providing prior notice and an opportunity for public comment on this action is impracticable and contrary to public interest. The fleet has taken the *C. bairdi* CBL for Registration Area O. Further delay would only result in overharvest of the CBL. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

## Classification

This action is required by § 679.62 and is exempt from review under E.O. 12866.

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

Dated: August 28, 1997.

**Gary C. Matlock,**

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

[FR Doc. 97–23408 Filed 8–29–97; 10:41 am]

BILLING CODE 3510–22–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 970613138–7138–01; I.D. 082897B]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Scallop Fishery; Closure in Registration Area H

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

**ACTION:** Closure.

**SUMMARY:** NMFS is closing the scallop fishery in Registration Area H (Cook Inlet). This action is necessary to prevent exceeding the scallop total allowable catch (TAC) in this area.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), August 29, until 2400 hrs, A.l.t., June 30, 1998.

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

**SUPPLEMENTARY INFORMATION:** The scallop fishery in the exclusive economic zone off Alaska is managed by NMFS according to the Fishery Management Plan for the Scallop Fishery off Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing for scallops is governed by regulations appearing at subpart F of 50 CFR part 600 and 50 CFR part 679. In accordance with § 679.62(b) the 1997 scallop TAC for Registration Area H (Cook Inlet) was established by the Final 1997–98 Harvest Specifications of Scallops (62 FR 34182, June 25, 1997) as 28,000 lb (12,701 kg) shucked meat.

The Administrator, Alaska Region, NMFS, has determined, in accordance with 679.62(c), that the scallop TAC for Registration Area H (Cook Inlet) has been reached. Therefore, NMFS is prohibiting the taking and retention of scallops in Registration Area H (Cook Inlet).

## Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1997 TAC for Registration Area H (Cook Inlet). Providing prior notice and an opportunity for public comment is impracticable and contrary to public interest. The fleet has taken the 1997 TAC for Registration Area H (Cook Inlet). Further delay would only result in overharvest of the 1997 TAC. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.62 and is exempt from review under E.O. 12866.

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

Dated: August 28, 1997.

**Gary C. Matlock,**

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

[FR Doc. 97–23490 Filed 8–29–97; 3:41 pm]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 62, No. 171
Thursday, September 4, 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.

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Part 404

**[Regulations No. 4]**

**RIN 0960–AE35**

### Reduction of Disability Benefits—Workers' Compensation and Public Disability Benefits and Payments

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Proposed rule.

**SUMMARY:** We propose to revise our rules on reduction of Social Security benefits based on disability on account of receipt of workers' compensation and/or public disability benefits and payments provided under Federal (other than Social Security), State, or local laws or plans to clarify our existing policies. We also propose to adopt a uniform method for proration of workers' compensation and public disability benefit/payment settlements. In addition, we propose to incorporate into our rules certain policy interpretations established previously in relevant Social Security Rulings (SSRs). Finally, we propose to update provisions that have not been changed since 1984.

**DATES:** To be sure that your comments are considered, we must receive them no later than November 3, 1997.

**ADDRESSES:** Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966–2830, sent by E-mail to ''regulations@ssa.gov'', or delivered to the Division of Regulations and Rulings, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235–0001, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

**FOR FURTHER INFORMATION CONTACT:** Daniel T. Bridgewater, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3298 for information about these rules.

**SUPPLEMENTARY INFORMATION:**

### Background

Certain disabled workers may be eligible for cash benefits under both workers' compensation and/or other public disability benefit programs and the Social Security disability insurance (SSDI) program. Section 224 of the Social Security Act (the Act) provides for a reduction in SSDI benefits so that total benefits under both workers' compensation and/or other public disability benefit programs and SSDI do not exceed the higher of 80 percent of a worker's predisability earnings (''average current earnings'') or the total family benefit (i.e., the sum of the individual's Social Security disability benefits and the Social Security benefits payable to others based upon his work record) under Social Security before reduction.

### Present Policy

The policy interpreted in SSRs over the years has focused mainly on certain aspects of the law. First, some State workers' compensation laws prescribe specific benefit amounts for certain permanent impairments (e.g., loss of a bodily member) without regard to actual loss of wages. Some beneficiaries questioned whether Congress intended to exclude such benefits based on permanent impairments from the SSDI benefit reduction. This issue was resolved in the courts, and SSA developed two SSRs to reflect its policy that permanent impairment benefits, compensable under State workers' compensation laws, are subject to offset against SSDI benefits. (SSR 74–21c, based on *Grant* v. *Weinberger,* 482 F.2d 1290 (6th Cir. 1973), and SSR 92–6c, based on *Davidson* v. *Sullivan,* 942 F.2d 90 (1st Cir. 1991)). More recent cases, *Krysztoforski* v. *Chater,* 55 F.3d 857 (3rd Cir. 1995) and *Hodge* v. *Shalala,* 27 F.3d 430 (9th Cir. 1994), also uphold SSA's policy in this regard. We now propose to amend our regulatory language to reflect this policy interpretation.

Second, some have questioned our policy that non-covered earnings (i.e., those earnings from employment not covered under the Act) cannot be used in determining the ''average current earnings'' for an individual. This policy, which is described in SSR 92–2a, is based on section 224(a) of the Act, which provides that ''average current earnings'' are to be computed by reference to the average monthly wage under section 215(b) of the Act and to wage and self-employment income totals under sections 209(a)(1) and 211(b)(1) of the Act. These statutory sections are concerned strictly with wages and self-employment income covered under the Act, and, thus, we cannot count non-covered earnings.

Judicial precedent strongly supports the Social Security Administration's (SSA) position: *Prather* v. *Shalala,* 844 F. Supp. 239 (D. Md. 1993), *aff'd w/o opinion,* 14 F.3d 595 (4th Cir. 1994); *Smith* v. *Sullivan,* 982 F.2d 308 (8th Cir. 1992); *Sousa* v. *Shalala,* No. C–92–2796 MHP (N.D. Cal. Jan. 19, 1995); *Everette* v. *Chater,* No. 92–C–714 (E.D. Wis. Aug. 8, 1995). Accordingly, we propose to clarify the regulatory language to express this policy in a more direct manner.

### Proposed Policy—Proration of Lump-Sum Awards

In many cases, an individual may receive some or all of his or her workers' compensation in a lump-sum. Because a lump-sum award is a substitute for periodic payments, the Act requires that we look to State law to see what rate would have been paid had the workers' compensation payment been made on a periodic basis, and that we prorate and offset at the rate that most closely approximates State law.

State workers' compensation laws clearly define how to compute the periodic rate. States base the weekly rate on a specified percentage of the worker's average weekly wage subject to a maximum amount set by law. Forty-two States use sixty-six and two-thirds percent.

SSA has been using three methods to establish the rate of offset. In order of priority, they are as follows:

1. The rate specified in the award. (If the award specifies a rate based on life expectancy, we use that rate and list the case for future reference.)
2. The periodic rate paid prior to the lump-sum award (if no rate was specified in the award).
3. The State's workers' compensation maximum weekly rate in effect at the time of the injury (if no rate was

specified in the award and if no periodic payments were made).

For years, lump-sum awards were rare, and they were prorated using method 1 or 2. Method 3 was added later.

Our experience in determining rates has been that, in almost every case, because of the worker's actual earnings, the specified percentage of the average weekly wage would have exceeded the State's maximum rate. Thus, the worker would have received the State's maximum periodic rate. Likewise, the prior periodic rate would have been paid at the maximum rate.

Although we believed that this policy would closely approximate the monthly rate that would have been paid in the absence of a lump-sum settlement, we have witnessed an ever-increasing number of cases nationwide where attorneys are requesting insurers to specify an artificially low rate in the lump-sum award. For example, some awards purport to set a proration rate based on the worker's life expectancy. This rate, often lower than the State's minimum rate, results in little or no offset under our present method of proration.

We do not believe that the use of a life expectancy rate in the lump sum award is a bona fide representation of the periodic rate that would have otherwise been paid. We do not believe that disabled workers would, in fact, accept such low rates if the lump-sum award were paid periodically. Also, we do not believe that these low rates are specified when SSA disability benefits and offset are not an issue.

Life expectancy can be based on subjective factors, such as health, life style, age, job, etc. Given the fact that these workers are disabled, it does not appear to be reasonable to utilize life expectancies to age 75 or older as these awards specify.

We conducted a survey in States where this practice started. One of the questions we asked of the States was whether a low rate based on life expectancy was a bona fide representation of the lump-sum award and in accordance with State law. Six of the eight States said, ''No.'' (One State said the question did not apply and one did not return the survey.)

It is clear that while State law may not provide life expectancy as the basis for a lump-sum award or as the basis for periodic benefits that the lump-sum represents, the actual awards do contain such language. Once a lump-sum award has been agreed upon, it is of no consequence to the insurer how the award is portrayed (i.e., whether the proration rate of the lump-sum award is based on the worker's life expectancy or the State's maximum weekly rate).

When our order of priority for setting the rate of offset was established, lump-sum awards were quite straightforward, even rare. Currently, lump-sum awards are being structured individually in order to best circumvent the offset required by section 224 of the Act. Attorneys have even called SSA personnel to seek guidance in structuring lump-sums to avoid offset.

In short, our policy on the proration of lump-sum awards has become a tool by which people avoid the offsets intended by Congress, rather than a means of approximating, as nearly as practicable, the offset that would have occurred had benefits been paid periodically. It thus can be viewed as no longer satisfying the requirements of section 224(b) of the Act.

In order to prorate and offset a lump-sum award using a rate that is more representative of the periodic rate that would have otherwise been paid under State law and in order to ensure a more uniform policy for all lump-sum cases nationwide, we propose a change in the order of priority for determining the weekly rate used. Specifically, we propose that lump-sum awards be prorated based on:

1. The rate specified in the award; but only if that rate is based on the percentage of the worker's average weekly wage required by State law;

2. The periodic rate paid prior to the lump-sum award (if method 1 does not apply); or

3. The State's maximum weekly rate in effect at the time of the injury (if methods 1 and 2 do not apply).

We believe this proposed change is needed to better implement section 224 of the Act more effectively.

**Proposed Policy—Exclusion of Legal and Medical Expenses**

Our present policy is that when workers incur legal, medical, and related expenses in connection with the claim for workers' compensation payments or related injury, those expenses are excluded from the lump-sum award for purposes of the offset computation to the extent consonant with applicable law. Any deductions from the workers' compensation payment such as tax withholdings, life insurance, medical premiums, etc., are included in the amount used in the offset computations, as are amounts garnished or attached to satisfy legal obligations.

There are three methods which we use in prorating a lump-sum award with excludable expenses:

Method A—Delays imposition of offset because it allows SSA to take the excludable expenses from the beginning of the proration. This is advantageous to the worker who is approaching age 62 or 65 years of age or when a closed period of disability is involved.

Method B—Divides the lump-sum award, minus the expenses by the total lump-sum award. This percentage is then multiplied by the weekly rate, resulting in a reduced weekly rate. This method reduces the weekly workers' compensation rate so the offset amount is lowered during the entire proration period.

Method C—Reduces the lump-sum award by the amount of the excludable expenses prior to the proration. This method removes offset at the earliest possible time and could even end the proration prior to the first possible month of offset.

Until 1971, only Method C was used. Since then, we have used the method most advantageous to the claimant, unless the lump-sum award specifies the manner in which expenses are to be deducted.

We propose to return to our pre-1971 policy for prorating a lump-sum award with excludable expenses. Using only Method C would provide uniformity and consistency for all claimants. Since the Act and the regulations do not require a specific method of proration, we believe Methods A and B can be discontinued.

Lastly, the meaning of the term ''related'' expenses has caused unnecessary confusion. We have received several questions as to whether items such as new homes, patios, ramps, costs of vans and vacations, moving expenses to a milder climate, etc., may be ''related'' expenses. Because we are aware of no expenses, other than medical or legal expenses, that should be excluded from offset, we propose to remove the category of ''related'' expenses and offset only medical and legal expenses.

**Miscellaneous Proposed Changes**

We propose to change the language in section 404.408(a)(1) regarding the application of the offset to certain individuals who first became entitled to SSDI after 1965 but before September 1981 based on a period of disability that began after June 1, 1965, and before March 1981. We wish to delete the word, ''first,'' as it is not required by the law. Also, we wish to delete the dates ''September 1981'' and ''March 1981'' to remove an anomaly that affects claims with a month of entitlement of September 1981 or later with disability onsets prior to March 1981.

**Example:** A claim is filed September 1982 establishing a disability onset date of January 10, 1980. The month of entitlement is determined to be September 1981. This example would not be covered by the current regulatory language.

We also propose to change the language in section 404.408(a)(1)(i) and elsewhere to refer to ''benefits or payments'' under a workers' compensation law or plan, rather than simply ''benefits,'' as many attorneys have claimed that certain workers' compensation is not a ''benefit'' but is in fact a ''payment.''

We propose to change the language in section 404.408(a)(2)(i) regarding individuals entitled to SSDI who also are concurrently entitled to certain other payments based on disability. We believe ''concurrently'' is redundant.

In addition, we propose to make revisions throughout § 404.408 to add the language ''workers' compensation,'' where appropriate, to current references to ''public disability benefits'' because ''workers' compensation'' is the designation given for the majority of public disability benefits other than SSDI or Supplemental Security Income benefits. Using this language makes explicit that section 404.408 applies to ''workers' compensation'' laws.

Finally, in § 404.408 (h), (i), (j), (k), and (*l*), we propose to remove outdated, unnecessary computation examples, leaving one basic example in paragraph (h) of this section. We believe that the removal of outdated, unnecessary examples will clarify this rule.

## Electronic Version

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9:00 a.m. on the date of publication in the **Federal Register**. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

## Regulatory Procedures

*Executive Order 12866*

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they are not subject to OMB review.

*Regulatory Flexibility Act*

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

## Paperwork Reduction Act

These proposed rules impose no additional reporting or recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program No. 96.001 Social Security—Disability Insurance)

## List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: August 26, 1997.

**John J. Callahan,**

*Acting Commissioner of Social Security.*

## PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950– )

For the reasons set out in the preamble, subpart E of part 404 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for subpart E of part 404 continues to read as follows:

**Authority:** Secs. 202, 203, 204 (a) and (e), 205 (a) and (c), 222(b), 223(e), 224, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403, 404 (a) and (e), 405 (a) and (c), 422(b), 423(e), 424a, 425, and 902(a)(5)).

2. Section 404.408 is amended by removing Example 2 from paragraph (h)(2) and by removing the examples from paragraphs (i), (j), (k), and (l)(3) and by revising the section heading and the headings and texts of the following paragraphs: (a)(1) introductory text, (a)(1)(i), (a)(1)(ii), (a)(2)(i), (b)(1), (b)(2)(ii), (c)(1) introductory text, (c)(1)(i), (c)(3), (c)(5), (d)—introductory text, (d)(1), (d)(2), (e), (f), (g), (h)(2)—Example 1, (j), (k), (l)(1), and (l)(2)(i). They read as follows:

### § 404.408 Reduction of benefits based on disability on account of receipt of certain other disability benefits or payments provided under Federal, State, or local laws or plans.

(a) * * *

(1) The individual became entitled to disability insurance benefits after 1965 based on a period of disability that began after June 1, 1965 (but see paragraph (a)(2) of this section), and

(i) The individual entitled to the disability insurance benefit is also entitled to periodic benefits or payments under a workers' compensation law or plan of the United States or a State for that month for an injury or illness, and

(ii) The Commissioner has, in a month before that month, received a notice of the entitlement, and

* * * * *

(2) * * *

(i) The individual entitled to the disability insurance benefit is also, for that month, entitled to a periodic benefit (including workers' compensation or any other payments) on account of a total or partial disability (whether or not permanent) under a law or plan of the United States, a State, a political subdivision, or an instrumentality of two or more of these entities, and

* * * * *

(b) *When reduction not made.* (1) The reduction of a benefit otherwise required by paragraph (a)(1) of this section is not made if the workers' compensation law or plan under which the periodic benefit or payment is payable provides for the reduction of such periodic benefit or payment when anyone is entitled to a benefit under title II of the Act on the basis of the earnings record of an individual entitled to a disability insurance benefit under section 223 of the Act.

(2) * * *

(ii) The benefit or payment is a Veterans' Administration benefit, a public disability benefit (except workers' compensation) payable to an employee based on employment covered under Social Security, a benefit based on need, or a wholly private pension or private insurance benefit.

(c) *Amount of reduction*—(1) *General.* The total of benefits for a month under sections 223 and 202 of the Act to which paragraph (a) of this section applies is reduced monthly (but not below zero) by the amount by which the sum of the monthly disability insurance benefits payable on the disabled individual's earnings record and benefits or payments under a workers' compensation law or plan payable for that month exceeds the higher of:

(i) Eighty percent of the individual's *average current earnings*, as defined in paragraph (c)(3) of this section; or

* * * * *

(3) *Average current earnings defined.*

(i) Beginning January 1, 1979, for purposes of this section, an individual's average current earnings is the largest amount computed under either paragraph (c)(3)(i)(A), (B), or (C) of this section (after reducing the amount to the next lower multiple of $1 when the amount is not a multiple of $1):

(A) The average monthly wage (determined under section 215(b) of the Act as in effect prior to January 1979) used for purposes of computing the individual's disability insurance benefit under section 223 of the Act;

(B) One-sixtieth of the total of the individual's wages and earnings from self-employment covered under the Act, without the limitations under sections 209(a) and 211(b)(1) of the Act (see paragraph (c)(3)(ii) of this section), for the 5 consecutive calendar years after 1950 for which the wages and earnings from self-employment covered under the Act (see subpart K of this part) were highest; or

(C) One-twelfth of the total of the individual's wages and earnings from self-employment covered under the Act, without the limitations under sections 209(a) and 211(b)(1) of the Act (see paragraph (c)(3)(ii) of this section), for the calendar year in which the individual had the highest wages and earnings from self-employment during the period consisting of the calendar year in which the individual became disabled and the 5 years immediately preceding that year.

(ii) *Method of determining calendar year earnings in excess of the limitations under sections 209(a) and 211(b)(1) of the Act.* For the purposes of paragraph (c)(3)(i) of this section, the extent by which the wages or earnings from self-employment of an individual exceed the maximum amount of earnings creditable under sections 209(a) and 211(b)(1) of the Act in any calendar year after 1950 and before 1978 will ordinarily be estimated on the basis of the earnings information available in the records of the Social Security Administration. (See subpart I of this part.) If an individual provides satisfactory evidence of the actual earnings in any year, the extent, if any, by which the earnings exceed the limitations under sections 209(a) and 211(b)(1) of the Act shall be determined by the use of such evidence instead of by the use of estimates.

* * * * *

(5) *Computing disability insurance benefits.* When reduction is required, the total monthly Social Security disability insurance benefits payable after reduction can be more easily computed by subtracting the monthly amount of the other workers' compensation/public disability benefits or payments from the higher of paragraph (c)(1)(i) or (ii) of this section. This is the method employed in the example used in this section.

(d) *Items not counted for reduction.* Amounts paid or incurred and/or a reasonable estimate of amounts to be incurred, by the individual for medical and/or legal expenses in connection with the claim for workers' compensation/public disability benefits or payments (see § 404.408 (a) and (b)) or the injury or occupational disease on which the workers' compensation/public disability award or settlement agreement is based, are excluded in computing the reduction under paragraph (a) of this section to the extent they are consonant with the applicable Federal, State, or local law or plan. The reduction must reflect either the actual amount of expenses already paid or incurred and/or a reasonable estimate of amounts to be incurred, given the circumstances in the individual's case, of future medical and/or legal expenses. The total of such expenses will be subtracted from the total of a settlement agreement prior to the proration of the reduction. Any expenses not established by evidence required by the Commissioner or not reflecting a reasonable estimate of the individual's actual future expenses will not be excluded. These medical and/or legal expenses may be evidenced by the workers' compensation/public disability award, compromise agreement, a court order, or by other evidence as the Commissioner may require. This other evidence may consist of:

(1) A detailed statement by the individual's physician or the employer's insurance carrier; or

(2) Bills, receipts, or canceled checks; or

* * * * *

(e) *Certification by individual concerning eligibility for workers' compensation/public disability benefits or payments.* Where it appears that an individual may be eligible for a workers' compensation/public disability benefit or payment which would give rise to a reduction under paragraph (a) of this section, the individual may be required, as a condition of certification for payment of any benefit under section 223 of the Act to any individual for any month, and of any benefit under section 202 of the Act for any month based on such individual's earnings record, to furnish evidence as requested by the Commissioner and to certify as to:

(1) Whether he or she has filed or intends to file any claim for a workers' compensation/public disability benefit or payment; and

(2) If he or she has so filed, whether there has been a decision on the claim. The Commissioner may rely, in the absence of evidence to the contrary, upon a certification that he or she has not filed and does not intend to file such a claim, or that he or she has filed and no decision has been made, in certifying any benefit for payment pursuant to section 205(i) of the Act.

(f) *Verification of eligibility or entitlement to a workers' compensation/public disability benefit or payment under paragraph (a).* Section 224 of the Act requires the head of any Federal agency to furnish the Commissioner information from the Federal agency's records that is needed to determine the reduction amount, if any, or verify other information to carry out the provisions of this section. The Commissioner is authorized to enter into agreements with States, political subdivisions, and other organizations that administer a law or plan of workers' compensation/public disability benefits in order to obtain information that may be required to carry out the provisions of this section.

(g) *Workers' compensation/public disability benefit or payment payable on other than a monthly basis.* (1) Where workers' compensation/public disability benefits or payments are paid periodically but not monthly, or are paid in a lump-sum as a commutation of or a substitute for periodic benefits or payments, the reduction under this section is made at the time or times and in the amounts that the Commissioner determines will approximate, as nearly as practicable the reduction required under paragraph (a) of this section.

(2) The rate at which to prorate the benefits or payments is the rate in the award if that rate is based on the percentage of the worker's average weekly wage required by Federal or State law. Otherwise, the rate to be used is the prior periodic rate or the State's maximum weekly rate in effect at the time of the injury.

(3) All lump-sum awards, whether for total or partial disability, for temporary or permanent disability, or for scheduled or unscheduled disabilities, including loss of body function, will be offset against Social Security disability insurance benefits as provided in paragraph (a) of this section.

(h) * * *

(2) * * *

**Example:** Effective September 1995, Harold is entitled to a monthly disability primary insurance amount of $507.90 and a monthly public disability benefit of $410.00 from the State. Eighty percent of Harold's average current earnings is $800.00. Because this amount ($800.00) is higher than Harold's disability insurance benefit ($507.90), we subtract Harold's monthly public disability benefit ($410.00) from eighty percent of his average current earnings ($800.00). This leaves Harold a reduced monthly disability benefit of $390.00.

(j) *Effect of social security disability insurance benefit or payment increases.* Any increase in benefits due to a recomputation or a statutory increase in benefit rates is not subject to the reduction for workers' compensation/public disability benefits or payments

under paragraph (a) of this section and does not change the amount to be deducted from the family benefit or payment. The increase is simply added to what amount, if any, is payable. If a new beneficiary becomes entitled to monthly benefits on the same earnings record after the increase, the amount of the reduction is redistributed among the new beneficiaries entitled under section 202 of the Act and deducted from their current benefit rate.

(k) *Effect of changes in the amount of the workers' compensation/public disability benefit or payment.* Any change in the amount of the workers' compensation/public disability benefit or payment received will result in a recalculation of the reduction under paragraph (a) of this section and, potentially, an adjustment in the amount of such reduction. For those individuals described in paragraph (a)(1) of this section who do not meet the conditions specified in paragraph (a)(2) of this section, any increased reduction will be imposed effective with the month after the month the Commissioner received notice of the increase in the workers' compensation benefit or payment (it should be noted that only workers' compensation can cause this reduction). Adjustments due to a decrease in the amount of the workers' compensation/public disability benefit or payment will be effective with the actual date the decreased amount was effective. For individuals described in paragraph (a)(2) of this section, any increase or decrease in the reduction will be imposed effective with the actual date of entitlement to the new amount of the workers' compensation/public disability benefit or payment.

(l) *Redetermination of benefits*—(1) *General.* In the second calendar year after the year in which reduction under this section in the total of an individual's benefits under section 223 of the Act and any benefits under section 202 of the Act based on his or her wages and self-employment income was first required (in a continuous period of months), and in each third year thereafter, the amount of those benefits which are still subject to reduction under this section are redetermined. The redetermination will be made unless it results in any decrease in the total amount of benefits payable under title II of the Act on the basis of the workers' wages and self-employment income. The redetermined benefit is effective with the January following the year in which the redetermination is made.

(2) * * *

(i) The ratio of the average of the total wages (as defined in § 404.1048(c)) of all persons for whom wages were reported to the Secretary of the Treasury or his delegate for the calendar year before the year in which the redetermination is made, to the average of the total wages of all persons reported to the Secretary of the Treasury or his delegate for calendar year 1977 or, if later, the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability); and

* * * * *

[FR Doc. 97–23506 Filed 9–3–97; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 884

**[Docket No. 97N–0335]**

## Obstetric and Gynecologic Devices: Reclassification of Medical Devices Used for In Vitro Fertilization and Related Assisted Reproduction Procedures

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to reclassify instrumentation intended for use in in vitro fertilization (IVF) and related assisted reproduction procedures from class III to class II. FDA is also proposing to reclassify assisted reproduction microscopes and microscope accessories from class III to class I and to exempt this device from the requirement of premarket notification. This reclassification is being proposed on the Secretary of Health and Human Services' own initiative, based on new information. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) and the Safe Medical Devices Act of 1990 (the SMDA).

**DATES:** Written comments by December 3, 1997. FDA proposes that any final regulation based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Elisa D. Harvey, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*A. Regulatory Authorities*

The act (21 U.S.C. 201 *et seq.*), as amended by the 1976 amendments (Pub. L. 94–295) and the SMDA (Pub. L. 101–629), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are: Class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

Section 513(f)(2) of the act provides that FDA may initiate the reclassification of a device classified into class III under section 513(f)(1) of the act, or the manufacturer or importer of a device may petition the agency to reclassify the device into class I or class II. FDA's regulations in § 860.134 (21

CFR 860.134) set forth the procedures for the filing and review of a petition for reclassification of such class III devices. In order to change the classification of the device it is necessary that the proposed new class have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. FDA relied upon ''valid scientific evidence,'' as defined in section 513(a)(3) of the act and 21 CFR 860.7(c)(2), in the classification process to determine the level of regulation for devices. For the purpose of reclassification, the valid scientific evidence upon which the agency relied must be publicly available. Publicly available information excludes trade secret and/or confidential information, e.g., the contents of premarket approval applications (PMA's) (see section 520(c) of the act (21 U.S.C. 360j(c)).

Section 513(d)(2)(A) of the act authorizes FDA to exempt, by regulation, a generic type of class I device from, among other things, the requirement of premarket notification in section 510(k) of the act after stating the reasons for making such a requirement inapplicable. Such an exemption permits manufacturers to introduce into commercial distribution generic types of devices without first submitting a premarket notification to FDA. If FDA has concerns about certain types of changes to a particular class I device, the agency may grant a limited exemption from premarket notification for that generic type of device.

*B. Regulatory History of the Devices*

Devices specifically intended for IVF and embryo transfer (ET) were developed and studied after enactment of the 1976 amendments. The first premarket notification submission (510(k)) for a device with an IVF indication for use was submitted to FDA in 1986. FDA found this device, and several subsequent to it, not substantially equivalent to preamendments devices because the IVF indication for use constituted a new intended use for these devices. Consequently, these devices were classified into class III by statute.

On January 29, 1988, FDA convened the Obstetrical and Gynecological Devices Panel (the Panel), an FDA advisory committee, to identify and discuss medical devices used for IVF or gamete intrafallopian transfer (GIFT), and to identify the data required for the evaluation of safety and effectiveness, in order to assist FDA in developing a regulatory strategy for medical devices used for IVF and related assisted reproductive technology (ART) procedures (Ref. 12). The Panel considered a wide variety of medical devices already being used by IVF clinics. Besides the overall quality and sterility of these devices, the Panel focused on one key concern that applied to many of the devices used for IVF, namely possible material toxicity of the device to gametes or embryos. The Panel agreed with many of the guest speakers that there was a general need to evaluate many of these IVF devices using the mouse embryo assay (MEA).

The MEA had been shown to be highly predictive of material safety. The Panel discussed what devices should be subjected to a variety of test regimens. The Panel agreed that, in general, IVF had been shown to be safe and effective for properly selected patients, and that many of the generic types of devices used in IVF/ART procedures could be adequately regulated by special controls. The Panel believed that each generic type of device used for IVF/ET was a candidate for reclassification if certain recognized testing, specifications, and/or labeling requirements were imposed.

Reclassification of devices can be initiated following a petition from a manufacturer, and FDA encouraged interested manufacturers to do so following the 1988 Panel meeting. However, no such petition was submitted to FDA, and devices intended for use in IVF remained in class III. Use of IVF/ART procedures in the United States continued to grow. A variety of assisted reproduction technologies and procedures, including IVF/ET and GIFT, are now considered the standard of care for treatment of infertility in a selected population of patients (Refs. 1, 6, 8, 17, 18, 20, 32, and 35).

On October 21, 1995, FDA reconvened the Panel to reconsider the safety and effectiveness of these devices (Ref. 13). At the October 1995 meeting, the Panel considered a new list of generic device names and identifications. FDA asked for scientific and clinical input on important design, manufacture, and use characteristics of these devices (Ref. 7). After presentations by FDA-invited guest speakers, industry, and professional societies, the Panel reviewed the background materials on these devices and made suggestions about appropriate testing requirements for each.

The individual devices used for IVF/ET, such as oocyte retrieval needles, reproductive media, labware, and ET catheters, each perform a part of a multistaged procedure. The ultimate success of the assisted reproduction procedure (pregnancy) depends on the safety and effectiveness of each individual medical device used, as well as operating procedures within the IVF clinic and patient selection/exclusion criteria. The 1988 and 1995 Panels agreed that premarket approval is not necessary to provide reasonable assurance of the safety and effectiveness of the individual medical devices used for IVF/ET.

In accordance with section 513(f) of the act and § 860.134, based on new information with respect to the device, FDA, on its own initiative, is proposing to reclassify the following instrumentation for assisted reproduction: (1) Needles; (2) catheters; (3) accessories; (4) microtools; (5) micropipette fabrication instruments; (6) micromanipulators and microinjectors; (7) labware; (8) water and water purification systems; and (9) reproductive media and supplements, from class III to class II when intended for the uses specified below in the device description section. Additionally, in accordance with section 513(f) of the act and § 860.134, based on new information with respect to the device, FDA, on its own initiative, is proposing to reclassify the assisted reproduction microscopes and microscope accessories from class III to class I when intended to enlarge images of gametes or embryos. Furthermore, FDA is proposing to exempt assisted reproduction microscopes and microscope accessories used for IVF and related assisted reproduction procedures from premarket notification requirements.

Consistent with the act and the regulation, and because the Panel had been consulted earlier in the process and offered input on appropriate design and test requirements, FDA did not refer the proposed reclassification back to the Panel for its recommendation on the requested change in classification.

## II. Device Descriptions

The following is a list of medical devices, with their respective identifications, covered by this reclassification. It is important to note that these requirements apply only to products that are intended for use in assisted reproduction. General purpose devices (e.g., incubators, freezers, and water purification systems), which are not intended for use in assisted reproduction, are not subject to the regulatory controls described later in this proposed rule.

1. *Assisted reproduction needles*: Assisted reproduction needles are devices used to either obtain gametes from the body, or introduce gametes, zygote(s), preembryo(s), and/or embryo(s) into the body. This generic

type of device may include a single or double lumen needle and component parts, including needle guides such as those used with ultrasound.

2. *Assisted reproduction catheters*: Assisted reproduction catheters are devices used to introduce or remove gametes, zygote(s), preembryo(s), and/or embryo(s) into or from the body. This generic type of device may include catheters, cannulae, introducers, dilators, sheaths, and component parts.

3. *Assisted reproduction accessories*: Assisted reproduction accessories are a group of devices used during assisted reproduction procedures, in conjunction with assisted reproduction needles and/or assisted reproduction catheters to aspirate, incubate, infuse, and/or maintain temperature. This generic type of device may include:

(a) Powered aspiration pumps, used to provide low flow, intermittent vacuum for the aspiration of eggs (ova).

(b) Syringe pumps (powered or manual), used to activate a syringe to infuse or aspirate small volumes of fluid during assisted reproduction procedures.

(c) Collection tube warmers, used to maintain the temperature of egg (oocyte) collection tubes at or near body temperature. A dish/plate/microscope stage warmer is a device used to maintain the temperature of the egg (oocyte) during manipulation.

(d) Embryo incubators, used to store and preserve gametes and/or embryos at or near body temperature.

(e) Cryopreservation instrumentation and devices, used to contain, freeze, and maintain gametes and/or embryos at an appropriate freezing temperature.

4. *Assisted reproduction microtools*: Assisted reproduction microtools are pipettes or other devices used in the laboratory to denude, micromanipulate, hold or transfer human gametes, or embryos for assisted hatching, intracytoplasmic sperm injection (ICSI), embryo biopsy, or other assisted reproduction methods, including preimplantation diagnosis.

5. *Assisted reproduction micropipette fabrication instruments*: Assisted reproduction micropipette fabrication devices are instruments intended to pull, bevel, or forge a micropipette or needle for ICSI, IVF, or other similar procedures.

6. *Assisted reproduction micromanipulators and microinjectors*: Assisted reproduction micromanipulators are devices intended to control the position of an assisted reproduction microtool. Assisted reproduction microinjectors include any device intended to control aspiration or expulsion of the contents of an assisted reproduction microtool.

7. *Assisted reproduction labware*: Assisted reproduction labware consists of laboratory equipment or supplies intended to prepare, store, manipulate, or transfer human gametes or embryos for IVF or other assisted reproduction techniques. These include syringes, IVF tissue culture dishes, IVF tissue culture plates, pipette tips, dishes, plates, and other vessels that come into physical contact with gametes, embryos, or tissue culture media.

8. *Assisted reproduction water and water purification systems*: Assisted reproduction water purification systems are devices intended to generate high quality sterile, pyrogen-free, distilled, deionized water for reconstitution of media used for aspiration, incubation, transfer or storage of gametes or embryos for IVF or other assisted reproduction procedures. They may also be intended as the final rinse for labware or other assisted reproduction devices that will contact the gametes or embryos. This device also includes bottled water that is specifically intended for reconstitution of media used for aspiration, incubation, transfer or storage of gametes or embryos for IVF or other assisted reproduction procedures.

9. *Reproductive media and supplements*: Reproductive media ad supplements are products that are used for assisted reproduction procedures. Media include liquid and powder versions of carious substances that come in direct physical contact with human gametes or embryos (including oil used to cover the media) for the purposes of preparation, maintenance, transfer or storage, and supplements include specific reagents added to media to enhance specific properties of the media (e.g., proteins, sera, antibiotics, etc.).

10. *Assisted reproduction microscopes and microscope accessories*: Assisted reproduction microscopes and microscope accessories (excluding microscope stage warmers, which are classified under Assisted Reproduction Accessories) are optical instruments used to enlarge images of gametes or embryos. Variation of microscopes and microscope accessories used for these purposes would include phase contrast microscopes, fluorescence microscopes, dissecting microscopes, and inverted stage microscopes.

## III. Proposed Reclassification

FDA is proposing that assisted reproduction: (1) Needles; (2) catheters; (3) accessories; (4) microtools; (5) micropipette fabrication instruments; (6) micromanipulators and microinjectors; (7) labware; (8) water and water purification systems; and (9) reproductive media and supplements; with the intended uses specified in section II of this document, be reclassified from class III to class II. FDA believes that class II, with the following special controls, would provide reasonable assurance of the safety and effectiveness of these devices: (1) The MEA (see Davidson et al., 1988 (Ref. 4); May, 1996 (Ref. 10)); (2) endotoxin testing (see Nagata and Shirakawa, 1996; and United States Pharmacopeia (USP), 23d ed. (Ref. 10)); (3) design specifications; (4) labeling; (5) clinical studies; and (6) voluntary standards (College of American Pathologists (CAP) Reproductive Laboratory Accreditation Program (Ref. 16), Society for Assisted Reproductive Technology (SART, Refs. 22 through 31)). In addition, FDA is developing a policy addressing regulation of tissue culture media for a variety of in vivo applications, including assisted reproduction. Guidance for performance and labeling of such products, based on differing claims, is being evaluated with input from industry. For general claims, it is expected that minimum performance data (based on toxicologic, microbiologic, and chemical studies) will be required. More specific clinical claims will require additional data.

FDA also proposes that assisted reproduction microscopes and microscope accessories used for IVF and related assisted reproduction procedures be reclassified from class III to class I. FDA believes that class I general controls are sufficient to provide reasonable assurance of the safety and effectiveness of these devices. Furthermore, FDA is proposing to exempt assisted reproduction microscopes and microscope accessories from premarket notification requirements.

## IV. Risks to Health

Because the inception of IVF and related ART procedures in the early 1980's, a wealth of literature regarding the safety and effectiveness of this technology has become available (Refs. 1, 5, 6, 8, 11, 18, 20, 22 through 30, 35, 37, and 38). The long history of use of devices for assisted reproduction and the large amount of published literature have demonstrated that the potential risks from use of these devices are now well-known and extensively documented. The following is a summary of the overall general potential risks that may be associated with the use of assisted reproduction devices to the gametes or embryo and the patient,

including background information, and identification of the general or special controls that FDA believes address each risk. The risks may or may not apply to each individual device. Risks to health with the devices mentioned in section II of this document may involve trauma or damage to the patient (see discussion below), to gametes or embryos.

*A. Gamete or Embryo Damage*

Gamete or embryo damage could occur which would render them viable but damaged, or nonviable. This could occur with the knowledge of the gynecologist, so that affected gametes or embryos would not be used in the procedures, or without the knowledge of the gynecologist, in which case damaged or nonviable gametes or embryos could be used in assisted reproductive procedures. This could result in cycles lost or potential development of damaged embryos, which may result in later loss of pregnancy or congenital defects. Nevertheless, if recommended testing procedures are followed, there is reasonable assurance that the risk of damage to gametes or embryos is small. The assisted reproduction devices most likely to present this risk are assisted reproduction needles, assisted reproduction catheters, assisted reproduction accessories, assisted reproduction microtools, assisted reproduction micromanipulators and microinjectors, and reproductive media and supplements. The special controls for these devices that would mitigate this risk would be the MEA, device sterilization validation, water quality testing, design specifications, labeling, and voluntary standards (in which techniques for using these devices are described).

*B. Pain*

The incidence of pain or discomfort associated with assisted reproduction procedures has been estimated at 0 to 11.6 percent (Refs. 2 and 9), depending on the specific procedure or part of the procedure being done. Typically it is associated with percutaneous abdominal needle puncture for oocyte retrieval, and it may be tolerable to the patient. In the event that the pain is intolerable, it may be mitigated by the use of local anesthetic. The assisted reproduction devices most likely to present this risk are assisted reproduction needles and assisted reproduction catheters. The special controls for these devices that would mitigate this risk would be labeling (specifically, instructions for use), design specifications, and voluntary standards (in which techniques for using these devices are described).

*C. Hematuria*

The incidence of hematuria has been estimated at 0.4 to 13.3 percent (Refs. 2, 9, 19, 34, and 39). This may occur due to the aspiration needle penetrating a filled bladder, and it may be accompanied by extravasation of urine or transient dysuria. These are short-term problems that typically resolve spontaneously within 24 hours. The assisted reproduction devices most likely to present this risk are assisted reproduction needles and assisted reproduction catheters. The special controls for these devices that would mitigate this risk would be labeling (specifically, instructions for use), design specifications and voluntary standards (in which techniques for using these devices are described).

*D. Infection (Uterine, Urinary Tract Infection (UTI), Exacerbation of Pelvic Inflammatory Disease (PID), and Cystitis)*

The incidence of infection occurring as a consequence of an assisted reproduction procedure has been estimated at 0.5 to 6.9 percent (Refs. 2, 9, 19, 34, and 39). If a needle puncture traverses the bladder, cystitis is a possible sequela. Infection may be introduced via needle puncture, or the use of any contaminated (unsterile) device, as well as by lack of adherence to strict sterile technique. For these reasons, antibiotics are prophylactically administered. These complications can also be minimized with close attention to sterile technique and careful screening for preexisting active or latent pelvic infections. The assisted reproduction devices most likely to present this risk are assisted reproduction needles, assisted reproduction catheters, assisted reproduction accessories, assisted reproduction microtools, assisted reproduction micromanipulators and microinjectors, and reproductive media and supplements. The special controls for these devices that would mitigate this risk would be the MEA, endotoxin testing, device sterilization validation, water quality testing, design specifications, labeling, and voluntary standards (in which techniques for using these devices are described).

*E. Bleeding*

The incidence of bleeding during assisted reproduction procedures has been estimated at 3.5 to 17 percent (Refs. 2, 9, 19, 34, and 39), and typically is associated with transvaginal oocyte retrieval or trauma secondary to insertion of a catheter through the cervix. Bleeding can usually be easily controlled with direct pressure. The assisted reproduction devices most likely to present this risk are assisted reproduction needles and assisted reproduction catheters. The special controls for these devices that would mitigate this risk would be design specifications, labeling, and voluntary standards (in which techniques for using these devices are described).

*F. Puncture of Blood Vessels, Uterus, or Bowel*

The incidence of inadvertent puncture of intra- or retro-abdominal structures is estimated at 0.2 to 5.1 percent for blood vessels, 0.9 to 1.9 percent for bowel, and 1.9 to 2.6 percent for the uterus (Refs. 2, 9, 19, 34, and 39). This can occur during oocyte retrieval procedures and is most often due to incorrect needle placement or inadequate knowledge of pelvic and abdominal anatomy by the operator. Incidence of these complications is minimized with increasing experience of the operator. Should any of these adverse events occur, surgical correction may be necessary to avoid further complications. The assisted reproduction devices most likely to present this risk are assisted reproduction needles and assisted reproduction catheters. The special controls for these devices that would mitigate this risk would be design specifications, labeling, and voluntary standards (in which techniques for using these devices are described).

*G. Other (Ectopic Pregnancy, Multiple Gestation, or Chromosomal and Congenital Abnormalities)*

Ectopic pregnancy, multiple gestation, or chromosomal and congenital abnormalities are also risks of assisted reproduction procedures, though not specifically related to any device. Rather, the occurrence of these events is related more to the inherent risk of assisted reproduction procedures in general, patient factors, and the specific clinical practices employed. Nevertheless, special controls of labeling and voluntary standards will help to ensure that the user includes appropriate patient education that informs patients of these risks as well as the specific procedures to be performed and devices to be used.

SART collects data from all of its members annually on success rates and the incidence of adverse events such as those listed above. According to SART's 1996 report (Ref. 30), the incidence of ectopic pregnancy following assisted reproduction procedures has

consistently remained in the range of 0.6 to 1.3 percent of all transfers performed (approximately 4 percent of established pregnancies) in the United States for several years. This is somewhat higher than the incidence of ectopic pregnancies (around 1.7 percent) in the general U.S. population (Ref. 15). The increased incidence of ectopic pregnancy following IVF procedures correlates strongly with tubal damage, which is a major cause of infertility in IVF patients. Other potential but less substantiated causes of ectopic pregnancy include the use of clomiphene, or ET techniques that use high intrauterine positioning of the catheter tip (near the tubal ostium) or large amounts of fluid. Heterotopic (simultaneous intrauterine and extrauterine) pregnancies are also a known complication following assisted reproductive procedures (Ref. 33) with an estimated incidence of up to 1.4 percent of pregnancies in IVF patients, compared to the general population's rate of 0.003 to 0.038 percent (Ref. 31). Risk factors for this complication also include tubal pathology and replacement of multiple embryos, as well as the other previously mentioned factors. Early transvaginal sonography has greatly improved the ability to detect ectopic or heterotopic pregnancies with nearly 100 percent sensitivity and specificity. The assisted reproduction devices most likely to present this risk are assisted reproduction needles and assisted reproduction catheters. The special controls for these devices that would mitigate this risk would be design specifications, labeling, and voluntary standards (in which techniques for using these devices are described).

Multiple gestation is the most common complication of assisted reproductive procedures, and it is obviously related to the number of embryos transferred per procedure or cycle, as well as the efficiency of implantation at a particular IVF facility. In the general U.S. population, twinning occurs in about 1.2 percent of deliveries, and triplets constitute 0.01 to 0.02 percent. The incidence of twins following assisted reproductive procedures ranges from about 20 to 35 percent, and 2 to 6 percent for triplets or higher order births. (Refs. 27 through 30). Risks associated with multiple gestation include increased chance of prematurity, increased perinatal morbidity and mortality, and increased maternal risks such as gestational hypertension (Ref. 1). These risks are not related per se to the medical devices used in accomplishing the procedure, but the practice of implanting multiple embryos to maximize the chance of achieving pregnancy. Various approaches to dealing with this problem have been suggested, including limiting the number of transferred zygotes or embryos to three or four, cryopreservation techniques for preserving extra zygotes or embryos for future use, and selective embryo reduction techniques. Early ultrasonographic monitoring of IVF patients provides the best method for documenting and following multiple gestation pregnancies in order to best treat these patients.

SART estimates with its data from 1996 (Ref. 30) that the incidence of birth defects is between 1.8 to 2.7 percent of neonates, which approximate those seen in the general U.S. population (Ref. 3), especially when adjusted for maternal age. Because the incidence of these abnormalities increased with maternal age, this rate would be expected due to the advanced age of many IVF patients. This one factor accounts for most abnormalities, although other potential procedure-related causes could be defects induced through ovulation stimulation, in vitro manipulations of gametes, or the lack of elimination of abnormal gametes via normal biological mechanisms.

## V. Summary of Reasons for Reclassification

FDA believes that the instrumentation for assisted reproduction: (1) Needles; (2) catheters; (3) accessories; (4) microtools; (5) micropipette fabrication; (6) micromanipulators and microinjectors; (7) labware; (8) water and water purification systems; and (9) reproductive media and supplements should be classified into class II because special controls, in addition to general controls, can provide reasonable assurance of the safety and effectiveness of the devices, and there is sufficient information to establish special controls to provide such assurance. FDA believes that general controls alone are not sufficient to provide reasonable assurance of the safety and effectiveness of these devices.

FDA believes that assisted reproduction microscopes and microscope accessories should be classified into class I because general controls would provide reasonable assurance of safety and effectiveness. Furthermore, FDA is proposing to exempt assisted reproduction microscopes and microscope accessories used for IVF and related assisted reproduction procedures from premarket notification requirements. These devices do not have a significant history of false or misleading claims or risks associated with their inherent characteristics such as device design or materials. In addition, the characteristics of these devices necessary for their safe and effective performance are well established.

## VI. Summary of Data Upon Which the Reclassification is Based

The number of IVF and other assisted reproduction procedures performed annually in the United States has grown considerably in recent years. In 1994, the most recent year from which statistics are available, about 33,000 IVF cycles were initiated, with approximately 9,500 live-birth deliveries (Ref. 30).

Success rates for standard IVF procedures have increased somewhat between 1991 and 1994, from about 15 to 21 percent per cycle initiated (see Table 1), while tubal transfer techniques such as GIFT and zygote intrafallopian transfer (ZIFT) have somewhat higher success rates in the range of 28 percent (Refs. 27 through 30). These include micromanipulation techniques such as ICSI, which is successful in treating male factor infertility, and assisted hatching. No consensus exists as to the explanation for the difference in success rates, but these techniques do reflect different patient populations and diagnostic categories. About 250 ART programs report data to a registry of SART (Ref. 30), published annually in *Fertility and Sterility* (Refs. 22 through 30). Data reporting is mandatory for SART membership, and it is believed that most programs in the United States doing ART are reporting their data to SART.

Adverse outcomes, such as ectopic pregnancy, pregnancy loss, stillbirth, and structural or functional anomalies, have remained steady over the period of 1991 to 1994. Ectopic pregnancy rates are about 1.5 to 4.0 percent of established pregnancies, or 0.6 to 1.3 percent of ET's done. Pregnancy loss, most of which occurs during the first trimester, has remained around 20 percent. Stillbirths comprise approximately 1 percent of clinical pregnancies established, and congenital anomalies make up approximately 2 percent of neonatal outcomes. The incidence of prematurity was not recorded. The incidence of multiple gestations, a common feature of ART, was recorded, with 60 to 67 percent (depending on the particular ART technique used) of births being singleton deliveries, about 29 percent of births being twin gestations, about 5 percent being triplet gestations, and less than 1 percent of multiple births being

quadruplets or greater (Refs. 27 through 30).

The potential health benefit to be derived from the use of assisted reproductive devices is considerable. Infertility, defined as the inability to become pregnant within 1 year, is common in the United States today. Estimates range from 8.5 percent to 14 percent in couples over 30 years of age. IVF, an assisted reproductive technique wherein oocytes are retrieved from the ovaries and fertilized extracorporeally with subsequent embryo replacement (Ref. 1), was developed to treat infertility. In 1981, Elizabeth Carr became the first child born in the United States using IVF technology (Norfolk, VA). Since then, the number of IVF clinics in the United States has grown so that today approximately 250 specialized IVF clinics report their results to the SART registry. The use of these devices and their associated techniques provides the chance for restoration of reproductive function to those who would otherwise remain infertile (Ref. 25). Many advances have been made in assisted reproductive technology over the past two decades which have permitted treatment for more patients, including the ability to place oocyte aspiration needles transvaginally under ultrasonic guidance. This increases the ease and accuracy of the procedure and decreases procedure time and patient discomfort. It also decreases or avoids risks associated with general anesthesia and laparotomy or laparoscopy.

TABLE 1.—ART SUCCESS RATES[1]

| | 1991 | 1992 | 1993 | 1994 |
|---|---|---|---|---|
| **Cycles Initiated[2]** | | | | |
| IVF | 24,671 (15.2) | 29,404 (16.8) | 33,543 (18.3) | 33,700 (20.7) |
| GIFT[3] | 5,452 (26.6) | 5,767 (26.3) | 4,992 (28.1) | 4,214 (28.4) |
| ZIFT[3] | 2,104 (19.7) | 1,993 (22.8) | 1,792 (24.4) | 926 (29.1) |
| Combination | 714 (19.3) | 791 (27.9) | 882 (27.8) | 550 (29.7) |
| Frozen ET[3] | 4,838 (11.1) | 5,814 (13.9) | 6,869 (13.3) | 7,046 (15.4) |
| Donor Oocytes | 1,107 (25.6) | 2,032 (31.3) | 2,766 (30.2) | 3,119 (46.8) |
| Total Deliveries | 5,699 | 7,355 | 8,741 | 9,573 |
| Number of Programs | 215 | 249 | 267 | 249 |

TABLE 2.—ART ADVERSE EVENTS[1]

| | 1991 | 1992 | 1993 | 1994 |
|---|---|---|---|---|
| **Ectopic Pregnancies[4]** | | | | |
| IVF | 223 (5.8) | 272 (4.9) | 288 (4.4) | 246 (3.9) |
| GIFT | 44 (2.9) | 61 (3.6) | 61 (4.0) | 45 (3.2) |
| ZIFT | 20 (4.5) | 20 (3.9) | 13 (2.8) | 9 (3.1) |
| Combination | 10 (4.5) | 10 (3.9) | 15 (5.3) | 5 (2.7) |
| Frozen ET | 28 (2.2) | 2 (3.2) | 10 (5.0) | 17 (1.5) |
| Donor Oocytes | Nr[5] | NR | NR | NR |
| **Pregnancy Loss (% of clinical pregnancies)** | | | | |
| IVF | 20 | 20 | 19 | 19 |
| GIFT | 22 | 22 | 20 | 22 |
| ZIFT | 19 | 15 | 20 | 16 |
| Combination | 39 | 17 | 20 | 15 |
| Frozen ET | 19 | 15 | 20 | 15 |
| Donor Oocytes | 23 | 25 | 20 | 19 |
| **Stillbirths (% of clinical pregnancies)** | | | | |
| IVF | 0.5 | 1.0 | 1.1 | 1.4 |
| GIFT | 1.0 | 0.6 | 1.1 | 1.0 |
| ZIFT | NR | NR | NR | NR |
| Combination | NR | NR | NR | NR |
| Frozen ET | NR | NR | NR | NR |
| Donor Oocytes | 0.3 | 0 | NR | NR |
| **Anomalies[6]** | | | | |
| IVF | 57 (1.5) | 109 (1.9) | 164 (2.3) | 174 (2.7) |
| GIFT | 17 (1.1) | 41 (2.4) | 19 (1.2) | 25 (1.8) |
| ZIFT | 4 (0.8) | 14 (2.5) | 20 (2.8) | 7 (2.4) |
| Combination | NR | NR | NR | 26 (2.1) |
| Frozen ET | 1 (2.0) | 0 (0.0) | 32 (3.1) | NR |
| Donor Oocytes | 5 (0.8) | NR | 18 (1.7) | 34 (2.6) |

[1] See references 26 through 29.
[2] In parentheses = % deliveries per retrieval.
[3] GIFT = gamete intrafallopian transfer; ZIFT = zygote intrafallopian transfer; ET = embryo transfer.
[4] In parentheses = % of established pregnancies.
[5] NR = none reported.
[6] In parentheses = defects/100 neonates.

These data compare to recent ectopic pregnancy rates of approximately 1.7 percent of all pregnancies (Ref. 15), overall (preclinical, clinical, and stillbirth) pregnancy loss rates of approximately 25 percent (Ref. 1), and an incidence of anomalies (congenital defects) of approximately 2 percent of all births in the general U.S. population (Ref. 3).

## VII. Special Controls

The following special controls are proposed for the assisted reproduction devices being proposed for reclassification into class II. These must be addressed, where appropriate, in any 510(k) premarket notification submitted to FDA.

### *A. Guidance Document*

FDA plans to develop a guidance document that would address the following:

1. Mouse Embryo Assay (Davidson et al., 1988 (Ref. 4); May, J. V., 1996 (Ref.10))

The MEA should be used for toxicity and functionality testing of reproductive media, labware, and other devices coming into contact with gametes and/or embryos (Refs. 4 and 10). The rationale for requiring this test as a special control for class II assisted reproduction devices is that it is a good surrogate indicator of potential toxicity of materials used in assisted reproduction devices to gametes and/or embryos. Both one-cell and two-cell assays are used, and these are identical except that one-cell embryos are flushed from the mouse oviduct earlier than two-cell embryos. There are advantages to either test. Some believe that a two-cell MEA is preferable because it assures that one is testing a viable cleaving embryo from the onset. If cleaving does not proceed to the expanding or hatching blastocyst stage, then the test material is suspect for toxicity to the embryo. A one-cell MEA may not be as reassuring because lack of cleavage may be due either to embryo toxicity or to an intrinsically compromised embryo. The two-cell MEA is also easier to use because of timing of oviductal flushing and the fact that the embryos release easily from their mass of cumulus cells. Others believe that one-cell embryos are more sensitive to toxic conditions and better represent the actual conditions of IVF and embryo development than the two-cell embryo. Whether a one-cell or two-cell MEA is used, the bioassay should duplicate, as closely as possible, the procedures used for human IVF, including the acquisition, maintenance, culture, transfer (relocation), and cryopreservation of embryos (Refs. 4 and 10). FDA will not dictate to the manufacturer which MEA should be used during the manufacture of a particular product, or even whether any MEA is used. Rather, if the MEA is used, the manufacturer should provide clear information to the user about how the assay was performed and the assay results, both on the label and in the labeling. If no MEA is used, then this information must also be clearly provided to the user.

2. Endotoxin Testing (Nagata and Shirakawa, 1996 (Ref. 14); USP, 23d ed., 1995 (Ref. 36))

The rationale for requiring endotoxin testing as a special control for class II assisted reproduction devices is that it will provide a mechanism for ensuring that devices coming into contact with gametes, embryos, and/or the patient have been tested for levels of endotoxin released from gram-negative bacteria, which is the major pyrogen of concern. Of primary concern, endotoxin can be harmful to embryos and thus potentially affect development of the embryo, implantation, and pregnancy rates (Ref. 14). An established USP endotoxin assay using the limulus amebocyte lysate (LAL) test (Ref. 36) must be performed on any device, including needles, catheters, labware, water (including bottled water or water purification systems), and media.

3. Sterilization Validation

The rationale for requiring sterilization validation as a special control for class II assisted reproduction devices is that it will provide a mechanism for ensuring that devices coming into contact with gametes and/or embryos are sterile to a sterility assurance level (SAL) of $10^{-6}$. Established sterilization validation testing must be performed on all devices according to American Association Medical Instrumentation (AAMI) guidelines.

4. Water Quality (May, J. V., 1996 (Ref. 10))

The rationale for requiring this test as a special control for class II assisted reproduction devices is that water quality is critically important to successful assisted reproductive technology procedures (Ref. 10). Water used to reconstitute reproductive media and to wash and rinse labware, whether generated in-house using purification systems or obtained in bottled form from vendors, should be sterile, pyrogen-free, type I reagent grade (CAP or American Society for Testing Materials (ASTM)) or greater. Water purification systems typically can generate even purer water with increased resistivity (18 megohm) relative to type I water. For general laboratory use, type II and higher can be used. Any item coming into contact with human gametes or embryos should have a final rinse with type I water or better. As stated earlier, general purpose water purification systems, not intended for use in assisted reproduction, will not be affected by this proposed rule.

5. Design Specifications

Particular design specifications may be identified for each type of device that assure minimally acceptable standards. The rationale for including design specifications as a special control for class II assisted reproduction devices is that it will help to reduce the incidence of adverse events such as bleeding, pain, or perforation that could be due to suboptimal device design. For example, assisted reproduction needles may be specified to be 16 to 18 gauge, 22 to 23 centimeters long, 45 to 60 degree beveled stainless steel and sterile to assure safe and adequate access to ovarian follicles.

6. Labeling

Specific labeling that identifies the intended use, indication for use, contraindications, precautions, warnings, and instructions for use will be required. The rationale for including labeling as a special control for class II assisted reproduction devices is that it will ensure that devices are used properly, that the user is adequately informed, that the intended use of the device is clearly understood, and that claims by the manufacturer do not exceed the intended use of the device. For instance, assisted reproduction catheters will require labeling that specifies its intended use as ''For transvaginal retrieval of oocytes,'' or ''For delivery of embryos into the fallopian tube.'' Labeling will also indicate whether a one-cell or two-cell MEA, or no assay at all, was performed.

7. Clinical Studies

Certain device designs may not conform to conventional configurations used in assisted reproduction today, e.g., a specially-configured ET catheter. Although the device designs envisioned for this special control do not raise new types of safety and effectiveness questions, additional testing may be necessary to validate clinical performance.

*B. Voluntary Standards (CAP) Reproductive Laboratory Accreditation Program (Ref. 15), SART, Refs. 22 through 31))*

The rationale for including voluntary standards by CAP and SART as a special control for class II assisted reproduction devices is that these organizations have already identified many important standards regarding various aspects of assisted reproduction, including recommended tests and equipment, as well as acceptable techniques in the use of many assisted reproduction devices. Voluntary standards issued by individual laboratories, and both CAP and SART, address many aspects of the use of these devices for assisted reproduction techniques, including water quality, type of laboratory equipment to be used, and various quality control techniques including MEA previously identified (Refs. 10, 11, 16, 21, 37, and 38). For example, CAP conducts comprehensive inspections of reproductive laboratories for quality assurance and control measures, specimen (sperm, oocytes, and embryos) handling and processing, documentation, equipment, reagents, personnel, glassware washing, communications, and laboratory safety (Ref. 16). SART publishes guidelines for human embryology and andrology laboratories (Ref. 31), and maintains an annually updated data base from all of its members (the great majority of IVF programs in the United States have membership in SART) on all assisted reproduction procedures conducted in the United States (Refs. 22 through 30). Statistics on the total numbers of ART procedures are kept, including IVF, GIFT, ZIFT, donated oocytes, frozen ET's, and micromanipulation procedures (e.g., ICSI, subzonal sperm insertion, assisted hatching). Outcome data on total numbers of clinical pregnancies, deliveries, and multiple gestations, as well as adverse events such as ectopic pregnancy, abortion, stillbirth, and congenital abnormalities are gathered.

Significant available literature has established the reasonable safety and effectiveness of assisted reproduction devices, and the potential complications. In addition, the preexisting recommendations (Ref. 16) already put in place by CAP Reproductive Laboratory Accreditation Program and SART (Refs. 22 through 31) provide excellent and comprehensive guidelines on the proper use of these devices and data reporting required by its members.

FDA believes that general controls and the special controls proposed for these devices are sufficient to provide reasonable assurance that these devices are safe and effective for their intended use.

## VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday:


1. Adashi, E. Y., J. A. Rock, and Z. Rosenwaks, *Reproductive Endocrinology, Surgery and Technology*, Lippincott-Raven, Philadelphia, 1996.
2. Ashkenazi, J. et al., ''Abdominal Complications Following Ultrasonically Guided Percutaneous Transvesical Collection of Oocytes for In Vitro Fertilization,'' *Journal of In Vitro Fertilization and Embryo Transfer*, 4(6):316–318, 1987.
3. Behrman, R. E., and R. M. Kliegman, *Nelson Essentials of Pediatrics*, 2d ed., W. B. Saunders, Philadelphia, p. 175, 1993.
4. Davidson, A. et al., ''Mouse Embryo Culture as Quality Control for Human In Vitro Fertilization: The One-Cell Versus the Two-cell Model,'' *Fertility and Sterility*, 49(3):516–521, 1988.
5. Davis, O. K., and Z. Rosenwaks, ''In Vitro Fertilization,'' *Infertility: Evaluation and Treatment*, edited by W. R. Keye and R. J. Chang, Saunders, pp. 759–771, 1994,
6. DeCherney, A. H., ''In Vitro Fertilization and Embryo Transfer: A Brief Overview,'' *Yale Journal of Biology and Medicine*, 59:409–414, 1986.
7. Letter from FDA to Manufacturers of Medical Devices Used for IVF/ET, September 1995.
8. Kerin, J. F. et al., ''The Way Forward for In Vitro Fertilization in Man,'' *Journal of Reproduction and Fertility*, Supplement, 36:161–172, 1988.
9. Lenz, S., and J. G. Lauritsen, ''Ultrasonically Guided Percutaneous Aspiration of Human Follicles Under Local Anesthesia: A New Method of Collecting Oocytes for In Vitro Fertilization,'' *Fertility and Sterility*, 38(6):673–677, 1982.
10. May, J. V., Recommendations to the FDA Obstetrics and Gynecology Devices Panel for Safety and Efficacy Parameters for Assisted Reproduction Labware and Reproductive Media, personal communication to Mike Kuchinski, 1996.
11. May, J. V., and K. Hanshew, ''Organization of the In Vitro Fertilization/Embryo Transfer Laboratory,'' *CRC Handbook of the Laboratory Diagnosis and Treatment of Infertility*, pp. 291–327.
12. Minutes, Obstetrics and Gynecology Devices Panel meeting, January 29, 1988.
13. Minutes, Obstetrics and Gynecology Devices Panel meeting, October 23, 1995.
14. Nagata, Y., and K. Shirakawa, ''Setting Standards for the Levels of Endotoxin in the Embryo Culture Media of Human In Vitro Fertilization and Embryo Transfer,'' *Fertility and Sterility*, 65(3):614–619, 1996.
15. Nederlof, K. P., H. W. Lawson, A. F. Saftlas, H. K. Atrash, and E. L. Finch, ''Ectopic Pregnancy Surveillance, United States, 1970–1987,'' *Morbidity and Mortality Weekly Reports (MMWR)*, 39(SS–4):9–17, 1990.
16. Inspection Checklist Section XC: Reproductive Laboratory, College of American Pathologists, Reproductive Laboratory Accreditation Program, pp. 1–50, 1993.
17. Palermo, G. D. et al., ''Intracytoplasmic Sperm Injection: A Powerful Tool to Overcome Fertilization Failure,'' *Fertility and Sterility*, 65(5):899–908, 1996.
18. Paulson, R. J., ''In Vitro Fertilization and Other Assisted Reproduction Techniques,'' *Journal of Reproductive Medicine*, 38(4):261–268, 1993.
19. Riddle, A. F. et al., ''Two Years Experience of Ultrasound-Directed Oocyte Retrieval,'' *Fertility and Sterility*, 48(3):454–458, 1987.
20. Seibel, M. M., ''A New Era in Reproductive Technology: In Vitro Fertilization Gamete Intrafallopian Transfer, and Donated Gametes and Embryos,'' *New England Journal of Medicine*, 318(313):828–834, 1988.
21. Seifer, D. B., ''Suggested Safety and Efficacy Parameters for FDA Reclassification Guidelines,'' personal communication to Colin Pollard, 1996.
22. Society for Assisted Reproductive Technology, The American Fertility Society, ''In Vitro Fertilization/Embryo Transfer in the United States: 1985 and 1986 Results From the National IVF–ET Registry,'' *Fertility and Sterility*, 49(2):212–215, 1988.
23. Society for Assisted Reproductive Technology, The American Fertility Society, ''In Vitro Fertilization/Embryo Transfer in the United States: 1985 and 1986 Results From the National IVF–ET Registry,'' *Fertility and Sterility*, 51(1):13–19, 1988.
24. Society for Assisted Reproductive Technology, The American Fertility Society, ''In Vitro Fertilization/Embryo Transfer in the United States: 1988 Results From the National IVF–ET Registry,'' *Fertility and Sterility*, 53(1):13–20, 1990.
25. Society for Assisted Reproductive Technology, The American Fertility Society, ''In Vitro Fertilization/Embryo Transfer in the United States: 1989 Results From the National IVF–ET Registry,'' *Fertility and Sterility*, 55(1):14–23, 1991.
26. Society for Assisted Reproductive Technology, The American Fertility Society, ''In Vitro Fertilization/Embryo Transfer in the United States: 1990 Results From the National IVF–ET Registry,'' *Fertility and Sterility*, 57(1):15–24, 1992.
27. Society for Assisted Reproductive Technology, The American Fertility Society, ''Assisted Reproductive Technology in the United States and Canada: 1991 Results From the Society for Assisted Reproductive Technology Generated From The American Fertility Society Registry,'' *Fertility and Sterility*, 59(5):956–962, 1993.
28. Society for Assisted Reproductive Technology, The American Fertility Society ''Assisted Reproductive Technology in the United States and Canada: 1992 Results Generated From The American Fertility Society/Society for Assisted Reproductive Technology Registry,'' *Fertility and Sterility*, 62(6):1121–1128, 1994.
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''Assisted Reproductive Technology in the United States and Canada: 1993 Results Generated From The American Fertility Society/Society for Assisted Reproductive Technology Registry,'' *Fertility and Sterility*, 64(1):13–21, 1995.

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31. Society for Assisted Reproductive Technology, The American Fertility Society, ''Guidelines for Human Embryology and Andrology Laboratories,'' *Fertility and Sterility*, 58(4) Supplement 1:1S–16S, 1992.

32. Surrey, E. S., and J. F. Kerin, ''Extended Techniques in Assisted Reproductive Technologies,'' *Infertility: Evaluation and Treatment*, edited by W. R. Keye and R. J. Chang, Saunders, pp. 788–797, 1994.

33. Tal, J. et al., ''Heterotropic Pregnancy After Ovulation Induction and Assisted Reproductive Technologies: A Literature Review from 1971 to 1993,'' *Fertility and Sterility*, 66(1):1–12, 1996.

34. Tan, S. L. et al., ''Surgical Techniques of Oocyte Collection and Embryo Transfer,'' *British Medical Bulletin*, 46(3):628–642, 1990.

35. Trounson, A., ''Recent Progress in Human In Vitro Fertilization and Embryo Transfer,'' *Developmental Biology*, chapter 5, pp. 149–186, 1986.

36. United States Pharmacopeia, 23d ed., National Formulary, vol. 18, Bacterial Endotoxins Test, No. 85, pp. 1696–1697, 1995.

37. Utian, W. H. et al., ''Implementation of an In Vitro Fertilization Program,'' *Journal of In Vitro Fertilization and Embryo Transfer*, 1(1):72–75, 1984.

38. Veeck, L. L., ''The Gamete Laboratory: Design, Management and Techniques,'' *Infertility: Evaluation and Treatment*, edited by W. R. Keye and R. J. Chang, Saunders, pp. 798–820, 1994.

39. Wikland, M. et al., ''Collection of Human Oocytes By the Use of Sonography,'' *Fertility and Sterility*, 39(5):603–608, 1983.

## IX. Proposed Effective Date

The agency proposes that any final rule based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

## X. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## XI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of these devices from class III to class II and class I will relieve all manufacturers of the device of the cost of complying with the premarket approval requirements in section 515 of the act (21 U.S.C. 360e). Because reclassification will reduce regulatory costs with respect to this device, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The Commissioner of Food and Drugs therefore certifies that this proposed rule, if issued, will not have a significant economic impact on a substantial number of small entities. In addition, this proposed rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

## XII. Submission of Comments

Interested persons may, on or before December 3, 1997, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

## List of Subjects in 21 CFR Part 884

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 884 be amended as follows:

## PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

1. The authority citation for 21 CFR part 884 continues to read as follows:

**Authority:** Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Subpart G, consisting of §§ 884.6100 through 884.7000 is added to read as follows:

### Subpart G—Assisted Reproduction Devices

Sec.
884.6100 Assisted reproduction needles.
884.6200 Assisted reproduction catheters.
884.6300 Assisted reproduction accessories.
884.6400 Assisted reproduction microtools.
884.6500 Assisted reproduction micropipette fabrication instruments.
884.6600 Assisted reproduction micromanipulators and microinjectors.
884.6700 Assisted reproduction labware.
884.6800 Assisted reproduction water and water purification systems.
884.6900 Reproductive media and supplements.
884.7000 Assisted reproductive microscopes and microscope accessories.

### Subpart G—Assisted Reproduction Devices

#### § 884.6100 Assisted reproduction needles.

(a) *Identification*. Assisted reproduction needles are devices used to obtain gametes or introduce gametes, zygote(s), preembryo(s), and/or embryo(s) into the body. This generic type of device may include a single or double lumen needle and component parts, including needle guides such as those used with ultrasound.

(b) *Classification*. Class II (special controls) (premarket notification guidance and voluntary standards).

#### § 884.6200 Assisted reproduction catheters.

(a) *Identification*. Assisted reproduction catheters are devices used to introduce or remove gametes, zygote(s), preembryo(s), and/or embryo(s) into or from the body. This generic type of device may include catheters, cannulae, introducers, dilators, sheaths, and component parts.

(b) *Classification*. Class II (special controls) (premarket notification guidance and voluntary standards).

#### § 884.6300 Assisted reproduction accessories.

(a) *Identification*. Assisted reproduction accessories are a group of devices used during assisted reproduction procedures, in conjunction with assisted reproduction needles and/

or assisted reproduction catheters, to aspirate, incubate, infuse, and/or maintain temperature. This generic type of device may include:

(1) Powered aspiration pumps, used to provide low flow, intermittent vacuum for the aspiration of eggs (ova).

(2) Syringe pumps (powered or manual), used to activate a syringe to infuse or aspirate small volumes of fluid during assisted reproduction procedures.

(3) Collection tube warmers, used to maintain the temperature of egg (oocyte) collection tubes at or near body temperature. A dish/plate/microscope stage warmer is a device used to maintain the temperature of the egg (oocyte) during manipulation.

(4) Embryo incubators, used to store and preserve gametes and/or embryos at or near body temperature.

(5) Cryopreservation instrumentation and devices, used to contain, freeze and maintain gametes and/or embryos at an appropriate freezing temperature.

(b) *Classification*. Class II (special controls) (premarket notification guidance and voluntary standards).

**§ 884.6400 Assisted reproduction microtools.**

(a) *Identification*. Assisted reproduction microtools are pipettes or other devices used in the laboratory to denude, micromanipulate, hold or transfer human gametes or embryos for assisted hatching, intracytoplasmic sperm injection (ICSI), embryo biopsy or other assisted reproduction methods, including preimplantation diagnosis.

(b) *Classification*. Class II (special controls) (premarket notification guidance and voluntary standards).

**§ 884.6500 Assisted reproduction micropipette fabrication instruments.**

(a) *Identification*. Assisted reproduction micropipette fabrication devices are instruments intended to pull, bevel, or forge a micropipette or needle for intracytoplasmic sperm injection (ICSI), in vitro fertilization (IVF), or other similar procedures.

(b) *Classification*. Class II (special controls) (premarket notification guidance and voluntary standards).

**§ 884.6600 Assisted reproduction micromanipulators and microinjectors.**

(a) *Identification*. Assisted reproduction micromanipulators are devices intended to control the position of an assisted reproduction microtool. Assisted reproduction microinjectors are any device intended to control aspiration or expulsion of the contents of an assisted reproduction microtool.

(b) *Classification*. Class II (special controls).

**§ 884.6700 Assisted reproduction labware.**

(a) *Identification*. Assisted reproduction labware consists of laboratory equipment or supplies intended to prepare, store, manipulate, or transfer human gametes or embryos for in vitro fertilization (IVF) or other assisted reproduction techniques. These include syringes, IVF tissue culture dishes, IVF tissue culture plates, pippette tips, dishes, plates, and other vessels that come into physical contact with gametes, embryos or tissue culture media.

(b) *Classification*. Class II (special controls).

**§ 884.6800 Assisted reproduction water and water purification systems.**

(a) *Identification*. Assisted reproduction water purification systems are devices specifically intended to generate high quality sterile, pyrogen-free, distilled, deionized water for reconstitution of media used for aspiration, incubation, transfer or storage of gametes or embryos for in vitro fertilization (IVF) or other assisted reproduction procedures. It may also be intended as the final rinse for labware or other assisted reproduction devices that will contact the gametes or embryos. This also includes bottled water ready for reconstitution available from a vendor that is specifically intended for reconstitution of media used for aspiration, incubation, transfer or storage of gametes or embryos for IVF or other assisted reproduction procedures.

(b) *Classification*. Class II (special controls).

**§ 884.6900 Reproductive media and supplements.**

(a) *Identification*. Reproductive media and supplements are products that are used for assisted reproduction procedures. Media include liquid and powder versions of various substances that come in direct physical contact with human gametes or embryos (including water, or oil used to cover the media) for the purposes of preparation, maintenance, transfer or storage, and supplements are specific reagents added to media to enhance specific properties of the media (e.g., proteins, sera, antibiotics, etc.).

(b) *Classification*. Class II (special controls) (premarket notification guidance and voluntary standards).

**§ 884.7000 Assisted reproductive microscopes and microscope accessories.**

(a) *Identification*. Assisted reproduction microscopes and microscope accessories (excluding microscope stage warmers, which are classified under Assisted Reproduction Accessories) are optical instruments used to enlarge images of gametes or embryos. Variations of microscopes and accessories used for these purposes would include phase contrast microscopes, fluorescence microscopes, dissecting microscopes, and inverted stage microscopes.

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

Dated: August 26, 1997.

**D. B. Burlington,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 97–23449 Filed 9–2–97; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 934

**[ND–032–FOR; Amendment No. XXII]**

## North Dakota Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; reopening and extension of public comment period on proposed amendment.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a revision to a previously proposed amendment to the North Dakota regulatory program (hereinafter, the ''North Dakota program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revision for North Dakota's proposed rules pertain to individual civil penalties. The amendment is intended to revise the North Dakota program to be consistent with the corresponding Federal regulations.

**DATES:** Written comments must be received by 4:00 p.m., m.d.t., September 19, 1997.

**ADDRESSES:** Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the North Dakota program, the proposed revision to the proposed amendment, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed

amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East ''B'' Street, Room 2128, Casper, Wyoming 82601–1918, Telephone: (307) 261–6550, Internet: gpadgett@osmre.gov

James R. Deutsch, Director, Reclamation Division, Public Service Commission, Bismarck, North Dakota 58505–0480, Telephone: (701) 328–2400

**FOR FURTHER INFORMATION CONTACT:** Guy Padgett, Telephone: (307) 261–6550.

**SUPPLEMENTARY INFORMATION:**

## I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program can be found in the December 14, 1980, **Federal Register** (45 FR 82214). Subsequent actions concerning North Dakota's program and program amendments can be found at 30 CFR 934.15, 934.16, and 934.30.

## II. Proposed Amendment

By letter dated April 12, 1995, North Dakota submitted a proposed amendment to its program (amendment No. XXII, administrative record No. ND–W–1) pursuant to SMCRA. (30 U.S.C. 1201 *et seq.*) North Dakota submitted the proposed amendment in response to the required program amendments at 30 CFR 934.16(y) and (z).

OSM announced receipt of the proposed amendment in the May 2, 1995 **Federal Register** (60 FR 21484), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. ND–W–04). Because no one requested a public hearing or meeting, none was held. The public comment period ended on June 1, 1995.

During its review of the proposed amendment, OSM identified concerns and notified North Dakota of the concerns by letter dated August 28, 1995 (administrative record No. ND–W–12). North Dakota responded in a letter dated October 19, 1995.

Subsequently, on July 30, 1997, OSM notified North Dakota by telephone of an additional concern (administrative record No. ND–W–17). In response, North Dakota proposed a revision to its proposed coal exploration regulations at North Dakota Administrative Code (NDAC) 43–02–001 (administrative record No. ND–W–18).

Specifically, North Dakota proposes to further revise its proposed regulations at NDAC 43–02–01 dealing with individual civil penalties, from: ''any director, officer, or agent of such corporation who willfully *and* knowingly authorized or carried out such violation * * *.'' (emphasis added); to: ''any director, officer, or agent of such corporation who willfully *or* knowingly authorized or carried out such violation * * *'' (emphasis added). The only change is that the word ''and'' would be replaced by the word ''or.'' According to North Dakota, the intent of the resulting requirement in North Dakota's regulations at NDAC 43–02–01 is that it would then be consistent with the requirement in North Dakota's statute at NDCC 38–12.1–08, upon which the requirement in North Dakota's regulations is based.

## III. Public Comment Procedures

OSM is reopening the comment period on the proposed program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional material submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed revision to the proposed amendment satisfies the applicable program criteria of 30 CFR 732.15. If the revision and the amendment are deemed adequate, they will become part of the North Dakota program.

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

## IV. Procedural Determinations

### *1. Executive Order 12866*

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

### *2. Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

### *3. National Environmental Policy Act*

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

### *4. Paperwork Reduction Act*

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

### *5. Regulatory Flexibility Act*

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

### *6. Unfunded Mandates*

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

**List of Subjects in 30 CFR Part 934**

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 27, 1997.

**Russell F. Price,**

*Acting Regional Director, Western Regional Coordinating Center.*

[FR Doc. 97–23423 Filed 9–3–97; 8:45 am]

BILLING CODE 4310–05–M

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

**[CGD08–97–004]**

**RIN 2115–AE47**

## Drawbridge Operation Regulation for the Minnesota River

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rule making.

**SUMMARY:** The Coast Guard proposes removing the 24 hour advance notice requirement from the regulation governing operation of drawbridges over the Minnesota River between the mouth and LeSueur, MN. This action is being taken to update the regulation to reflect existing conditions and to ensure the reasonable needs of navigation are met. The change will require drawbridges on that reach of the river to open on demand in accordance with the general drawbridge operating regulations under 33 CFR 117 Subpart A.

**DATES:** Comments must be received on or before November 3, 1997.

**ADDRESSES:** Comments may be mailed to Director, Western Rivers Operations (ob), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, Attention: Bridge Administrator. Comments may also be delivered to Room 2.107f at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (314) 539–3900, extension 378.

The Bridge Branch, Director Western Rivers Operations, maintains the public docket for this rulemaking. Comments will become part of the public docket and the docket will be available for inspection or copying in room 2.107f at the above address.

**FOR FURTHER INFORMATION CONTACT:** Roger K. Wiebusch, Bridge Administrator, Director Western Rivers Operations, 314–539–3900, extension 378.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

The Coast Guard encourage interested persons to particiate in this rulemaking by submitting written data, views, or arguments. The Coast Guard is soliciting comments on the regulation change until November 3, 1997. The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guared plans no public hearing. Persons may request a public hearing by writing to the Bridge Administrator at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at the time and place announced by a later notice in the **Federal Register**.

### Background and Purpose

The proposed change will ensure the regulation reflects favorable existing drawbridge operating practices. Coordination between the Coast Guard, waterway users and owners of the only affected drawbridge at Savage, MN, Mile 14.3 on the Minnesota River, have resulted in the bridge being operated in a manner that meets the needs of both navigation and the railroad. (All written correspondence regarding this coordination is available in the public docket). Operation of the Savage Drawbridge will revert to the existing general drawbridge regulations found in 33 CFR, 117 Subpart A, i.e. it will open on demand. Approval of this proposal will eliminate an obsolete and undesirable drawbridge regulation and ensure continued favorable drawbridge operation practices.

### Discussion of Change

This proposed rule will remove the requirement in 33 CFR 117.663, paragraph (a), that currently requires river traffic to provide 24 hours advance notice for drawbridge operation. All bridges below (downstream of) LeSueur, MN will now operate under the general bridge requirements found in 33 CFR 117 Subpart A, i.e. will have to open upon demand. The only bridge that will be affected is the railroad drawbridge at Savage, MN. The proposed rule will maintain the existing language in the second paragraph of 33 CFR 117.663 stating that the draws of bridges above LeSueur, MN need not be opened for the passage of vessels.

### Regulatory Evaluation

This rule is not a significant regulatory action under 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The proposed rule affects one drawbridge and is not expected to significantly alter the day-to-day activities of any businesses.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this change, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. Because the proposed rule affects only one drawbridge and requires the bridge to open upon demand, the Coast Guard expects the impact of this change to be minimal. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this change, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (See **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

### Collection of Information

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

### Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this change does not have sufficient federalism

implications to warrant preparation of a Federalism Assessment.

**Environment**

The Coast Guard has reviewed the environmental impact of this proposed rule and concluded that under section 2.B.2e(32) of COMDTINST M16475.1B, this proposed change is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found not to have significant effect on the environment. A ''Categorical Exclusion Determination'' is available for inspection or copying where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulation**

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. § 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.663 is revised to read as follows:

**§ 117.663 Minnesota River.**

The draws of bridges above LeSueur, MN need not be opened for the passage of vessels.

Dated: August 21, 1997.

**T.W. Josiah,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 97–23442 Filed 9–3–97; 8:45 am]

BILLING CODE 4910–14–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Part 416

**[BPD–831–P]**

**RIN 0938–AH15**

## Medicare Program; Adjustment in Payment Amounts for New Technology Intraocular Lenses

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would establish in regulations a process under which interested parties may request, with respect to a class of new technology intraocular lenses (IOLs), a review of the appropriateness of the current payment amount for IOLs furnished by Medicare-participating ambulatory surgical centers.

The rule implements section 141(b) of the Social Security Act Amendments of 1994, which requires us to develop and implement this process.

**DATES:** Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 3, 1997.

**ADDRESSES:** Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, *Attention*: BPD–831–P, P.O. Box 26688, Baltimore, MD 21207–0488.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments may also be submitted electronically to the following e-mail address: BPD831P@hcfa.gov. E-mail comments must include the full name and address of the sender and must be submitted to the referenced address to be considered. All comments must be incorporated in the e-mail message because we may not be able to access attachments. Electronically submitted comments will be available for public inspection at the Independence Avenue address below.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–831–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

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**FOR FURTHER INFORMATION CONTACT:** Cathaleen Ahern, (410) 786–4515.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*A. Payment for Ambulatory Surgical Center Facility Services*

Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) provides that benefits under the Medicare supplementary medical insurance program (Part B) include services furnished in connection with surgical procedures that, under section 1833(i)(1)(A) of the Act, are specified by us and are performed on an inpatient basis in a hospital but that also can be performed safely on an ambulatory basis in an ambulatory surgical center (ASC) or in a hospital outpatient department. To participate in the Medicare program as an ASC, a facility must meet the standards specified under section 1832(a)(2)(F)(i) of the Act and 42 CFR 416.25 (''Basic requirements''). Our regulations at 42 CFR part 416 contain the coverage and payment rules for services furnished by Medicare-participating ASCs.

Section 1833(i)(2)(A) of the Act authorizes us to pay ASCs a prospectively-determined rate for facility services. ''Facility services'' means services that are furnished in conjunction with covered surgical procedures performed in an ASC, or in a hospital on an outpatient basis. Section 416.61 sets forth included and excluded facility services. ASC facility services payment rates represent our

estimate of a fair fee that takes into account the costs incurred by ASCs generally in furnishing facility services in connection with performing a surgical procedure. ASC payment rates do not include physician fees and other medical items and services, such as laboratory services or prosthetic devices, for which separate payment may be authorized under other provisions of the Medicare program. However, an intraocular lens (IOL) is included as an ASC facility service under section 1833(i)(2)(A)(iii) of the Act.

Payment for ASC facility services is subject to the usual Medicare Part B deductible and coinsurance requirements. Therefore, participating ASCs are paid 80 percent of the prospectively-determined rate adjusted for regional wage variations. The beneficiary pays a coinsurance amount equal to 20 percent of the wage-adjusted ASC facility fee.

Currently, the Medicare program covers approximately 2,300 procedures performed in an ASC. We assign to each procedure one of eight standard payment rates. Collectively, the procedures assigned a particular payment rate constitute an ASC payment group. The current payment group rates follow:

Group 1—$312
Group 2—$419
Group 3—$479
Group 4—$591
Group 5—$674
Group 6—$785
Group 7—$935
Group 8—$923

All procedures within a payment group are paid the same rate, adjusted for geographic wage variation. (A detailed discussion of the ASC payment methodology and rate-setting procedures is set forth in the final notice published in the **Federal Register** on February 8, 1990, entitled ''Revision of Ambulatory Surgery Center Payment Rate Methodology'' (55 FR 4526).)

A ninth payment group allotted exclusively to extracorporeal shockwave lithotripsy services was established in the notice with comment period published December 31, 1991 (56 FR 67666). The decision in *American Lithotripsy Society* v. *Sullivan,* 785 F. Supp. 1034 (D.D.C. 1992), prohibits us from paying for these services under the ASC benefit at this time. Extracorporeal shockwave lithotripsy payment rates are the subject of a separate document, and a proposed notice was published October 1, 1993 (58 FR 51355).

*B. Payment for Intraocular Lenses Furnished in an Ambulatory Surgical Center*

At the inception of the ASC benefit on September 7, 1982, Medicare paid 80 percent of the reasonable charge for IOLs supplied for insertion concurrent with or following cataract surgery performed in an ASC. Section 4063(b) of the Omnibus Budget and Reconciliation Act of 1987 (OBRA 1987) (Pub. L. 100–203), enacted on December 22, 1987, amended section 1833(i)(2)(A) of the Act to mandate that we include payment for an IOL furnished by an ASC for insertion during or following cataract surgery as part of the ASC facility fee rather than paying for the IOL separately, in addition to the facility fee. Payment included in the facility fee for an IOL must be reasonable and related to the cost of acquiring the class of IOL involved.

Thus, for services furnished beginning March 12, 1990, which was the effective date of the final notice published in the **Federal Register** on February 8, 1990, entitled ''Revision of Ambulatory Surgery Center Payment Rate Methodology'' (55 FR 4526), Medicare included payment for an IOL in payment group 6 and payment group 8, the two payment groups that include IOL insertion procedures. The Physicians' Current Procedural Terminology (CPT) codes for groups 6 and 8 and their descriptors follow:

*Payment Group 6*

CPT code 66985—Insertion of intraocular lens prosthesis (secondary implant), not associated with concurrent cataract removal.

CPT code 66986—Exchange of intraocular lens. (This CPT code was first listed in CPT 1992; we added it to the ASC list effective January 30, 1992.)

*Payment Group 8*

CPT code 66983—Intracapsular cataract extraction with insertion of intraocular lens prosthesis (one stage procedure).

CPT code 66984—Extracapsular cataract removal with insertion of intraocular lens prosthesis (one stage procedure), manual or mechanical technique (eg, irrigation and aspiration or phacoemulsification).

Initially, we set the payment amount for IOLs at $200. We did not categorize IOLs into different classes for the reasons discussed below. The $200 allowance applied to any IOL furnished for surgical insertion by an ASC.

Our identification of $200 as the appropriate amount of payment for an IOL was influenced by the Office of Inspector General's (OIG's) finding that ASCs were able to negotiate an average IOL price of $200, and that discounts in unknown amounts were available to other ASCs. (See *Medicare Certified Ambulatory Surgical Centers, Cataract Surgery Costs and Related Issues,* OAI–09–88–00490, published March 1988. Copies can be obtained from the Office of Inspector General, Department of Health and Human Services, (415) 556–0675.)

In *Outpatient Ophthalmic Surgery Society, Inc.* v. *Shalala,* No. 90–0305 (D.D.C. January 31, 1994), the court rejected both arguments that were mounted in a challenge to the $200 IOL payment amount. The court deferred to our reliance on the OIG study as the basis for determining the IOL payment amount and upheld our determination that there is no medical justification to recognize different classes of IOLs.

Section 4151(c)(3) of the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990) (Pub. L. 101–508), enacted on November 5, 1990, froze the IOL payment amount at $200 for IOLs furnished by ASCs in conjunction with surgery performed during the period beginning November 5, 1990 and ending December 31, 1992. We continued paying an IOL allowance of $200 from January 1, 1993 through December 31, 1993.

Section 13533 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993) (Pub. L. 103–66), enacted on August 10, 1993, mandated that payment for an IOL furnished by an ASC be equal to $150 beginning January 1, 1994 through December 31, 1998.

## II. Provisions of This Proposed Rule

*A. Requirement for Review of Payment for New Technology Intraocular Lenses*

On October 31, 1994, the Congress passed the Social Security Act Amendments of 1994 (SSAA 1994) (Pub. L. 103–432). Section 141(b) of SSAA 1994 requires us, not later than 1 year after the date of enactment (that is, by October 31, 1995), to develop and implement a process under which interested parties may request, with respect to a class of new technology IOLs, a review of the appropriateness of the payment amount provided for IOLs furnished by ASCs under section 1833(i)(2)(A)(iii) of the Act. Since January 1, 1994, the payment amount for IOLs furnished by ASCs under section 1833(i)(2)(A)(iii) of the Act has been $150.

Section 141(b)(1) of SSAA 1994 stipulates that an IOL may not be treated as a new technology IOL unless it has been approved by the Food and Drug

Administration (FDA). Section 141(b)(2) of SSAA 1994 requires that, in determining whether to provide a payment adjustment, we take into account whether use of the IOL is likely to result in reduced risk of intraoperative or postoperative complication or trauma, accelerated postoperative recovery, reduced induced astigmatism, improved postoperative visual acuity, more stable postoperative vision, or any other comparable clinical advantages.

Section 141(b)(3) of SSAA 1994 requires that we publish at least annually a list of the requests received for review of the appropriateness of the IOL payment amount with respect to a new technology IOL. We must provide a 30-day comment period on the IOLs that are the subject of the requests for review. Within 90 days of the close of the comment period, we must publish a notice of the determinations made with respect to the appropriateness of the IOL payment amount for the IOLs for which a review was requested. Any adjustment of the IOL payment amount (or payment limit) for a particular IOL or class of IOLs that we determine is warranted would be effective not later than 30 days following publication of the final notice of our determination.

Implementation of section 141(b) of SSAA 1994 requires three principal policy decisions:

- Identification of a class or classes of new technology IOLs.
- Determination of whether the current IOL payment amount is appropriate for an IOL identified as belonging to a class of new technology IOLs.
- Identification of the payment adjustment to be applied if the current payment amount is found to be inappropriate.

In the sections that follow, we discuss the factors that led us to the process that is the subject of this proposed rule. We welcome comments on the options selected and rejected, and on potential alternatives not considered.

*B. Identification of a Class of New Technology Intraocular Lenses*

1. Distinguishing Among Classes of Intraocular Lenses

In order to prepare the final notice entitled ''Revision of Ambulatory Surgery Center Payment Rate Methodology'' (55 FR 4526) that was published in the **Federal Register** on February 8, 1990, we sought supporting documentation that would justify pricing IOLs according to IOL type or ''class,'' and that would establish the basis for distinguishing among different types of IOLs, such as placement of the IOL within the eye, either as anterior chamber or posterior chamber IOLs; or the style of the IOL, either single-piece or multi-piece; or characterization of the IOL as ''advanced technology.''

On February 22, 1989, the FDA advised us in a letter that its premarket approval review process determined whether IOLs were ''safe and effective'' not by comparing IOLs with one another, but by comparing them with a set of historical IOL data known collectively as the ''grid.'' The FDA noted that no additional labeling or advertising claims of the superiority of one IOL (or type of IOL) over another had been approved at that time; that is, medical benefits of one IOL or type of IOL over another had not been proven in the studies that were submitted to the FDA. There were no across-the-board differences in the indications and contraindications or in the warnings sections of the package insert that would imply across-the-board medical benefits for one IOL or type of IOL over another.

The studies that were submitted to HCFA at that time failed to yield conclusive evidence of specific clinical conditions or indications that required or influenced the use of one IOL over another, nor did HCFA find justification for a differentiated price structure based on IOL type. We therefore determined that a $200 payment amount was both reasonable and related to the costs incurred by ASCs to acquire IOLs available at that time. As noted above, a Federal court sustained this determination. (See *Outpatient Ophthalmic Surgery Society, Inc.* v. *Shalala,* No. 90–0305 (D.D.C. January 31, 1994).)

2. Criterion To Define a Class of New Technology Intraocular Lenses

There still is no universally accepted definition of what constitutes a ''class of new technology intraocular lenses.'' Section 141(b) of SSAA 1994 does not define new technology IOLs other than to specify that an IOL may not be treated as a new technology IOL unless it has been approved by the FDA. We must therefore first define the characteristics that distinguish a ''new technology'' IOL from other IOLs in order to comply with section 141(b) of SSAA 1994.

Section 141(b) of SSAA 1994 requires that we take clinical outcomes such as ''reduced risk of intraoperative or postoperative complication or trauma'' and ''reduced induced astigmatism'' into account in determining whether to provide a payment adjustment with respect to a particular IOL.

Because they are identified with such specificity, we infer that the clinical outcomes listed in the law are intended to characterize IOLs that belong to a ''class of new technology intraocular lenses,'' the use of which not only produces the specified clinical outcomes, but does so to a greater degree than other IOLs. We submit that the latter consideration is crucial because of the abundant evidence that demonstrates that IOLs have attained a level of technical sophistication, clinical success, and patient satisfaction that exceeds that of the more than 1 million IOLs implanted during clinical trials conducted between 1978 and 1982. (An analysis of the 1978 through 1982 clinical trial data forms the FDA's ''grid,'' the historical control group against which newer IOLs are measured.) To illustrate, 93 percent and 96.8 percent of patients in more recent trials of two IOLs that were approved in 1994 achieved visual acuity of 20/40 or better, compared to 88 percent of patients in the historical control group. The ''best cases,'' those without any preoperative ocular pathology or macular degeneration at any time, achieved visual acuity of 20/40 or better in 97 percent and 99.5 percent of the patients in the two newer trials, compared to 94 percent of the control group grid patients. The high level of improved vision and the low rate of adverse effects already attainable using currently available IOLs seem to leave little room for substantive improvements in the areas listed as desirable outcomes in SSAA 1994. At issue, then, is how to recognize IOLs that exceed the already superior levels of performance of IOLs readily accessible in the current market to such an extent that they warrant being recognized as belonging to a separate and distinct class of IOLs.

Determining if use of a particular IOL results in specific clinical outcomes, and the degree to which outcomes attainable by use of that IOL exceed what would be expected if a different IOL were used, requires an assessment of scientific data. We therefore considered convening an expert panel to evaluate claims of the clinical superiority of an IOL, or asking contractor medical directors to do so. Part of the FDA's responsibility is granting premarket approval of applications for new IOLs, through analysis by specialists such as ophthalmologists; chemical, biomedical, and mechanical engineers; microbiologists; and toxicologists. As part of the premarket approval process, an FDA group of experts evaluates

claims of safety and effectiveness, and approves the claims for the purposes of labeling and advertising. The FDA also has an advisory panel composed of practicing ophthalmologists and other clinicians who review clinical data and advise the FDA on the approvability of applications. This panel reviews any new device that presents new questions of safety and effectiveness.

Because the expertise and review process already exist within the Department of Health and Human Services, it would be duplicative for us to convene an expert panel for the purpose of evaluating claims of the clinical superiority of an IOL. Therefore, we propose that the criterion for identifying an IOL to be treated by us as a ''new technology'' IOL under the process proposed in this rule be that all claims of the IOL's specific clinical advantages and superiority over existing IOLs with respect to the factors listed in section 141(b) of SSAA 1994, for example, reduced risk of intraoperative or postoperative complication or trauma, accelerated postoperative recovery, reduced induced astigmatism, improved postoperative visual acuity, more stable postoperative vision, or other comparable clinical advantages, have been approved by the FDA for labeling and advertising purposes.

We asked the FDA if the premarket approval process would allow it to approve these claims for labeling and advertising purposes. The FDA responded on March 31, 1995 as follows:

> Intraocular lenses are regulated by the FDA as Class III, restricted devices that require premarket approval (PMA) prior to marketing in the United States. FDA's authority to regulate labeling can be found throughout the Federal Food, Drug and Cosmetic Act (FFDCA) (i.e., Sections 201, 301, 501, 502, 507, 519, 520, 701, 704). IOL labeling is reviewed and approved by the FDA as part of the PMA review process (Section 515(c)(1)(f) of the FFDCA). Any extraordinary labeling claims are similarly reviewed by the FDA as part of the PMA process. A device would be deemed to be misbranded if 'its labeling is false or misleading in any particular' (Section 502(a) of the FFDCA).
>
> As a restricted device, an intraocular lens would also be deemed to be misbranded if its advertising is false or misleading or lacks information required by the FFDCA, including intended uses (Sections 502(q) and (r) of the FFDCA). * * * Both clinical and bench testing could be used by firms to document additional claims, although clinical data would be needed if the clinical relevance or benefit of the ''high-tech'' feature were not well established.

In order to further define what distinguishes an IOL that would be treated as a ''new technology'' IOL under section 141(b) of SSAA 1994, we considered proposing as a second criterion the requirement that the IOL be appropriately characterized as a product of ''new technology.'' We would have expected a ''new technology'' IOL to embody materials, design, fabrication, or other features that are ''new,'' that is, original and generally recognized as a significant innovation relative to the materials, design, fabrication, or features of contemporary IOLs. However, any lens, whether new or previously approved, would have to demonstrate clinical advantages to the FDA's satisfaction in order to comply with the SSAA 1994 requirement of achieving clinical advantages. Thus, we hold the view that this definition of ''new'' is not required. We welcome comments on this issue.

Once we determine that an IOL satisfies the clinical criterion proposed above as the standard for treating an IOL as a ''new technology lens,'' that IOL will be considered as belonging to a ''class of new technology lenses'' for the purposes of implementing the payment review in accordance with section 141(b) of SSAA 1994 as described below.

3. Five-Year Limit on Subsets of ''New Technology''

We propose to impose certain constraints on payment adjustments that result from the process that is the subject of this proposed rule to ensure that Medicare payments for IOLs furnished under section 1833(i)(2)(A)(iii) of the Act remain reasonable and related to their acquisition cost.

We do not believe that all IOLs that could satisfy the overall criteria of ''new technology'' proposed in this rule would necessarily be of the same type or category. Rather, based on our assessment of the kinds of IOLs that are currently in clinical trials, we believe ''new technology'' IOLs could logically be grouped into smaller subsets of ''new technology,'' each of which is defined or identified by a common salient feature or characteristic, such as fabrication from the same material, or being multifocal in design, or designed to correct astigmatism.

For payment purposes, after we accept an IOL as satisfying the criterion that we have proposed for belonging to a ''class of new technology lenses,'' we propose to assign that IOL to a subset of IOLs with which it shares a common feature that distinguishes it from other ''new technology'' IOLs. We further propose to set the lifespan of each subset of ''new technology'' IOLs at 5 years. That is, beginning the sixth year following our initial recognition of a ''new technology'' subset, the new technology attribute that the IOLs in the subset have in common would cease to be considered a characteristic of ''new technology,'' and the Medicare payment adjustment for IOLs in that subset would be discontinued. We would not consider for payment adjustment any other IOLs whose primary distinguishing feature was that attribute. For IOLs approved at the beginning of the fifth year of the subset term, Medicare would pay any ''new technology'' adjustment for 1 year only.

We are proposing a 5-year limit because defining a ''new technology'' characteristic as ''new'' for fewer than 5 years does not seem fair to manufacturers whose model(s) of the new technology IOL may receive FDA approval sometime after the original IOL that opened the subset within the class of ''new technology'' IOLs receives its premarket approval. But to define a ''new technology'' characteristic as ''new'' for more than 5 years seems to impose an unnecessary and unwarranted drain on the Medicare trust fund, given the natural course of market forces that have repeatedly succeeded in reducing IOL costs in a few years following introduction of a modification or innovation in design or material.

4. Impact of Memorandum of Understanding

On September 19, 1995, we published a final rule with comment period in the **Federal Register** entitled ''Medicare Program; Criteria and Procedures for Extending Coverage to Certain Devices and Related Services'' (60 FR 48417). That regulation discussed a memorandum of understanding between the FDA and HCFA regarding extending Medicare coverage to certain investigational devices. Although the criteria to be used in the process described in the rule include determining whether or not a ''significant modification'' has been made to a device, that determination will not affect the process described in this proposed rule. We will consult with the FDA should issues arise concerning the classification of lenses.

*C. Appropriateness of Payment Amount*

SSAA 1994 requires us to review the appropriateness of the current IOL payment amount with respect to a class of new technology IOLs. Although SSAA 1994 itself does not provide explicit guidance on the standard for judging the appropriateness of the current IOL payment amount, section 1833(i)(2)(A)(iii) of the Act requires that the IOL payment amount included in

the ASC facility fee be reasonable and related to the cost of acquiring the class of IOL involved. Therefore, after we determine that an IOL meets the criterion that qualifies it to be treated as a new technology IOL under the process proposed in this rule, we must next determine if the current IOL payment amount is reasonable and related to the cost of acquiring that IOL.

At this time, the only method we are aware of for determining IOL acquisition costs is to survey purchasers and audit invoices. The OIG conducted such a survey in preparing its 1994 report entitled *Acquisition Costs of Prosthetic Intraocular Lenses*, OEI–05–92–01030. (Copies can be obtained from the Office of Inspector General, Department of Health and Human Services, (312) 353–4124.) The OIG found that when IOL payments were fixed at $200, ASCs could acquire and were acquiring IOLs for an average of $126 in 1991 and $112 in 1992. This does not take into account discounts available to the majority of purchasers because the financial arrangements took many forms, only a few of which were straightforward rebates or price reductions. The OIG also discovered that the newest type of IOL available at the time of its review (a foldable, ultraviolet-absorbing, silicone IOL) was obtainable within relatively the same price range as other IOLs in the study (from $75 to $475 for the foldable IOLs, compared to a range of $30 to $450 for rigid IOLs). The OIG determined that ASCs were buying foldable IOLs for $125 or less, at a time when the Medicare IOL payment amount was $200.

We are developing IOL cost data as part of the 1994 Medicare Ambulatory Surgical Center Payment Rate Survey of Facility Overhead and Procedure Specific Costs (Form HCFA–452B). Although that information is not yet available, we believe that the current payment amount of $150 continues to exceed the average cost to an ASC of acquiring an approved IOL.

We may find, however, that IOLs affected by this regulation will not have been in widespread use by ASCs at the time a review of the IOL is requested under the provisions of section 141(b) of SSAA 1994. Therefore, because actual acquisition cost information may be sparse, we propose also to take into account list price; manufacturing costs; selling costs; general and administrative overhead costs; research and development costs; manufacturer discount and rebate packages; and any other factors that may be relevant indicators that the current payment amount is not appropriate for the type of new technology IOL under review. We welcome comments on criteria that would facilitate an objective determination of what constitutes a payment that is both reasonable and related to acquisition cost with respect to ''new technology'' IOLs. The criteria should include the use of readily verifiable data, for example, studies published in peer-reviewed journals.

*D. Payment Adjustment When Current Payment Amount Is Inappropriate*

The final step in the process that is the subject of this proposed rule involves determining the amount of a payment adjustment if we find that the current IOL payment amount is inappropriate. Among the factors that we propose to take into account in order to determine the amount of the adjustment to be made if the current IOL allowance is found to be inappropriate with respect to the acquisition cost of the particular IOL are the following:

- Market projections based on anticipated clinical indications of need for the IOL and the percent of the Medicare population expected to present that need on an annual basis.
- Additional incremental costs incurred to manufacture a new technology IOL relative to the cost of manufacturing other IOLs, such as the cost attributable to using a more sophisticated piece of machinery or the cost of fabricating a new IOL material.
- Additional costs incurred to conduct clinical trials that document for FDA approval the clinical superiority of the IOL relative to the costs incurred to conduct clinical trials for other IOLs.
- Research and development costs incurred that exceed those associated with other IOLs approved by the FDA.
- Current and historical pricing, sales volume, and revenues.
- A reasonable rate of return and profit based on the manufacturer's investment in the IOL.

We considered other options for determining the amount of an adjustment to be made if the current payment amount was found to be inappropriate for an IOL being reviewed under the provisions proposed in this rule including—

- Application of a single flat, across-the-board percentage increase to the IOL payment amount for every IOL that we determined satisfied the criteria defining a ''new technology'' IOL;
- The percent of the IOL industry's investment in research and development that ultimately leads to innovations in IOLs; and
- The percentage of sales attributable to an IOL for which a review was requested.

We rejected these options, however, primarily because they are inconsistent with the overall statutory mandate that payment be reasonable and related to the cost of acquiring an IOL.

*E. Implementation of the Payment Adjustment*

1. Two-Year Limit on Payment Adjustment

A related issue pertains to the appropriate length of time the adjusted payment amount would be allowed by Medicare for a particular ''new technology'' IOL. We propose to allow a single IOL the benefit of any payment adjustment determined to be appropriate for a period of 2 years following the review process proposed in this rule. At the conclusion of the 2-year payment adjustment period, Medicare payment for the IOL would then revert to the payment rate for IOLs furnished by an ASC that is in effect at that time.

Supporting a 2-year payment limit is the OIG's 1994 report (*Acquisition Costs of Prosthetic Intraocular Lenses*, OEI–05–92–01030), which found a decrease in IOL prices generally over a 2-year period ranging from 11 to 14 percent in various settings. We assume this decrease is attributable to technology diffusion and the associated development of similar lenses by competing firms. We believe a desirable new technology IOL with demonstrated clinical superiority would be subject to equivalent conditions, and thus experience a similar drop in acquisition cost over a 2-year period.

2. Operational Payment Principles

The payment adjustments we publish in the **Federal Register** would be implemented prospectively, effective 30 days from the date of their publication. This implementation date of a payment adjustment is required under section 141(b) of SSAA 1994.

We propose to apply the same payment adjustment amount established for the first IOL or IOLs approved within a new technology subset to all IOLs that we subsequently accept as satisfying the criteria for ''new technology'' that are assigned to the same subset. If a new technology IOL were to qualify under more than one subset of technology, and the subsets had different payment rates, the IOL would be paid for at the higher (or highest) applicable rate.

We expect that more than one manufacturer would be working to develop IOLs that rely on the same or similar technology that defines ''new technology'' under the provisions of this

rule. If we were to make a payment adjustment under the provisions proposed in this rule, the payment adjustment amount would be based on information regarding IOL production, acquisition costs, and IOL benefits that is submitted by the manufacturer or manufacturers that first request review for a particular type of new technology IOLs. Manufacturers would have 3 years during which to submit requests for review of equivalent IOLs approved by the FDA that were in a ''new technology'' subset already approved by us and still benefit from the full 2-year payment adjustment term. Requests for review of an IOL submitted during the third year of a technology's designation as ''new'' would only have the benefit of a payment adjustment for 1 year.

If an interested party wants an IOL to be considered for a payment adjustment under section 141(b) of SSAA 1994, that interested party must request a review in accordance with the process proposed in this rule, which request would be approved and published in a final rule and codified in the Code of Federal Regulations. In accordance with section 141(b) of SSAA 1994, we would adhere to a yearly cycle of receiving requests for review, publishing those requests, reviewing comments on the requests, reviewing the requests, and publishing our determinations. We would not make determinations or provide for payment adjustments outside this schedule, although interested parties may submit requests for review as soon as FDA grants its approval. We would compile these requests for publication in the next applicable **Federal Register** notice.

We propose to assign codes to be used to bill for IOLs that qualify for the payment adjustment. The list of these IOLs, with the appropriate billing code, would be published annually in the **Federal Register**. Billing for any other IOLs using ''new technology'' billing codes would constitute fraud.

We invite comments on the suitability of these proposals and solicit suggestions for alternative approaches for determining how to identify IOLs as ''new technology''; for evaluating the appropriateness of the current IOL allowance; for calculating the amount of an adjustment to be made in the event the current IOL payment amount is found to be inappropriate with respect to a particular IOL; and for defining the period of time during which the payment adjustment would be in effect. We believe that any adjustment amount should be modest, since the high quality, readily accessible IOLs currently on the market leave only marginal room for improvement. We do not believe that an upward adjustment is warranted unless the new technology IOLs, as a group, cost more to produce, are appreciably superior clinically, and successfully fulfill a need unmet before that time in an innovative manner.

*F. Review and Adjustment Process*

In this section, we describe the process that we propose to implement annually in order to determine the appropriateness of IOL pricing as required under section 141(b) of SSAA 1994.

1. **Federal Register** Notice Inaugurates Annual Cycle

The process, which is designed to be repeated annually on a 365-day cycle, would be initiated by publication of a **Federal Register** notice that would serve a threefold purpose.

*a. Deadline for submission of a request for review. The publication date of the* **Federal Register** notice announcing the deadline by which any interested parties would have to submit requests in order for us to review the appropriateness of the Medicare payment allowance under section 1833(i)(2)(A)(iii) of the Act with respect to a particular IOL would be established as ''Day 1'' of the 365-day annual review cycle. The ''Day 1'' **Federal Register** notice would include the deadline for submission of requests to review (the date of publication of the **Federal Register** notice plus 125 days); the requirements to be satisfied in order for an IOL to be treated as a ''new technology'' IOL under section 141(b) of SSAA 1994; the specific information that must accompany a request for review as well as the format in which that information is to be submitted; the address to which the request is to be sent; the factors that we would take into account in determining whether the current IOL payment amount is appropriate; the factors that we would take into account in determining the payment adjustment to be made; and any other information that we believe is relevant and necessary.

*b. List of intraocular lenses for payment adjustment.* The **Federal Register** notice published on ''Day 1'' of the 365-day cycle, in addition to announcing the deadline for submission of requests to review for the forthcoming year, would list those IOLs, identified as new technology IOLs, for which we had found a payment adjustment to be appropriate during the prior year's review. The ''Day 1'' notice would also include information on the amount of any payment adjustment determined for a particular IOL; the subset of ''new technology'' under which each IOL would be classified; the beginning date of the period when the payment adjustment would be effective (''Day 1,'' the date of publication of the **Federal Register** notice, plus 30 days); the code(s) to be used to bill for the IOL; the expiration date of the period during which the payment adjustment would be allowed (2 years from the date of publication of the **Federal Register** notice); and, the expiration date of the IOL's ''new technology'' designation (5 years from the date of publication of the **Federal Register** notice). Because ASC rates are prospectively set, we would make payment adjustments prospectively.

*c. Summary of previous year's determinations.* The ''Day 1'' **Federal Register** notice would list any other IOLs to which a payment adjustment still applied as the result of reviews in earlier years; the type of ''new technology'' under which each IOL had been classified whether or not it qualified for a payment adjustment; the amount of the payment adjustment allowed for each type of IOL; the code(s) to be used to bill; and the dates when the ''new technology'' designation of the IOL and the applicable payment adjustment would expire.

2. Publication of Requests for Review

We would provide that we must receive requests for review no later than 125 days from the date of publication of the ''Day 1'' **Federal Register** notice inviting requests for review. We would compile a list of any requests for review that we received timely. The list, including the manufacturer's name and the model number of the IOL to be reviewed, would be published in a **Federal Register** notice with comment period. This second notice would be published no later than 245 days from the publication date of the first **Federal Register** notice that initiated the annual review cycle by inviting requests for review. The public would have 30 days to comment on the IOLs included in the list of those for which a payment review had been requested.

3. Our Review and Publication of Determinations

We would review any comments that were submitted regarding the list of IOLs published in the **Federal Register** along with the information submitted with the request to review to decide whether an adjustment of the current IOL payment amount was appropriate with respect to each IOL on the list. Because of the rigid time frame for this process, the applicant must submit sufficient information in a timely manner to allow for review. At our

discretion, we may request additional information. If an initial submission is incomplete, however, we would make a determination based on the information submitted.

As described in an earlier section, we propose to take the following factors into account in determining whether to provide a payment adjustment:

- The IOL meets the definition of a ''new technology IOL'' in § 416.180 (''Definitions'').
- The extent to which the current IOL payment amount is reasonable and reflects the acquisition cost of the IOL under review.

No later than 90 days after the close of the public comment period, we would publish in the **Federal Register** a notice announcing our determinations with respect to the requests for review that had been published 120 days previously announcing the amount of any new payment adjustments; announcing the deadline for submission of the upcoming year's requests for review 125 days from that time; and summarizing payment adjustments made previously that were still in effect. With publication of this notice, the annual cycle would be repeated with a new ''Day 1'' date.

The following table summarizes the key events in the annual review cycle that is the subject of this proposed rule:

| Event | Timeframe |
|---|---|
| Publication of a FEDERAL REGISTER notice inviting requests for review, announcing our determinations of adjustments to be made to ''new technology'' IOL payment amounts, and summarizing adjustments from prior years that are still in effect. | Date of publication of this notice constitutes ''Day 1'' of the annual review cycle. |
| Effective date for any payment adjustments that we determine are appropriate as published in the FEDERAL REGISTER on ''Day 1.''. | ''Day 1'' date plus 30 days. |
| Deadline for receipt of the IOL review requests for our consideration | ''Day 1'' date plus 125 days. |
| Publication in the FEDERAL REGISTER of the list of requests for review | ''Day 1'' date plus 245 days. |
| End of 30-day public comment period regarding the list of requests for review | ''Day 1'' date plus 275 days. |
| Publication of a FEDERAL REGISTER notice inviting requests for review, announcing our determinations of adjustments to be made to ''new technology'' IOL payment amounts, and summarizing adjustments from prior years that are still in effect. | ''Day 1'' date plus 365 days; cycle starts over with new ''Day 1.'' |

To summarize the process that we propose in this rule, in order for us to treat an IOL as a new technology IOL under the provisions of SSAA 1994, the IOL must have obtained FDA approval to include in labeling and advertising claims of superior clinical advantages over other IOLs. If we find that the IOL for which a review is requested meets this criterion and if we determine that the current payment amount for IOLs furnished by ASCs is inappropriate with respect to the IOL, that is, the current IOL payment amount is not reasonable and is not related to the cost of acquiring the IOL, we would adjust the payment amount for the IOL. In determining the amount of adjustment, we propose to take into account development and manufacturing costs and sales projections as elements of cost with respect to the IOL under review, both alone and relative to other IOLs.

*G. Requirements for Content of a Request To Review*

We propose to require interested parties seeking a review of the IOL allowance under section 141(b) of the SSAA 1994 to submit certain information that we regard as critical if we are to make a fair and objective determination that the payment amount for an IOL paid under section 1833(i)(2)(A)(iii) of the Act is or is not appropriate. Interested parties requesting a review of the IOL payment amount with respect to a particular IOL would be required to submit the following: identification of the individual IOL under consideration as a ''new technology'' IOL for which a payment review is requested, including the name of the manufacturer, model number, trade name, and the date the FDA granted premarket approval for the IOL; a copy of the FDA's summary of safety and effectiveness; a copy of the labeling claims of specific clinical advantages approved by the FDA; reports of modifications made after FDA approval; development and manufacturing costs of the ''new technology'' IOL relative to the costs of manufacturing other approved IOLs; the costs of conducting clinical trials for the IOL in question relative to the costs of conducting clinical trials for other approved IOLs; indications and contraindications for use; epidemiological data indicating demand for the IOL; sales price, sales history, and revenues, and prices and projected revenues during the period of the payment adjustment; names of purchasers; and other information we consider appropriate for making a determination. We cannot be all-inclusive in this list since we may need information that we cannot foresee at this time. We may modify our requests for information as changes in technology dictate. We may request supplemental information from individual interested parties during the review process. The interested party would be responsible for demonstrating to our satisfaction that a payment adjustment for the IOL under review is warranted, especially given the widespread availability of high quality IOLs at a cost equal to or less than the current Medicare IOL allowance. The burden of proof would be on the interested party to show that the current IOL payment amount is inappropriate for the new technology IOL for which a review is requested.

Interested parties should be aware that 45 CFR 5.65(c) provides that a submitter of information may designate all or part of the information as being exempt from mandatory disclosure under Exemption 4 of the Freedom of Information Act.

## III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

## IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

## V. Regulatory Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act

(RFA) (5. U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all manufacturers of IOLs, ASCs, hospital outpatient departments, and physicians who perform IOL insertion surgery to be small entities. Individuals and States are not included in the definition of a small entity. We are not preparing a regulatory flexibility analysis because we have determined, and the Secretary certifies, that this proposed regulation would not have a significant economic impact on a substantial number of small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule would have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing a rural hospital impact statement because we have determined, and the Secretary certifies, that this proposed regulation would not have a significant impact on the operations of a substantial number of small rural hospitals.

Although this proposed rule is not an ''economically significant'' rule under Executive Order 12866, we present below a voluntary analysis of the effects of this proposed rule because many beneficiaries who undergo IOL insertion surgery following a cataract extraction could be affected.

We believe that the fiscal impact of this rule would be negligible. We do not expect that making this payment adjustment would have an impact on the availability or prices of other IOLs. We do not expect that it would affect competition, employment, or investment. The ocular implant industry is mature, with a successful product readily available to purchasers. Our data suggest that we pay, under the Medicare program, more than the acquisition cost for most of the IOLs used today. New technology IOLs would achieve improvements in only small segments of the industry, since the majority of IOLs function superbly. The IOLs under development that we are aware of would substitute for spectacles in some cases, and in others would allow the patient to wear a single vision prescription rather than bifocals. The desirability of this feature to the Medicare population is not known.

There would be no significant program savings, even if the use of these IOLs reduced expenditures for spectacles or eliminated the need for follow-up treatment. The complexities of claims processing for an additional payment on top of a bundled, fixed payment would be considerable. Manual claims processing or a significant reconfiguration of claims processing software would be required. The payment method for ASC-type procedures performed in hospital outpatient departments requires that we use a blend of 42 percent of the hospital's costs or charges and 58 percent of the ASC rate as a basis for payment. The addition of an adjustment to two of the ASC rates would complicate hospital payment. The review process to determine which IOLs qualify for a payment adjustment would be costly in terms of staff hours and **Federal Register** publication costs. We would have to develop new codes to identify specific IOLs, which creates the possibility of ''upcoding,'' or using those codes for IOLs not eligible for the adjustment. We would also have to undertake an extensive educational effort, to explain the use of the new codes to the provider community and to our contractors. This would involve manual issuances and program memoranda. These direct and indirect costs more than outweigh the marginal benefit available to a few manufacturers.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

### List of Subjects in 42 CFR Part 416

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR part 416 would be amended as follows:

## PART 416—AMBULATORY SURGICAL SERVICES

1. The authority citation for part 416 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. A new subpart F, consisting of §§ 416.180, 416.185, 416.190, 416.195, and 416.200, is added to read as follows:

### Subpart F—Adjustment in Payment Amounts for New Technology Intraocular Lenses

Secs.

416.180 Definitions.
416.185 Payment review process.
416.190 Who may request a review.
416.195 Content of a request to review.
416.200 Application of the payment adjustment.

### Subpart F—Adjustment in Payment Amounts for New Technology Intraocular Lenses

#### § 416.180 Definitions.

As used in this subpart, the following definitions apply:

Class of new technology intraocular lenses (IOLs) means all of the IOLs, collectively, that HCFA determines to have met the definition of ''new technology IOL'' under the provisions of this subpart.

Interested party means any individual, partnership, corporation, association, society, scientific or academic establishment, professional or trade organization, or any other legal entity.

New technology IOL means an IOL that HCFA determines to have met the following criterion: The FDA has approved for use in labeling and advertising the IOL's claims of specific clinical advantages and superiority over existing IOLs with regard to reduced risk of intraoperative or postoperative complication or trauma, accelerated postoperative recovery, reduced induced astigmatism, improved postoperative visual acuity, more stable postoperative vision, or other comparable clinical advantages.

New technology subset means a group of IOLs that HCFA determines to meet the criterion for being treated as new technology IOLs and that share a common feature or features that distinguish them from other IOLs. For example, all new technology IOLs that are made of a particular bioengineered material could comprise one subset, while all that rely on a particular optical innovation could comprise another.

#### § 416.185 Payment review process.

(a) HCFA publishes a **Federal Register** notice announcing the deadline and requirements for submitting a request for HCFA to review payment for an IOL.

(b) HCFA receives requests for review of payment for an IOL.

(c) HCFA compiles a list of the requests it receives timely and identifies the IOL manufacturer's name, the model number of the IOL to be reviewed, the interested party or parties that submit requests, and a summary of the interested party's grounds for requesting review of the appropriateness of the IOL payment amount.

(d) HCFA publishes the list of requests in a **Federal Register** notice with comment period, giving the public 30 days to comment on the IOLs for which review was requested.

(e) HCFA reviews the information submitted with the request to review, any timely comments that are submitted regarding the list of IOLs published in the **Federal Register**, and any other timely information that HCFA deems relevant to decide whether to provide a payment adjustment. Factors that HCFA takes into account in determining whether the IOL payment amount provided under section 1833(i)(A)(2)(iii) of the Act is appropriate with respect to an IOL for which a review was requested include, but are not limited to, the following:

(1) Whether the IOL meets the definition of a ''new-technology IOL'' in § 416.180.

(2) What it costs ASCs to acquire IOLs in the new technology subset to which the IOL under review belongs.

(3) Whether the current IOL payment allowance is reasonable with regard to the IOL under review.

(f) If HCFA determines that the current IOL payment allowance is not appropriate for the IOL under review, HCFA establishes a payment adjustment that takes into account the following factors:

(1) IOL manufacturing costs.

(2) The IOL manufacturer's selling costs and general and administrative overhead costs.

(3) Research and development costs attributable to the IOL.

(4) Manufacturer discount and rebate packages.

(5) Other information that HCFA considers appropriate in determining a payment adjustment.

(g) Within 90 days of the end of the comment period following the **Federal Register** notice identified in paragraph (d) of this section that lists IOLs for which a review was requested, HCFA publishes its determinations with regard to payment adjustments in the **Federal Register**. In the same **Federal Register** notice, HCFA also announces the deadline and requirements for submitting requests for the next annual cycle of reviews.

(h) Payment adjustments are effective beginning 30 days after the publication of HCFA's determinations in the **Federal Register**.

**§ 416.190 Who may request a review.**

Any party who is able to furnish the information required in § 416.195 may request that HCFA review the appropriateness of the payment amount provided under section 1833(i)(2)(A)(iii) of the Act with respect to an IOL that meets the definition of a new technology IOL in § 416.180.

**§ 416.195 Content of a request to review.**

The interested party requesting a review of the IOL payment amount must timely furnish convincing evidence that the payment amount provided under section 1833(i)(2)(A)(iii) of the Act is not appropriate for a new technology IOL and that a payment adjustment is reasonable and warranted.

(a) Requirements for a request to review the appropriateness of the IOL payment amount for a new technology IOL. In order for HCFA to consider a request to review the IOL payment amount with regard to a particular IOL, the request must meet all of the following requirements:

(1) Identification of an IOL. The interested party must provide the following information:

(i) The name of the manufacturer, the model number, and the trade name of the IOL.

(ii) A copy of the FDA's summary of the IOL's safety and effectiveness.

(iii) A copy of the labeling claims of specific clinical advantages approved by the FDA for the IOL.

(iv) A copy of the IOL's original FDA approval notification.

(v) Reports of modifications made subsequent to original FDA approval.

(vi) Indications and contraindications for use of the IOL.

(vii) Epidemiological data indicating demand for the IOL.

(viii) Other information that HCFA finds necessary for identification of the IOL.

(2) IOL costs. To enable HCFA to review the appropriateness of the payment amount provided under section 1833(i)(2)(A)(iii) of the Act with regard to the IOL, the following documented evidence of the cost of the IOL and the manufacturer's investment in the IOL is required:

(i) The manufacturer's current list price for the IOL and a history of the IOL's pricing since FDA approval was obtained.

(ii) Manufacturing costs of the IOL relative to the costs of manufacturing other approved IOLs.

(iii) Research and development costs incurred to create the IOL, using research and development costs of other FDA-approved IOLs for purposes of comparison.

(iv) Costs incurred to conduct clinical trials for the purpose of demonstrating for FDA approval the clinical superiority of the IOL relative to the costs incurred to conduct clinical trials for other approved IOLs.

(v) Sales and revenue history of the IOL, and sales and revenues projected for the IOL if a payment adjustment were approved by HCFA.

(vi) Names of purchasers of the IOL.

(vii) Other information HCFA finds necessary for making a determination.

(b) Confidential information. To the extent that information received from an IOL manufacturer can reasonably be characterized as a trade secret or as privileged or confidential commercial or financial information, Exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and, with respect to trade secrets, the Trade Secrets Act (18 U.S.C. 1905), allow HCFA to maintain the confidentiality of the information and to protect it from disclosure not otherwise authorized or required by Federal law.

**§ 416.200 Application of the payment adjustment.**

(a) New technology subset. (1) HCFA designates a predominant characteristic of a new technology IOL that both sets it apart from other IOLs and links it with other similar IOLs with the same characteristic to establish within the ''class of new technology IOLs'' a specific subset of new technology.

(2) Each subset is recognized for purposes of this subpart as belonging to the class of new technology IOLs for a period of 5 years, effective beginning the date that the first IOL that defines the subset is identified.

(3) During the fifth year following the date that the first IOL is designated as belonging to the subset, requests to review IOLs that would be considered part of the subset that expires at the end of the year are not considered.

(4) Beginning on the sixth anniversary date of the effective date of the recognition of a subset, payment adjustments applicable to IOLs in that subset cease for all IOLs in that subset and payment reverts to the payment rate in effect at that time for IOLs under section 1833(i)(2)(A)(iii) of the Act.

(b) Duration of payment adjustment. (1) Any single model of IOL for which HCFA determines that a payment adjustment is appropriate receives the payment adjustment for a period of 2 years.

(2) On the second anniversary date of implementation of a payment adjustment approved for the IOL under the provisions of this subpart, payment for the IOL reverts to the IOL payment rate in effect at that time under section 1833(i)(2)(A)(iii) of the Act.

(c) Similarity of payment adjustment. All IOLs included in the same subset of new technology IOLs and for which HCFA determines a payment adjustment is appropriate receive the same payment adjustment.

(d) Basis for payment. (1) In order for HCFA to consider an IOL for a payment

adjustment under this subpart, an interested party must submit timely a request for review prepared in accordance with the requirements in § 416.195, and the IOL must be included in the list of requests for review that is published annually in the **Federal Register** in accordance with the process described in § 416.185.

(2) In order for HCFA to make an IOL payment adjustment under this subpart, the IOL for which the adjustment is approved must be identified in the list of determinations HCFA publishes in the **Federal Register** 125 days after publication of the list of requests for review.

(i) HCFA assigns a unique billing code to each IOL for which it determines a payment adjustment is appropriate.

(ii) Using the billing code assigned to an IOL for which HCFA determines a payment adjustment is appropriate under this subpart in order to bill for a different IOL constitutes fraud.

(Sections 1832(a)(2)(F)(i) and 1833(i)(2)(a) of the Social Security Act (42 U.S.C. 1395k(a)(2)(F)(i) and 1395l(i)(2)(a)))

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 17, 1997.

**Bruce C. Vladeck,**

*Administrator, Health Care Financing Administration.*

Dated: March 10, 1997.

**Donna E. Shalala,**

*Secretary.*

[FR Doc. 97–23380 Filed 9–3–97; 8:45 am]

BILLING CODE 4120–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 97–189, RM–9135]**

### Radio Broadcasting Services; Nassawadox, VA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Ken Robol requesting the allotment of Channel 252A to Nassawadox, Virginia, as the community's first local aural transmission service. Channel 252A can be allotted to Nassawadox in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 252A at Nassawadox are 37–28–24 NL and 75–51–30 WL.

**DATES:** Comments must be filed on or before October 20, 1997, and reply comments on or before November 4, 1997.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Ken Robol, 303 Amherst Court, Chesapeake, Virginia 23320 (petitioner).

**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. 97–189, adopted August 20, 1997, and released August 29, 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 contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 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. 97–23437 Filed 9–3–97; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 97–187, RM–9149]**

### Radio Broadcasting Services; Patterson, IA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by West Wind Broadcasting requesting the allotment of Channel 290A to Patterson, Iowa, as the community's first local aural transmission service. Channel 290A can be allotted to Patterson in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 290A at Patterson are 41–20–54 NL and 93–52–49 WL.

**DATES:** Comments must be filed on or before October 20, 1997, and reply comments on or before November 4, 1997.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael, Jr., President, West Wind Broadcasting, c/o Magic City Media, 1912 Capitol Avenue, Suite 300, Cheyenne, Wyoming 82001 (petitioner).

**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. 97–187, adopted August 20, 1997, and released August 29, 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 contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

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. 97–23438 Filed 9–3–97; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 97–190; RM–9139]**

### Radio Broadcasting Services; Ipswich, SD

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Mountain Tower Broadcasting proposing the allotment of Channel 300A at Ipswich, South Dakota, as the community's first local aural transmission service. Channel 300A can be allotted to Ipswich in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 300A at Ipswich are North Latitude 45–26–42 and West Longitude 99–01–48.

**DATES:** Comments must be filed on or before October 20, 1997, and reply comments on or before November 4, 1997.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Victor A. Michael, Jr., President, Mountain Tower Broadcasting, c/o Magic City Media, 1912 Capitol Avenue, Suite 300, Cheyenne, Wyoming 82001(Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–190, adopted August 20, 1997, and released August 29, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

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. 97–23441 Filed 9–3–97; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 97–191; RM–9140]**

### Radio Broadcasting Services; Murdo, SD

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Windy Valley Broadcasting proposing the allotment of Channel 285A at Murdo, South Dakota, as the community's first local aural transmission service. Channel 285A can be allotted to Murdo in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 285A at Murdo are North Latitude 43–53–24 and West Longitude 100–43–06.

**DATES:** Comments must be filed on or before October 20, 1997, and reply comments on or before November 4, 1997.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Victor A. Michael, Jr., President, Windy Valley Broadcasting, c/o Magic City Media, 1912 Capitol Avenue, Suite 300, Cheyenne, Wyoming 82001 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–191, adopted August 20, 1997, and released August 29, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

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. 97–23440 Filed 9–3–97; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 97–188, RM–9137]**

### Radio Broadcasting Services; Macon, MS

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Team Broadcasting Company, Inc., requesting the allotment of Channel 244A to Macon, Mississippi, as the community's local aural transmission service. Channel 244A can be allotted to Macon in compliance with the Commission's minimum distance separation

requirements with a site restriction of 4.6 kilometers (2.9 miles) west in order to avoid a short-spacing conflict with the licensed operation of Station WMJJ–FM, Channel 243C, Birmingham, Alabama. The coordinates for Channel 244A at Macon are 33–07–25 NL and 88–36–34 WL.

**DATES:** Comments must be filed on or before October 20, 1997, and reply comments on or before November 4, 1997.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Ruben C. Hughes, President, Team Broadcasting Company, Inc., 561 Golden Avenue, Mobile, Alabama 36617 (Petitioner).

**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. 97–188, adopted August 20, 1997, and released August 29, 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 contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 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. 97–23439 Filed 9–3–97; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition to List the Alexander Archipelago Wolf as Threatened and to Designate Critical Habitat

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 12-month petition finding.

**SUMMARY:** The Fish and Wildlife Service (Service) announces a 12-month finding for a petition to list the Alexander Archipelago wolf (*Canis lupus ligoni*) under the Endangered Species Act of 1973, as amended. After review of all available scientific and commercial information, the Service finds that listing the Alexander Archipelago wolf as threatened is not warranted.

**DATES:** The finding announced in this document was made on August 28, 1997.

**ADDRESSES:** Data, information, comments, or questions concerning this petition should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 3000 Vintage Blvd., Suite 201, Juneau, Alaska 99801–7100. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** John Lindell, Fish and Wildlife Biologist, at the above address, or by calling 907/586–7240.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information, the Service make a finding on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority.

On December 17, 1993, the Service received a petition to list the Alexander Archipelago wolf as threatened under the Act from the Biodiversity Legal Foundation, Eric Holle, and Martin Berghoffen. On May 20, 1994, the Service announced a 90-day finding (59 FR 26476) that the petition presented substantial information indicating that the requested action may be warranted and opened a public comment period until October 1, 1994 (59 FR 26476 and 59 FR 44122). The Service issued its 12-month finding that listing the Alexander Archipelago wolf was not warranted on February 23, 1995 (60 FR 10056).

On February 7, 1996, the Southwest Center for Biological Diversity, Biodiversity Legal Foundation, Save the West, Save America's Forests, Native Forest Network, Native Forest Council, Eric Holle, Martin Berghoffen, and Don Muller filed suit in the United States Court for the District of Columbia challenging the Service's not warranted finding. On October 9, 1996, the United States District Court remanded the 12-month finding to the Secretary of the Interior, instructing him to reconsider the determination ''on the basis of the current forest plan, and status of the wolf and its habitat, as they stand today'' (96 CV 00227 DDC).

On December 5, 1996, a public comment period was opened by the Service (61 FR 64497). It was extended until April 4, 1997, through three subsequent notices (61 FR 69065; 62 FR 6930; and 62 FR 14662). Prior to a final determination, however, the Forest Service issued the Tongass Land Management Plan Revision, which superseded the 1979 version of the plan. In keeping with the United States District Court's order that a finding be based upon the ''current forest plan,'' the District Court granted an extension until August 31, 1997, so that the petitioners, the public, and the Service could reconsider the status of the Alexander Archipelago wolf under the revised Tongass Land Management Plan. Therefore, the Service reopened the public comment period from June 12, 1997, to July 28, 1997 (62 FR 32070).

The Service has reevaluated the petition and the literature cited in the petition, reviewed other available literature and information, and consulted with biologists and researchers familiar with gray wolves in general, and the Alexander Archipelago wolf in particular. The 1997 revised Tongass National Forest Land Management Plan formed the basis for evaluating the status of the wolf on the Tongass National Forest. On the basis of the best scientific and commercial information available, the Service finds that listing the Alexander Archipelago wolf as threatened is not warranted.

The taxonomic status of wolves in southeast Alaska, commonly referred to as Alexander Archipelago wolves, is uncertain. Nevertheless, the Service believes that there is persuasive support

in the record for treating southeast Alaska wolves as a distinct subspecies, *Canis lupus ligoni*, and, therefore, believes that it is reasonable to review the status of wolves in southeastern Alaska as a listable entity under the Endangered Species Act.

The Alexander Archipelago wolf occurs on the mainland in southeast Alaska from Dixon Entrance to Yakutat Bay and on all the major islands in the Alexander Archipelago except Admiralty, Baranof and Chichagof islands. Wolves in southeast Alaska are relatively isolated by the Pacific Ocean and the Coast Mountain Range. Six rivers or passes penetrate the Coastal Mountains and may allow some interchange between wolves in southeast Alaska and those in British Columbia, Canada. Wolves in Alaska and coastal British Columbia may also interchange along the coastal mainland; however, the amount of interchange between Alaska and British Columbia wolves has not been studied.

The current population of Alexander Archipelago wolves is thought to be stable at moderate to high densities. The population size of wolves in southeast Alaska is not known with certainty but probably numbers between 750 and 1,500 individuals. About 67 percent of the population is estimated to live on the islands in the central and southern portion of the archipelago.

Potential threats to the species' persistence include human-caused mortality, disease, loss of prey as a result of timber harvest, and loss of prey as the result of severe winter weather. Results from a recent scientific study indicate that hunting and trapping of wolves may have exceeded sustainable levels on Prince of Wales and Kosciusko Islands, Alaska. In response to that study, the Alaska Board of Game and the Federal Subsistence Board revised hunting and trapping regulations in southeast Alaska to limit annual wolf harvest to acceptable levels.

Canine diseases have been documented in other North American wolf populations. Evidence from these other populations indicates that although disease may cause mortality, it is unlikely to have an effect on the population of Alexander Archipelago wolves.

The Service considers potential loss of prey the most serious threat. Wolves are capable of exploiting a variety of ungulate and nonungulate prey. Within the major island groups in southeast Alaska, where wolves are most abundant and logging is most prevalent, Sitka black-tailed deer and, to a lesser extent, beaver are the most commonly used prey. On the mainland, goats are the most commonly used ungulate prey. Moose and elk have very limited distributions in southeast Alaska and are probably used where available.

Logging on the Tongass National Forest has been concentrated in high volume forests since industrial scale logging began in 1955. These forests are important winter habitat for deer because the multilayered canopies intercept snow and allow deer access to highly nutritious forage that is not available in most clearcuts and second-growth forests. Much of the harvest has occurred within the major island groups and adjacent mainland occupied by wolves. The projected logging of old growth in southeast Alaska will result in a decline of deer in southeast Alaska. Effects of logging will be particularly evident during winters with heavy snow that persists on the forest floor for long periods of time. Because wolves are inextricably tied to their prey, declines in deer are expected to eventually result in declines of wolves.

Despite the anticipated population decline, the Service believes that wolves in southeast Alaska will not be in danger of extinction within the foreseeable future because we expect the population decline to stop at an acceptable level. Additionally, wolves are known to persist at low numbers in healthy populations and to be resilient to the activities of man because of their high reproductive rate and high dispersal capability. The Service, therefore, concludes that the Alexander Archipelago wolf is unlikely to become endangered throughout all or a significant portion of its range in the foreseeable future.

Authors: The primary authors of this document are Teresa Woods, Fish and Wildlife Biologist, 907/786–3505, and Tony DeGange, Fish and Wildlife Biologist, 907/786–3492, of the Fish and Wildlife Service, Alaska Regional Office.

## Authority

The authority for this section is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: August 28, 1997.

**Jamie Rappaport Clark,**

*Director, Fish and Wildlife Service.*

[FR Doc. 97–23501 Filed 9–3–97; 8:45 am]

BILLING CODE 4310–55–P

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

# Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition To List the Queen Charlotte Goshawk as Endangered and To Designate Critical Habitat

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 12-month petition finding.

**SUMMARY:** The Fish and Wildlife Service (Service) announces a 12-month finding for a petition to list the Queen Charlotte goshawk (*Accipiter gentilis laingi*) under the Endangered Species Act of 1973, as amended. After review of all available scientific and commercial information, the Service finds that listing this subspecies as endangered or threatened is not warranted.

**DATES:** The finding announced in this document was made on August 28, 1997.

**ADDRESSES:** Data, information, comments, or questions concerning this petition should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 3000 Vintage Blvd., Suite 201, Juneau, Alaska 99801–7100. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** John Lindell, Fish and Wildlife Biologist, at the above address, or by calling 907/586–7240.

**SUPPLEMENTARY INFORMATION:**

## Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information, the Service make a finding on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority.

On May 9, 1994, the Fish and Wildlife Service received a petition dated May 2, 1994, from the Southwest Center for Biological Diversity, Greater Gila Biodiversity Project, Biodiversity Legal Foundation, Greater Ecosystem Alliance, Save the West, Save America's

Forests, Native Forest Network, Native Forest Council, Eric Holle, and Don Muller, to list the Queen Charlotte goshawk as endangered under the Endangered Species Act. The petition was based largely upon the present and impending effects of timber harvest in the Tongass National Forest on the Queen Charlotte goshawk. On August 26, 1994, the Service published a positive 90-day finding (59 FR 44124) that substantial information was presented in the petition indicating that the requested action may be warranted.

In accordance with the Service's listing petition procedures, the positive 90-day finding initiated a more thorough 12-month evaluation, and based on this evaluation the Service determined on May 19, 1995, that listing was not warranted (60 FR 33784).

On November 17, 1995, the Southwest Center for Biological Diversity, Biodiversity Legal Foundation, Save the West, Save America's Forests, Native Forest Network, Native Forest Council, Eric Holle, and Don Muller filed a complaint in United States District Court, District of Columbia, against the Department of the Interior and the Service for their refusal to list the Queen Charlotte goshawk and designate critical habitat. On September 25, 1996, the United States District Court remanded the 12-month finding to the Secretary of the Interior, instructing him to reconsider the determination ''on the basis of the current forest plan, and status of the goshawk and its habitat, as they stand today'' (95 CV 02138 DDC).

Accordingly, the Service began to reconsider the status of the subspecies on the basis of the 1979 Tongass Land Management Plan, which was at that time the ''current forest plan.'' A public comment period opened on December 5, 1996 (61 FR 64497) and was extended through April 4, 1997 (61 FR 69065; 62 FR 6930; and 62 FR 14662) to gather all available information for review. Prior to a final determination, however, the USDA Forest Service issued the 1997 Tongass Land Management Plan Revision, which superseded the 1979 version of the plan. In keeping with the United States District Court's order that a finding be based upon the ''current forest plan,'' the District Court granted an extension until August 31, 1997, so that the petitioners, public, and Service could reconsider the status of the Queen Charlotte goshawk under the revised Tongass Land Management Plan. Therefore, the Service reopened the public comment period from June 12 to July 28, 1997 (62 FR 32070). We based this finding, therefore, upon all available information on the subspecies throughout its range, as well as long-term habitat projections for the Tongass National Forest included in the 1997 Tongass Land Management Plan Revision.

The northern goshawk (*Accipiter gentilis*) occurs in boreal and temperate forests of North America, Europe, and Asia. This notice pertains exclusively to the Queen Charlotte goshawk (*A. g. laingi*), a subspecies that occurs in the coastal temperate rainforests of southeast Alaska and British Columbia, Canada. Although some uncertainty surrounds the exact range of the subspecies and the zones of intergradation between it and *A. g. atricapillus* (which is the subspecies that occurs in adjacent areas), the distribution of the Queen Charlotte goshawk is currently described as the islands and mainland of southeast Alaska south of Icy Strait and Lynn Canal, and the Queen Charlotte Islands and Vancouver Island in British Columbia.

Queen Charlotte goshawks are difficult to census, and no reliable population estimates or population trend data are available. However, recent research has shown that the Queen Charlotte goshawk has a strong association with productive old-growth forest, where it usually nests, spends the majority of its time, and which provides habitat for most of the hawk's important prey species. Therefore, harvest of productive old-growth forest is likely to adversely affect the Queen Charlotte goshawk, and an interagency team of experts recently concluded that the goshawk's abundance has likely declined in recent years as a result of habitat loss. In 1994, the Alaska Region of the Forest Service designated the Queen Charlotte goshawk as a sensitive species, and the Alaska Department of Fish and Game designated the subspecies as a ''species of special concern.'' The Committee on the Status of Endangered Wildlife in Canada designated the Queen Charlotte goshawk as ''vulnerable'' in Canada in 1995, and the Province of British Columbia added the subspecies to their ''red list'' of candidates for endangered or threatened status.

The Service has identified four factors associated with timber harvest have been identified as potential threats to the subspecies' persistence. They are loss of nesting habitat, a reduction in foraging success, increased predation, and a reduction in dispersal and gene flow. However, there is little information on these threats, so assessment of their effects on goshawks at the population level remain largely speculative. As a result, in evaluating the Queen Charlotte goshawk's status, the Service has relied primarily upon consideration of the proportion of productive old-growth forest that has been, and is projected to be, affected by logging.

In southeast Alaska, when habitat projections for the Tongass National Forest (derived from the 1997 Revision to the Tongass Land Management Plan) were added to estimates for private and State lands, approximately 57 percent of the original productive old-growth forest is contained within large reserves where timber harvest is prohibited. In the matrix, which is the area outside of reserves where harvest can take place, another 18 percent of the original productive old-growth forest will be maintained by measures intended to protect beach and estuary fringes, riparian corridors, and other resources. Thus, a total of 75 percent of the original preferred habitat will remain intact. Although fragmentation may compromise habitat quality in some areas, the Service believes that large reserves will provide sufficient habitat for goshawks to ensure that the subspecies will persist throughout southeast Alaska in well-distributed local populations.

In British Columbia, approximately 64 percent of the original productive old-growth forest will be protected on the Queen Charlotte Islands, with 20 percent in reserves and 44 percent maintained within the matrix. On Vancouver Island, considerably less of the original old-growth will be protected: 13 percent of the old-growth is contained within reserves and 23 percent will be protected in the matrix, for a total of 36 percent of the total. There is insufficient information to predict the effect of removing 64 percent of the old growth forest on goshawk abundance on Vancouver Island. However, given that 75 percent and 64 percent of the original productive old growth forest will remain intact in southeast Alaska and the Queen Charlotte Islands, respectively, the Service believes with a high degree of certainty that Queen Charlotte goshawks will persist and do not warrant listing under section 4 of the Endangered Species Act.

Authors: The primary authors of this document are Ted Swem, Wildlife Biologist, Fairbanks Ecological Services Office, 907/456–0441, and Teresa Woods, Fish and Wildlife Biologist, 907/786–3505 of the Alaska Regional Office.

**Authority**

The authority for this section is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: August 28, 1997.

**Jamie Rappaport Clark.**

*Director, Fish and Wildlife Service.*

[FR Doc. 97–23502 Filed 9–3–97; 8:45 am]

BILLING CODE 4310–55–P

# Notices

Federal Register

Vol. 62, No. 171

Thursday, September 4, 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

### Foreign Agricultural Service

### Extension of a Currently Approved Information Collection

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Foreign Agricultural Service's intention to request an extension and revision for a currently approved information collection in support of the Buyer Alert program based on re-estimates.

**DATES:** Comments on this notice must be received by November 3, 1997 to be assured of consideration.

**REQUEST FOR COMMENTS:** Send comments regarding (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to and copies of the Buyer Alert program applications form may be obtained from: Charles T. Alexander, Director, AgExport Services Division, Commodity and Marketing Programs, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Stop 1052, Washington, D.C. 20250–1052. All written comments received will be available for public inspection at the above address during business hours from 8:00 a.m. to 5:00 p.m.—Phone (202) 720–0159, Fax: (202) 720–0193.

**SUPPLEMENTARY INFORMATION:**

*Title:* Buyer Alert Program.

*OMB Number:* 0551–0024.

*Expiration Date of Approval:* November 30, 1997.

*Type of Request:* Extension and revision of a currently approved information collection.

*Abstract:* The Buyer Alert program is an advertising service provided to any U.S. agricultural exporter of food, farm, and forest products. This service is intended to assist the first time exporter or small and medium size U.S. companies in advertising their product to foreign buyers. Advertisements are distributed by USDA overseas offices via a bi-weekly newsletter and other means to reach foreign buyers and importers. An exporter may advertise up to five different products. Each advertisement provides a product description, offer terms, and information about the exporter. This information is collected by the USDA from an application form which the exporter completes to initiate placement of an advertisement in the Buyer Alert program. The information is necessary to facilitate effective advertisement and marketing of the U.S. agricultural product in overseas markets. Authority for this program falls under 7 U.S.C. Part 1761. The program is voluntary. A small fee is charged for use of the service.

*Estimate of Burden:* The burden to U.S. exporters is estimated to average 0.17 hours per response.

*Respondents:* U.S. agricultural exporters of food, farm, and forest products.

*Estimated Number of Respondents:* 600 per annum.

*Estimated Number of Responses per Respondent:* 3 per annum.

*Estimated Total Annual Burden of Respondents:* 306 hours per annum.

Copies of this information collection can be obtained from Valerie Countiss, the Agency Information Collection Coordinator, at (202) 720–6713.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C. August 28, 1997.

**Timothy J. Galvin,**

*Acting Administrator, Foreign Agricultural Service.*

[FR Doc. 97–23456 Filed 9–3–97; 8:45 am]

BILLING CODE 3410–10–M

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration.

*Title:* Southeast Region Federal Fisheries Permits Family of Forms.

*Agency Form Number:* None.

*OMB Approval Number:* 0648–0205.

*Burden:* 1,651 hours.

*Avg. Hours Per Response:* Ranges between 5 and 45 minutes depending on the requirement.

*Needs and Uses:* One of the steps taken to manage regulated fisheries is to issue permits to users of the resources. Permits are issued to dealers and fishermen alike. Permits serve several purposes including (1) to identify vessels that are eligible to participate in a fishery; (2) to identify dealers; (3) to allow revocation of a permit as an enforcement tool, and (4) to acquire data on the economic structure of the fleet. The data obtained are used by the National Marine Fisheries Service, the Regional Councils, state agencies, and the U.S. Coast Guard in developing management measures to control fishing effort, as well as to enforce the measures once they are in effect.

*Affected Public:* Businesses or other for-profit organizations, individuals.

*Frequency:* On occasion, biennially, annually.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce,

Room 5327, 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 David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

Dated: August 26, 1997.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer.*

[FR Doc. 97–23409 Filed 9–3–97; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Business Information Service for the Newly Independent States (BISNIS) Finance Link

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

**DATES:** Written comments must be submitted on or before November 3, 1997.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230. Phone number (202) 482–3272.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to: Trevor Gunn, BISNIS, Room 7413, Department of Commerce, 14th & Constitution Avenue, NW, Washington, DC 20230; phone (202) 482–4655, fax (202) 482–2293.

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

The International Trade Administration's Business Information Service for the Newly Independent States (BISNIS) offers business information and counseling to U.S. companies seeking to export or invest in the countries of the former Soviet Union. One of the essential components of BISNIS' services is assisting companies in locating suitable financing for exports. Often, official sources, such as the Export-Import Bank of the United States, cannot handle all requests for a variety of reasons. The proposed BISNIS Finance Link collection of information is an internet-based service to facilitate contact between exporters and financing agencies. Exporters fill out a form giving relevant details about their company and desired transaction. The form is then submitted via Internet's World Wide Web to BISNIS. If complete, BISNIS will, in turn, distribute the information collected to potential financing agencies. The intention is to provide a service that benefits both exporters and financing agencies.

#### II. Method of Collection

The request is sent via internet to Department of Commerce, BISNIS Information Service for the Newly Independent States, Trade Finance Specialist.

#### III. Data

*OMB Number:* N/A.

*Form Number:* N/A.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 200.

*Estimated Time per Response:* 10 minutes.

*Estimated Total Annual Burden Hours:* 33 hours.

*Estimated Total Annual Cost:* $1155—no capital costs are required.

#### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 26, 1997.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 97–23410 Filed 9–3–97; 8:45 am]

BILLING CODE 3510–DA–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Fisheries Capital Construction Fund Agreement, Application, and Certificate of Construction/Reconstruction

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before November 3, 1997.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Charles L. Cooper, Financial Services Division, Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, Maryland 20910, (301) 713–2396.

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

Respondents will be commercial fishing industry individuals, partnerships, or corporations which want to enter into Capital Construction Fund agreements with the Secretary of Commerce allowing deferral of Federal taxation on fishing vessel income deposited into the fund for use in the acquisition, construction, or reconstruction of fishing vessels. Deferred taxes are recaptured by reducing an agreement vessel's basis for depreciation by the amount withdrawn from the fund for its acquisition, construction, or reconstruction. The

information collected from applicants on these forms is used to determine their eligibility to participate in the Capital Construction Fund Program pursuant to 50 CFR Part 259.

## II. Method of Collection

The collection of information will be collected on Fishing Vessel CCF Application, the Interim Capital Construction Fund Agreement, and the Certificate of Construction/Reconstruction.

## III. Data

*OMB Number:* 0648–0090.

*Form Number:* NOAA Form 88–14.

*Type of Review:* Regular Submission.

*Affected Public:* Businesses and other for profit organizations—commercial fishermen, partnerships, and corporations with Capital Construction Fund agreements.

*Estimated Number of Respondents:* 1,000.

*Estimated Time Per Response:* 2.25 hours.

*Estimated Total Annual Burden Hours:* 2,250.

*Estimated Total Annual Cost to Public:* No capital, operations, or maintenance costs are expected.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 26, 1997.

**Linda Engelmeier,**

*Acting Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 97–23419 Filed 9–3–97; 8:45 am]

BILLING CODE 3510–22–P

# DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[Docket No. 970801189–7189–01]**

**RIN 0648–ZA33**

## Announcement of Graduate Research Fellowships in the National Estuarine Research Reserve System for Fiscal Year 1998

**AGENCY:** Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice.

**SUMMARY:** The Sanctuaries and Reserves Division (SRD) of the Office of Ocean and Coastal Resource Management is soliciting applications for graduate fellowship funding within the National Estuarine Research Reserve System. This notice sets forth funding priorities, selection criteria, and application procedures.

The National Estuarine Research Reserve System of the National Oceanic and Atmospheric Administration (NOAA) announces the availability of Graduate Research Fellowships. SRD anticipates that 19 Graduate Research Fellowships will be competitively awarded to qualified graduate students whose research occurs within the boundaries of at least one Reserve. Fellowships will start no earlier than June 1, 1998.

**DATES:** Applications must be postmarked no later than November 1, 1997. Notification regarding the awarding of fellowships will be issued on or about March 1, 1998.

**ADDRESSES:** Dr. Dwight D. Trueblood, Science Coordinator, NOAA/Sanctuaries and Reserves Division, 1305 East-West Highway, N/ORM2, SSMC4, 11th Floor, Silver Spring, MD 20910, Attn: FY98 NERRS Research. Phone: 301–713–3145, ext. 174. Fax: 301–713–0404, internet: dtrueblood@ocean.nos.noaa.gov. Web page: http://wave.nos.noaa.gov/ocrm/nerr/nerrs__research.html. See Appendix I for National Estuarine Research Reserve addresses.

**FOR FURTHER INFORMATION CONTACT:** For further information on specific research opportunities at National Estuarine Research Reserve sites, contact the site staff listed in Appendix I. For application information, contact the Science Coordinator of the Sanctuaries and Reserves Division (see **ADDRESSES** above).

**SUPPLEMENTARY INFORMATION:**

## I. Authority and Background

Section 315 of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1461, establishes the National Estuarine Research Reserve System (NERRS). 16 U.S.C. 1461 (e)(1)(B) authorizes the Secretary of Commerce to make grants to any coastal state or public or private person for purposes of supporting research and monitoring within a national estuarine reserve that are consistent with the research guidelines developed under subsection (c). This program is listed in the Catalog of Federal Domestic Assistance (CFDA) under ''Coastal Zone Management Estuarine Research Reserves,'' Number 11.420.

## II. Information on Established National Estuarine Research Reserves

The NERRS consists of estuarine areas of the United States and its territories which are designated and managed for research and educational purposes. Each National Estuarine Research Reserve (Reserve) within the NERRS is chosen to reflect regional differences and to include a variety of ecosystem types in accordance with the classification scheme of the national program as presented in 15 CFR part 921.

Each Reserve supports a wide range of beneficial uses of ecological, economic, recreational, and aesthetic values which are dependent upon the maintenance of a healthy ecosystem. The sites provide habitats for a wide range of ecologically and commercially important species of fish, shellfish, birds, and other aquatic and terrestrial wildlife. Each Reserve has been designed to ensure its effectiveness as a conservation unit and as a site for long-term research and monitoring. As part of a national system, the Reserves collectively provide an excellent opportunity to address research questions and estuarine management issues of national significance. For a detailed description of the sites, contact the individual site staff or refer to the NERR internet web site provided in the **ADDRESSES** section.

## III. Availability of Funds'

Funds are expected to be available on a competitive basis to qualified graduate students for research within National Estuarine Research Reserves leading to a graduate degree. No more than two fellowships at any one site will be funded at any one time; based upon fellowships awarded in the 1997 funding cycle, we anticipate only 19

openings for Fellowships in FY98. Fellowships are expected to be available at the following sites:

| NERR site | Fellowships |
|---|---|
| ACE Basin | 1 |
| Apalachicola | 1 |
| Chesapeake Bay, VA | 1 |
| Delaware | 1 |
| Elkhorn Slough | 1 |
| Great Bay | 2 |
| Hudson River | 1 |
| Jobos Bay | 1 |
| Mullica River | 1 |
| Old Woman Creek | 1 |
| Rookery Bay | 1 |
| Sapelo Island | 2 |
| South Slough | 2 |
| Tijuana River | 1 |
| Weeks Bay | 1 |
| Wells | 1 |

Because NOAA is an active partner in NERRS research, funds will be awarded through a cooperative agreement. NOAA may be involved in the award in the following manner:

The Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management, reserves the right to immediately halt activity under this award if it becomes obvious that award activities are not fulfilling the mission of the National Estuarine Research Reserve System. While day-to-day management is the responsibility of the recipient, frequent guidance and direction is provided by the Federal Government for the successful conduct of this award. Non-compliance with a Federally approved project may result in immediate halting of the award.

SRD generally will review and approve each stage of work annually before the next begins to assure that studies will produce viable information on which to form valid coastal management decisions.

All staff at NERRS sites are ineligible to submit an application for a fellowship under this Announcement. Federal funds requested must be matched by the applicant by at least 30% of the *TOTAL cost, not the Federal share, of the project.* It is anticipated that fellowships receiving funding under this announcement will begin by June 1, 1998.

## IV. Purpose and Priorities

NERR Research funds are provided to support management-related research projects that will enhance scientific understanding of the Reserve ecosystem, provide information needed by Reserve management and coastal management decision-makers, and improve public awareness and understanding of estuarine ecosystems and estuarine management issues (15 CFR 921.50).

The NERR Graduate Research Fellowship program is designed to fund high quality research focused on enhancing coastal zone management while providing students with hands-on training in ecological monitoring.

Research projects proposed in response to this announcement must: (1) Address coastal management issues identified as having local, regional, or national significance, described in the ''Scientific Areas of Support'' below; and (2) be conducted within one or more designated NERR sites. Funding ($16,500 per year) is intended to provide any combination of research support, salary, tuition, supplies, or other costs as needed, including overhead. Fellows will be expected to participate in an ecological training program that will entail some aspect of ecological monitoring or research for up to a maximum of 15 hours per week. Fellows conducting multi-site projects may fulfill this requirement at one or a combination of sites but for no more than a total of 15 hours per week. This training program may occur throughout the academic year or may be concentrated during a specific season. Students are encouraged, but not required, to incorporate these training activities into their own research programs.

### *Scientific Areas of Support*

The NERRs program has identified the following as areas of nationally significant research interest. Proposed research projects submitted in response to this announcement must address one of the following topics (see #1 above):

- The effects of non-point source pollution on estuarine ecosystems;
- Evaluative criteria and/or methods for estuarine ecosystem restoration;
- The importance of biodiversity and effects of invasive species on estuarine ecosystems; or
- Mechanisms for sustaining resources within estuarine ecosystems.

Each NERR has local issues of concern that fall within one of the topics above. Applicants are responsible for contacting the NERR site of interest to determine those site-specific research needs.

**Note:** It is strongly suggested that applicants contact the host Reserve (see Appendix I) for information on site-specific information and to discuss the training opportunities at the site.

## V. Guidelines for Application Preparation, Review, and Reporting Requirements

Applicants for SRD research fellowships must follow the guidelines presented in this announcement. Applications not adhering to these guidelines may be returned to the applicant without further review.

Applications for graduate fellowships in the NERRs are solicited annually for award the following fiscal year. Application due dates and other pertinent information are contained in this announcement of research opportunities. Applicants must submit an original and two (2) copies of each application and all supporting documents (*curricula vitae,* literature referenced, transcripts, etc.), excluding letters of reference which must come directly from their source.

Applicants may request funding for up to three years; funding for years two and three will be made available based on availability of funds and satisfactory progress of research as determined by the NERR Research Staff and the student's faculty advisor, in consultation with SRD. The amount of the award is $15,000/annum plus 10% overhead for a total of $16,500/annum. Requested Federal funds must be matched by at least 30 percent of the award total.

Applicants who are selected for funding will be required to: (1) Work with the Research Coordinator or Reserve Manager to develop an ecological training program for up to 15 hours per week; (2) submit an annual technical report to SRD and the host Reserve before the end of each funding cycle on the research accomplishments to-date; and (3) acknowledge NERRS support in all relevant scientific presentations and publications. In addition, fellows will be strongly encouraged to publish their results in peer-reviewed literature and make presentations at scientific meetings.

### *A. Applications*

Students admitted to or enrolled in a full-time Master's or Doctoral program at U.S. accredited universities are eligible to apply. Students should have completed a majority of their course work at the beginning of their fellowship and have an approved thesis research program.

Applicants are required to submit:

(1) An academic résumé or a *curriculum vitae* that includes all graduate and undergraduate institutions (department or area of study, degree, and year of graduation), all publications (including undergraduate and graduate theses), awards or fellowships, and work/research experience;

(2) A cover letter from the applicant indicating current academic status, research interests, career goals, and how the proposed research fits into their degree program, and the results of any discussion with NERR staff regarding the ecological monitoring training program;

(3) A titled research proposal (double-spaced in a font no smaller than 12-point courier) that includes an Abstract, Introduction, Methods and Materials, Project Significance, and Bibliography;

(4) A proposed budget (see Section B, Proposal Content, below for specific guidelines);

(5) An unofficial copy of all undergraduate and graduate transcripts;

(6) A letter of support from the applicant's graduate advisor indicating the advisor's contribution (financial and otherwise) to the applicant's graduate studies, and an assurance that the student is in good academic standing; and

(7) Two letters of recommendations (from other than the applicant's graduate advisor) sent directly from their source.

One original and two (2) copies of the information requested above, excluding letters of reference, must be submitted to the SRD Science Coordinator at the address in the Addresses section, postmarked no later than November 1, 1997. Applications postmarked November 2, 1997 or later, will be returned without review. Receipt of all applications will be acknowledged and a copy sent to the appropriate Reserve staff.

*B. Proposal Content*

The research proposal should contain the sections described below.

1. Title Page. A title page must be provided which lists:

- Student name, address, telephone number, fax number & email address,
- Project title,
- Amount of funding requested,
- Name of graduate institution,
- Name of institution providing matching funds and amount of matching funds,
- Name, address, telephone number, fax number & email address of faculty advisor,
- NERR site where research is to be conducted, and
- Number of years of requested support.

If it is a multi-site project, the title page must indicate which Reserve will be the primary contact (''host Reserve'') for the training program.

2. Abstract. The abstract should state the research objectives, scientific methods to be used, and the significance of the project to a particular Reserve and the NERRS program. The abstract must be limited to one page.

3. Project Description. The project description must be limited to 6 double-spaced pages excluding figures. The main body of the proposal should be a detailed statement of the work to be undertaken, and include the following components:

(a) Introduction. This section should introduce the research setting and environment. It should include a brief review of pertinent literature and describe the research problem in relation to relevant coastal management issues and the research priorities. This section should also present the primary hypothesis upon which the project is focused, as well as any additional or component hypotheses which will be addressed by the research project.

(b) Methods. This section should state the methods(s) to be used to accomplish the specific research objectives, including a systematic discussion of what, when, where, and how the data are to be collected, analyzed, and reported. Field and laboratory methods should be scientifically valid and reliable and accompanied by a statistically sound sampling scheme. Methods chosen should be justified and compared with other methods employed for similar work.

Techniques should allow the testing of the hypotheses, but also provide baseline data related to ecological and management questions concerning the Reserve environment. Methods should be described concisely and techniques should be reliable enough to allow comparison with those made at different sites and times by different investigators. The methods must have proven their utility and sensitivity as indicators for natural or human-induced change.

Analytical methods and statistical tests applied to the data should be documented, thus providing a rationale for choosing one set of methods over alternatives. Quality control measures also should be documented (e.g., statistical confidence levels, standards of reference, performance requirements, internal evaluation criteria). The proposal should indicate by way of discussion how data are to be synthesized, interpreted and integrated into final work products.

A map clearly showing the study location and any other features of interest must be included; a U.S. Geological Survey topographic map, or an equivalent, is suggested for this purpose. Consultation with Reserve personnel to identify existing maps is strongly recommended.

(c) Project Significance. This section should provide a clear discussion of how the proposed research addresses state and national estuarine and coastal resource management issues and how the proposed research effort will enhance or contribute to improving the state of knowledge of the estuary; i.e., why is the proposed research important and how will the results contribute to coastal resource management? This section must also discuss the relation of the proposed research to the research priorities stated in Section IV. Applicability of research findings to other NERRS and coastal areas should also be mentioned.

4. Milestone Schedule. A milestone schedule is required. This schedule should show, in table form, anticipated dates for completing field work and data collection, data analysis, progress reports, the final technical report and other related activities. Use ''Month 1, Month 2,'' rather than June, July, etc., in preparing these charts.

5. Personnel and Project Management. The proposal must include a description of how the project will be managed, including the name and expertise of faculty advisors and other team members. Evidence of ability to successfully complete the proposed research should be supported by reference to similar efforts performed.

6. Literature Cited. This section should provide complete references for current literature, research, and other appropriate published and unpublished documents cited in the text of the proposal.

7. Budget. The amount of Federal funds requested must be matched by the applicant by at least 30% of the total project cost (i.e., $7,072 match for $16,500 in Federal funds for total project cost of $23,572). Cash or the value of goods and services (except land) directly benefiting the research project may be used to satisfy the matching requirements. Overhead costs for these awards are limited to $1,500 of the Federal share (i.e., $15,000 for project and $1,500 for overhead) and waived overhead costs may also be used as match. Funds from other Federal agencies and NERRS staff salaries supported by Federal funds may not be used as match. Requirements for the non-Federal share are contained in OMB Circular A–110. SRD strongly suggests that the applicant work with their institution's research office to develop their budget (see section D, below).

The applicant may request funds under any of the categories listed below as long as the costs are reasonable and necessary to perform research. The budget should contain itemized costs with appropriate narratives justifying proposed expenditures. Budget categories are to be broken down as follows, clearly showing both Federal and non-Federal shares side by side:

—Salary. The rate of pay (hourly, monthly, or annually) should be

indicated. Salaries requested must be consistent with the institution's regular practices. The submitting organization may request that salary data remain confidential information.

—Fringe Benefits. Fringe Benefits (i.e., social security, insurance, retirement) may be treated as direct costs as long as this is consistent with the institution's regular practices.

—Equipment. While not their primary purpose, fellowship funds may be approved for the purchase of equipment only if the following conditions are met: (a) A lease versus purchase analysis has been conducted by the applicant or the applicant's institution and the findings determine that purchase is the most economical method of procurement; and (b) the equipment does not exist at the recipient's institution or the Reserve site and is essential for the successful completion of the project.

The justification must discuss each of these points along with the purpose of the equipment and a justification for its use, and include a list of equipment to be purchased, leased, or rented by model number and manufacturer, where known. At the termination of the fellowship, disposition of equipment will be determined by the NOAA Property Administrator.

—Travel. The type, extent, and estimated cost (broken down by transportation, lodging and per diem) of travel should be explained and justified in relation to the proposed research; the justification should also identify the person traveling. Travel expense is limited to round trip travel to field research locations and professional meetings to present the research results and should not exceed 40 percent of total award costs.

—Other Direct Costs. Other anticipated costs should be itemized under the following categories:

• *Materials and Supplies.* The budget should indicate in general terms the types of expendable materials and supplies required and their estimated costs;

• *Research Vessel or Aircraft Rental.* Include purpose, unit cost, duration of use, user, and justification;

• *Laboratory Space Rental.* Funds may be requested for use of laboratory space at research establishments away from the student's institution while conducting studies specifically related to the proposed effort;

• *Telecommunication Services and Reproduction Costs.* Include expenses associated with telephone calls, facsimile, copying, reprint charges, film duplication, etc.;

• *Computer Services.* The cost of unusual or costly computer services may be requested and must be justified.

—Indirect Costs. Requested overhead costs under NERRS fellowship award are limited to $1,500 of the Federal amount.

8. Requests for Reserve Support Services. On-site Reserve personnel sometimes can provide limited logistical support for research projects in the form of manpower, equipment, supplies, etc. Any request for Reserve support services, including any services provided as match, should be approved by the Reserve Manager or Research Coordinator prior to application submission and be included as part of the application package in the form of written correspondence. Reserve resources which are supported by Federal funds are not eligible to be used as match.

9. Coordination with other Research in Progress or Proposed. SRD encourages collaboration and cost-sharing with other investigators to enhance scientific capabilities and avoid unnecessary duplication of effort. Applications should include a description of how the research will be coordinated with other research projects that are in progress or proposed, if applicable.

10. Permits. The applicant must apply for any applicable local, state or Federal permits. A copy of the permit application and supporting documentation should be attached to the application as an appendix. SRD must receive notification of the approval of the permit application before funding can be approved.

*C. Application Review and Evaluation*

All applications will be evaluated for scientific merit by SRD staff, a host Reserve scientific panel of no less than three reviewers from the scientific community, and the appropriate Research Coordinator and/or Reserve Manager. Criteria for selection include: (1) The quality of proposed research and its applicability to the NERRS Scientific Areas of Significance and specific Reserve research and resource management goals; and (2) academic excellence based on the applicant's transcripts and two letters of reference. No more than two Fellowships will be awarded at any one time for any one Reserve. Final funding recommendations will be made by the Chief of the Sanctuaries and Reserves Division, based upon scientific review and SRD programmatic considerations.

*D. Fellowship Awards*

Awards are normally made to the fellow's graduate institution through the use of a cooperative agreement. Applicants whose projects are recommended for funding will be required to complete all necessary Federal financial assistance forms (SF–424, SF–424A, SF–424B, CD–511, and SF–LLL, OMB Control Numbers 0348–0043, 0348–0044, and 0348–0046), which will be provided by SRD with the letter of fellowship notification. SRD recommends that all applicants work with their graduate institution during the development of their budget to ensure concurrence on budgetary issues (e.g. the use of salary and fringe benefits as match).

## VI. Other Requirements

Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

All non-profit and for-profit applicants are subject to a name-check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: (1) The delinquent account is paid in full; (2) A Negotiated repayment schedule is established and at least one payment is received; or (3) Other arrangements satisfactory to the Department of Commerce are made.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding. In addition, any recipients who are past due for submitting acceptable final reports under any previous SRD-funded research will be ineligible to be considered for new awards until final reports re received, reviewed and deemed acceptable by SRD.

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

If an application is selected for funding, the Department of Commerce (DOC) has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion

of DOC. However, funding priority will be given to the additional years of multi-year proposals upon satisfactory completion of the current year of research.

Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and other Responsibility Matter; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided:

1. Nonprocurement Debarment and Suspension. Prospective participants (as defined at 15 CFR Part 26 Section 105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension,'' and the related section of the certification form prescribed above applies;

2. Drug-Free Workplace. Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

3. Anti-Lobbying. Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on the use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form which applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

5. Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying,'' and disclosure form SF–LLL, ''Disclosure of Lobbying Activities.'' The original form CD–512 is intended for the use of recipients. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-Made Equipment or Products: Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program should be American-made to the extent feasible.

Indirect Costs: The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Preaward Activities: If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover preaward costs.

## VII. Classification

This notice has been determined to be ''not significant'' for purposes of E.O. 12866.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Administrative Order 216–6.

This notice does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

This notice involves a collection of information subject to the requirements of the Paperwork Reduction Act. The requirements have been approved by the Office of Management and Budget under control numbers 0348–0043, 0348–0044, and 0348–0046.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection displays a current valid OMB control number.

Federal Domestic Assistance Catalog Number 11.420 Coastal Zone Management Estuarine Research Reserves)

Dated: August 14, 1997.

**Nancy Foster,**

*Assistant Administrator, Ocean Services and Coastal Zone Management.*

## Appendix I. NERRS on-Site Staff

Alabama
Mr. L.G. Adams, Manager
Mr. Bob McCormack, Interpretive Coordinator
Weeks Bay National Estuarine Research Reserve
11300 U.S. Highway 98
Fairhope, AL 36532
(334) 928–9792
bmccormack@ocean.nos.noaa.gov

California
Dr. Jane Caffrey, Research Coordinator
Elkhorn Slough National Estuarine Research Reserve
1700 Elkhorn Road
Watsonville, CA 95076
(408) 728–2822
jcaffrey@cats.ucsc.edu

Ed Navarro
Acting Manager
Tijuana River National Estuarine Research Reserve
301 Caspian Way
Imperial Beach, CA 92032
(619) 575–3613

Delaware
Ms. Sarah Cooksey, Manager
Dr. William Meredith, Research Coordinator
Delaware National Estuarine Research Reserve
Department of Natural Resources and Environmental Control
Division of Soil and Water Conservation
89 Kings Highway
Dover, DE 19903
(302) 739–3451 (Cooksey)
(302) 739–3493 (Meredith)
wmeredith@state.de.us

Florida
Mr. Woodward Miley II, Manager
Mr. Lee Edmiston, Research Coordinator
Apalachicola River National Estuarine Research Reserve
350 Carroll Street
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edmist@mail.state.fl.us

Mr. Gary Lytton, Manager
Dr. Todd Hopkins, Research Coordinator
Rookery Bay National Estuarine Research Reserve
300 Tower Road
Naples, FL 34113–8059
(941) 417–6310
hopkins__t@dep.state.fl.us

Georgia
Mr. Buddy Sullivan, Manager
Dr. Stuart Stevens, Research Coordinator
Sapelo Island National Estuarine Research Reserve
Department of Natural Resources
P.O. Box 15
Sapelo Island, GA 31327
(912) 485–2251 (Sullivan)
(912) 264–7218 (Stevens)
stuart@dnrcrd3.dnr.state.ga.us

Maine
Dr. Michele Dionne, Research Coordinator
Wells National Estuarine Research Reserve
RR#2, Box 806
Wells, ME 04090
(207) 646–1555
dionne@cybertours.com

Maryland
Ms. Mary Ellen Dore, Manager
Mr. David Nemazie, Research Coordinator

Chesapeake Bay National Estuarine Research Reserve in Maryland
Dept. of Natural Resources
Tawes State Office Building, E–2
580 Taylor Avenue
Annapolis, MD 21401
(410) 260–8730 (Dore)
(410) 228–9250 ×615 (Nemazie)
nemazie@ca.umces.edu

Massachusetts
Ms. Christine Gault, Manager
Dr. Richard Crawford, Research Coordinator
Waquoit Bay National Estuarine Research Reserve
Dept. of Environmental Management
P.O. Box 3092
Waquoit, MA 02536
(508) 457–0495
wbnerr@capecod.net

New Hampshire
Mr. Peter Wellenberger, Manager
Great Bay National Estuarine Research Reserve
New Hampshire Fish and Game Department
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[FR Doc. 97–23446 Filed 9–3–97; 8:45 am]

BILLING CODE 3510–08–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Association

### Administration, Modernization Transition Committee; Public Meeting

**ACTION:** Notice of public meeting.

**TIME AND DATE:** September 24, 1997 beginning at 8:00 a.m.

**PLACE:** This meeting will take place at the Silver Spring Quality Hotel, 8727 Colesville Road, Silver Spring, Maryland.

**STATUS:** The meeting will be open to the public. The time between 10:00 a.m. to 10:30 a.m. will be set aside for oral comments or questions from the public and approximately 50 seats will be available on a first-come first-served basis.

**MATTERS TO BE CONSIDERED:** This meeting will cover: Consultation on 11 combined Automation and Closure Certifications, 5 combined Consolidation, Automation and Closure Certifications, and 1 Closure only Certification; review of the Air Safety Foundation's pilot education and feedback results; update on the interactions between NWS and the Astoria community; presentation on the National Research Council Road Map Study; and update on FAA ASOS Assessment.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Nicholas Scheller, National Weather Service, Modernization Staff, 1325 East-West Highway, SSMC2, Silver Spring, Maryland 20910. Telephone: (301) 713–0454.

Dated: August 28, 1997.

**Nicholas R. Scheller,**

*Manager, National Implementation Staff.*

[FR Doc. 97–23491 Filed 9–3–97; 8:45 am]

BILLING CODE 3510–12–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 072597B]**

### Advisory Panel on Highly Migratory Species Fisheries

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

**ACTION:** Notice of intent; request for nominations; correction.

**SUMMARY:** NMFS is correcting a notice that appeared in the **Federal Register** of Thursday, August 28, 1997 (62 FR 45629) in column one. The original notice was published with an incorrect date for receipt of nominations. The date for receipt of nominations should be September 12, 1997. Nominations may be sent to Rebecca Lent, Chief, Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910. Nominations may be faxed to (301) 713–1917.

**FOR FURTHER INFORMATION CONTACT:** Liz Lauck (301) 713–2347.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 072597B, appearing on page 45629 in the **Federal Register** of Thursday, August 28, 1997, the following correction is made:

1. On page 45629, in the first column, ''Nominations must be submitted by September 29, 1997'' is changed to ''Nominations must be submitted by September 12, 1997.

Dated: August 28, 1997.

**Gary C. Matlock,**

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

[FR Doc. 97–23494 Filed 9–3–97; 8:45 am]

**BILLING CODE 3510–22–F**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 082797B]**

### North Pacific Fishery Management Council; Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The North Pacific Fishery Management Council (Council) and its advisory committees will meet in Seattle the week of September 22, 1997.

**DATES:** The meetings will be held during the week of September 22, 1997. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** All meetings will be held at the DoubleTree Hotel-Seattle Airport, 18740 Pacific Coast Highway South, Seattle, WA. All meetings are open to the public with the exception of a Council executive session tentatively scheduled for noon on Thursday, September 25, to discuss personnel, international issues, or litigation, as necessary.

*Council address*: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** Council staff, telephone: (907) 271–2809.

**SUPPLEMENTARY INFORMATION:** Individual Fishery Quota (IFQ) Implementation Team will meet Sunday, September 21, 9:00 a.m. to 6:00 p.m.

The Scientific and Statistical Committee and Advisory Panel will begin meeting at 8:00 a.m. on Monday, September 22, and continue until their agendas are completed.

The Enforcement Committee will meet Monday evening, September 22, beginning at 6:00 p.m.

The Council's regular plenary session will begin at 8:00 a.m. on Tuesday, September 23, and continue through Sunday, September 28.

Other workgroup or committee meetings may be held during the week. Notices of these meetings will be posted at the hotel. The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Oaths of office will be administered to newly-appointed Council members, and election of officers will take place.

2. Reports from the NMFS and Alaska Department of Fish and Game on the current status of the fisheries off Alaska, and NMFS and U.S. Coast Guard reports on enforcement.

3. Review and approve problem statement and alternatives for further analysis for allocation of pollock between inshore and offshore sectors. Consider separating the pollock Community Development Quota (CDQ) program from the inshore-offshore amendment.

4. Consider approval of the State of Alaska's recommendations for allocation of multi-species CDQs under the license limitation program.

5. Consider final action for an amendment to the Halibut and Sablefish IFQ Program to amend ownership requirements for hired skippers, and give initial review of an amendment to initiate rolling closures in the sablefish fisheries during annual surveys. Receive a report and discussion paper from the International Pacific Halibut Commission on a weighmasters program from the IFQ fisheries,

6. The Council will consider several halibut issues, including:

a. Consider final action on management alternatives for the Alaska halibut guided sport/charterboat industry.

b. Consider final action on a local area halibut management plan for Sitka Sound.

c. Initial review of changes to the possession limits for halibut.

d. General discussion of local area halibut management plans.

7. Under Magnuson-Stevens Act revisions, the Council will consider the following subjects:

a. The IFQ/CDQ fee and registry programs; initial review.

b. Final action on the North Pacific loan program.

c. Review proposals for bycatch reduction measures.

d. Receive progress reports on other mandates, including essential fish habitat.

8. Receive a report on an industry-initiated crab license buyback program.

9. Review progress toward a joint project agreement for managing the observer program and review a draft analysis for a third-party arrangement for observer procurement services.

10. Receive a progress report from the Vessel Bycatch Accountability committee.

11. The Council will receive the preliminary 1998 Stock Assessment and Fishery Evaluation (SAFE) reports for Gulf of Alaska and Bering Sea/Aleutian Islands groundfish and release them for public review, and set preliminary 1998 harvest allocations, including vessel incentive program rate standards, and bycatch allowances.

12. Other groundfish issues to be addressed include:

a. Review a proposal and industry recommendations for trip limits for pollock and Pacific cod in the Gulf of Alaska.

b. Review recommendations on groundfish issues from the joint Council and Alaska Board of Fisheries Committee.

c. Discuss a proposal for Eastern Gulf of Alaska boundary changes.

d. Take final action on an amendment to revise the maximum retainable bycatch of shortaker/rougheye in Bering Sea/Aleutian Islands trawl fisheries.

e. Staff report on gear preemption issues.

f. Consider repeal of salmon retention regulations.

13. Review Amendment 3 to the Scallop Fishery Management Plan for joint management with the State of Alaska. Discussion of limited entry for the scallop fishery and provide direction to staff.

14. Review proposals received for changes to the groundfish fishery management plans.

15. Review and comment on an application for foreign vessel transhipment permit.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during the meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language

interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: August 28, 1997.

**Gary C. Matlock,**

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

[FR Doc. 97–23495 Filed 9–3–97; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF DEFENSE

### Department of the Army

### Performance Review Boards; Membership

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice.

**SUMMARY:** Notice is given of the names of members of four performance review boards for the Department of the Army.

**EFFECTIVE DATE:** August 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** David Stokes, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army, Washington, DC 20310–0111.

**SUPPLEMENTARY INFORMATION:** Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the U.S. Army Materiel Command are:

1. MG David R. Gust, Program Executive Officer, Intelligence and Electronic Warfare.
2. BG Joseph L. Bergantz, Comanche Program Manager, Program Executive Office, Aviation, Army Acquisition Executive.
3. BG(P) John S. Caldwell, Jr., Deputy Chief of Staff for Research, Development, and Acquisition, U.S. Army Materiel Command.
4. Mr. Dale G. Adams, Principal Deputy for Acquisition, U.S. Army Materiel Command.
5. Mr. Edward T. Bair, Deputy Program Executive Officer, Intelligence and Electronic Warfare, Army Acquisition Executive.
6. Mr. Barry J. Baskett, Director, Engineering, U.S. Army Aviation and Troop Command, AMC.
7. Mr. Paul Bogosian, Deputy Program Executive Officer, Aviation, Army Acquisition Executive.
8. Mr. T. Kevin Carroll, Director, CECOM Acquisition Center, U.S. Army Communications-Electronics Command, AMC.
9. Dr. Jagdish Chandra, Deputy Director, Information Science and Technology Directorate, U.S. Army Research Laboratory, AMC.
10. Dr. Andrew Crowson, Director, Materials Science Division, U.S. Army Research Office, AMC.
11. Ms. L. Marlene Cruze, Director, Acquisition Center, U.S. Army Missile Command, AMC.
12. Dr. Larry O. Daniel, Director, Systems Engineering and Production, U.S. Army Missile Command, AMC.
13. Dr. Paul H. Deitz, Director, Ballistic Vulnerability Division, U.S. Army Research Laboratory, AMC.
14. Mr. Alexander Farkas, Director for Development Business Group, U.S. Army Tank-automotive and Armaments Command, AMC.
15. Mr. Frank E. Fiorilli, Deputy for Business, U.S. Army Communications-Electronics Command, AMC.
16. Mr. James L. Flinn III, Director, Integrated Materiel Management Center, U.S. Army Missile Command, AMC.
17. Mr. Bruce M. Fonoroff, Associate Director, Plans, Programs, and Budget, U.S. Army Research Laboratory, AMC.
18. Mr. John F. Gehbauer, Deputy Director, Close Combat Armaments Center, Armament RD&E Center, U.S. Army Tank-automotive Command, AMC.
19. Mr. Thomas L. House, Executive Director, Aviation RD&E Center, U.S. Army Aviation and Troop Command, AMC.
20. Dr. Paul L. Jacobs, Associate Director for Technology, U.S. Army Missile Command, AMC.
21. Dr. Robert W. Lewis, Deputy to the Commander, U.S. Army Soldier Systems Command.
22. Mr. Harold L. Mabrey, Executive Director, Acquisition Center, U.S. Army Aviation and Troop Command, AMC.
23. Dr. Ingo W. May, Director, Weapons and Materials Research Directorate, U.S. Army Research Laboratory, AMC.
24. Dr. Richard E. McClelland, Vice President for Research, U.S. Army Tank-automotive Command, AMC.
25. Mr. Daniel G. Mehney, Director, Acquisition, U.S. Army Tank-automotive and Armaments Command, AMC.
26. Mr. A. David Mills, Principal Deputy for Logistics, U.S. Army Materiel Command.
27. Mr. Jimmy C. Morgan, Director, Armament and Chemical Acquisition and Logistics Activity, U.S. Army Tank-automotive and Armaments Command, AMC.
28. Mr. Douglas R. Newberry, Deputy to the Commander, U.S. Army Tank-automotive and Armaments Command, AMC.
29. Mr. A.Q. Oldacre, Deputy Program Executive Officer, Missile Defense, Army Acquisition Executive.
30. Ms. Renata F. Price, Assistant Deputy Chief of Staff for RD&A—Science and Technology, U.S. Army Materiel Command.
31. Mr. Daniel J. Rubery, Deputy to the Commander, U.S. Army Aviation and Troop Command, AMC.
32. Dr. James J. Streilein, Director, Evaluation Analysis Center, U.S. Army Operational Test and Evaluation Command.
33. Ms. Kathryn Szymanski, Command Counsel, U.S. Army Communications-Electronics Command, AMC.
34. Dr. James J. Wade, Director, Survivability/Lethality Analysis, U.S. Army Research Laboratory, AMC.
35. Mr. Walter Wynbelt, Program Executive Officer, Tactical Wheeled Vehicles, Army Acquisition Executive.

The members of the Performance Review Board for the United States Army, Office of The Surgeon General are:

1. MG John J. Cuddy, DC, Deputy Surgeon General, Office of The Surgeon General, and Chief of Staff, U.S. Army Medical Command.
2. MG Leslie M. Burger, MC, Commander, North Atlantic Regional Medical Command, and Commander, Walter Reed Army Medical Center, Washington, D.C.
3. BG John S. Parker, MC, Assistant Surgeon General for Force Development and Sustainment, and Chief, Medical Corps, Office of The Surgeon General.
4. BG Mack C. Hill, MS, Assistant Surgeon General for Force Management, and Chief, Medical Service Corps, Office of the Surgeon General.
5. Mr. James C. Reardon, Executive Director, Defense Medical Information Management, Office of the Assistant Secretary of Defense (Health Affairs).
6. Mr. Ronald G. Richards, Principal Director, Office of the Deputy Assistant Secretary of Defense (Health Affairs), Health Services Operations and Readiness.
7. Ms. Sandy R. Riley, Deputy Administrative Assistant to the Secretary of the Army, Headquarters, Department of the Army.
8. Ms. Jean Storck, Principal Director, Office of the Deputy Assistant Secretary of Defense (Health Affairs), Health Services Financing.

The members of the Performance Review Board for the consolidated Commands are:

1. MG James J. Cravens, Chief of Staff, U.S. Army Training and Doctrine Command (TRADOC).
2. Mr. Roy Reynolds, Director of Operations, White Sands Missile Range, TRADOC.
3. Mr. Robert Seger, Assistant Deputy Chief of Staff for Training (Plans and Policy), TRADOC.
4. Mr. William R. Lucas, Deputy to the Commander, Military Traffic Management Command (MTMC).
5. Mr. Thomas Collinsworth, Director, MTMC Transportation Engineering Agency.
6. MG Charles G. Sutton, Jr., Commander, Army Signal Command, Forces Command (FORSCOM).
7. Ms. Vicky L. Jefferis, Assistant Deputy Chief of Staff for Resources and Evaluation FORSCOM.
8. Dr. Michael Gentry, Senior Technical Director/Chief Engineer, Army Signal Command, FORSCOM.
9. Mr. John R. Kohler, Assistant Deputy Chief of Staff for Resource Management, U.S. Army, Europe.
10. Mr. William Rich, Deputy and Technical Director, U.S. Army National Ground Intelligence Center.

The members of the Performance Review Board for the Office of the Chief of Staff, Army are:

1. BG William Boykin, Deputy Director Operations Readiness & Mobilization, Office of the Deputy Chief of Staff for Operations and Plans (DCSOPS).
2. BG John M. Dubik, Director of Training for DCSOPS.
3. Mr. John Riente, Technical Advisor to the DCSOPS.
4. MG Julian Sullivan, Director for Supply and Maintenance, Office of the Deputy Chief of Staff for Logistics (DCSLOG).
5. Mr. Chester Kowalczyk, Assistant Director of Energy & Troop Support, DCSLOG.
6. MG Charles C. Cannon, Jr., Assistant Deputy Chief of Staff for Logistics.
7. Mr. Mark W. Ewing, Assistant Deputy Chief of Staff for Intelligence.
8. MG David H. Ohle, Assistant Deputy Chief of Staff for Personnel, Office of the Deputy Chief of Staff for Personnel (DCSPER).
9. BG Clayton E. Melton, Director of Human Resource, DCSPER.
10. Dr. Zita M. Simutis, Deputy Director, Army Research Institute, DCSPER.
11. Dr. Jack H. Hiller, Director of MANPRINT, DCSPER.
12. Mr. William C. Reeves, Jr., Director, Weapons Directorate, U.S. Army Space and Strategic Defense Command (SSDC).
13. Dr. Robin B. Buckelew, Director, Missile Defense Battle Integration Center, SSDC.
14. Mr. Edgar Vandiver, Director, Concepts and Analysis Agency.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 97–23496 Filed 9–3–97; 8:45 am]

BILLING CODE 3710–08–M

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Record of Decision

**AGENCY:** Department of Defense, Department of the Navy.

**ACTION:** Record of Decision to implement the sewage effluent compliance project for the Santa Margarita River Basin of Marine Corps Base, Camp Pendleton, California.

**SUMMARY:** Pursuant to Section 102(c) of the National Environmental Policy Act (NEPA) of 1969, and the Council of Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of the Navy announces its decision to upgrade the wastewater treatment and disposal systems in the Santa Margarita River Basin of Marine Corps Base (MCB), Camp Pendleton, California. Upgrades in the Santa Margarita River Basin include the construction of a series of wastewater discharge flow percolation/equalization ponds inland from the coastline, and a connecting pipeline, approximately 98,000 total lineal feet, to connect sewage treatment plants 1, 2, 3, 8 and 13 to the La Salina ocean outfall, which is owned and operated by the City of Oceanside.

**DATES:** This action is effective immediately.

**ADDRESSES:** Mr. Lupe E. Armas, Assistant Chief of Staff, Environmental Security, Marine Corps Base, Camp Pendleton, CA 92055–5008.

**FOR FURTHER INFORMATION CONTACT:** Mr. Armas at (619) 725–4512.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 102(c) of the National Environmental Policy Act (NEPA) of 1969, and the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of the Navy announces its decision to upgrade the wastewater treatment and disposal systems in the Santa Margarita River Basin of Marine Corps Base (MCB), Camp Pendleton, California. Upgrades in the Santa Margarita River Basin include the construction of a series of wastewater discharge flow percolation/equalization ponds inland from the coastline, and a connecting pipeline, approximately 98,000 total lineal feet, to connect percolation/equalization ponds serving sewage treatment plants 1, 2, 3, 8 and 13 to the La Salina ocean outfall, which is owned and operated by the City of Oceanside. The project will be constructed in two phases. Phase one includes construction of new infrastructure linking facilities on Camp Pendleton. Phase two includes pipeline construction from the percolation/equalization ponds on Camp Pendleton to the La Salina Oceanside ocean outfall, as well as authorize execution of the utility service agreement contract with the City of Oceanside for the use of the outfall.

Sewage treatment plants 3 and 8 were constructed in the 1940's and currently discharge secondary treated effluent to percolation basins adjacent to the sewage treatment plants within a beneficial use portion of the lower Santa Margarita River Basin. Sewage treatment plant 1 was constructed in the 1940's and currently discharges secondary treated effluent to oxidation ponds and then as a surface discharge to the Santa Margarita River Basin at locations distant from the plant. Sewage treatment plant 2 was constructed prior to 1960 and currently discharges secondary effluent that is primarily diverted for irrigation use at the Marine Memorial Golf Course with any excess effluent discharged to the Santa Margarita River via a series of oxidation ponds, open channel trenches and pipelines. Sewage treatment plant 13 was constructed prior to 1960 and was designed to discharge secondary effluent via force main pipeline to percolation ponds in the lower Santa Margarita River, approximately 3 miles distant (upriver). The force main pipeline was damaged by the January 1993 flood; consequently sewage treatment plant 13 discharges secondary effluent directly to the Santa Margarita River at a location adjacent to the estuary.

Groundwater extracted from this basin serves developments within the southern portion of MCB Camp Pendleton. The current quality of effluent discharged into the Santa Margarita River Basin, from all plants, does not meet the standards of the 1994 San Diego Water Quality Basin Plan, the State of California Porter Cologne Water Quality Act of 1969, and the National Pollution Discharge Elimination System requirements of the Federal Water Pollution Control Act of 1972. As a result of these discharges, the San Diego Regional Water Quality Control Board issued Cease and Desist Orders to MCB Camp Pendleton in January 1989. To

comply with these Cease and Desist Orders, new facilities are required to improve wastewater treatment and disposal practices and meet the Basin Plan objectives.

Alternatives considered for correcting the conditions cited in the Cease and Desist Orders included water disposal of effluent, land disposal of effluent and no action. Water disposal alternatives included construction of an ocean outfall, live-stream discharge of either secondary- or tertiary-treated effluent to the Santa Margarita River, discharge to an off-base publicly owned treatment works, and a basin plan amendment. Land disposal alternatives included percolation basins, biological ponds, leach fields, and injection wells.

The preferred alternative, as identified in the Draft Environmental Impact Statement (DEIS) consists of the construction of 98,000 feet of pipeline, and percolation/equalization ponds connecting all five Base sewage treatment plants and traversing through the City of Oceanside, to the City owned La Salina ocean outfall for ultimate disposal. Though all five sewage treatment plants will be connected to the ocean outfall, only sewage treatment plant 13 normally will discharge to this outfall. The other sewage treatment plants will discharge to the outfall during storm events. The Base sewage treatment plants would continue to treat sewage and discharge effluent at the current secondary level. This alternative is identified in the Final Environmental Impact Statement (FEIS) as the environmentally preferred alternative for the Santa Margarita River. Connection to the La Salina ocean outfall will require the approval of the City of Oceanside.

A systematic and multidisciplinary approach to identify alternatives was utilized which incorporated criteria based upon technical and functional suitability. Alternatives were evaluated for technical suitability consistent with the numerous constraints imposed by available land for treatment and disposal facilities and subsurface geological and hydrogeological conditions. Technically suitable alternatives were further evaluated for their ability to satisfy the following six functional requirements of the project: (1) Prevention of degradation of water quality to sustain beneficial uses identified in the San Diego Basin Plan, (2) compliance with water quality standards in accordance with State Groundwater Recharge Guidelines, (3) compliance with water quality standards in accordance with Federal and State safe drinking water standards, (4) compliance with the timelines identified in the Cease and Desist Orders, (5) maintenance of sustained volume within each water basin, and (6) prevention of saltwater intrusion into each water basin. The analysis determined that the preferred alternative is the only alternative that meets all six functional requirement criteria, and is therefore the most environmentally preferable.

All practical means to avoid or minimize environmental harm have been adopted as identified below and are amplified in the FEIS.

Construction of the on Base percolation/equalization ponds and pipeline within the Santa Margarita River will require grading and excavation. A soil erosion control plan will be prepared for construction, and will include restricting grading and excavation during the rainy season, restricting heavy equipment to existing roads and rights-of-way, installing sediment control measures, and implementing post-construction revegetation. Construction of the facilities within the City of Oceanside will also require trenching operations. Implementation of the pipeline project segments within Oceanside will be performed consistent with grading operation specifications developed by the City of Oceanside.

To reduce potential significant impacts on paleontological resources to an acceptable level, the Marine Corps will develop an environmental education program, develop an information pamphlet and conduct an environmental education class for all construction project personnel. Additionally, environmental monitors shall be present when construction activities occur in designated sensitive areas. Environmental monitors shall ensure that paleontological resources are recovered according to approved procedures. If paleontological resources are identified aboard the Base or within the City of Oceanside, and salvage efforts are required, the Marine Corps will curate the materials. Those materials found in the City of Oceanside will be provided to the City as requested.

The Southwestern willow flycatcher (*Empidonax trailii*), the least Bell's vireo (*Vireo belli pusillus*) and the Arroyo southwest toad (*Bufo mocroscaphus*), all federally listed endangered species, are known to occur in the riparian areas of the Santa Margarita River drainage. The vireo and the flycatcher are known to occur in the Pilgrim Creek reach of the San Luis Rey River drainage.

Construction activities will likely be completed outside of the vireo and flycatcher breeding season (March 15 through September 15). Clearing of the vegetation will be completed prior to the breeding season. This will avoid the possibility of vireos and flycatchers nesting within the area that may be directly affected by the construction activities. In addition, construction outside of the breeding season will avoid indirect noise impacts to the species.

For construction that cannot be accomplished between September 15 to March 15, additional mitigation measures will be implemented in accordance with the United States Fish and Wildlife Service Section 7 Endangered Species Act Biological Opinion for Programmatic Activities and Conservation Plans in Riparian and Estuarine/Beach Ecosystems on Marine Corps Base Camp Pendleton, BO 1–6–95–F–02 (Riparian Biological Opinion) and the United States Army Corps of Engineers Section 404 Permit will be implemented. These will include a pre-construction survey that will determine whether any active vireo or flycatcher nests are within 500 feet of the construction corridor prior to construction activity. All work within 500 feet of a nest will be completed within a continuous 8-week period.

To avoid the small possibility that arroyo southwestern toads, or that other wildlife, could be injured by falling into open trenches or by burrowing into trench walls or spoils piles, no trenches will be left unprotected at night. If the arroyo southwestern toad breeding season (February 1 to September 30) cannot be avoided and preconstruction surveys reveal that construction will take place in toad habitat, mitigation measures will be implemented as mandated by the Riparian Biological Opinion, including fencing the pipeline corridor with silt-screen or shade cloth material the night prior to trenching and removing all toads within the enclosure. Any necessary removal of toads or other animals from trenches will be performed by a biologist permitted by the U.S. Fish and Wildlife Service to handle Arroyo Southwestern toads.

The project will result in a temporary loss of 6.3 acres of riparian habitat in the Santa Margarita River drainage (including jurisdictional wetlands and waters of the United States), which provides habitat for the endangered willow flycatcher and vireo. Temporary impacts to riparian habitats, including mulefat scrub, southern arroyo riparian and southern willow scrub, will be mitigated through a combination of invasive exotic plant control and vegetation management to allow natural native species revegetation within five years. Restoration of temporary impacts

will consist of invasive exotic plant control, measures to alleviate soil compaction that may occur during construction activities, and monitoring for a period of five years. The Marine Corps will monitor the effects of discharge elimination from sewage treatment plant 3 in the Santa Margarita Riparian system for 10 years to establish baseline data for areas upstream, adjacent to and downstream of the existing percolation basins. Hydrologic and vegetation monitoring data will be collected in accordance with the provisions of the Riparian Biological Opinion and provisions of the Clean Water Act Section 404 and 401 permits. Should changes in water quality or water levels be detected, the Marine Corps will consult with the San Diego Regional Water Quality Control Board and the U.S. Fish and Wildlife Service to develop and implement appropriate mitigation measures. No permanent or temporary riparian or wetland impacts are expected with project implementation within the San Luis Rey River drainage.

Critical Habitat for the Southwestern Willow Flycatcher has recently been designated by the U.S. Fish and Wildlife Service, including the 100-year flood plain of the Santa Margarita River. However, no permanent riparian/wetland impacts are expected from project implementation within the critical habitat area. Accordingly, the project will not adversely modify this habitat.

The California gnatcatcher (*Polioptilla california*), a federally listed threatened species, is present in the coastal sage scrub habitat near the percolation/equalization ponds and pipeline alignments. The project will result in a direct temporary impact to 2.5 acres of the coastal sage scrub, of which only 0.80 acres are currently occupied gnatcatcher habitat. Mitigation and compensation for permanently removed occupied coastal sage scrub habitat (e.g., for the pipeline access road and the Lemon Grove ponds) will be achieved through habitat enhancement and management at a ratio of 2:1 in coastal sage scrub areas closest to the project impacts. The enhancement areas should stay free of any development or disturbance in the future. In accordance with the Biological Opinion 1–6–96–F–36 for the project (Upland Biological Opinion), coastal sage scrub habitat will be revegetated within two years of construction in all areas where permanent vegetation removal is not required (i.e., along pipeline alignments). Clearing of vegetation for the Lemon Grove ponds shall be done outside of the gnatcatcher breeding season (February 1 through July 31).

To the maximum extent possible, construction activities will be completed outside the California gnatcatcher breeding season to avoid indirect noise impact to the species. For construction that cannot be accomplished between August 1 and January 31, additional mitigation measures will be implemented in accordance with the Upland Biological Opinion. These include clearing of the vegetation prior to the breeding season, even if subsequent construction activities occur within the breeding season. This avoids the possibility of gnatcatchers nesting within the area that may be directly affected by the project. A pre-construction survey will determine whether any active gnatcatcher nests are within 500 feet of the pipeline corridor prior to construction activity. For those nests within 500 feet, a topographical analysis will be completed to determine if disturbance is probable. If so, then all work within 500 feet of a nest will be completed within a continuous 96 hour period.

To mitigate temporary impacts to coastal sage scrub habitat affected areas will be recontoured and reseeded with native coastal sage scrub species and non-native vegetation will be controlled for three years. This work will be initiated no later than the first growing season after the area is disturbed from project construction activities. Per the Upland Biological Opinion, this revegetation will be considered acceptable if the total cover by native coastal sage scrub species is at least 70 percent and the vegetation is not being artificially sustained, or if the Marine Corps can demonstrate to the satisfaction of U.S. Fish and Wildlife Service that the habitat is insignificantly different from naturally occurring gnatcatcher habitats or fully functional coastal sage scrub on the Base.

A report summarizing habitat enhancement and restoration will be provided to the U.S. Fish and Wildlife Service within 60 days of the initial phase and after three years to document the success of the mitigation measures.

Thread-leaved brodiaea (*Brodiaea filifolia*), a proposed threatened plant species, has been identified along the construction corridor adjacent to the Headquarters alignment within the southern portion of the Base. Construction will result in the removal of a small population (five individuals plants) of thread-leaved brodiaea. The plant corms will be transplanted, prior to construction, to another suitable area on the Base that is presently occupied by the species.

Vernal Pools with associated watersheds have been identified near sewage treatment plant 2 along the project pipeline alignment. The pools and associated watershed adjacent to sewage treatment plant 2 will be fenced and monitored by a biologist. An erosion control plan will also be implemented to minimize dust, sedimentation, or siltation into the pools. This plan will be implemented by the contractor and reviewed and approved by the Base to ensure that the methods implemented are deemed effective. All pipelines will follow existing roads to the maximum extent practical.

Construction will affect three archeological sites determined to be eligible for inclusion on the National Register of Historic Places. The Marine Corps will prepare a treatment and data recovery plan for these three sites; CA–SDI 12,628, CA–SDI–14,0005H, and CA–SDI–14,170. A construction monitoring plan to include a discovery plan will also be prepared. The construction monitoring plan will also include monitoring for buried cultural resources within areas of Quaternary alluvium within the project alignment and at cultural resource sites CA–SDI–8761, CA–SDI–14,060, CA–SDI–14,058 and CA–SDI–14,059. Flagging of the right-of-way boundaries and construction monitoring will occur in the vicinity of cultural resource sites CA–SDI–12,567 and CA–SDI–12,577 to ensure avoidance of the significant site areas. Should archeological resources be encountered during construction, all work will be halted in the immediate area to determine if the resources are significant and whether excavation or protection of resources is required. The California State Historic Preservation Officer concurs with this approach.

Analysis of air emissions that would occur during construction and operation of the percolation ponds determined that these emissions will be below *de minimis* levels and that the project conforms with the State Implementation Plan for air quality.

A Coastal Consistency Negative Determination was prepared and submitted for this project to the California Coastal Commission. The Negative determination concluded that the proposed action is being carried out in a manner consistent with the enforceable policies of the Coastal Zone Management Act. The California Coastal Commission and the City of Oceanside concur with this determination. A separate Coastal Use Development Permit was prepared and submitted to

the City of Oceanside in compliance with the City of Oceanside Local Coastal Plan and the California Coastal Management Program. The Oceanside City Planning Commission has approved the Coastal Use Development Permit.

The proposed action has been evaluated with respect to environmental and social impacts, as well as access to public information and an opportunity for public participation in the NEPA process as mandated by Executive Order 12898, ''Federal Actions to Address Environmental Justices in Minority Populations and Low-Income Populations.'' The project is consistent with the goals and provisions of that Executive Order and no disproprotionate impacts to minority or low-income populations will occur.

In the event that the Marine Corps and City of Oceanside are unable to come to an agreement for connecting to the La Salina ocean outfall, the Marine Corps will utilize the new force main pipeline to collect treated effluent from sewage treatment plants 1, 2, 3 and 8 and dispose of treated effluent at percolation/equalization basins that will be constructed at the Lemon Grove site, as discussed in the FEIS. Also, as discussed in the FEIS, effluent diversion from sewage treatment plants 1 and 2 will be continued and be used primarily to irrigate the Marine Memorial Golf Course during the dry season, and a separate pipeline would be constructed (included within the 98,000 foot estimate) from the golf course to the new force main pipeline (to the Lemon Grove percolation/equalization ponds) to dispose of surplus irrigation effluent during the winter months. In addition, as discussed in the FEIS, effluent from sewage treatment plants 3 and 8 would also flow to the Lemon Grove percolation/equalization ponds. Finally, treated effluent from sewage treatment plant 13 would continue to be discharged to the existing Twin Lakes equalization/percolation ponds; to the Santa Margarita River; and possibly to the Lemon Grove Ponds, capacity permitting. Any continued discharge to the Santa Margarita River would be in violation of the Cease and Desist Order. Accordingly, continued discharge from sewage treatment plant 13 into the Santa Margarita River would require an upgrade to sewage treatment plant 13 to meet current permit conditions or a modification of the National Pollutant Discharge Elimination System permit granted to MCB Camp Pendleton by the San Diego Regional Water Quality Control Board. Implementation of any proposal to obtain a revised National Pollutant Discharge Elimination System permit or to add advanced treatment to sewage treatment plant 13 to comply with the existing permit conditions would require additional engineering and environmental analysis. Accordingly, subsequent environmental documentation would be prepared, as appropriate, pursuant to NEPA if the need arises to further pursue or continue discharge of treated effluent from sewage treatment plant 13 into the Santa Margarita River.

Preparation of the Environmental Impact Statement began with a public scoping process to identify issues that should be addressed in the document. Involvement in scoping was offered through a combination of documented public announcements and meetings with State of California agencies. Public announcements were handled through scoping letters sent to Federal, State, and local governmental agencies, citizen groups and associations, and the general public. Also, a Notice of Intent to prepare an Environmental Impact Statement was published in local newspapers and the **Federal Register**. The notice of availability of the DEIS appeared in the **Federal Register** on December 20, 1996. The DEIS was distributed to Federal, State and local governmental agencies, officials, citizens groups and associations, public libraries and other interested parties. The public review period for the DEIS was from December 20, 1996 through February 2, 1997. Comments received on the DEIS focused on alternatives analysis, groundwater recharge, endangered species and wetlands issues. The FEIS addressed these comments and was distributed to officials of Federal, State and local governmental agencies, citizens groups and associations, public libraries and to other interested parties on June 27, 1997. The public review period for the FEIS ended on July 27, 1997. No comments were received on the FEIS.

The Department of the Navy believes that there are no remaining issues to be resolved with respect to this project. In the event that the La Salina ocean outfall is unavailable, all pertinent issues have been identified and addressed. Questions regarding the Environmental Impact Statement prepared for this action may be directed to Mr. Lupe E. Armas, Assistant Chief of Staff, Environmental Security, Marine Corps Base, Camp Pendleton, CA 92055–5008, telephone (619) 725–4512.

Dated August 26, 1997.

**Duncan Holaday,**

*Deputy Assistant Secretary of the Navy (Installations and Facilities).*

[FR Doc. 97–23375 Filed 9–3–97; 8:45 am]

BILLING CODE 3810–AE–P

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Record of Decision for the Disposal and Reuse of the Fleet and Industrial Supply Center, Oakland, California

**SUMMARY:** The Department of the Navy (Navy), pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C), and the regulations of the Council on Environmental Quality that implement NEPA procedures, 40 CFR Parts 1500–1508, hereby announces its decision to dispose of the Fleet and Industrial Supply Center (FISC) Oakland, California.

Navy intends to dispose of this property directly to the Port of Oakland (Port) as authorized by the Department of Defense Authorization Act for Fiscal year 1993, Public Law 102–484, Section 2834, as amended by the Department of Defense Authorization Act for Fiscal Year 1996, Public Law 104–106, Section 2867. Based upon the Port's Vision 2000 Program, it proposes to develop marine, rail, and truck cargo facilities on the property. The Port's Vision 2000 Program is consistent with the designation of the area for ''priority port use'' in the April 1996 San Francisco Bay Seaport Plan Update, issued jointly by the San Francisco Bay Conservation and Development Commission and the Metropolitan Transportation Commission. The Port's redevelopment will also provide public access to the waterfront and, in the Oakland Middle Harbor, a marine habitat enhancement area.

In deciding to dispose of FISC Oakland, Navy has determined that the Port's proposed use of the property as an intermodal cargo facility is consistent with Public law 102–484, as amended by Public Law 104–106. This Record Of Decision does not mandate a specific mix of land uses. Rather, it leaves selection of the particular means to achieve the proposed redevelopment to the Port of Oakland.

Navy and the Port analyzed the impacts of disposal and reuse under the Vision 2000 Program in a Joint Environmental Impact Statement/ Environmental Impact Report (EIS/EIR), as required by NEPA and the California Environmental Quality Act (CEQA),

California Public Resources Code, Section 21000, *et seq.* The EIS/EIR analyzed four reuse alternatives and identified the Reduced Harbor Fill Alternative as the Preferred Alternative. This alternative proposed a mix of land uses that allocated about three-fourths of the FISC property to industrial, rail and marine terminal activities and reserved the remaining property for public access and habitat enhancement.

The Port plans to redevelop the FISC property in phases over several years and will prepare additional CEQA documentation as particular projects are ready for evaluation. While this Record Of Decision completes Navy's responsibility under NEPA, the Federal Highway Administration, a cooperating agency in preparation of the EIS/EIR, will prepare a separate Record Of Decision that reflects its decision concerning funding for the Port's redevelopment project.

**Background**

The FISC Oakland property is situated on 528 acres in West Oakland, about two miles west of Oakland's central business district, on the east side of San Francisco Bay. It lies within the limits of the City of Oakland in Alameda County and falls under the planning jurisdiction of the Port of Oakland.

In 1940, Navy acquired from the City of Oakland 392 acres of the 528 acres that comprise the FISC Oakland property and established the Oakland Naval Supply Depot (later renamed the Naval Supply Center) to provide logistical support for the Pacific Theater in World War II. The City conveyed this property to Navy subject to a reversionary clause that would cause the property to revert to the City of Oakland if Navy decided not to use it as a supply depot or for other military purposes.

Navy subsequently acquired an additional 136 acres of adjacent upland property and increased the total area of the FISC property to 528 acres. This additional 136 acres has no reverter limiting Navy's ability to convey the property and is currently leased to the Port for use as warehousing, open laydown storage, and parking.

Because the 392 acres acquired from the City of Oakland will revert to the City by operation of law, the only property for which Navy must make a disposal decision is the remaining 136 acres. Therefore, disposal of that 136 acres is the subject of this Record of Decision.

The Department of Defense Authorization Act for Fiscal Year 1993, Public Law 102–484, Section 2834, authorized Navy to lease up to 195 acres of FISC Oakland property to the Port of Oakland for 50 years. The Department of Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, Section 2833, amended these provisions to permit Navy to lease available property to the Port.

Navy has leased about 190 acres of FISC property to the Port to permit expansion of the Port's rail and marine terminal facilities. On May 25, 1995, following a Joint EIS/EIR, Navy issued a separate Record of Decision concerning that leasing action.

The 1995 Defense Base Closure and Realignment Commission recommended closure of FISC Oakland. This recommendation was approved by President Clinton and accepted by the One Hundred Fourth Congress in 1995. The base is scheduled for operational closure in September 1998.

Section 2834 of Public Law 102–484 was subsequently amended by the Department of Defense Authorization Act for Fiscal Year 1996, Public Law 104–106, Section 2867, which gave Navy authority to convey the FISC property to the Port. This authority is independent of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. § 471, *et seq.*, and its implementing regulations, the Federal Property Management Regulations, 41 CFR part 101–47, as well as the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, 10 U.S.C. § 2687 note.

Navy published a notice of intent in the **Federal Register** on May 30, 1996, announcing that Navy, with the Port of Oakland, would prepare a Joint EIS/EIR. This analysis would consider the impacts of Navy's disposal of the property not covered by the reverter, *i.e.*, the 136 acres, and the Port's reuse of the entire 528-acre FISC property, including the buildings and infrastructure. A thirty-day public scoping period was established, and a public scoping meeting was held on June 13, 1996, at the McClymonds High School Auditorium in the City of Oakland.

On March 7, 1997, Navy and the Port distributed a Draft EIS/EIR (DEIS/EIR) to Federal, State, and local agencies, interested parties, and the general public. Navy held a public hearing on April 8, 1997, at the West Oakland Public Library in the City of Oakland. During the forty-five day review period after publication of the DEIS/EIR, Federal agencies, California State agencies, local government agencies, and the public submitted written comments. These comments and Navy's responses were incorporated in the Final EIS/EIR (FEIS/EIR), which was distributed to the public on July 25, 1997, for a thirty-day review period that concluded on August 25, 1997. Navy received comments on the FEIS/EIR from the United States Environmental Protection Agency, the Bay Area Air Quality Management District, the Association of Bay Area Governments, the East Bay Regional Park District, the Golden Gate University Environmental Law and Justice Clinic, and Arc Ecology.

**Alternatives**

NEPA requires Navy to evaluate a reasonable range of alternatives for the disposal and reuse of this Federal property. Because Navy proposes to dispose of the property pursuant to Section 2834 of Public Law 102–484, as amended by Section 2867 of Public Law 104–106, Navy analyzed the environmental impacts of two alternatives: (1) Disposal of the property to the Port and (2) no action. The ''No action'' alternative would result in Navy retaining ownership of the 136 acres of nonreversionary property while the other 392 acres would revert to the Port. Navy would continue leasing the nonreversionary property to the Port by way of the existing 50-year lease agreement.

In the diposal alternative, the 136-acre property would be conveyed to the Port of Oakland which would use the property to implement its Vision 2000 Program. In the Joint EIS/EIR, the Port evaluated four reuse alternatives for implementing this Program. Each of these alternatives involved intermodal port development and differed only in respect of waterfront configuration, the amount of bay fill, and public access. In the Joint FEIS/EIR, the Port identified the Reduced Harbor Fill Alternative as its Preferred Alternative.

**Environmental Impacts**

Navy analyzed the direct, indirect, and cumulative impacts of its disposal and the Port's proposed reuse on land use, socioeconomics, public services, cultural resources, aesthetic resources, biological resources, water resources, geology and soils, traffic and circulation, air quality, noise, utilities, and hazardous materials and waste.

The direct environmental impacts are those associated with Navy's proposed disposal of the 136 acres and with the ''No action'' alternative. The indirect impacts are those associated with the Port's reuse of this nonreversionary 136-acre Navy property. The cumulative impacts are those associated with the redevelopment of the reversionary FISC property (the 392 acres), third-party property included in the Vision 2000

Program, and other development activity in the area. Navy has no authority to control the Port's use of the reversionary property after it reverts to the Port, nor to control use of the third-party property that is part of the Vision 2000 Program.

With the exception of the impact on cultural resources, no significant direct impacts would result from Navy's disposal of the FISC Oakland property. Therefore, this Record of Decision will focus on the indirect and cumulative impacts that are likely to result from the Port's implementation of the Preferred Alternative, designated as the Reduced Harbor Fill Alternative.

The Reduced Harbor Fill Alternative would not have any significant impact on land use. Although the one-acre Middle Harbor Park would be eliminated, this alternative would provide public access to 31 acres of shoreline along the Oakland Middle Harbor, a substantial increase over current public access to the property.

The Reduced Harbor Fill Alternative would not result in any significant adverse socioeconomic impacts. Indeed, the Port's proposal would generate about 10,000 more new jobs than would the ''No action'' alternative.

The Reduced Harbor Fill Alternative would have a significant impact on public services as a result of the elimination of the Spectrum Medical Care Clinic that provides medical services to the West Oakland community. This impact could be mitigated, however, by moving the clinic to another site in West Oakland.

As noted earlier, the Reduced Harbor Fill Alternative would have a significant impact on cultural resources, because historic buildings and structures in the Naval Supply Center Oakland Historic District would be demolished in the redevelopment. This historic district is eligible for listing on the National Register of Historic Places. Thus, in order to permit the planned redevelopment, it was necessary to amend an existing Memorandum Of Agreement (MOA) with the State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP). This MOA provided for recordation and demolition of only those historic structures that were located on FISC property that the Port had leased from Navy. Navy, the SHPO, and the ACHP agreed upon an amendment that provides for recordation and demolition of all historic structures on the entire FISC property. The amended MOA was signed by Navy on March 7, 1997, the SHPO on April 11, 1997, and the ACHP on April 30, 1997.

The Reduced Harbor Fill Alternative would have a significant impact on aesthetic resources. Middle Harbor Park, which now provides visitors with a clear view of Oakland Harbor, would be replaced with marine terminal facilities. The Port, however, proposes to replace Middle Harbor Park with another park that will afford visitors enhanced opportunities to view Oakland Harbor and San Francisco Bay. This proposal should adequately mitigate the adverse impact caused by the loss of Middle Harbor Park.

On June 26, 1997, the United States Fish and Wildlife Service (USFWS) issued a Biological Opinion concerning the endangered California least tern. The Service concluded that Navy's disposal of the FISC property is not likely to jeopardize the continued existence of the California least tern.

The Port's proposal, however, could have a significant impact on biological resources because it may result in the loss of least tern foraging habitat. Thus, the Port will engage in programmatic consultation with USFWS pursuant to the Endangered Species Act, 16 U.S.C. 1531 *et. seq.*, and will consult with the United States Army Corps of Engineers to ensure that construction of the marine terminal and dredging do not cause significant adverse impacts on the least tern's foraging habitat.

The Reduced Harbor Fill Alternative could have another significant impact on biological resources arising out of the accumulation of sediments on eelgrass beds. This impact could be mitigated by relocating the eelgrass beds as part of the marine habitat enhancement project. Such a relocation would also enhance the environment for marine and biological resources in the Oakland Middle Harbor.

The pollutant runoff that would be generated by the Port's Reduced Harbor Fill Alternative would have a significant impact on water resources. The combination of a well-designed stormwater management facility and the implementation of best management practices, such as those already developed by the Port for vehicle maintenance, could reduce the project's stormwater pollutant runoff to an insignificant level.

The Port's dredging and its disposal of dredged material, including filling Oakland Middle Harbor, could cause adverse impacts. Thus, the Port is considering several alternatives for the disposal and reuse of any contaminated material that may result from dredging. The nature and extent of these impacts can only be determined after the sediments have been tested, the dredging methods have been selected, and the disposal and reuse sites have been identified. In any event, the Port will conduct dredging and disposal of dredged material in a manner suited to the particular conditions at the dredge site and consistent with the permit requirements of the appropriate regulatory agencies.

Redevelopment of the FISC Oakland property would continue to expose the public to those risks typically associated with regional seismic events, *i.e.*, earthquakes, liquefaction, and ground settlement. Thus, the redevelopment must comply with local building and waterfront design codes and seismic safety requirements.

The Reduced Harbor Fill Alternative would have a significant impact on traffic at the intersection of Third Street and Adeline Street during peak hours. Its impact could be mitigated by restriping the eastbound and westbound Third Street approaches to the intersection. This Alternative would not have a significant impact on nearby highways, although some Bay Area freeway segments would experience increased traffic. The Port's proposal would generate about 54,705 passenger car equivalent (PCE) average daily trips (weighted for additional truck traffic), as compared with the ''No action'' alternative's 38,513 PCE average daily trips. However, these additional trips would be distributed throughout the day so that freeway operations would not likely be significantly affected.

The Reduced Harbor Fill Alternative would have a significant impact on air quality because of the increase in transportation-related air pollutant emissions. Redevelopment of the property will attract additional automobile, truck, rail and ship traffic. Emissions from this traffic will include reactive organic compounds, nitrogen oxides, sulfur oxides, and particulate matter (less than 10 microns). Thus, the Bay Area Air Quality Management District's planning for attainment of the National Ambient Air Quality Standards will require consideration of these additional emissions as well as those generated by other growth projected for the San Francisco Bay area.

Implementation of the Reduced Harbor Fill Alternative would not result in any significant impact from noise. There would, however, be additional noise generated by traffic, trains, railyard operations and marine terminal activities. The new Cypress Freeway, located between the project site and the West Oakland neighborhoods, should attenuate the additional noise generated at the project site.

The Reduced Harbor Fill Alternative would not result in any significant

impacts on the utilities that serve the FISC property, *i.e.*, landfill capacity, water distribution, sanitary sewers, stormwater drainage, electric power, natural gas, and telephone systems.

Navy also analyzed the potential for impacts on low-income and minority populations pursuant to Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, reprinted in 42 U.S.C. § 4321 note. Although a low-income, minority population resides adjacent to the FISC property, there would be no disproportionately high and adverse human health or environmental effects on that population as a result of the proposed action.

**Mitigation**

Implementation of Navy's decision to dispose of the FISC Oakland property does not require Navy to perform any mitigation measure beyond that already accomplished, *i.e.*, amendment of the MOA concerning the Naval Supply Center Oakland Historic District. The FEIS/EIR identified and discussed those actions that would be necessary to mitigate the impacts associated with reuse of the FISC Oakland property. The Port of Oakland, under the direction of Federal, State, and local agencies with regulatory authority over protected resources, will be responsible for implementing necessary mitigation measures. The implementation of mitigation concerning the historic property will be governed by the MOA.

**Comments Received on the FEIS**

Navy received comments on the FEIS/EIR from the United States Environmental Protection Agency, the Bay Area Air Quality Management District, the East Bay Regional Park District, the Association of Bay Area Governments, and two citizens groups: the Golden Gate University Environmental Law and Justice Clinic, and Arc Ecology. The following substantive issues were identified.

The EPA requested that Navy quantify the amount of ''contaminated'' dredged material associated with the Preferred Alternative that would be not suitable for unconfined aquatic disposal. Navy and the Port anticipate that the amount of dredged material not suitable for unconfined aquatic disposal will be small. Most of the dredging required to complete the project is expected to be in rocky areas or clean sand areas, which typically have minimal sediment contamination. Contamination is most likely to be found in the upper layers of shoreline sediment near piers and wharves. Based upon the footprint of the preferred reuse alternative and discussions with the Port of Oakland, Navy estimates that 300,000 cubic yards, or less than 7% of the 4,500,000 cubic yards to be dredged, will not be suitable for unconfined aquatic disposal. Precise information will be developed and specific impacts discussed when the Port of Oakland submits an application for a Dredge and Fill permit under the Clean Water Act to the Army Corps of Engineers.

EPA recognized that the programmatic levels of analysis in the FEIS/EIR were too preliminary for biological resource impacts to be fully evaluated. EPA, however, questioned the one half mile Region Of Influence (ROI) used in the FEIS/EIR for analyzing impacts from dredging and requested that the ROI in the FEIS/EIR not artificially constrain the project-level analysis of the potential introduction of contaminants into the aquatic food chain. As the precise location and extent of dredging has not been determined and no disposal sites have been identified, Navy considers the estimated one-half mile ROI for biological resources appropriate for this FEIS/EIR. The Port of Oakland will define the ROI more precisely when it prepares project-level CEQA documentation for dredging.

The Bay Area Air Quality Management District requested that the Port of Oakland consider mitigation measures to minimize air emissions, even if these measures would not reduce air emissions below the significant level. The Port of Oakland intends to continue to meet with the community to discuss air quality issues and mitigation. Should it identify mitigation measures which would further reduce air emissions, the Port of Oakland will consider such measures in future project-specific CEQA documents prepared for its Vision 2000 Program.

The East Bay Regional Park District requested that the Port of Oakland make a firm commitment to construct or fund a bicycle/pedestrian access in Oakland Middle Harbor as part of this joint EIS/EIR. The Port of Oakland has not yet proposed specific locations for public access improvements. It will consider specific public access proposals such as the bicycle/pedestrian path in future project-specific CEQA documents for Oakland Middle Harbor.

The East Bay Regional Park District (EBRPD) commented that it supports a goal of maximum feasible public access in the Oakland Middle Harbor area, preferring multiple public access areas to a single, large public access area. The Port of Oakland has not yet proposed specific locations for public access improvements. It will consider specific public access proposals such as multiple access areas in future project-specific CEQA documents for Oakland Middle Harbor.

The Association of Bay Area Governments (ABAG) noted that the San Francisco Bay Trail map in the FEIS/EIR was inaccurate because it did not show a proposed trail route between Mandella Parkway and Maritime Streets. The identification of this map error, while useful, does not change the environmental impact analysis in the FEIS/EIR.

The Golden Gate University Environmental Law and Justice Clinic (Environmental Law Clinic) submitted comments on behalf of West Oakland Neighbors, a local citizens group. The Environmental Law Clinic expressed concerns that the FEIS/EIR did not consider feasible mitigation measures which would reduce air emissions. Specifically, the Environmental Law Clinic suggested that truck parking facilities remain open continuously to preclude the parking of trucks on the residential streets of West Oakland where residents would be subjected to emissions and noise from diesel engine start-up and idle, and that the Port of Oakland purchase emission credits.

The FEIS/EIR evaluated a variety of mitigation measures to reduce air emissions associated with port redevelopment. While some mitigation measures, such as a 24 hour parking facility, will be implemented and will reduce noise and air emissions in the West Oakland community, none of the proposed mitigation measures would reduce ozone precursors and particulate matter emissions below thresholds established by the local Air Quality District. For example, use of emission reduction credits are available for mobile sources, is project specific. The FEIS/EIR analyzed port redevelopment at the programmatic level. The Vision 2000 Program will be implemented in phases with project-specific analysis completed for each phase or project. Whether use of emission credits is appropriate and whether credits are actually available can be analyzed in project-specific CEQA documents. The Port of Oakland will continue to discuss possible mitigation with the local community.

The Environmental Law Clinic also suggested that EPA's informal proposal to redesignate the San Francisco Bay area as moderate nonattainment for ozone should be considered new information requiring supplemental analysis in the FEIS/EIR. At present EPA has not formally proposed a change in ozone designation for the bay Area.

Even if EPA has published a proposed change in designation from attainment/maintenance to nonattainment, the amount of emissions associated with the reuse alternatives would not change. Air impacts would still be significant and the Port of Oakland would still need to evaluate additional mitigation measures in project-specific CEQA documents. The more stringent emission restrictions normally associated with nonattainment designations are not applicable to the Navy's proposed action as federal disposal actions are exempt from application of the Clean Air Act's Conformity provisions.

The Environmental Law Clinic expressed concern that, contrary to the analysis in the FEIS/EIR, minority and low income residents of West Oakland were disproportionately and adversely affected by air emissions from the proposed port redevelopment. As discussed in the FEIS/EIR, ozone precursor and particulate emissions from motor vehicle, rail, and ship traffic would occur over a broad dispersed geographic area, and therefore would not result in a localized impact on West Oakland neighborhoods. Particulate emissions during demolition and construction will be controlled, eliminating any adverse impacts on the West Oakland community during the construction phase. Impacts associated with the proposed redevelopment therefore would not be disproportionately high and adverse.

The Environmental Law Clinic also commented that the FEIS/EIR did not include mitigation for impacts to shorebirds from the Port's Vision 2000 Program. Suitable habitat for shorebirds is very limited in the area. Impacts identified in the FEIS/EIR are so limited that mitigation is not required.

**Conclusion**

Of the 528-acre FISC Oakland property, about 392 acres will revert to the Port. The remaining nonreversionary property, 136 acres, is currently leased to the Port by way of a 50-year lease. Although the ''No action'' alternative has less potential for causing adverse environmental impacts, it would not permit efficient use of the nonreversionary Navy property.

Navy's conveyance of the nonreversionary property to the Port would allow the Port to reuse and redevelop the entire FISC Oakland property efficiently, with other nearby property, in a manner consistent with the ''port priority use'' designation of the San Francisco Bay Conservation and Development Commission and the Metropolitan Transportation Commission. Additionally, disposal of the property relieves Navy of the burden of owning, managing, and maintaining property that it no longer needs.

Accordingly, Navy will dispose of the FISC Oakland property by conveying it to the Port of Oakland pursuant to Section 2867 of Public Law 104–106.

Dated: August 28, 1997.

**Robert B. Pirie, Jr.,**

*Assistant Secretary of the Navy, (Installations And Environment).*

[FR Doc. 97–23448 Filed 9–3–97; 8:45 am]

BILLING CODE 3810–FF–M

## DEPARTMENT OF EDUCATION

### Notice of Waivers Granted

**ACTION:** Notice of waivers granted by the U.S. Secretary of Education under the authority of the Elementary and Secondary Education Act.

**SUMMARY:** The Elementary and Secondary Education Act (ESEA) as reauthorized in the Improving America's Schools Act (IASA) (Pub. L. 103–382), the Goals 2000: Educate America Act (Pub. L. 103–227), and the School-to-Work Opportunities Act (Pub. L. 103–239) provide State education agencies, school districts, schools, and other recipients of Federal education funds with unprecedented flexibility in using Federal education programs to meet specific local needs for improving teaching and learning, and to support systemic education reform initiatives designed to help all children reach challenging academic standards. In order to facilitate effective innovation and program improvement, these Acts authorize the Secretary of Education to grant waivers of certain Federal program requirements.

As of June 30, 1997, the U.S. Department of Education had approved 164 waiver requests under the waiver authorities identified above. This notice, published as provided for in section 14401(g) of the ESEA, identifies the 21 waiver requests approved by the Department of Education from January 1, 1997 through June 30, 1997.

**(A) Waivers Approved Under the General Waiver Authority in Section 14401 of the ESEA**

(1) *Name of Applicant:* Puerto Rico Department of Education, San Juan, PR.

*Requirement Waived:* Section 1113(a)(3) of the ESEA.

*Duration of Waiver:* Two years.

*Date Granted:* January 2, 1997.

(2) *Name of Applicant:* Hawaii Department of Education on behalf of Kapalama School, Honolulu, HI.

*Requirement Waived:* Section 1114(a)(1)(B) of the ESEA.

*Duration of Waiver:* Three years.

*Date Granted:* January 30, 1997.

(3) *Name of Applicant:* Hawaii Department of Education on behalf of King Kaumuali'i Elementary School, Honolulu, HI.

*Requirement Waived:* Section 1114(a)(1)(B) of the ESEA.

*Duration of Waiver:* Three years.

*Date Granted:* January 30, 1997

(4) *Name of Applicant:* Hawaii Department of Education on behalf of Pearl Harbor Elementary School, Honolulu, HI.

*Requirement Waived:* Section 1114(a)(1)(B) of the ESEA.

*Duration of Waiver:* Three years.

*Date Granted:* January 30, 1997.

(5) *Name of Applicant:* Hawaii Department of Education on behalf of Pearl Harbor Kai Elementary School, Honolulu, HI.

*Requirement Waived:* Section 1114(a)(1)(B) of the ESEA.

*Duration of Waiver:* Three years.

*Date Granted:* January 30, 1997.

(6) *Name of Applicant:* Oregon Department of Education on behalf of the Oregon State System of Higher Education, Salem, OR.

*Requirement Waived:* Section 2206(b) as applied to Section 2203(2) of the ESEA.

*Duration of Waiver:* Three years.

*Date Granted:* January 30, 1997.

(7) *Name of Applicant:* West Perry School District, Elliotsburg, PA.

*Requirements Waived:* Sections 1113(c)(1) and 1113(c)(2) of the ESEA, and 34 CFR Section 200.28(c).

*Duration of Waiver:* Three years.

*Date Granted:* January 30, 1997.

(8) *Name of Applicant:* Philadelphia School District, Philadelphia, PA.

*Requirements Waived:* Section 1113(c)(1) of the ESEA, and 34 CFR Section 200.28(c).

*Duration of Waiver:* Three years.

*Date Granted:* January 31, 1997.

(9) *Name of Applicant:* Hawaii Department of Education on behalf of Waipahu Intermediate School, Honolulu, HI.

*Requirement Waived:* Section 1114(a)(1)(B) of the ESEA.

*Duration of Waiver:* Three years.

*Date Granted:* March 9, 1997.

(10) *Name of Applicant:* Amphitheater Public Schools, Tucson, AZ.

*Requirement Waived:* Section 1114(a)(1)(B) of the ESEA.

*Duration of Waiver:* Three years.

*Date Granted:* March 18, 1997.

(11) *Name of Applicant:* Arizona Department of Education, Phoenix, AZ.

*Requirement Waived:* Section 1208(b)(5)(A) of the ESEA.

*Duration of Waiver:* Three years.

*Date Granted:* March 27, 1997.

(12) *Name of Applicant:* Hawaii Department of Education on behalf of Konawaena Elementary School, Honolulu, HI.

*Requirement Waived:* Section 1114(a)(1)(B) of the ESEA.

*Duration of Waiver:* Three years.

*Date Granted:* March 27, 1997.

(13) *Name of Applicant:* McLean County School District, Calhoun, KY.

*Requirement Waived:* Section 1114(a)(1)(B) of the ESEA.

*Duration of Waiver:* Three years.

*Date Granted:* April 21, 1997.

(14) *Name of Applicant:* Oregon Department of Education, Salem, OR.

*Requirements Waived:* Sections 3134 and 3135 of the ESEA.

*Duration of Waiver:* One year.

*Date Granted:* April 21, 1997.

(15) *Name of Applicant:* Elizabethtown Independent Schools, Elizabethtown, KY.

*Requirement Waived:* Section 1114(a)(1)(B) of the ESEA.

*Duration of Waiver:* Three years.

*Date Granted:* May 13, 1997.

(16) *Name of Applicant:* Hawaii Department of Education on behalf of Kealakehe Intermediate School, Honolulu, HI.

*Requirement Waived:* Section 1114(a)(1)(B) of the ESEA.

*Duration of Waiver:* Three years.

*Date Granted:* May 13, 1997.

(17) *Name of Applicant:* Bedford Area School District, Bedford, PA.

*Requirement Waived:* Section 1113(a)(2)(B) of the ESEA.

*Duration of Waiver:* One year.

*Date Granted:* June 13, 1997.

(18) *Name of Applicant:* Colorado Department of Education, Denver, CO.

*Requirement Waived:* Section 11004(a) of the ESEA.

*Duration of Waiver:* Three years.

*Date Granted:* June 13, 1997.

(19) *Name of Applicant:* Florida Department of Education, Tallahassee, FL.

*Requirements Waived:* Section 2206(b) as applied to Sections 2203(1) and 2203(2) of the ESEA.

*Duration of Waiver:* Three years.

*Date Granted:* June 13, 1997.

(20) *Name of Applicant:* Great Valley School District, Malvern, PA.

*Requirement Waived:* Section 1113(a)(2)(B) of the ESEA.

*Duration of Waiver:* Three years.

*Date Granted:* June 26, 1997.

**(B) Waivers Approved Under the Desegregation Waiver Authority in Section 1113(a)(7) of the ESEA**

(1) *Name of Applicant:* Warren Township Metropolitan School District, Indianapolis, IN.

*Requirement Waived:* Section 1113(a)(2)(B) of the ESEA.

*Duration of Waiver:* Three years.

*Date Granted:* June 13, 1997.

**Applying for a Waiver**

Requests for waivers that would be implemented and affect school-level activities beginning with the semester immediately following January 1, 1998 must be submitted to the Department in substantially approvable form no later than October 1, 1997. Requests for waivers that would be implemented and affect school-level activities beginning with the 1998–1999 school year must be submitted to the Department in substantially approvable form no later than April 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Doherty at the Department's Waiver Assistance Line, (202) 401–7801. The Department's Waiver Guidance, which provides examples of waivers, explains the waiver authorities in detail, and describes how to apply for a waiver, is also available at this number. The Guidance and other information on flexibility also are available at the Department's World Wide Web site at http://www.ed.gov/flexibility.

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.

Dated: August 28, 1997.

**Marshall S. Smith,**

*Acting Deputy Secretary.*

[FR Doc. 97–23504 Filed 9–3–97; 8:45 am]

BILLING CODE 4000–01–P

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## DEPARTMENT OF EDUCATION

## DEPARTMENT OF LABOR

### The Advisory Council for School-to-Work Opportunities; Renewal

In accordance with the Federal Advisory Committee Act, the Secretaries of Labor and Education have renewed the charter for the Advisory Council for School-to-Work Opportunities.

The Advisory Council for School-to-Work Opportunities will provide advice to the Departments of Education and Labor on a number of matters pertaining to implementation of the School-to-Work Opportunities Act of 1994. The Council shall be responsible for: Assessing the progress of School-to-Work Opportunities systems development and program implementation toward achieving the goals of the School-to-Work Opportunities Initiative; providing feedback and making recommendations to the Steering Committee regarding the progress and direction of implementation of the School-to-Work Opportunities Initiative; reporting periodically to the Steering Committee on emerging issues, actions, findings and advice; and providing input into policy issues, as requested.

The Council will meet two times a year. It will be comprised of approximately 40 members, with the following representation: educators (seven), employers (six), labor (six), community groups (five), the general public (four), students (two, one secondary and one post-secondary), parents (two), State officials (four, e.g., current Governors, State legislators, State School-to-Work Opportunities officials), and local officials (four, e.g., mayors, county administrators, local School-to-Work Opportunities officials). None of these members shall be deemed to be employees of the United States.

The Council will report to the Departments of Education and Labor through the School-to-Work Opportunities Steering Committee, comprised of senior executive Federal officials from the Departments of Education and Labor. It will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act fifteen (15) days from the date of publication.

Interested persons are invited to submit comments regarding the renewal of The Advisory Council for School-to-Work Opportunities. Such comments should be addressed to: J.D. Hoye, School-to-Work Office. 400 Virginia Ave., SW, Room 210, Washington, DC 20024.

Signed at Washington, DC this 27th day of August, 1997.

**Richard W. Riley,**

*Secretary of Education.*

**Alexis M. Herman,**

*Secretary of Labor.*

[FR Doc. 97–23484 Filed 9–3–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF ENERGY

**[FE Docket Nos. 97–42–NG; 97–34–NG; 97–38–NG; 93–12–NG; 95–25–NG; 94–87–NG; 92–53–NG; 97–44–NG; 97–45–NG; 97–49–NG; 97–47–NG; 97–50–NG; 97–43–NG; 97–46–NG; 97–51–NG]**

### Office of Fossil Energy; Orders Granting, Transferring and Vacating Blanket Authorizations To Import and/or Export Natural Gas

AIG TRADING CORPORATION
ENSERCH ENERGY SERVICES, INC.
CRESTAR ENERGY MARKETING CORP.
AMERICAN HUNTER ENERGY INC.
AMERICAN HUNTER ENERGY INC.
AMERICAN HUNTER ENERGY INC.
PANDA RESOURCES, INC.
PAN-ALBERTA GAS (U.S.) INC.
CASCADE NATURAL GAS CORPORATION
HOWARD ENERGY MARKETING, INC.
INLAND PACIFIC ENERGY SERVICES CORP.
MIDCON GAS SERVICES CORP.
DISTRIBUIDORA DE GAS NATURAL DE MEXICALI
AEC MARKETING (USA) INC.
AEC MARKETING (USA) INC.

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of orders.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued Orders authorizing, transferring and/or vacating various imports and/or exports of natural gas. These orders are summarized in the attached appendix.

These Orders are available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities, Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on August 21, 1997.

**Wayne E. Peters,**

*Manager, Natural Gas Regulation, Office of Natural Gas and Petroleum Import and Export Activities, Office of Fossil Energy.*

APPENDIX—BLANKET IMPORT/EXPORT AUTHORIZATIONS GRANTED

[DOE/FE Authority]

| Order No. | Date issued | Importer/exporter FE docket No. | Two-year maximum | | Comments |
|---|---|---|---|---|---|
| | | | Import volume | Export volume | |
| 1276 | 06/10/97 | AIG Trading Corporation 97–42–NG | 300 Bcf<br>300 Bcf | 300 Bcf<br>300 Bcf | Import/export from and to Canada and from and to Mexico. |
| 1277 | 06/10/97 | Enserch Energy Services, Inc. 97–34–NG. | 200 Bcf | 200 Bcf | Import from Canada and Mexico and export to Canada and Mexico. |
| 1278 | 06/10/97 | Crestar Energy Marketing Corp. 97–38–NG. | 50 Bcf | | Import/export combined total from and to Canada. |
| 812–A | 06/10/97 | American Hunter Energy Inc. (Formerly American Hunter Exploration Ltd.) 93–12–97. | | | Transfer of authority. |
| 1045–A | 06/10/97 | American Hunter Energy Inc. (Formerly American Hunter Exploration Ltd.) 95–25–NG. | | | Transfer of authority. |
| 1000–A | 06/10/97 | American Hunter Energy Inc. (Formerly American Hunter Exploration Ltd.) 94–87–NG. | | | Transfer of authority. |
| 656–A | 06/10/97 | Panda Resources, Inc. 92–53–NG | | | Vacate. |
| 1279 | 06/20/97 | Pan-Alberta Gas (U.S.) Inc. 97–44–NG | 730 Bcf | | Import from Canada. |
| 1281 | 06/24/97 | Cascade Natural Gas Corporation 97–45–NG. | 60 Bcf | | Import from Canada. |
| 1283 | 06/27/97 | Howard Energy Marketing, Inc. 97–49–NG. | 36 Bcf | 36 Bcf | Import/export from and to Canada. |
| 1284 | 06/27/97 | Inland Pacific Energy Services Corp. 97–47–NG. | 48 Bcf | | Import from Canada. |
| 1285 | 06/27/97 | Midcon Gas Services Corp. 97–50–NG | | 600 Bcf | Export combined total to Canada and Mexico. |
| 1286 | 06/27/97 | Distribuidora De Gas Natural De Mexicali 97–43–NG. | 18.3 Bcf | 18.3 Bcf | Import from Canada to export to Mexico. |
| 1287 | 06/27/97 | AEC Marketing (USA) Inc. (Formerly Alenco Gas Services Inc.) 97–46–NG. | 66 Bcf | | Import from Canada. |
| 1288 | 06/30/97 | AEC Marketing (USA) Inc. (Formerly Alenco Gas Services Inc.) 97–51–NG. | | 50 Bcf | Export to Canada. |

[FR Doc. 97–23500 Filed 9–3–97; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

**[FE Docket Nos. 97–53–NG; 96–16–NG; 94–13–NG; 95–122–NG; 97–52–NG; 97–54–NG]**

### Office of Fossil Energy; Orders Granting, Transferring and Vacating Blanket Authorizations to Import and/or Export Natural Gas

PEMEX GAS Y PETROQUIMICA BASICA
EL PASO ENERGY MARKETING COMPANY (Formerly EPEM Marketing Company)
EL PASO ENERGY MARKETING COMPANY (Formerly EPEM Marketing Company)
EL PASO ENERGY MARKETING COMPANY (Formerly EPEM Marketing Company)

EL PASO ENERGY MARKETING COMPANY
WESTERN GAS RESOURCES, INC.

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of orders.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued orders authorizing, transferring and/or vacating various imports and/or exports of natural gas. These orders are summarized in the attached appendix.

These orders are available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities, Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on August 21, 1997.

**Wayne E. Peters,**

*Manager, Natural Gas Regulation, Office of Natural Gas and Petroleum, Import and Export Activities, Office of Fossil Energy.*

APPENDIX—BLANKET IMPORT/EXPORT AUTHORIZATIONS GRANTED

[DOE/FE Authority]

| Order No. | Date issued | Importer/Exporter FE docket No. | Two-year maximum | | Comments |
|---|---|---|---|---|---|
| | | | Import volume | Export volume | |
| 1289 | 07/11/97 | Pemex Gas Y Petroquimica Basica 97–53–NG. | 160 Bcf | | Import/export combined total, including LNG to and from Mexico. |
| 1159–B | 07/25/97 | El Paso Energy Marketing Company (Formerly EPEM Marketing Company) 96–16–NG. | | | Name change. |
| 940–B | 07/25/97 | El Paso Energy Marketing Company (Formerly EPEM Marketing Company) 94–13–NG. | | | Name change. |
| 1138–B | 07/25/97 | El Paso Energy Marketing Company (Formerly EPEM Marketing Company) 95–122–NG. | | | Name change. |
| 1291 | 07/25/97 | El Paso Energy Marketing Company 97–52–NG. | 200 Bcf | | Import from Mexico. |
| 1292 | 07/31/97 | Western Gas Resources, Inc. 97–54–NG | 73 Bcf | 73 Bcf | Import and export from and to Canada. |

[FR Doc. 97–23499 Filed 9–3–97; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Energy Information Administration

### Agency Information Collection Under Review by the Office of Management and Budget

**AGENCY:** Energy Information Administration, Department of Energy.

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) Collection number and title; (2) summary of the collection of information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) description of the likely respondents; and (5) estimate of total annual reporting burden (average hours per response x proposed frequency of response per year x estimated number of likely respondents.)

**DATES:** Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

**ADDRESSES:** Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW, Washington, D.C. 20503. (Comments should also be addressed to the Statistics and Methods Group at the address below.)

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Jay Casselberry, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Mr. Casselberry may be telephoned at (202) 426–1116, FAX (202) 426–1081, or e-mail at Jay.Casselberry@eia.doe.gov.

**SUPPLEMENTARY INFORMATION:** The energy information collection submitted to OMB for review was:

1. EIA–851 and EIA–858, ''Uranium Data Program''.

2. Energy Information Administration; 1905–0160; Extension with changes; Mandatory.

3. EIA's Uranium Data Program collects basic data necessary to meet EIA's legislative mandates as well as the needs of EIA's public and private customers. Data collected include uranium exploration, reserves, production, processing, and marketing. The data are used for analyses and publications. Respondents include firms and individuals that comprise the U.S. uranium industry.

4. Business or other for-profit.

5. 2706 hours (10.74 hours×2.1 responses per year×120 respondents).

**Statutory Authority:** Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C., August 26, 1997.

**Jay H. Casselberry,**

*Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.*

[FR Doc. 97–23503 Filed 9–3–97; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–470–000]**

## Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

August 28, 1997.

Take notice that on August 26, 1997, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, First Revised Sheet No. 635 to be effective September 25, 1997.

Algonquin asserts that the purpose of this filing is to comply with the Commission's Order No. 636–C, Ordering Paragraph (B) which requires any pipeline with a right-of-first-refusal tariff provision containing a contract term cap longer than five years to revise its tariff consistent with the revised cap of five years adopted in Order No. 636–C.

Algonquin states that copies of this filing were served on firm customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23417 Filed 9–3–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP97–703–000]**

## ANR Pipeline Company; Notice of Request Under Blanket Authorization

August 28, 1997.

Take notice that on August 22, 1997, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP97–703–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations (18 CFR 157.205, 157.211) under the Natural Gas Act (NGA) for authorization to construct and operate a bi-directional interconnection between ANR and Mid Continent Market Center, Inc. (MCMC) in Kiowa County Kansas, for Part 284 transportation services by ANR, under ANR's blanket certificate issued in Docket No. CP82–480–000, pursuant to Section 7 of the NGA, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

ANR proposes to construct and operate an 8-inch hot tap, an 8-inch insulating flange, and an electronic measurement system. It is stated that ANR will be fully reimbursed for the $102,000 cost of installing the facilities by MCMC. It is explained that the interconnection will give shippers on ANR access to MCMC's system. ANR states that the interconnection will accommodate deliveries of up to 40 Mmcf per day. It is asserted that the proposal will have no adverse impact on ANR's peak day or annual deliveries or on the annual entitlements of ANR's customers. It is explained that the proposal will not impact ANR's gas supply situation and that deliveries can be made without detriment or disadvantage to any existing customer.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23396 Filed 9–3–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–464–000]**

## ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 28, 1997.

Take notice that, on August 25, 1997, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet proposed to be effective September 25, 1997:

Second Revised Sheet No. 162

ANR states that the purpose of this filing is to comply with the Commission's Order No. 636–C. That order required pipelines to reduce to five years the maximum cap for long-term shippers to match offers under the right-of-first-refusal process.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23411 Filed 9–3–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–465–000]**

### ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 28, 1997.

Take notice that, on August 25, 1997, ANR Pipeline Company (ANR) tendered for filing, in compliance with Order No. 636–C, a proposal for a revised level of transition costs to be allocated to interruptible transportation customers. For the reasons set forth in its filing, ANR proposed to replace its existing ten percent (10%) allocation level with a five percent (5%) allocation level.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commissions Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23412 Filed 9–3–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–468–000]**

### Canyon Creek Compression Company; Notice of Proposed Changes in FERC Gas Tariff

August 28, 1997.

Take notice that on August 26, 1997, Canyon Creek Compression Company (Canyon) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet Nos. 168 and 169, to be effective October 1, 1997.

Canyon states that the filing was made pursuant to Section 4 of the Natural Gas Act, the Commission's Regulations thereunder regarding tariff changes, and Order No. 636–C. Specifically, Canyon requested to modify Sections 18.2(d)(1) and (d)(3) of the General Terms and Conditions of its tariff relating to the right of first refusal to provide for a five-year term matching cap instead of the currently effective twenty-year term match.

Canyon requested whateven waivers are necessary to permit the tariff sheets to become effective on October 1, 1997.

Canyon states that a copy of the filing has been mailed to Canyon's transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23415 Filed 9–3–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–290–002]**

### Colorado Interstate Gas Company; Notice of Tariff Compliance Filing

August 28, 1997.

Take notice that on August 25, 1997, Colorado Interstate Gas Company (CIG) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Second Revised Sheet No. 132A.07, Original Sheet No. 132A.07a and Substitute Second Revised Sheet No. 132A.08 to be effective April 14, 1997.

CIG states the tariff sheets are filed in compliance with the order issued August 4, 1997 in Docket No. RP97–290–000 and RP97–290–001, as well as Section 154.203 of the Commission's regulations. CIG further states these sheets are filed to (i) remove Section 6 of Rate Schedule HSP–1 which provided for reimbursement to Transporter of fees, (ii) clarify that scheduling and allocation of pooled quantities shall be determined by the priority of the take-away transportation agreement and, (iii) state that Transporter shall give at least 30 days advance notice prior to modification of the scope of a pooling area.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23407 Filed 9–3–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. GT97–64–000]**

### Iroquois Gas Transmission System, L.P. Notice of GRI Refunds

August 28, 1997.

Take notice that on August 25, 1997, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing a report of Gas Research Institute (GRI) refunds to Iroquois for the period from January 1, 1996 to December 31, 1996.

Iroquois states that the refunds have been based on the total refund from GRI to Iroquois of $421,241 and that refund checks were issued to all eligible firm customers.

Iroquois states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426 in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules of Practice and Procedures. All such motions or protests must be filed on or

before September 5, 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 in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23402 Filed 9–3–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EC97–48–000]**

### Lake Benton Power Partners, LLC; Notice of Filing

August 28, 1997.

Take notice that on August 18, 1997 and August 22, 1997, Lake Benton Power Partners, LLC tendered for filing amendments 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 Avenue, 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 September 8, 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. 97–23395 Filed 9–3–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP97–710–000]**

### Natural Gas Pipeline Company of America; Notice of Application To Abandon

August 28, 1997.

Take notice that on August 25, 1997, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois 60148 filed pursuant to Section 7(b) of the Natural Gas Act, for authority to abandon by sale to its affiliate MidCon Texas Pipeline Operator (MidCon) certain laterals, meters and tap facilities located in Jim Hogg and Zapata Counties, Texas.

Specifically, Natural proposes to abandon: (1) 11.7 miles of 8-inch pipeline along with meter and tap facilities comprising the Los Mogotes Lateral in Zapata County, Texas; and (2) 15.9 miles of 10-inch pipeline along with meter and tap facilities comprising the Escobas Lateral in Jim Hogg and Zapata Counties, Texas.

Applicant intends to sell the facilities to MidCon for their net book value of $151,713. Applicant also asks the Commission to specify that after transfer to MidCon the facilities will be non-jurisdictional.

Any person desiring to be heard or make any protest with reference to said application should on or before September 18, 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 385.214 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 protesters 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 Commissions'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, or if the Commission on its own review of the matter finds that permission and approval of the proposed abandonment are 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 Applicant to appear or be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23399 Filed 9–3–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–469–000]**

### Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

August 28, 1997.

Take notice that on August 26, 1997, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets to be effective October 1, 1997.

Natural states that the purpose of the filing is to modify the provisions in Natural's tariff relating to recovery of gas supply realignment costs. Specifically, Natural is filing to continue the pricing differential method with respect to one contract. In addition, Natural is filing mechanisms to recover supply realignment costs originally allocated to Rate Schedule ITS which were not collected in ITS rates.

Natural requested any waivers which may be required to permit the tendered tariff sheets to become effective on October 1, 1997.

Natural states that copies of the filing have been mailed to Natural's customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to

be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23416 Filed 9–3–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP97–708–000]**

### Northern Natural Gas Company; Notice of Application

August 28, 1997.

Take notice that on August 25, 1997, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP97–708–000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to Columbia Gulf Transmission Company (Columbia Gulf) Northern's ownership interest in certain facilities with appurtenances, located in West Cameron and Vermillion Blocks, Offshore Louisiana, for $10.00, including any facilities constructed under its blanket during the processing of this application, and to abandon any related services, as more fully set forth in the application on file with the Commission and open to public inspection.

Northern states that these facilities are no longer needed to perform its primary function as transporter, as opposed to its pre-636 function as merchant of natural gas, and therefore has decided to sell the facilities. Also, Northern indicates that these facilities are non-contiguous to its system and that Columbia Gulf is more in tune to operating such facilities in conjunction with its interstate pipeline system.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 18, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are 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 Northern to appear or be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23398 Filed 9–3–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–480–000]**

### Pacific Gas Transmission Company, Notice of Proposed Changes in FERC Gas Tariff

August 28, 1997.

Take notice that on August 26, 1997, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A: First Revised Sheet No. 131, to be effective September 26, 1997.

PGT asserts the purpose of this filing is to comply with the Commission's February 27, 1997 Order on Remand in Docket Nos. RM91–11–006, *et al.* (''Order on Remand''), which directed pipelines to revise their contract matching term cap in the right-of-first-refusal provisions of their tariffs to be consistent with the five-year cap established in the Order on Remand.

PGT further states a copy of this filing has been served upon its jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23421 Filed 9–3–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–466–000]**

### Stingray Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 28, 1997.

Take notice that on August 26, 1997, Stingray Pipeline Company (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 178, to be effective October 1, 1997.

Stingray states that the filing was made pursuant to Section 4 of the Natural Gas Act, the Commission's Regulations thereunder regarding tariff changes, and Order No. 636–C. Specifically, Stingray requested to modify Sections 18.2(d)(1) and (d)(3) of the General Terms and Conditions of its tariff relating to the right of first refusal to provide for a five-year term matching cap instead of the currently effective twenty-year term match.

Stingray requested whatever waivers are necessary to permit the tariff sheet to become effective on October 1, 1997.

Stingray states that a copy of the filing has been mailed to Stingray's transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the

Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23413 Filed 9–3–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–471–000]**

### Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 28, 1997.

Take notice that on August 26, 1997, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Second Revised Sheet No. 462 to be effective September 25, 1997.

Texas Eastern asserts that the purpose of this filing is to comply with the Commission's Order No. 636–C, Ordering Paragraph (B) which requires any pipeline with a right-of-first-refusal tariff provision containing a contract term cap longer than five years to revise its tariff consistent with the revised cap of five years adopted in Order No. 636–C.

Texas Eastern states that copies of this filing were served on firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23418 Filed 9–3–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–467–000]**

### Trailblazer Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 28, 1997.

Take notice that on August 26, 1997, Trailblazer Pipeline Company (Trailblazer) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Sheet No. 177, to be effective October 1, 1997.

Trailblazer states that the filing was made pursuant to Section 4 of the Natural Gas Act, the Commission's Regulations thereunder regarding tariff changes, and Order No. 636–C. Specifically, Trailblazer requested to modify Sections 21.2(d)(1) and (d)(3) of the General Terms and Conditions of its tariff relating to the right of first refusal to provide for a five-year term matching cap instead of the currently effective twenty-year term match.

Trailblazer requests whatever waivers are necessary to permit the tariff sheet to become effective on October 1, 1997.

Trailblazer states that a copy of the filing has been mailed to Trailblazer's transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23414 Filed 9–3–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP97–705–000]**

### Transcontinental Gas Pipeline Corporation and El Paso Natural Gas Company; Notice of Joint Application

August 28, 1997.

Take notice that on August 22, 1997, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251 and El Paso Natural Gas Company (El Paso), jointly referred to as Applicants, filed in Docket No. CP97–705–000 a joint application pursuant to Section 7(b) of the Natural Gas Act for an order permitting and approving the abandonment of existing Section 7(c) certificated exchange agreements between Transco and El Paso, under Transco's Rate Schedules X–160 and X–161 and El Paso's Rate Schedules X–46 and X–45, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, the Applicants state that they seek Commission authorization to terminate Transco's Rate Schedules X–160 and X–161 and El Paso's Rate Schedules X–46 and X–45. The Applicants state that Transco and El Paso, by letter dated June 2, 1997, mutually agreed to terminate these services effective as of the date an order is issued approving such terminations.

The Applicants state that the service provided under the exchange agreements has not been utilized since May, 1991, and that no historical imbalances associated with the subject exchange agreements exist.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 18, 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 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 permission and approval for the proposed abandonment are 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 Transco or El Paso to appear or be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23397 Filed 9–3–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP97–712–000]**

### Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

August 28, 1997.

Take notice that on August 25, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in the above docket, a request pursuant to Section 7 of the Natural Gas Act (N.A.) and Sections 157.205 and 157.211 of the Commission's Regulations, for authorization to utilize an existing tap to effectuate natural gas transportation deliveries to Montana-Dakota Utilities (Montana-Dakota) for ultimate use by additional residential customers in McCone County, Montana, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Williston Basin proposes to provide natural gas transportation deliveries to Montana-Dakota for ultimate use by residential customers under Rate Schedules FT–1 and/or IT–1 of its FERC Gas Tariff, Second Revised Volume No. 1. Williston Basin was authorized to acquire and operate this tap pursuant to the Commission's order dated February 13, 1985, in Docket Nos. CP82–487–000, *et al.* Williston Basin states that the proposed service will have no significant effect on its peak day or annual requirements and capacity has been determined to exist on its system to service this natural gas market. Williston Basin states that its FERC Gas Tariff does not prohibit the addition of new delivery points. Williston Basin also states that the volumes to be delivered are within the contractual entitlements of the customer.

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 Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity is deemed to be authorized effective on 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. 97–23400 Filed 9–3–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–472–000]**

### Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 28, 1997.

Take notice that on August 26, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective August 26, 1997:

First Revised Sheet No. 45
First Revised Sheet No. 75
Second Revised Sheet No. 293

Williston Basin states that the revised tariff sheets reflect modifications to Williston Basin's FERC Gas Tariff in compliance with the Commission's Order No. 636–C ''Order on Remand'' issued February 27, 1997 in Docket Nos. RM91–11–006 and RM87–34–072.

Any persons 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 Sections 385.211 and 385.214). All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23420 Filed 9–3–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EC97–47–000]**

### Zond Minnesota Development Corporation and Lake Benton Power Partners, LLC; Notice of Filing

August 28, 1997.

Take notice that on August 18, 1997, Zond Minnesota Development Corporation and Lake Benton Power Partners, LLC 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 must be filed on or before September 8, 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. 97–23394 Filed 9–3–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 8321–006]**

### Murray W. Thurston, Inc.; Notice of Availability of Environmental Assessment

August 28, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 F.R. 47897), the Commission's Office of Hydropower Licensing has reviewed an exemption surrender application for the Thurston Mill Project No. 8321–006. The Thurston Mill Project is located on the Swift River in Oxford County, Maine. The EA finds that approving the application would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Commission's Reference and Information Center, Room 2A, 888 First Street, N.E., Washington, D.C. 20426. For further information, please contact the project manager, Ms. Hillary Berlin, at (202) 219–0038.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23405 Filed 9–3–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 5276–040]**

### Niagara Mohawk Power Corp. and Northern Electric Power Co.; Notice of Availability of Final Environmental Assessment

August 28, 1997.

An environmental assessment (EA) is available for public review. The EA is for an application to amend the Hudson Falls Hydroelectric Project. The licensee proposes to suspend article 404 which requires the release of a continuous minimum flow of 500 cfs to allow for PCB cleanup. The EA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. The Hudson Falls Hydroelectric Project is located on the Hudson River in Washington County, New York.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the FEA can be viewed in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

For further information, please contact the project manager, Mr. Sean Murphy, at (202) 219–2964.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23403 Filed 9–3–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 11547–000 Connecticut]**

### Summit Hydropower; Notice of Availability of Environmental Assessment

August 28, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Hale Hydroelectric Project located on the Quinebaug River in Windham County, near the town of Putnam, Connecticut, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review of the Public Reference Branch, Room 2A of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23406 Filed 9–3–97; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

### Intent to Prepare an Environmental Impact Statement and Notice of Scoping Meeting

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

**ACTION:** The U.S. Environmental Protection Agency (EPA) has determined the need to prepare an Environmental Impact Statement (EIS) for the Tampa Water Resource Recovery Project. This action is taken pursuant to 40 CFR 1501.7 and section 102(2)(C) of the National Environmental Policy Act (NEPA). EPA intends to prepare this EIS in cooperation with the U.S. Army Corps of Engineers, Jacksonville District. This effort will be coordinated closely with the ongoing multi-agency ecosystem team permitting now underway for this project.

### Administrative History

Congress provided funds through the FY 95 Appropriations Act for local area water supply related projects. One of these projects involves the granting of funds to the City of Tampa for the Tampa Water Resource Recovery Project (TWRRP). Region 4 awarded grant No. XP994689–95–0 to the City of Tampa on March 1, 1995 in the amount of $18,712,000.

The TWRRP grant involves investigating, designing and constructing a project for the recovery of between 15 and 50 million gallons of advanced wastewater treated effluent to supplement area water supplies. The water would be recovered from the City of Tampa's Howard F. Curren treatment plant for use as water supplies for the Tampa area. The effluent would be further treated and then transported from the Curren plant to the middle pool of the Tampa Bypass Canal, a flood control project built by the Corps of Engineers and managed by the Southwest Florida Water Management District. Water would then either be pumped from the Harney canal into the Hillsborough River Reservoir, the City's water supply source, or be withdrawn by a series of linear wells adjacent to the Tampa Bypass Canal. The raw water would be treated as needed and used for municipal drinking water for the Tampa area.

The State of Florida with cooperation and participation from the City of Tampa and federal, state, regional and local agencies has initiated a cooperative permitting effort for this project. This ''Ecosystem Team Permitting'' is designed to result in a more coordinated and efficient

permitting process with a resulting net ecosystem benefit. EPA is a party in this team permitting process. The permitting process is projected to be completed in the winter of 1998.

EPA has identified the need to prepare an environmental impact statement (EIS) for this grant award. The potential for impact and controversy were considered as part of this determination. The intent of the EPA is to assure the requirements of the National Environmental Policy Act are fully met. EPA intends to coordinate the preparation on the EIS with the Ecosystem Team Permitting process as much as possible. Available information and materials produced by the applicant and other materials generated by the team permitting process will be used for preparing the EIS.

**Alternatives**

The EIS will address alternatives for the project and their potential impacts. Potential impacts to water quality, public health and area water resources will be given special attention.

**Role of the Public**

Participation in the EIS process is invited from individuals, organizations, and all governmental agencies. EPA will hold a public scoping meeting in concert with an ecosystem permitting team public meeting on September 17, 1997 at 6:00 pm. The meeting will be held at the Tampa Convention Center, Room 18. Both oral and written comments will be accepted. Comments and questions are encouraged, and relevant issues identified in the scoping process will be addressed in the EIS. Following the scoping meeting, EPA, State of Florida and City of Tampa officials will be on hand to answer questions the public may have regarding this project, the NEPA process or the team permitting process.

Persons who do not attend the scoping meeting and wish to comment on the issues and scope of the project are invited to respond in writing to this Agency. Comments received will be addressed in the EIS. Comments provided through the ecosystem permitting process will also be considered for the EIS. For more information, or to be placed on the mailing list, write or call Robert B. Howard, U.S. Environmental Protection Agency, Region 4, Water Management Division, 61 Forsyth St. SW, Atlanta, GA 30303, (404)562–9370, FAX (404)562 9343.

*Responsible Official:* John H. Hankinson, Jr., Regional Administrator.

Dated: August 28, 1997.

**Richard E. Sanderson,**

*Director, Office of Federal Activities.*

[FR Doc. 97–23401 Filed 9–3–97; 8:45 am]

BILLING CODE 5483–07–P

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**AGENCY:** Federal Election Commission.

**FEDERAL REGISTER NUMBER:** 97–21733.

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Thursday, August 21, 1997, 10:00 a.m., Meeting Open to the Public.

The Following Item was Added to the Agenda: Advisory Opinion 1997–14: Mississippi Republican Party by counsel, Robert F. Wood.

**DATE AND TIME:** Tuesday, September 9, 1997 at 10:00 a.m.

**PLACE:** 999 E Street, N.W., Washington, DC.

**STATUS:** This Meeting will be Closed to the Public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

**DATE AND TIME:** Thursday, September 11, 1997 at 10:00 a.m.

**PLACE:** 999 E Street, N.W., Washington, D.C. (Ninth Floor).

**STATUS:** This Meeting will be Open to the Public.

**ITEMS TO BE DISCUSSED:**

Correction and Approval of Minutes.

Advisory Opinion 1997–15: Kenneth Nickalo by counsel, Jennifer Blum.

Advisory Opinion 1997–16: Nancy DenDooven, Treasurer, on behalf of ONRC Action Federal PAC.

Advisory Opinion 1997–19: Rena Johnson, Counsel, CoreStates Financial Corporation.

Revised Disclosure Forms and Schedules.

Recordkeeping and Reporting Regulations—Notice of Proposed Rulemaking.

Administrative Matters.

**PERSON TO CONTACT FOR INFORMATION:**

Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

**Marjorie W. Emmons,**

*Secretary of the Commission.*

[FR Doc. 97–23579 Filed 9–2–97; 11:41 am]

BILLING CODE 6715–01–M

## FEDERAL RESERVE SYSTEM

### 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. The application also will 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. 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 September 29, 1997.

**A. Federal Reserve Bank of San Francisco** (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

*1. California Community Financial Institutions Fund Limited Partnership; Belvedere Capital Partners, Inc.; and Newco,* all of San Francisco, California; to become bank holding companies by acquiring 63.2 percent of the votign shares of Security First Bank, Fullerton, California.

In connection with this application, National Bancorp of Alaska, Inc., Anchorage, Alaska, has applied to acquire 9.9 percent of the voting shares of California Community Financial

Institutions Fund Limited Partnership, and thereby indirectly acquire Security First Bank, Fullerton, California.

*2. United Security Bancorporation*, Spokane, Washington; to merge with Community Bancorporation, Pullman, Washington, and thereby indirectly acquire Bank of Pullman, Pullman, Washington.

Board of Governors of the Federal Reserve System, August 29, 1997.

**Barbara R. Lowrey,**

*Associate Secretary of the Board.*

[FR Doc. 97–23505 Filed 9–3–97; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 11:00 a.m., Monday, September 8, 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: August 29, 1997.

**Barbara R. Lowrey,**

*Associate Secretary of the Board.*

[FR Doc. 97–23564 Filed 8–29–97; 4:47 pm]

BILLING CODE 6210–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration on Aging

### Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

The Department of Health and Human Services has submitted the following (see below) emergency processing public information clearance 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).

*Title:* Performance (Progress) Report for Title IV Training, Research, and Discretionary Projects and Programs Grantees.

*OMB Number:* Existing collection in use without an OMB Control Number.

| Instrument | Number of grantees/respondents | Number of responses per year | Average burden hours per respondent | Total burden hours |
|---|---|---|---|---|
| Performance (Progress) Report for Title IV Grantees | 75 | 2 | 16 | 2400 |

*Description:* The Administration on Aging (AoA) requires grantees funded under Title IV of the Older Americans Act, Pub. L. 89–73, enacted July 14, 1965, last amended on September 30, 1992, Pub. L. 102–375, (42 U.S.C. 3034), to report semiannually on the performance of their projects. The specifications for reporting are consistent with 45 CFR part 74, subpart J. This information serves to supplement the financial report, submitted on standard form OMB 269.

*Description:* The information submitted by grantees will be used by AoA to:

(1) Review and monitor grantees' progress in achieving project objectives;

(2) Identify significant findings, products and practices of projects; and

(3) Identify areas that may benefit from advice and assistance from AoA, and in rare instances, take corrective action.

The performance report for Title IV grants is submitted semiannually, concurrent with the financial report, filed on standard form OMB 269. If these reports were made less frequently, opportunities for AoA to monitor and provide needed guidance would not be available to grantees.

*Additional Information:* The AoA is requesting that OMB grant a 180-day approval for this information collection under procedures for emergency processing by August 29, 1997. A copy of this individual ICR, with applicable supporting documentation, may be obtained by calling the Administration on Aging, Reports Clearance Officer, Sharon Matthews at (202) 205–2814.

Comments and questions about the ICR should be directed to the Office of Information and Regulatory Affairs, Attn: Allison Eydt, OMB Desk Officer, Office of Management and Budget, Washington, DC 20503.

Dated: August 22, 1997.

**William F. Benson,**

*Acting Principal Deputy Assistant Secretary for Aging.*

[FR Doc. 97–23470 Filed 9–3–97; 8:45 am]

BILLING CODE 4150–04–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention (CDC)

### Clinical Laboratory Improvement Advisory Committee (CLIAC) Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** FR Doc. 97–21100 Filed 8/8/97. Published 8/11/97 (Volume 62, Number 154, Pages 42997–42998).

**PREVIOUSLY ANNOUNCED TIMES AND DATES OF THE MEETING:** 8:30 a.m.–4:30 p.m., September 11, 1997, 8:30 a.m.–4:30 p.m., September 12, 1997.

**CHANGES TO THE NOTICE:** Addition to the announced agenda: For the afternoon of September 11, discussion of the new FDA category ''home use with a prescription'' and considerations for waiver of such laboratory tests under the Clinical Laboratory Improvement Amendments regulations.

**CONTACT PERSON FOR MORE INFORMATION:** John Ridderhof, Dr. P.H., Division of Laboratory Systems, Public Health Practice Program Office, CDC, 4770 Buford Highway, NE, MS G25, Atlanta, Georgia 30341–3724, telephone 770/488–7660.

Dated: August 29, 1997.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).*

[FR Doc. 97–23577 Filed 9–2–97; 1:35 pm]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Epidemiology Program Office, Office of the Director, Centers for Disease Control and Prevention (CDC), Announces the Following Meeting

*Name:* Guide to Community Preventive Services (GCPS) Task Force Meeting.

*Times and Dates:* 8:30 a.m.–5 p.m., September 18, 1997. 8:30 a.m.–5 p.m., September 19, 1997.

*Place:* Lenox Inn Buckhead, 3387 Lenox Road, NE, Atlanta, Georgia 30326.

*Status:* Open to the public, limited only by the space available.

*Purpose:* The mission of the Task Force is to develop and publish a Guide to Community Preventive Services, which is based on the best available scientific evidence and current expertise regarding essential public health services and what works in the delivery of those services.

*Matters to be Discussed:* Agenda items include (1) development of an explicit process to translate evidence into recommendations; (2) a discussion on methods to incorporate data from extant reviews on the systematic review of evidence; (3) setting goals for success of the Guide; (4) refine the working Table of Contents; and (5) progress reports on the status of the following chapters: Violence and Abusive Behaviors; Firearms; Physical Activity; Oral Health; Tobacco; and Sexual Behaviors.

Agenda items are subject to change as priorities dictate.

*Contact Person for Additional Information:* Marguerite Pappaioanou, Chief, Community Preventive Service Guide Development Activity, Division of Prevention Research and Analytic Methods, Epidemiology Program Office, CDC, 1600 Clifton Road, NE, M/S D–01, Atlanta, Georgia 30333, telephone 404/639–4301. Persons wishing to reserve a space for this meeting should call 404/639–4301 by close of business on September 12, 1997.

Dated: August 28, 1997.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 97–23464 Filed 9–3–97; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC), in Collaboration With the Department of Energy (DOE) and the National Institute for Occupational Safety and Health, CDC, Announces the Following Meeting

*Name:* Oak Ridge Workshop on Energy-Related Epidemiologic Research Needs.

*Times and Dates:* 2 p.m.–9 p.m., September 22, 1997. 8:30 a.m.–12 noon, September 23, 1997.

*Place:* Ramada Inn and Suites, 420 South Illinois Avenue, Oak Ridge, Tennessee 37830, telephone 423/483–4371, FAX 423/483–5972.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

*Purpose:* To solicit individual input from scientists, representatives of State and local health departments, DOE facility managers, workers, and the public regarding epidemiologic research needs in and around the Oak Ridge DOE facility. The results of this workshop and similar workshops at other locations will be used to plan a national workshop on epidemiologic research tentatively scheduled to take place in the Spring of 1998. The results of the national workshop will be used to set the short- and long-range research plan for health studies at DOE facilities.

*Matters To Be Discussed:* The workshop will be divided into three breakout sessions which will include the following topics: (1) Worker health studies, (2) environmental epidemiology, and (3) communications and community involvement.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Michael J. Sage, Deputy Chief, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: August 28, 1997.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 97–23463 Filed 9–3–97; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Child Care Quarterly Case Record Report.

*OMB No.:* New request.

*Description:* This legislatively-mandated report collects program and participants data on children receiving direct CCDF funds. Desegregate data will be collected and will be used to determine the participants and program characteristics as well as cost and level of child care services. The data will be used to provide a report to Congress.

*Respondents:* State, Local or Tribal Govt.

*Annual Burden Estimates:*

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| ACF–801 | 56 | 4 | 20 | 4,360 |

*Estimated Total Annual Burden Hours:* 4,360.

*Additional Information:* Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer.

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

Dated: August 28, 1997.

**Bob Sargis,**

*Acting Reports Clearance Officer.*

[FR Doc. 97–23469 Filed 9–3–97; 8:45 am]

BILLING CODE 4184–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 97N–0022]**

### Agency Information Collection Activities Submission for OMB Review; Comment Request

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

**DATES:** Submit written comments on the collection of information by October 6, 1997.

**ADDRESSES:** Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attention: Desk Officer for FDA.

**FOR FURTHER INFORMATION CONTACT:** Judith V. Bigelow, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1479.

**SUPPLEMENTARY INFORMATION:** In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

### Agreement for Shipment of Devices for Sterilization—21 CFR 801.150(a)(2) and (e) (OMB Control No. 0910–0131—Reinstatement)

Under sections 501(c) and 502(a) of the act (21 U.S.C. 351(c) and 352(a)), nonsterile devices that are labeled as sterile but are in interstate transit to a facility to be sterilized are adulterated and misbranded. FDA regulations in § 801.150(a)(2) and (e) (21 CFR 801.150(a)(2) and (e)) establish a control mechanism by which firms may manufacture and label medical devices as sterile at one establishment and ship the devices in interstate commerce for sterilization at another establishment, a practice that facilitates the processing of devices and is economically necessary for some firms. Under § 801.150(a)(2) and (e), manufacturers and sterilizers may sign an agreement containing the following: (1) Instructions for maintaining accountability of the number of units in each shipment; (2) acknowledgment that the devices are nonsterile, being shipped for further processing; and (3) specifications for sterilization processing.

This agreement allows the manufacturer to ship nonsterile products to be sterilized without initiating regulatory action and provides FDA with a means to protect consumers from use of nonsterile products. During routine plant inspections, FDA normally reviews agreements that must be kept for 2 years after final shipment or delivery of devices. To discontinue this reporting and recordkeeping procedure would place an economic hardship on the industry and an additional burden on FDA to monitor products in interstate commerce for failure to comply with adulteration and misbranding provisions of the act.

The respondents to this collection of information are device manufacturers and contract sterilizers.

FDA estimates the reporting burden of this collection of information as follows:

TABLE—1. ESTIMATED ANNUAL REPORTING BURDEN

| 21 CFR Section | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 801.150 | 90 | 20 | 1,800 | 4 | 7,200 |

There are no capital costs or operating and maintenance costs associated with this collection of information.

No burden has been estimated for the recordkeeping requirement in § 801.150(a)(2) because these records are maintained as a usual and customary part of normal business activities. Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities.

FDA's estimate of the burden is based on actual data obtained from industry during the past 3 years where there are approximately 90 firms subject to this requirement.

Dated: August 27, 1997.

**William B. Schultz,**

*Deputy Commissioner for Policy.*

[FR Doc. 97–23507 Filed 9–3–97; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Memorandum of Understanding Between the Food and Drug Administration and the Department of Agriculture, Food and Forestry of Ireland

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and the Department of Agriculture, Food and Forestry of Ireland. The purpose of the MOU is to establish certification requirements for caseins, caseinates, and mixtures thereof.

**DATES:** The agreement became effective November 5, 1996.

**FOR FURTHER INFORMATION CONTACT:** Merton Smith, Office of Health Affairs (HFY–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 20.108(c), which states that all written agreements and MOU's between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: August 28, 1997.

**William B. Schultz,**

*Deputy Commissioner for Policy.*

**Memorandum of Understanding Between the Food and Drug Administration Department of Health and Human Services of the United States of America and the Department of Agriculture, Food and Forestry of Ireland Covering Caseins, Caseinates, and Mixtures Thereof Exported to the United States**

*I. Purpose*

The Food and Drug Administration (FDA), Department of Health and Human Services of the United States of America and the Department of Agriculture, Food and Forestry (DAFF) of Ireland upon signing this Memorandum of Understanding (MOU) intend to:

1. Establish certification requirements for the caseins, caseinates, and mixtures thereof exported from Ireland to the United States to assure that contaminated caseins, caseinates, and mixtures thereof will not be imported into the United States.
2. Minimize the need for extensive FDA audit sampling of these certified products from Ireland.

*II. Definitions*

For the purposes of this MOU, both participants concur in the following definitions:

*LOT*: A lot is a quantity of casein, caseinates, or mixtures thereof packaged by one manufacturer during a definite period of time not exceeding one (1) day. The manufacturing process, including milling and packaging, is performed by using a perfectly identified processing line. Caseins, caseinates, or mixtures thereof intended for export to the United States are packaged, after milling, in identical containers identified by a unique code or mark traceable to the manufacturer.

*SALMONELLA-NEGATIVE*: The absence of *Salmonella* in thirty (30) subsamples, each of twenty-five (25) grams, that have been taken from the same lot of product and tested using the procedures contained in the current edition of the *Bacteriological Analytical Manual* (see Section V. Analytical Methodology).

*PHOSPHATASE-NEGATIVE*: The absence of phosphatase activity in thirty (30) subsamples, each of twenty-five (25) grams, that have been taken from the same lot of product and tested using the method contained in the current edition of the *Official Methods of Analysis* (see Section V. Analytical Methodology).

*III. Substance of MOU*

A. The Department of Agriculture, Food and Forestry of Ireland

The Department of Agriculture, Food and Forestry of Ireland (DAFF) is the agency of the Irish government responsible for inspecting those caseins, caseinates, and mixtures thereof that are intended for export. Such inspection is necessary for consumer protection. To fulfill its responsibilities under this Memorandum of Understanding, DAFF intends to ensure that caseins, caseinates, and mixtures thereof that are intended for export to the United States are fit for human consumption in that they comply with the requirements of the Food, Drug, and Cosmetic Act of the United States, of the Public Health Service Act of the United States, and of this Memorandum of Understanding. DAFF intends to inspect and analyze samples of these caseins, caseinates, and mixtures thereof to ensure that they comply with these requirements.

To discharge its responsibilities regarding caseins, caseinates, and mixtures thereof and to fulfill its commitment under this MOU, DAFF plans to:

1. Inspect and analyze each lot of caseins, caseinates, and mixtures thereof produced in Ireland for export to the United States to assure that it is *Salmonella*-negative and phosphatase-negative, based on the testing of thirty (30) subsamples of twenty-five (25) gram units taken from bags in a lot of caseins, caseinates, and mixtures thereof immediately before closing, as determined by the methods cited in Section V. Analytical Methodology.
2. Require that all containers of a lot of caseins, caseinates, and mixtures thereof that are to be exported to the United States be certified as comply with the provisions of this Memorandum of Understanding, and identified by a lot number, and all other information required by the Federal Food, Drug, and Cosmetic Act of the United States.
3. Require that all of the information that is required by the Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act of the United States be included on the label and labeling of individual products.
4. Furnish FDA with a copy of the current Irish regulations and the procedures used to ensure that the caseins, caseinates, and mixtures thereof are in compliance with those regulations and with the Food, Drug, and Cosmetic Act and the Public Health Service Act of the United States.
5. Furnish FDA, upon request, with a full description of the manufacturing processes and quality controls used to ensure that the caseins, caseinates, and mixtures thereof that are produced are fit for human consumption, as discussed in III. A. Substance of MOU.

B. The Food and Drug Administration of the United States of America

FDA is charged with the enforcement of the Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, certain provisions of the Public Health Service Act, and other related statutes of the United States. FDA directs its activities toward the protection of the public health in the United States by ensuring that foods are safe and wholesome and are honestly and informatively labeled. FDA accomplishes this goal in part through inspections of food processors and distributors. In addition, it collects and examines samples to ensure compliance with these statutes. FDA makes a concerted effort to ensure that foods entering the United States meet the same standards as domestic products. To discharge these responsibilities regarding caseins, caseinates, and mixtures thereof and to fulfill this Memorandum of Understanding, FDA plans to:

1. Audit samples of caseins, caseinates, and mixtures thereof certified by DAFF under this Memorandum of Understanding to ensure that the products exported from Ireland and offered for import into the United States comply with the requirements of the Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, the Public Health Service Act, and other related statutes of the United States.
2. Share any information obtained through its audit sampling with DAFF and the First Secretary of the Embassy of Ireland.
3. Promptly notify DAFF and the First Secretary of the Embassy of Ireland of the detention of any caseins, caseinates, and mixtures thereof covered by this Memorandum of Understanding.
4. Share expertise and provide consultative assistance to DAFF when necessary to assure the safety of the caseins, caseinates, and mixtures thereof exported to the United States.

*IV. Sample Collection*

The same samples should be used to determine both the presence, if any, of *Salmonella* and the level of phosphatase activity.

Each sample will consist of thirty (30) subsamples of caseins, caseinates, or mixtures thereof. Each subsample will consist of approximately twenty-five (25) grams that will be collected in accordance with the applicable portions of the current edition of the *Bacteriological Analytical Manual* (see Section V. Analytical Methodology).

*V. Analytical Methodology*

Compliance with the established criteria for *Salmonella* and phosphatase should be determined according to the methods contained in the current editions of *Bacteriological Analytical Manual* for *Salmonella* and *Official Methods of Analysis* for phosphatase.

These publications are available from:
AOAC International
481 North Frederick Avenue, Suite 500
Gaithersburg, MD 20877
Telephone number: 301–924–7077
Telefax number: 301–924–7089

*VI. Participating Parties*

A. The Department of Agriculture, Food and Forestry, Agriculture House, Kildare Street, Dublin 2, Ireland

B. Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, USA

*VII. Liaison Officers*

A. For the Department of Agriculture, Food and Forestry: Principal Officer, Milk Policy Division, (Currently, Mr. Tom Moran), Department of Agriculture, Food and Forestry, Agriculture House, Kildare Street, Dublin 2, Ireland

For the Embassy of Ireland: First Secretary, (Currently, Ms. Kate Slattery), 2234 Massachusetts Avenue, N.W., Washington,

DC 20008. Telephone number: 202–452–3939

B. For the Food and Drug Administration: Director, International Activities Staff, (Currently, Mr. Charles W. Cooper), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C Street, S.W., Washington, DC 20204. Telephone number: 202–205–5042, Telefax number: 202– 205–0165

*VIII. Administrative Procedures*

The participants mutually consent on the ways and means of giving instructions and guidance for the practical implementation and application of this Memorandum of Understanding.

The obligations under this MOU are intended to be non-binding.

*IX. Period of MOU*

Activities under this Memorandum of Understanding commence upon signature by both participants for a period of five (5) years and may, at the conclusion of that period, with the consent of both participants, be extended for an additional five (5) years. The participants plan to evaluate the MOU sometime during each five (5) year period. The MOU may be extended or revised by mutual consent, or terminated by either participant, upon a thirty (30) day advance written notice to the other.

For the Department of Agriculture, Food and Forestry of Ireland
By: K. Slattery
Title: First Secretary, Embassy of Ireland
Date: November 5, 1996
Place: Rockville, Maryland

For the Food and Drug Administration, Department of Health and Human Services of the United States of America
By: M. A. Friedman
Title: Deputy Commissioner for Operations, U.S. Food and Drug Administration
Date: November 5, 1996
Place: Rockville, Maryland

[FR Doc. 97–23451 Filed 9–3–97; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### National Vaccine Injury Compensation Program; List of Petitions Received

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (''the Program''), as required by section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

**FOR FURTHER INFORMATION CONTACT:** For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Court of Federal Claims, 717 Madison Place, N.W., Washington, D.C. 20005, (202) 219–9657. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 8A35, Rockville, MD 20857, (301) 443–6593.

**SUPPLEMENTARY INFORMATION:** The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated her responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by HRSA on April 10, 1997, through June 24, 1997.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

(a) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by'' one of the vaccines referred to in the Table, or

(b) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading ''For Further Information Contact''), with a copy to HRSA addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8–05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

**List of Petitions**

1. Laurie Duplease on behalf of Alexis Duplease, New Haven, Connecticut, Court of Federal Claims Number 97–0270 V
2. James Gimesky on behalf of Jenna Lynn Gimesky, Ann Arbor, Michigan, Court of Federal Claims Number 97–0280 V
3. Shari M. and John G. Lawlor on behalf of Brooke D. Lawlor, Omaha, Nebraska, Court of Federal Claims Number 97–0285 V

4. Marylin and Lawrence Cutler on behalf of Lawrence Cutler, New Brunswick, New Jersey, Court of Federal Claims Number 97–0302 V
5. Iris Maldonado on behalf of Ruben Anibal Felipe Maldonado, Orlando, Florida, Court of Federal Claims Number 97–0314 V
6. Mark Harrington, Belzoni, Mississippi, Court of Federal Claims Number 97–0316 V
7. Michelle and Richard Emmons on behalf of Lauren C. Emmons, Vista, California, Court of Federal Claims Number 97–0327 V
8. Tina and Shawn Saladiner on behalf of Somer Saladiner, Culpeper, Virginia, Court of Federal Claims Number 97–0331 V
9. Aida Miucin on behalf of Marko Miucin, San Diego, California, Court of Federal Claims Number 97–0336 V
10. Thomas J. Sansone, Sr. on behalf of Thomas J. Sansone, Jr., Mount Kisco, New York, Court of Federal Claims Number 97–0337 V
11. Thomas James Owens, Jr., Covington, Louisiana, Court of Federal Claims Number 97–0360 V
12. John Franklin Rowe, Jr., Hagerstown, Maryland, Court of Federal Claims Number 97–0366 V
13. Betsy and Michael Cuthbertson on behalf of Nicole Cuthbertson, Frisco, Colorado, Court of Federal Claims Number 97–0367 V
14. Patton and Richard Carter on behalf of Rebecca Carter, Deceased, Ashland, New Hampshire, Court of Federal Claims Number 97–0387 V
15. Tara Davis on behalf of Shayna Adams, Overland Park, Kansas, Court of Federal Claims Number 97–0392 V
16. Deborah Hartkopf, on behalf of Lindsey Hartkopf, Cherry Hill, New Jersey, Court of Federal Claims Number 97–0403 V
17. Wendy and Steven Jarvis on behalf of Philip Thomas Jarvis, Thomasville, North Carolina, Court of Federal Claims Number 97–0405V
18. Julie and David A. Ryan on behalf of Emilee Ryan, Indiana, Pennsylvania, Court of Federal Claims Number 97–0412 V
19. Thuy Bui Cung and Thach Bui Kim on behalf of Diane Cung, Deceased, Westminster, California, Court of Federal Claims Number 97–0420 V
20. Christina and James Michener on behalf of Barak Ross Michener, Las Cruces, New Mexico, Court of Federal Claims Number 97–0421 V
21. Margaret Reed, Vienna, Virginia, Court of Federal Claims Number 97–0427 V
22. Danielle Deidun on behalf of Jalyn Deidun, Grosse Pointe, Michigan, Court of Federal Claims Number 97–0430 V
23. Debra Valois on behalf of Alvin Cole Valois, Hammond, Louisiana, Court of Federal Claims Number 97–0433 V
24. Carlene T. Giuffrida on behalf of Megan-Rose Giuffrida, Stony Brook, New York, Court of Federal Claims Number 97–0436 V
25. Paula and Rick Rohl on behalf of Samuel Rohl, Lihue, Hawaii, Court of Federal Claims Number 97–0440 V

Dated: August 28, 1997.

**Claude Earl Fox,**

*Acting Administrator.*

[FR Doc. 97–23374 Filed 9–3–97; 8:45 am]

BILLING CODE 4160–15–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

### Availability of Funds for Loan Repayment Program for Repayment of Health Professions Educational Loans

**AGENCY:** Indian Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** The Administration's budget request for fiscal year (FY) 1998 includes $11,706,000 for the Indian Health Service Loan Repayment Program for health professions educational loans (undergraduate and graduate) in return for full-time clinical service in Indian health programs. It is anticipated that $11,706,000 will be available to support approximately 250 competing awards averaging $50,000 per award.

This program announcement is subject to the appropriation of funds. This notice is being published early to coincide with the recruitment activity of the IHS which competes with other Government and private health management organizations to employ qualified health professionals. Funds are required to be expended by September 30 of the fiscal year. This program is authorized by section 108 of the Indian Health Care Improvement Act (IHCIA) as amended, 25 U.S.C. 1601 et seq. The IHS invites potential applicants to request an application for participation in the Loan Repayment Program.

**DATES:** Applications for the FY 1998 Loan Repayment Program will be accepted and evaluated monthly beginning January 2, 1998 and will continue each month thereafter until all funds are exhausted. Subsequent monthly deadline dates are scheduled for Friday of the second full week of each month. Notice of awards will be mailed on the last working day of each month.

Applicants selected for participation in the FY 1998 program cycle will be expected to begin their service period no later than September 30, 1998.

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Applications received after the monthly closing date will be held for consideration in the next monthly funding cycle. Applicants who do not receive funding by September 30, 1998 will be notified in writing.

**FORM TO BE USED FOR APPLICATION:** Applications will be accepted only if they are submitted on the form entitled ''Application for the Indian Health Service Loan Repayment Program,'' identified with the Office of Management and Budget approval number of OMB #0917–0014 (expires 11/30/99).

**ADDRESSES:** Application materials may be obtained by calling or writing to the address below. In addition, completed applications should be returned to: IHS Loan Repayment Program, 12300 Twinbrook Parkway—Suite 100, Rockville, Maryland 20852, PH: 301/443–3396 [between 8:00 a.m. and 5:00 p.m. (EST) Monday through Friday, except Federal holidays].

**FOR FURTHER INFORMATION CONTACT:** Please address inquiries to Mr. Charles Yepa, Chief, IHS Loan Repayment Program, Twinbrook Metro Plaza—Suite 100, 12300 Twinbrook Parkway, Rockville, Maryland 20852, PH: 301/443–3396 (between 8 a.m. and 5 p.m. (EST) Monday through Friday, except Federal holidays).

**SUPPLEMENTARY INFORMATION:** Section 108 of the INCIA as amended by Public Laws 100–713 and 102–573, authorizes the IHS Loan Repayment Program and provides in pertinent part as follows:

> The Secretary, acting through the Service, shall establish a program to be known as the Indian Health Service Loan Repayment Program (hereinafter referred to as the ''Loan Repayment Program'') in order to assure an adequate supply of trained health professionals necessary to maintain

accreditation of, and provide health care services to Indians through, Indian health programs.

Section 4(n) of the IHCIA, as amended by the Indian Health Care Improvement Technical Corrections Act of 1996, Public Law 104–313, provides that:

''Health Profession'' means allopathic medicine, family medicine, internal medicine, pediatrics, geriatric medicine, obstetrics and gynecology, podiatric medicine, nursing, public health nursing, dentistry, psychiatry, osteopathy, optometry, pharmacy, psychology, public health, social work, marriage and family therapy, chiropractic medicine, environmental health and engineering, an allied health profession, or any other health profession.

For the purposes of this program, the term ''Indian health program'' is defined in section 108(a)(2)(A), as follows:

* * * any health program or facility funded, in whole or in part, by the IHS for the benefit of American Indians and Alaska Natives and administered:

a. Directly by the service; or

b. By any Indian tribe or tribal or Indian organization pursuant to a contract under:

(1) The Indian Self-Determination Act; or

(2) Section 23 of the Act of April 30, 1908 (25 U.S.C. 47), popularly known as the Buy Indian Act; or

(3) By an urban Indian organization pursuant to title V of this Act.

Applicants may sign contractual agreements with the Secretary for 2 years. The IHS will repay all or a portion of the applicant's health professions educational loans (undergraduate and graduate) for tuition expenses and reasonable educational and living expenses in amounts up to $30,000 per year for each year of contracted service to be made in annual payments to the participant for the purpose of repaying his/her outstanding health professions educational loans. Repayment of health professional educations loans will be made to the participant within 120 days after the participant's entry on duty has been confirmed by the IHS.

The Secretary must approve the contract before the disbursement of loan repayments can be made to the participant. Participants will be required to fulfill their contract service agreements through full-time clinical practice at an Indian health program site determined by the Secretary. Loan repayment sites are characterized by physical, cultural, and professional isolation, and have histories of frequent staff turnover. All Indian health program sites are annually prioritized by discipline, based on need or vacancy by the Agency.

All health professionals will receive up to $30,000 per year, regardless of their length of contract. Where payments under the Loan Repayment Program result in an increase in Federal income tax liability the IRS will pay up to 31 percent of the participant's total loan repayments to the Internal Revenue Service on the participant's behalf for all or part of the increased tax liability of the participant.

Pursuant to section 108(b), to be eligible to participate in the Loan Repayment Program an individual must:

(1) A. be enrolled:

(i) In a course of study or program in an accredited institution, as determined by the Secretary, within any State and be scheduled to complete such course of study in the same year such individual applies to participate in the Loan Repayment Program. (This includes the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau); or

(ii) In an approved graduate training program in a health profession; or

B. Have a degree in a health profession and a license to practice; and

(2) A. Be eligible for, or hold an appointment as a Commissioned Officer in the Regular or Reserve Corps of the Public Health Service; or

B. Be eligible for selection for civilian service in the Regular or Reserve Corps of the Public Health Service; or

C. Meet the professional standards for civil service employment in the IHS; or

D. Be employed in an Indian health program without service obligation; and

(3) Submit to the Secretary an application and contract to the Loan Repayment Program; and

(4) Sign and submit to the Secretary, a written contract agreeing to accept repayment of educational loans and to serve for the applicable period of obligated service in a priority site as determined by the Secretary; and

(5) Sign an affidavit attesting to the fact that they have been informed of the relative merits of the U.S. Public Health Service Commissioned Corps and the Civil Service as employment options.

Upon approval of the applicant for participation in the Loan Repayment Program, the applicant will receive confirmation of his/her loan repayment award and the duty site at which he/she will serve his/her loan repayment obligation.

The IHS has identified the positions in each Indian health program for which there is a need or vacancy and ranked those positions in order of priority by developing discipline specific prioritized lists of sites. Ranking criteria for these sites include the following:

- Historically critical shortages caused by frequent staff turnover;
- Current unmatched vacancies in a Health Profession Discipline;
- Projected vacancies in a Health Profession Discipline;
- Ensuring that the staffing needs of Indian health programs administered by an Indian tribe or tribal or health organization receive consideration on an equal basis with programs that are administered directly by the Service; and
- Giving priority to vacancies in Indian health programs that have a need for health professionals to provide health care services as a result of individuals having breached Loan Repayment Program contracts entered into under this section. Consistent with this priority ranking, in determining which applications to approve and which contracts to accept, the IHS will give priority to applications made by American Indians and Alaska Natives and to individuals recruited through the efforts of Indian tribes or tribal or Indian organizations.
- With respect to priorities among the various health professions, the statute requires that of the total amount appropriated for FY 1998 for loan repayment contracts, not less than 25 percent be provided to applicants who are nurses, nurse practitioners, or nurse midwives and not less than 10 percent be provided to applicants who are mental health professionals (other than nurses, nurse practitioners, or nurse midwives). This requirement does not apply if the number of applications from these two groups, respectively, is not sufficient to meet the requirement.
- Subject to the above statutory priority for nurses and mental health practitioners, the IHS will give priority in funding among health professionals to physicians in the following priority specialties: Anesthesiology, emergency room medicine, general surgery, obstetrics/gynecology, ophthalmology, orthopedic surgery, otolaryngology/otorhinolaryngol, psychiatry and radiology.

The following factors are equal in weight when applied, and are applied when all other criteria are equal and a selection must be made between applicants.

One or all of the following factors may be applicable to an applicant, and the applicant who has the most of these factors, all other criteria equal, would be selected.

- An applicant's length of current employment in the IHS, tribal or urban program.

• Availability for service earlier than other applicants (first come, first served); and

• Date the individual's application was received.

Any individual who enters this program and satisfactorily completes his or her obligated period of service may apply to extend the contract on a year-by-year basis, as determined by the IHS, at the maximum amount of up to $30,000 per year and additional 31 percent for Federal Withholding. If funds are available, the maximum amount will be funded in this manner and will not exceed the total of the individual's outstanding eligible health professions educational loans.

Any individual who owes an obligation for health professional service to the Federal Government or to a State or other entity under an agreement with such State or other entity is not eligible for the Loan Repayment Program unless such an obligation will be completely satisfied prior to the beginning of service under this program in the year that an application is made for this program.

This program is not subject to review under Executive Order 12372.

(The Catalog of Federal Domestic Assistance number is 93.164.)

Dated: August 11, 1997.

**Michael H. Trujillo,**

*Assistant Surgeon General, Director.*

[FR Doc. 97–23508 Filed 9–3–97; 8:45 am]

BILLING CODE 4160–16–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Research Resources; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Center for Research Resources Special Emphasis Panel (SEP) meeting:

*Name of SEP:* Minority Initiative: K–12 Teachers & High.

*Date:* September 16, 1997.

*Time:* 8:00 a.m.–Until Adjournment.

*Place:* Holiday Inn Bethesda, Montgomery Room, 8120 Wisconsin Avenue, Bethesda, MD 20814, (301) 652–2000.

*Contact Person:* Dr. Jill Carrington, Scientific Review Administrator, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0811.

*Purpose/Agenda:* To evaluate and review grant applications.

This 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. 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.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet time limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93.306, Laboratory Animal Science and Primate Research).

Dated: August 28, 1997.

**LaVeen M. Ponds,**

*Policy Analyst, NIH CMO.*

[FR Doc. 97–23479 Filed 9–3–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the following National Heart, Lung, and Blood Institute Special Emphasis Panel.

The meeting will be open to the public to provide concept review of proposed contract or grant solicitations.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

*Name of Panel:* Strategies to Augment Alveolarization.

*Date:* September 29, 1997.

*Time:* 9:00 a.m.

*Place:* II Rockledge Center, Room 10229, 6701 Rockledge Drive, Bethesda, Maryland 20892.

*Agenda:* To discuss current concepts concerning alveolarization including basic science and clinical issues.

*Contact Person:* Mary Anne Berberich, Ph.D., NHLBI/DLD, II Rockledge Center, 6701 Rockledge Drive, Rm. 10102, MSC 7952, Bethesda, Maryland 20892, (301) 435–0222.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: August 27, 1997.

**LaVeen M. Ponds,**

*Policy Analyst, NIH CMO.*

[FR Doc. 97–23477 Filed 9–3–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the following National Heart, Lung, and Blood Institute Special Emphasis Panel.

The meeting will be open to the public to provide concept review of proposed contract or grant solicitations.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

*Name of Panel:* Creutzfeldt-Jakob Disease (CJD) and Blood Transfusion.

*Dates of Meeting:* September 24, 1997.

*Time of Meeting:* 9:00 a.m.

*Place of Meeting:* NIH, Building 31, C Wing, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

*Agenda:* To discuss and develop plans for research in the area of CJD and its possible transmission by blood transfusion.

*Contact Person:* Luiz H. Barbosa, D.V.M., NHLBI/DBDR, II Rockledge Center, 6701 Rockledge Drive, Rm. 10146, MSC 7950, Bethesda, Maryland 20892, (301) 435–0075.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: August 27, 1997.

**LaVeen M. Ponds,**

*Policy Analyst, NIH CMO.*

[FR Doc. 97–23478 Filed 9–3–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the following National Heart, Lung, and Blood Institute Special Emphasis Panel.

The meeting will be open to the public to provide concept review of proposed contract or grant solicitations.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

*Name of Panel:* Research Priorities in Blood Diseases and Resources.

*Dates of Meeting:* September 29–30, 1997.

*Time of Meeting:* 9:00 a.m.–recess, September 29. 8:30 a.m.–adjournment, September 30.

*Place of Meeting:* II Rockledge Center, Room 9104, 6701 Rockledge Drive, Bethesda, Maryland 20892.

*Agenda:* Review and prioritize new research concepts and proposed initiatives developed by the Division of Blood Disease Scientific Research Groups.

*Contact Person:* Carol H. Letendre, Ph.D., NHLBI/DBDR, II Rockledge Center, 6701 Rockledge Drive, Rm. 10162, MSC 7950, Bethesda, Maryland 20892, (301) 435–0080.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: August 28, 1997.

**LaVeen M. Ponds,**

*Policy Analyst, NIH CMO.*

[FR Doc. 97–23481 Filed 9–3–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

*Name of SEP:* Neurodevelopmental Battery for the Maternal Lifestyle Study (Teleconference).

*Date:* September 3, 1997.

*Time:* 1:00 p.m. (ET)–adjournment.

*Place:* 61E Building, Room 5E03, 6100 Executive Boulevard, Rockville, MD 20852.

*Contact Person:* Hameed A. Khan, Ph.D., 61E Building, Rm. 5E03, Rockville, Maryland 20852, Telephone: 301–496–1485.

*Purpose/Agenda:* To evaluate and review a contract proposal.

This 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. The discussions of this proposal could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposal, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children], National Institutes of Health)

Dated: August 27, 1997.

**LaVeen M. Ponds,**

*Policy Analyst, NIH CMO.*

[FR Doc. 97–23476 Filed 9–3–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

*Name of SEP:* ZDK1–GRB–6–J2.

*Date:* November 19, 1997.

*Time:* 7:30 pm.

*Place:* Indiana University, School of Medicine, 635 Barnhill Drive, Indianapolis, IN 46202–5120.

*Contact Person:* Sharee Pepper, Ph.D., Scientific Review Administrator, Review Branch, NIDDK, Natcher Building, Room 6as–25E, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–7798.

*Purpose/Agenda:* To review and evaluate grant applications.

This 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. 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.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: August 28, 1997.

**LaVeen M. Ponds,**

*Policy Analyst, NIH CMO.*

[FR Doc. 97–23480 Filed 9–3–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute on Drug Abuse (NIDA) Special Emphasis Panel meeting:

*Purpose/Agenda:* To evaluate and review contract proposals.

*Name of Committee:* NIDA Special Emphasis Panel (Identification and Analysis of THC, Cocaine, and Other Drugs of Abuse and Their Metabolites in Meconium).

*Date:* September 8, 1997.

*Time:* 10:00 a.m.

*Place:* Contracts Management Branch, National Institute on Drug Abuse, NIH, 5600 Fishers Lane, Room 10–49, Rockville, MD 20857, (Telephone Conference).

*Contact Person:* Mr. Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, Telephone (301) 443–1644.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The 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.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Scientist Development, Research Scientist Development, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health)

Dated: August 28, 1997.

**LaVeen M. Ponds,**

*Policy Analyst, NIH CMO.*

[FR Doc. 97–23482 Filed 9–3–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Workshop on Thalidomide: Potential Benefits and Risks

Notice is hereby given of the NIH workshop on ''Thalidomide: Potential Benefits and Risks,'' which will be held September 9–10, 1997, in the Natcher Conference Center of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The conference begins at 8:30 a.m. on September 9 and at 8 a.m. on September 10.

Thalidomide was associated in 1961 with serious human teratogenicity. Its use in the treatment of morning sickness

and insomnia was abandoned, and it became infamous as an example of a drug with major toxic effects. Thalidomide is now being studied as a treatment for many serious diseases, including erythema nodosum leprosum, chronic graft-versus-host disease, and aphthous ulcers in patients with and without HIV infection.

The purpose of the workshop is to provide a public forum to assess the emerging research opportunities, potential clinical applications, and accompanying risks associated with the use of thalidomide. The meeting is open to researchers, academic and community-based physicians, nurses, pharmacists, other health care professionals, industry personnel, patients, and other interested individuals.

The workshop is sponsored by the Office of Rare Diseases, the Office of Research on Women's Health, the Office of Medical Applications of Research, the National Institute of Allergy and Infectious Diseases, the National Institute of Arthritis and Musculoskeletal and Skin Diseases, the National Institute of Dental Research, and the National Institute of Child Health and Human Development of the National Institutes of Health; by the Center for Drug Evaluation and Research and the Office of Special Health Issues of the Food and Drug Administration; and by the Centers for Disease Control and Prevention.

Advance information on the conference program and conference registration materials may be obtained from Prospect Associates, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 468–MEET; by e-mail to raredisease@PropspectAssoc.com; or at http://rarediseases.info.nih.gov/ord on the World Wide Web.

Dated August 12, 1997.

**Ruth L. Kirschstein,**

*Deputy Director, National Institutes of Health.*

[FR Doc. 97–23383 Filed 9–3–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of 1-Trans-Delta$^9$-Tetrahydrocannabinol

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of 1-trans-delta$^9$-tetrahydrocannabinol which is a major psychoactive component of marijuana and a widely used Schedule I substance.

Toxicology and carcinogenicity studies were conducted by administering 1-trans-delta$^9$-tetrahydrocannabinol (THC) in corn oil to groups of 62 vehicle control male rats, 60 low-dose male rats, 70 mid- and high-dose male rats, and 60 female rats at doses of 0, 12.5, 25, or 50 mg THC/kg body weight by gavage for 104 to 105 weeks. Groups of 62 vehicle control male mice, 60 low-dose male mice, 61 mid-dose male mice, and 60 high-dose male mice and 60 female mice were administered 0, 125, 250, or 500 mg THC/kg body weight in corn oil by gavage for 104 to 105 weeks (males) or 105 to 106 weeks (females).

Under the conditions of these 2-year gavage studies, there was no evidence of carcinogenic activity [1] of 1-trans-delta$^9$-tetrahydrocannabinol in male or female F344/N rats administered 12.5, 25, or 50 mg/kg. There was equivocal evidence of carcinogenic activity of THC in male and female B6C3F1 mice based on the increased incidences of thyroid gland follicular cell adenomas in 125 mg/kg groups.

Increased incidences of thyroid gland follicular cell hyperplasia occurred in male and female mice, and increased incidences of hyperplasia and ulcers of the forestomach were observed in male mice.

The incidences of mammary gland fibroadenomas and uterine stromal polyps were decreased in dosed groups of female rats, as were the incidences of pancreatic adenomas, pituitary gland adenomas, and interstitial cell adenomas of the testis in dosed male rats and liver neoplasms in dosed mice. These decreases were likely related to lower body weights in dosed animals.

Questions or comments about the Technical Report should be directed to Central Data Management at PO Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of Toxicology and Carcinogenesis Studies of 1-Trans-Delta$^9$-Tetrahydrocannabinol (CAS No. 1972–08–3) (TR–446) are available from Central Data Management, NIEHS, MD E1–02, PO Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: August 14, 1997.

**Samuel H. Wilson,**

*NIEHS Deputy Director.*

[FR Doc. 97–23381 Filed 9–3–97; 8:45 am]

BILLING CODE 4140–01–M

[1] The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results (''clear evidence'' and ''some evidence''), one category for uncertain findings (''equivocal evidence''), one category for no observable effect (''no evidence''), and one category for studies that cannot be evaluated because of major flaws (''inadequate study'').

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### Centers for Disease Control and Prevention; Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 54 FR 13389–90, dated March 30, 1997) is amended to reflect the transfer of international emergency and refugee functions from the International Health Program Office (IHPO) to the National Center for Environmental Health and the transfer of child survival functions associated with Integrated Case Management activities in IHPO to the National Center for Infectious Diseases.

*Section C–B, Organization and Functions,* is hereby amended as follows:

Revise the mission and function statement for the *International Health Program Office (CG)* by deleting item (6) and renumbering the remaining items accordingly.

Revise the functional statement for the *Office of the Director (CG1),* by deleting item (7) and renumbering the remaining items accordingly.

Revise the functional statement for the *Division of Field Services (CG6)* by deleting item (5) and renumbering the remaining items accordingly.

Delete in their entirety the title and functional statement for *Child Survival Activity (CG62).*

Revise the functional statement for the *Division of Technical Support (CG7)* by deleting item (6).

Revise the functional statement for the *Epidemiologic Support Branch (CG72)* by deleting items (2) and (8) and renumbering the remaining items accordingly.

Dated: August 25, 1997.

**David Satcher,**

*Director.*

[FR Doc. 97–23457 Filed 9–3–97; 8:45 am]

BILLING CODE 4160–18–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4263–N–14]**

### Notice of Proposed Information Collection for Public Comment

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments due: November 3, 1997.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing and Urban Development, 451—7th Street, SW, Room 9116, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** John Coonts, Telephone number (202) 708–3046 (this is not a toll-free number) for copies of the proposed form and other available documents.

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Section 248 Single Family Mortgage Insurance on Indian Reservations and Other Restricted Lands.

*OMB Control Number:* 2502–0340.

*Description of the need for the information and the proposed use:* Verification of mortgage security and certification of eviction procedures by Indian tribes are needed by HUD to satisfy requirements for Single Family mortgage insurance and for uses in the event of foreclosure.

*Agency form numbers:* N/A.

*Members of affected public:* Business or other for profit and State, Local or Tribal Government.

An estimation of the total numbers of hours needed to prepare the information collection is 610, the number of respondents is 1,220, frequency of responses is on occasion and the hours of response is .5.

*Status of the proposed information collection:* Extension of a currently approved collection.

**Authority:** Sec. 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 26, 1997.

**Stephanie A. Smith,**

*General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 97–23386 Filed 9–3–97; 8:45 am]

BILLING CODE 4210–27–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4263–N–16]**

### Notice of Proposed Information Collection for Public Comments

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments due: November 3, 1997.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4238, Washington, DC 20410–5000.

**FOR FURTHER INFORMATION CONTACT:** Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This notice also lists the following information:

*Title of Proposal:* Public Housing Construction Report.

*OMB Control Number:* 2577–0027.

*Description of the need for the information and proposed use:* Public Housing Agencies (PHAs) are responsible for contract administration for low-income housing projects. The architect, or other person licensed under State law, prepares the report and submits it to the PHA from the date of contract execution to final inspection. The report provides information on contractors, contract amount, starting/completing dates, progress on site improvements and buildings, inspection forecast and acceptance for occupancy. HUD uses the information to track the progress of construction to ensure that contract and inspection dates comply with HUD procedures.

*Agency Form Number:* Form HUD–5378.

*Members of the affected public:* State, Local or Tribal Government.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* 158 (projects), 12 months average construction period x two reports a month = 24 for each project totaling 3,792 responses, 15 minutes per response, 568 hours total reporting burden, 152 hours total recordkeeping burden.

*Status of the proposed information collection:* Reinstatement.

**Authority:** Sec. 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 28, 1997.

**Kevin Emanuel Marchman,**

*Acting Assistant Secretary for Public and Indian Housing.*

**BILLING CODE 4210–33–M**

# Public Housing Construction Report

**U.S. Department of Housing and Urban Development**
Office of Public and Indian Housing

OMB Approval No. 2577-0027 (exp.7/31/96)

See Instructions on Back

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect or sponsor, and you are not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This information is required by Section 6(c)(4) of the U.S. Housing Act of 1937 and 24 CFR Part 941 HUD regulations. PHAs are responsible for contract administration for low-income housing projects. The architect, or other person licensed under State law, prepares the report and submits it to the PHA from the date of contract execution to final inspection. The report provides information on contractors, contract amount, starting/completing dates, progress on site improvements and buildings, inspection forecast and acceptance for occupancy. HUD uses the information to track the progress of construction to ensure that contract and inspection dates comply with HUD procedures. Responses to the collection of information are required to obtain a benefit. The information requested does not lend itself to confidentiality.

| | | |
|---|---|---|
| Name of Public Housing Agency | Development Number | Total Number of Buildings |
| Development Name | Report Number | Total Dwelling Units Scheduled |
| Development Address and Telephone number of Project Office | Period Ended | Dwelling Units Scheduled Elderly |

**1. Contract Data** **Scheduled Completion:** % **Actual Completion:** %

| Prime Contractors | Division of Work | Adjusted Contract Amount | Adjusted Value of Work in Place | Contract Starting Date | Contract Completion Date |
|---|---|---|---|---|---|
| | | $ | $ | | |
| | | $ | $ | | |
| | | $ | $ | | |
| | | $ | $ | | |
| | | $ | $ | | |
| | | $ | $ | | |
| | **Totals** | $ | $ | | |

**2. Average Effective Employment During Reporting Period:**

| **3. Dwelling Buildings Progress** | Not Started | In Progress | Completed | **4. Site Improvements Progress** | Not Started | In Progress | Completed |
|---|---|---|---|---|---|---|---|
| a. Foundations | | | | a. Utilities | | | |
| b. Mechanical Roughing | | | | b. Streets and Walks | | | |
| c. Interior Finish | | | | c. Lawns and Planting | | | |
| d. Punch List | | | | d. Other | | | |

**5. Supervisory and Inspection Force Employed by: (1) Local Authority:** **(2) Architect:**

| Duty | Full Time | Part Time | Duty | Full Time | Part Time |
|---|---|---|---|---|---|
| a. | | | c. | | |
| b. | | | d. | | |

| **6. Inspection Forecast** | | | **7. Acceptance for Occupancy and Use** | |
|---|---|---|---|---|
| Item | No. of Units | Date to beReady | Item | No. of Units |
| a. Final - First Group | | | a. Dwelling Units Previously Accepted | |
| b. Final - Second Group | | | b. Dwelling Units Accepted this Period | |
| c. Final - Third Group | | | c. Total Dwelling Units Accepted to Date | |

**8. Narrative Report:** Special Circumstances, Construction Delays, Problems, etc., if Project includes Other Facilities, such as Community M and M Building. Show the Percent Completion under this heading, also include Status of Off-Site Work. Continue on back if necessary.

Contracting Officer's Name & Signature & Date:

X

Previous edition is obsolete

form **HUD - 5378** (2/94)
ref Handbooks 7417.1 & 7450.1

**8. Narrative Report:** (continued)

**Instructions for Preparation of form HUD - 5378, Public Housing Construction Report**

1. General. Form HUD - 5378 shall be prepared and mailed on the 1st and 16th day of each calendar month of the construction period. Each report shall be numbered in serial order, commencing with No. 1 and continuing through the final report. All spaces must be filled on each report, including the street address of the project and the telephone number of the project office.

2. Body of Report.
   a. Item 1: Contract Data
      Completion Percentages: Fill in accurately the scheduled and the actual completion percentages.
      Prime Contractors: Arrange Prime Contracts in the order of award.
      Division of Work: Enter the division of the work awarded to each.
      Adjusted Contract Amount: For each contract, enter the contract amount as adjusted by all approved Change Orders.
      Adjusted Value of Work in Place: Each Contractor's latest periodical estimate for partial payment shall be utilized.
      Contract Starting Date: Enter the effective starting date established by Notice to Proceed for each of the Contractors listed.
      Contract Completion Date: Enter the contract completion date established by Notice to Proceed for each of the Contractors listed.

   b. Item 2: Average Effective Employment During Reporting Period: This is intended to show the approximate size of the productive labor force.

   c. Item 3: Dwelling Building Progress: Enter the number of dwelling buildings under each appropriate heading.

   d. Item 4: Site Improvements Progress: This covers all on-site non-dwelling construction. Enter an "X" under each appropriate heading. If "In Progress," show the percentage of completion.

   e. Item 5: Supervisory and Inspection Force: This should show the current composition of these forces and by whom they are employed.
      Employment: Indicate with an "X" by whom these forces are employed.
      Duty: Enter the active duty assignments for the period. Do not use individual's names.
      Time Classification: Enter the number of persons performing the duty under each time classification.

   f. Item 6: Inspection Forecast: This forecast is to provide HUD with advance information for planning itineraries of Construction Representatives and should be revised in successive reports as necessary.

   g. Item 7: Acceptance of Occupancy and Use: These items are self-explanatory.

   h. Item 8. Narrative Report: The report should be the historical record of the construction of the project, written in conversational style, and should include the names and titles of all official visitors, including the Architects.

3. Signatures: The original and all copies must be signed and dated by the Contracting Officer, with the name typed below the signature.

Previous edition is obsolete

form **HUD - 5378** (2/94)
ref Handbooks 7417.1 & 7450.1

[FR Doc. 97–23387 Filed 9–3–97; 8:45 am]
BILLING CODE 4210–33–C

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4263–N–15]**

## Notice of Proposed Information Collection for Public Comments

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments due: November 3, 1997.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 4238, Washington, DC 20410–5000.

**FOR FURTHER INFORMATION CONTACT:** Mildred M. Hamman, (202) 708–3642. extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Operating Budget, Supporting Schedules and Board Resolution.

*OMB Control Number:* 2577–0026.

*Description of the need for the information and proposed use:* The operating budget and supporting forms are submitted by the Public Housing Agency (PHA) for the low-income housing program. The operating budget provides a summary of proposed/budget receipts and expenditures by major category, as well as blocks for blocks for indicating approval of budget receipts and expenditures by PHA and HUD. The supporting forms provide the detail of how the amounts shown on the operating budget were arrived at, as well as justification of certain specified amounts. The information is reviewed by HUD to determine if the plan of operation adopted by the PHA and amounts included therein are reasonable for the efficient and economical operation of the development(s), and the PHA is in compliance with HUD procedures to assure that sound management practices will be followed in the operation of the development. The legal authority for this information collection is section 6(c)(4) of the United States Housing Act of 1937, as amended.

*Agency Form Numbers:* Form HUD–52564, HUD–52566, HUD–52567, HUD–52571, HUD–52573, HUD–52574.

*Members of the affected public:* State, Local or Tribal Government.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* 3,780 responses, one response per respondents, totaling 3,780 annual responses, 120 hours per response, 454,545 total reporting burden hours.

*Status of the proposed information collection:* Extension without change.

**Authority:** Sec. 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 28, 1997.

**Kevin Emanuel Marchman,**

*Acting Assistant Secretary for Public and Indian Housing.*

BILLING CODE 4210–33–M

# Operating Budget

**U.S. Department of Housing and Urban Development**
Office of Public and Indian Housing

OMB Approval No. 2577-0026 (exp. 10/31/97)

**See page four for Instructions and the Public reporting burden statement.**

a. Type of Submission: ☐ Original ☐ Revision No.: _____

b. Fiscal Year Ending

c. No. of months (check one): ☐ 12 mo. ☐ Other (specify)_____

d. Type of HUD assisted project(s)
- 01 ☐ PHA/IHA-Owned Rental Housing
- 02 ☐ IHA Owned Mutual Help Homeownership
- 03 ☐ PHA/IHA Leased Rental Housing
- 04 ☐ PHA/IHA Owned Turnkey III Homeownership
- 05 ☐ PHA/IHA Leased Homeownership

e. Name of Public Housing Agency / Indian Housing Authority (PHA/IHA)

f. Address (city, State, zip code)

g. ACC Number

h. PAS / LOCCS Project No.

i. HUD Field Office

j. No. of Dwelling Units

k. No. of Unit Months Available

m. No. of Projects

| Line No. | Acct. No. | Description (1) | Actuals Last Fiscal Yr. 19____ PUM (2) | ☐ Estimates ☐ or Actual Current Budget Yr. 19_____ PUM (3) | Requested Budget Estimates: PHA/IHA Estimates PUM (4) | PHA/IHA Estimates Amount (to nearest $10) (5) | HUD Modifications PUM (6) | HUD Modifications Amount (to nearest $10) (7) |
|---|---|---|---|---|---|---|---|---|
| **Homebuyers Monthly Payments for:** | | | | | | | | |
| 010 | 7710 | Operating Expense | | | | | | |
| 020 | 7712 | Earned Home Payments | | | | | | |
| 030 | 7714 | Nonroutine Maintenance Reserve | | | | | | |
| **040** | **Total** | Break-Even Amount (sum of lines 010, 020, and 030) | | | | | | |
| 050 | 7716 | Excess (or deficit) in Break-Even | | | | | | |
| 060 | 7790 | Homebuyers Monthly Payments - Contra | | | | | | |
| **Operating Receipts** | | | | | | | | |
| 070 | 3110 | Dwelling Rental | | | | | | |
| 080 | 3120 | Excess Utilities | | | | | | |
| 090 | 3190 | Nondwelling Rental | | | | | | |
| **100** | **Total** | Rental Income (sum of lines 070, 080, and 090) | | | | | | |
| 110 | 3610 | Interest on General Fund Investments | | | | | | |
| 120 | 3690 | Other Income | | | | | | |
| **130** | **Total** | Operating Income (sum of lines 100, 110, and 120) | | | | | | |
| **Operating Expenditures - Administration:** | | | | | | | | |
| 140 | 4110 | Administrative Salaries | | | | | | |
| 150 | 4130 | Legal Expense | | | | | | |
| 160 | 4140 | Staff Training | | | | | | |
| 170 | 4150 | Travel | | | | | | |
| 180 | 4170 | Accounting Fees | | | | | | |
| 190 | 4171 | Auditing Fees | | | | | | |
| 200 | 4190 | Other Administrative Expenses | | | | | | |
| **210** | **Total** | Administrative Expense (sum of line 140 thru line 200) | | | | | | |
| **Tenant Services:** | | | | | | | | |
| 220 | 4210 | Salaries | | | | | | |
| 230 | 4220 | Recreation, Publications and Other Services | | | | | | |
| 240 | 4230 | Contract Costs, Training and Other | | | | | | |
| **250** | **Total** | Tenant Services Expense (sum of lines 220, 230, and 240) | | | | | | |
| **Utilities:** | | | | | | | | |
| 260 | 4310 | Water | | | | | | |
| 270 | 4320 | Electricity | | | | | | |
| 280 | 4330 | Gas | | | | | | |
| 290 | 4340 | Fuel | | | | | | |
| 300 | 4350 | Labor | | | | | | |
| 310 | 4390 | Other utilities expense | | | | | | |
| **320** | **Total** | Utilities Expense (sum of line 260 thru line 310) | | | | | | |

| Name of PHA / IHA | Fiscal Year Ending |
|---|---|
| | |

| Line No. | Acct. No. | Description (1) | Actuals Last Fiscal Yr. 19____ PUM (2) | ☐ Estimates ☐ or Actual Current Budget Yr. 19_____ PUM (3) | Requested Budget Estimates: PHA/IHA Estimates PUM (4) | PHA/IHA Estimates Amount (to nearest $10) (5) | HUD Modifications PUM (6) | HUD Modifications Amount (to nearest $10) (7) |
|---|---|---|---|---|---|---|---|---|
| **Ordinary Maintenance and Operation:** | | | | | | | | |
| 330 | 4410 | Labor | | | | | | |
| 340 | 4420 | Materials | | | | | | |
| 350 | 4430 | Contract Costs | | | | | | |
| **360** | **Total** | Ordinary Maintenance & Operation Expense (lines 330 to 350) | | | | | | |
| **Protective Services:** | | | | | | | | |
| 370 | 4460 | Labor | | | | | | |
| 380 | 4470 | Materials | | | | | | |
| 390 | 4480 | Contract costs | | | | | | |
| **400** | **Total** | Protective Services Expense (sum of lines 370 to 390) | | | | | | |
| **General Expense:** | | | | | | | | |
| 410 | 4510 | Insurance | | | | | | |
| 420 | 4520 | Payments in Lieu of Taxes | | | | | | |
| 430 | 4530 | Terminal Leave Payments | | | | | | |
| 440 | 4540 | Employee Benefit Contributions | | | | | | |
| 450 | 4570 | Collection Losses | | | | | | |
| 460 | 4590 | Other General Expense | | | | | | |
| **470** | **Total** | General Expense (sum of lines 410 to 460) | | | | | | |
| **480** | **Total** | Routine Expense (sum of lines 210, 250, 320, 360, 400, and 470) | | | | | | |
| **Rent for Leased Dwellings:** | | | | | | | | |
| 490 | 4710 | Rents to Owners of Leased Dwellings | | | | | | |
| **500** | **Total** | Operating Expense (sum of lines 480 and 490) | | | | | | |
| **Nonroutine Expenditures:** | | | | | | | | |
| 510 | 4610 | Extraordinary Maintenance | | | | | | |
| 520 | 7520 | Replacement of Nonexpendable Equipment | | | | | | |
| 530 | 7540 | Property Betterments and Additions | | | | | | |
| **540** | **Total** | Nonroutine Expenditures (sum of lines 510, 520, and 530) | | | | | | |
| **550** | **Total** | Operating Expenditures (sum of lines 500 and 540) | | | | | | |
| **Prior Year Adjustments:** | | | | | | | | |
| 560 | 6010 | Prior Year Adjustments Affecting Residual Receipts | | | | | | |
| **Other Expenditures:** | | | | | | | | |
| 570 | | Deficiency in Residual Receipts at End of Preceding Fiscal Yr. | | | | | | |
| **580** | **Total** | Operating Expenditures, including prior year adjustments and other expenditures (line 550 plus or minus line 560 plus line 570) | | | | | | |
| 590 | | Residual Receipts (or Deficit) before HUD Contributions and provision for operating reserve (line 130 minus line 580) | | | | | | |
| **HUD Contributions:** | | | | | | | | |
| 600 | 8010 | Basic Annual Contribution Earned - Leased Projects:Current Year | | | | | | |
| 610 | 8011 | Prior Year Adjustments - (Debit) Credit | | | | | | |
| **620** | **Total** | Basic Annual Contribution (line 600 plus or minus line 610) | | | | | | |
| 630 | 8020 | Contributions Earned - Op. Sub: - Cur. Yr.(before year-end adj) | | | | | | |
| 640 | | Mandatory PFS Adjustments (net): | | | | | | |
| 650 | | Other (specify): | | | | | | |
| 660 | | Other (specify): | | | | | | |
| 670 | | Total Year-end Adjustments/Other (plus or minus lines 640 thru 660) | | | | | | |
| 680 | 8020 | Total Operating Subsidy-current year (line 630 plus or minus line 670) | | | | | | |
| **690** | **Total** | HUD Contributions (sum of lines 620 and 680) | | | | | | |
| 700 | | Residual Receipts (or Deficit) (sum of line 590 plus line 690) Enter here and on line 810 | | | | | | |

| Name of PHA / IHA | Fiscal Year Ending |
|---|---|
| | |

| | | Operating Reserve | PHA/IHA Estimates | HUD Modifications |
|---|---|---|---|---|
| | | **Part I - Maximum Operating Reserve - End of Current Budget Year** | | |
| 740 | 2821 | **PHA / IHA-Leased Housing - Section 23 or 10(c)**<br>50% of Line 480, column 5, form HUD-52564 | | |

| | | | | |
|---|---|---|---|---|
| | | **Part II - Provision for and Estimated or Actual Operating Reserve at Fiscal Year End** | | |
| 780 | | Operating Reserve at End of Previous Fiscal Year - Actual for FYE (date): | | |
| 790 | | Provision for Operating Reserve - Current Budget Year (check one)<br>☐ Estimated for FYE<br>☐ Actual for FYE | | |
| 800 | | Operating Reserve at End of Current Budget Year (check one)<br>☐ Estimated for FYE<br>☐ Actual for FYE | | |
| 810 | | Provision for Operating Reserve - Requested Budget Year Estimated for FYE<br>Enter Amount from line 700 | | |
| 820 | | Operating Reserve at End of Requested Budget Year Estimated for FYE<br>(Sum of lines 800 and 810) | | |
| 830 | | Cash Reserve Requirement - _____ % of line 480 | | |

Comments:

**PHA / IHA Approval**

Name _____

Title _____

Signature _____ Date _____

**Field Office Approval**

Name _____

Title _____

Signature _____ Date _____

Public reporting burden for this collection of information is estimated to average 116 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collecton displays a valid OMB control number.

This information is required by Section 6(c)(4) of the U.S. Housing Act of 1937. The information is the operating budget for the low-income housing program and provides a summary of proposed/budgeted receipts and expenditures, approval of budgeted receipts and expenditures, and justification of certain specified amounts. HUD reviews the information to determine if the operating plan adopted by the PHA and the amounts are reasonable and that the PHA is in compliance with procedures prescribed by HUD. Responses are required to obtain benefits. This information does not lend itself to confidentiality.

**Instructions for Preparing Form HUD-52564, Operating Budget**

Separate Operating Budgets must be prepared for each separate Annual Contributions Contract (ACC). However, the supporting documentation can be combined for each Turnkey III project within an ACC, provided it clearly separates the cost by program and/or ACC number. Prepare all of the supporting documentation (Forms HUD-52573, HUD-52566 and HUD-52571) prior to finalizing the Operating Budget.

The headings for items a. through m. are self-explanatory.

**Columns:**

Column (2): Obtain actual P.U.M. amounts from the Statement(s) of Operating Receipts and Expenditures (Form HUD-52599) for the year preceding the current budget year.

Column (3): Include the actual (if available) or estimated PUM amounts for the current budget year.

Columns (4) and (5): Enter amounts on applicable lines from HUD Schedules and/or HA worksheets in column (5). After completing column (5) compute the P.U.M. amounts for Column (4) by dividing each figure in Column (5) by the No. of Unit Months of Availablity, item k.

Columns (6) and (7): Leave blank. If HUD modifies the HA estimates as a condition for approval, HUD will complete these columns and return a copy to the HA.

**Line Items**

Lines 010 through 060 are specific to the Turnkey III Owned Homeownership Program. These lines correspond to accounts 7710 through 7790, see Accounting Handbook 7510.1.

Line 460: Use this line, if applicable, for showing estimated interest on Administrative and Sundry Loans.

Line 490: This line is specific to the Section 23, Leased Rental Program.

Line 560: Use this line, if applicable, only in connection with budget revisions.

Line 570: Use this line, if applicable, for such items as carry-overs of unabsorbed deficiencies in residual receipts from prior years.

Line 630: Operating Subsidy Eligibility for the requested year before year end adjustments.

Lines 640 to 660: Year end adjustments to be funded in the requested budget year.

Line 700: An estimated decrease cannot be more than the amount available in the operating reserve at the beginning of the requested budget year (line 800).

**Special Instructions, Budget Revisions**

Budget revisions must be approved by the end of the PHA fiscal year.

When using this form for budget revisions, the following additional instructions are applicable:

No changes are to be made to Column (2) or Column (3).

No changes are to be made in the amount for Operating Subsidy Eligibility before year end adjustments (Line 630, or in Part I -Maximum Operating Reserve-End of Current Budget Year.

**Operating Reserves**

Operating reserves are calculated by individual Annual Contributions Contract except that the operating reserves for Section 23 Leased Housing Projects, Turnkey III Homeownership Projects (HA Owned or Leased) must be separately calculated and reported by project.

Line 780: Enter amount as of the last previous fiscal year (year preceding current budget year).

Line 790:

a. Enter estimated amount, if original budget, or actual amount, if revised budget.

b. Enter negative balance in parentheses. (The negative balance may not exceed the amount on line 780.)

Line 800: Enter sum of lines 780 and 790.

Line 810:

a. Enter estimated amount.

b. Enter negative balance in parentheses. (The negative balance may not exceed the amount on line 800.)

Line 820: Enter sum of lines 800 and 810.

Line 830: Enter percent of routine operating expenses (or minimum dollar amount) currently used by HUD as a performance measure to evaluate the cash requirements and/or operating reserve adequacy.

# Operating Budget

## Schedule of All Positions and Salaries

**See back of page for Instructions and Public reporting burden statement**

**U.S. Department of Housing and Urban Development**
Office of Public and Indian Housing

OMB Approval No. 2577-0026 (Exp. 10/31/97)

| Name of Housing Authority | Locality | Fiscal Year End |
|---|---|---|
| | | |

| Position Title and Name By Organizational Unit and Function | | Present Salary Rate | Requested Budget Year | | | Allocation of Salaries by Program | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Estimated Payment | | | | | | | | |
| | | As of (date) | Salary Rate | No. Months | Amount | Management | Modernization | Development | Section 8 Programs | Other Programs | Longevity | Method of Allocation |
| (1) | (1a) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) |
| | | | | | | | | | | | | |

To the best of my knowledge, all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.
**Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

| Executive Director or Designated Official | Date |
|---|---|
| | |



form **HUD-52566** (3/95)
ref Handbook 7475.1

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collecton displays a valid OMB control number.

This information is required by Section 6(c)(4) of the U.S. Housing Act of 1937. The information is the operating budget for the low-income housing program and provides a summary of proposed/budgeted receipts and expenditures, approval of budgeted receipts and expenditures, and justification of certain specified amounts. HUD reviews the information to determine if the operating plan adopted by the PHA and the amounts are reasonable and that the PHA is in compliance with procedures prescribed by HUD. Responses are required to obtain benefits. This information does not lend itself to confidentiality.

**Instructions for Preparation of Form HUD-52566**

This form is to be prepared to show proposed staffing for the Requested Budget Year. All employees of the Housing Authority must be listed.

**Identification:** The identification boxes at the top of the form are self-explanatory.

**Position Title and Name by Organizational Unit and Function:**

**Column (1):** List each position title according to Organizational Unit, i.e., Central Office, Central Maintenance, Project or Project Management Group, Section 8, Modernization, and Function within each organization unit, i.e., Office of Director, Accounting and Purchasing Section, Leasing and Occupancy Section, General Maintenance, etc. All seasonal temporary labor may be combined on a single line designated "Casual Labor" or "Temporary Labor."

**Column (1a):** For each position or group of positions as appropriate, enter an account designation as follows:

| | |
|---|---|
| AN-T | Administrative-Nontechnical positions |
| A-T | Administrative-Technical positions |
| M | Maintenance positions |
| U | Utilities Labor positions |
| O | Other positions such as staff attorneys and architectural and engineering personnel employed for the sole purpose of preparing plans and specifications for extraordinary maintenance jobs or for betterments and additions. |

**Column (2) Present Salary Rate:** Enter closing date of latest completed payroll in heading. Then, for each position listed in Column (1), enter the present annual salary rate in accordance with the latest payroll record. For new positions to be established in the Requested Budget Year, leave this column blank.

**Columns (3), (4), (5) Requested Budget Year:**

**Salary Rate:** For each position listed, enter the proposed salary rate for the Requested Budget Year.

**Estimated Payment:**

**No. Months:** For each position listed, enter the estimated equivalent number of full months of employment in the Requested Budget Year.

**Amount:** For each position listed, enter the estimated amount of salary to be paid during the Requested Budget Year.

**Allocation of Salaries by Program:** Columns (6) through (11) are to be completed by Housing Authorities who administer programs other than Management.

**Column (6)–Management:** For each position listed enter the amount of salary allocable to management related activities.

**Column (7)–Modernization Programs:** For each position listed enter the amount of salary allocable to Modernization (CIAP/Comprehensive Grant Program) related activities. The Housing Authority must have an approved CIAP/Comprehensive Plan budget with funds approved under Development Accounts 1410.1 and 1410.2.

**Column (8)–Development:** For each position listed, enter the amount of salary allocable to activities related to projects in development. Include in one amount the amount chargeable to Development Cost Accounts 1410 and 1425.

**Column (9)–Section 8 Programs:** For each position listed, enter the amount of salary allocable to activities related to Section 8 programs.

**Column (10)–Other Programs:** For each position listed, enter the amount of salary allocable to activities related to projects which are locally-owned, State-aided, etc., and to all other programs with which the Local Authority is concerned such as Urban Renewal, etc.

Note: This Column should also include the allocation of salary costs of shared resources, 1.e., where staff or other resources are shared between a HA program and a program administered by an identity-of-interest non-profit entity, the salary cost must be equitably allocated to each program.

**Column (11)–Other:** For each position listed, enter the amount of salary allocable as a result of longevity compensation.

**Column (12)–Method of Allocation:** For each position or group of positions listed, show the method used for allocating the salaries listed.

On the basis of information shown on this schedule complete Form HUD-52573, Summary of Budget Data and Justifications, **Summary of Staffing and Salary Data** section, and Form HUD-52564, Operating Budget.

## Operating Budget
Schedule of Nonroutine Expenditures

**U.S. Department of Housing and Urban Development**
Office of Public and Indian Housing

OMB Approval No. 2577-0026 (Exp. 10/31/97)

**See back of page for Instructions and Public reporting burden statement**

| Local Housing Authority | Locality | Fiscal Year Ending |
|---|---|---|
| | | |

| Extraordinary Maintenance and Betterments and Additions (Excluding Equipment Additions) | | | | | | | Equipment Requirements | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | Requested Budget Year | | | Requested Budget | | |
| Work Project Number (1) | Description of Work Project (List **Extraordinary Maintenance** and **Betterments and Additions** separately) (2) | Housing Project Number (3) | Total Estimated Cost (4) | Percent Complete Current Budget Year End (5) | Estimated Expenditure In Year (6) | Percent Complete Year End (7) | Description of Equipment Items (List **Replacements** and **Additions** separately) (8) | No. of Items (9) | Item Cost (10) | Estimated Expenditure In Year (11) |
| | | | | | | | | | | |

**Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)



form **HUD-52567** (3/95)
ref Handbook 7475.1

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collecton displays a valid OMB control number.

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## Instructions for Preparation of Form HUD-52567

Prepare this form to describe each work project, or job, of extraordinary maintenance, property betterments and additions, and replacement or addition of nonexpendable equipment scheduled for accomplishment in whole or in part during the Requested Budget Year.

**Identification:** The identification boxes at the top of the form are self-explanatory.

### Extraordinary Maintenance and Betterments and Additions

**Column (1) Work Project Numbers:** For work projects to be started during the Requested Budget Year assign consecutive numbers to identify them with the classification of work and the LHA Fiscal Year, and enter the numbers in this column. For example: For Extraordinary Maintenance jobs to be started during the LHA Fiscal Year 1966, the number would be EM-66-1, EM-66-2, etc. and for Betterments and Additions jobs the numbers would be BA-66-1, BA-66-2, etc.

**Column (2) Description:** Describe each work project concisely, but sufficiently to give a full understanding of its nature and scope. For work projects started in previous years, point out any significant changes in nature and scope.

**Column (3) Housing Project Number:** Opposite each work project number and description enter the number of the Housing Projects at which the work is located.

**Column (4) Total Estimated Cost:** Enter a realistic estimate of the total cost of each work project based, to the extent practicable, on a thorough study of detailed specification of the work. If any part of the work is to be performed by Project staff the estimated cost should include the appropriate portion of their salaries. If there has been a change in the total estimated cost of work started in previous years, the revised total estimate should be entered and note to this effect included in the description column.

**Column (5) Percent Complete Current Budget Year End:** For work projects started in previous years, enter a realistic estimate of the percentage of work that will have been completed at the end of the Current Budget Year. This percentage may or may not correspond to the percentage of total estimated cost that will have been expended at that time.

### Requested Budget Year:

**Column (6) Estimated Expenditure In Year:** For each work project enter a realistic estimate of the portion of Total Estimated Cost that will be expended during the Requested Budget Year. These estimates should include the appropriate portion of salaries of Project staff which is to perform any of the work.

**Column (7) Percent Complete Year End:** For each work project enter a realistic estimate of the percentage of work that will have been completed at the end of the Requested Budget Year. This percentage may or may not correspond to the percentage of total estimated cost that will have been expended at that time.

### Equipment Requirements

**Column (8) Description:** Under a heading "Replacement of Equipment" list each type of nonexpendable equipment to be replaced, and separately under a heading "Property Additions" list each new type of nonexpendable equipment to be acquired. Give a brief description of each type and identify the Housing Project to which it is to be assigned.

**Column (9) Number of Items:** Enter the number of items of each type of equipment to be purchased for each Housing Project designated in Column (8).

**Column (10) Item Cost:** Enter estimated net cost of each item of equipment, e.g. purchase price, less discounts, trade-in allowances, and/or proceeds from disposition of equipment being replaced.

**Column (11) Estimated Expenditure In Year:** For each type of equipment, enter the estimated cost obtained by multiplying the number of items in Column 9 by the item cost in Column 10. Also, enter total cost of equipment listed under each of the headings "Replacement of Equipment" and "Property Additions."

### Totals

a. The total in Column 6 for Extraordinary Maintenance should be entered on Line 510, Column 5, of form HUD-52564.

b. The total in Column 11 for Replacement of Equipment should be entered on Line 520, Column 5, of form HUD-52564.

c. The sum of the totals in Columns 6 and 11 for Property Betterments and Additions should be entered on Line 530, Column 5, of form HUD-52564.

# Operating Budget

Schedule of Administration
Expense Other Than Salary

**U.S. Department of Housing and Urban Development**
Office of Public and Indian Housing

OMB Approval No. 2577-0026 (Exp. 10/31/97)

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collecton displays a valid OMB control number.

This information is required by Section 6(c)(4) of the U.S. Housing Act of 1937. The information is the operating budget for the low-income housing program and provides a summary of proposed/budgeted receipts and expenditures, approval of budgeted receipts and expenditures, and justification of certain specified amounts. HUD reviews the information to determine if the operating plan adopted by the PHA and the amounts are reasonable and that the PHA is in compliance with procedures prescribed by HUD. Responses are required to obtain benefits. This information does not lend itself to confidentiality.

| Name of Housing Authority: | Locality: | Fiscal Year End: |
|---|---|---|
| | | |

| | (1) Description | (2) Total | (3) Management | (4) Development | (5) Section 8 | (6) Other |
|---|---|---|---|---|---|---|
| 1 | Legal Expense (see Special Note in Instructions) | | | | | |
| 2 | Training (list and provide justification) | | | | | |
| 3 | Travel<br>Trips To Conventions and Meetings (list and provide justification) | | | | | |
| 4 | Other Travel:<br>Outside Area of Jurisdiction | | | | | |
| 5 | Within Area of Jurisdiction | | | | | |
| 6 | Total Travel | | | | | |
| 7 | Accounting | | | | | |
| 8 | Auditing | | | | | |
| 9 | Sundry<br>Rental of Office Space | | | | | |
| 10 | Publications | | | | | |
| 11 | Membership Dues and Fees (list organization and amount) | | | | | |
| 12 | Telephone, Fax, Electronic Communications | | | | | |
| 13 | Collection Agent Fees and Court Costs | | | | | |
| 14 | Administrative Services Contracts (list and provide justification) | | | | | |
| 15 | Forms, Stationary and Office Supplies | | | | | |
| 16 | Other Sundry Expense (provide breakdown) | | | | | |
| 17 | Total Sundry | | | | | |
| 18 | Total Administration Expense Other Than Salaries | | | | | |

To the best of my knowledge, all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.
**Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Signature of authorized representative & Date:

X



form **HUD-52571** (3/95)
ref Handbook 7475.1

Justification/Breakdown:

**Instructions for Preparation of Form HUD-52571**

Prepare this form to reflect detailed estimates of Administration Expense, other than salaries, and the distribution to all programs administered by the Housing Authority.

The identification boxes in the upper right hand corner are self-explanatory.

1. **Legal Expense**: Enter in Column (2), Line 1 the estimated cost of legal service. Enter in Columns (3) through (6) the pro rata shares of amounts in Column (2) chargeable to programs administered by the Housing Authority.

**Special Note**: The amount entered on Form HUD-52564 should also include salaries of Staff Attorneys as shown on Form HUD-52566 and included on line for "Other" in the Summary of Staffing and Salary Data section of Form HUD-52573.

2. **Training**: List and provide justification for all training.

**Travel Expense**: Justification must be provided for travel.

3. **Trips to Conventions and Meetings**: Under Justification/Breakdown, List each convention and meeting to be attended by commissioners and staff, with the location. Enter the number of persons expected to attend and show the aggregate number of travel days and the estimated total cost of each trip including subsistence allowance, cost of transportation, and reimbursable miscellaneous expenses. Enter the sum of the total costs of all trips in Column (2). Enter in Columns (3) through (6) the pro rata shares of amounts in Column (2) chargeable to programs administered by the Housing Authority.

4. **Other Travel: Outside Area of Jurisdiction**: Enter in Column (2), Line 4 the estimated cost for travel by commissioners and staff, including subsistence, transportation, and reimbursable miscellaneous expenses. Follow instructions 3 above for columns (3) through (6).

5. **Other Travel: Within Area of Jurisdiction**: Enter in Column (2), Line 5 the estimated cost for travel, including fixed monthly allowances for reimbursement on a mileage basis for use of privately owned automobiles; and reimbursement for authorized use of local public transportation. Follow instructions 3 above for columns (3) through (6).

6. **Total Travel:** Sum Lines 3, 4, and 5 for Columns (2) through (7) and enter total for each on Line 6 "Total Travel."

7, thru 16. **Accounting, Auditing and Sundry**: Enter the estimated total for all programs in Column (2) for each item of expense in Lines 7 through 16. In Columns (3) through (6) enter the pro rata share of amounts shown in Column (2) chargeable to all programs administered by the Housing Authority.

14. **Administrative Services Contracts**: List and provide justification for all contracts (excluding accounting contracts).

16. **All Other Sundry Expense**: List all items identified under this expense.

18. **Total Administration Expense Other Than Salaries**:

Add the amounts on the following Lines:

| | |
|---|---|
| Line 1 | Legal Expense |
| Line 2 | Training |
| Line 6 | Total Travel |
| Line 7 | Accounting |
| Line 8 | Auditing |
| Line 17 | Total Sundry |

On Line 18 enter the appropriate totals in Columns (2) through (6). The amount shown in Column (3), lines 1, 2, 6, 7, 8, and 17, should be carried forward to Lines 150 through 200 of Form HUD-52564, Operating Budget.

# Operating Budget

Summary of Budget Data and Justifications

**U.S. Department of Housing and Urban Development**
Office of Public and Indian Housing

OMB Approval No. 2577-0026 (Exp. 10/31/97)

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collecton displays a valid OMB control number.

This information is required by Section 6(c)(4) of the U.S. Housing Act of 1937. The information is the operating budget for the low-income housing program and provides a summary of proposed/budgeted receipts and expenditures, approval of budgeted receipts and expenditures, and justification of certain specified amounts. HUD reviews the information to determine if the operating plan adopted by the PHA and the amounts are reasonable and that the PHA is in compliance with procedures prescribed by HUD. Responses are required to obtain benefits. This information does not lend itself to confidentiality.

| Name of Local Housing Authority: | Locality: | Fiscal Year Ending: |
|---|---|---|
| | | , 19 |

## Operating Receipts

**Dwelling Rental:** Explain basis for estimate. For HUD-aided low-rent housing, other than Section 23 Leased housing, state amount of latest available total HA monthly rent roll, the number of dwelling units available for occupancy and the number accepted for the same month end. Cite HA policy revisions and economic and other factors which may result in a greater or lesser average monthly rent roll during the Requested Budget Year. For Section 23 Leased housing, state the number of units under lease, the PUM lease price, and whether or not the cost of utilities is included. If not included, explain method for payment at utility costs by HA and/or tenant.

**Excess Utilities:** (**Not** for Section 23 Leased housing.) Check appropriate spaces in item 1, and explain "Other". Under item 2, explain basis for determining excess utility consumption. For example, Gas; individual check meters at OH-100-1, proration of excess over allowances at OH-100-2, etc. Cite effective date of present utility allowances. Explain anticipated changes in allowances or other factors which will cause a significant change in the total amount of excess utility charges during the Requested Budget Year.

1. Utility Services Surcharged: Gas ☐ Electricity ☐ Other ☐ (Specify) _____

2. Comments

**Nondwelling Rent:** (**Not** for Section 23 Leased housing.) Complete Item 1, specifying each space rented, to whom, and the rental terms. For example: Community Building Space - Nursery School - $50 per month, etc. Cite changes anticipated during the Requested Budget Year affecting estimated Non-dwelling Rental Income.

1.

| Space Rented | To Whom | Rental Terms |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |

2. Comments

**Interest on General Fund Investments:** State the amount of present General Fund investment and the percentage of the General Fund it represents. Explain circumstances such as increased or decreased operating reserves, dwelling rent, operating expenditures, etc., which will affect estimated average monthly total investments in the Requested Budget Year. Explain basis for distribution of interest income between housing programs.

**Other Comments On Estimates of Operating Receipts:** Give comments on all other significant sources of income which will present a clear understanding of the HA's prospective Operating Receipts situation during the Requested Budget Year. For Section 23 Leased housing explain basis for estimate of utility charges to tenants.

## Operating Expenditures

**Summary of Staffing and Salary Data**

Complete the summary below on the basis of information shown on form HUD-52566, Schedule of All Positions and Salaries, as follows:

**Column (1)** Enter the total number of positions designated with the corresponding account line symbol as shown in Column (1), form HUD-52566.

**Column (2)** Enter the number of equivalent full-time positions allocable to HUD-aided housing in management. For example: A HA has three "A-NT" positions allocable to such housing at the rate of 80%, 70%, and 50% respectively. Thus, the equivalent full-time positions is two. (8/10 + 7/10 + 5/10).

**Column (3)** Enter the portion of total salary expense shown in Column (5) or Column (6), form HUD-52566, allocable to HUD-aided housing in management, other than Section 23 Leased housing.

**Column (4)** Enter the portion of total salary expense shown in Column (5) or Column (10), form HUD-52566, allocable to Section 23 Leased housing in management.

**Column (5)** Enter the portion of total salary expense shown in Column (5) or Column (7), form HUD-52566, allocable to Modernization programs (Comprehensive Improvement Assistance Program or Comprehensive Grant Program).

**Cloumn (6)** Enter the portion of total salary expense shown in Column (5) or Column (9), form HUD-52566, allocable to Section 8 Programs.

**Note:** The number of equivalent full-time positions and the amount of salary expense for all positions designated "M" on form HUD-52566 must be equitably distributed to account lines **Ordinary Maintenance and Operation—Labor, Extraordinary Maintenance Work Projects,** and **Betterments and Additions Work Projects**.

| Account Line | Total Number of Positions (1) | HUD-Aided Management Program | | | | |
|---|---|---|---|---|---|---|
| | | Equivalent Full-Time Positions (2) | Salary Expense | | | |
| | | | Management (3) | Section 23 Leased Housing Only (4) | Modernization Programs (5) | Section 8 Program (6) |
| Administration—Nontechnical Salaries[1] | | | | | | |
| Administration—Technical Salaries[1] | | | | | | |
| Ordinary Maintenance and Operation—Labor[1] | | | | | | |
| Utilities—Labor[1] | | | | | | |
| Other (Specify) (Legal, etc.)[1] | | | | | | |
| Extraordinary Maintenance Work Projects[2] | | | | | | |
| Betterments and Additions Work Projects[2] | | | | | | |

1 Carry forward to the appropriate line on HUD-52564, the amount of salary expense shown in Column (3) on the corresponding line above. Carry forward to the appropriate line on HUD-52564 (Section 23 Leased Housing Budget), the amount of salary expense shown in Column (4) on the corresponding line above.

2 The amount of salary expense distributed to Extraordinary Maintenance Work Projects and to Betterments and Additions Work Projects is to be included in the cost of each individual project to be performed by the HA Staff, as shown on form HUD-52567.

Specify all proposed new positions and all present positions to be abolished in the Requested Budget Year. Cite prior HUD concurrence in proposed staffing changes or present justification for such changes. Cite prior HUD concurrence in proposed salary increases for Administration Staff or give justification and pertinent comparability information. Cite effective date for current approved wage rates (form HUD-52158) and justify all deviations from these rates.

**Travel, Publications, Membership Dues and Fees, Telephone and Telegraph, and Sundry:** In addition to "Justification for Travel to Conventions and Meetings" shown on form HUD-52571, give an explanation of substantial Requested Budget Year estimated increases over the PUM rate of expenditures for these accounts in the Current Budget Year. Explain basis for allocation of each element of these expenses.

**Utilities:** Give an explanation of substantial Requested Budget Year estimated increases over the PUM rate of expenditures for each utility service in the Current Budget Year. Describe and state estimated cost of each element of "Other Utilities Expense."

**Ordinary Maintenance & Operation—Materials:** Give an explanation of substantial Requested Budget Year estimated increases over the PUM rate of expenditures for materials in the Current Budget Year.

**Ordinary Maintenance & Operation—Contract Costs:** List each ordinary maintenance and operation service contracted for and give the estimated cost for each. Cite and justify new contract services proposed for the Requested Budget Year. Explain substantial Requested Budget Year increases over the PUM rate of expenditure for Contract Services in the Current Budget Year. If LHA has contract for maintenance of elevator cabs, give contract cost per cab.

**Insurance:** Give an explanation of substantial Requested Budget Year estimated increases in the PUM rate of expenditures for insurance over the Current Budget Year. Cite changes in coverage, premium rates, etc.

**Employee Benefit Contributions:** List all Employee Benefit plans participated in. Give justification for all plans to be instituted in the Requested Budget Year for which prior HUD concurrence has not been given.

**Collection Losses:** State the number of tenants accounts receivable to be written off and the number and total amount of all accounts receivable for both present and vacated tenants as of the month in which the estimate was computed.

**Extraordinary Maintenance, Replacement of Equipment, and Betterments and Additions:** Cite prior HUD approval or give justification for each nonroutine work project included in the Requested Budget and for those for future years which make up the estimate on form HUD-52570. Justifying information incorporated on or attached to form HUD-52567 need not be repeated here.

**Contracts:** List all contracts, other than those listed on page 3 of this form under Ordinary Maintenance & Operation (OMO). Cite the name of the contractor, type of contract, cost of contract, and contract period. Justification must be provided for all contract services proposed for the Requested Budget Year (RBY). Explain substantial RBY increases over the PUM rate of expenditure for these contracts in the Current Budget Year.

# PHA/IHA Board Resolution

Approving Operating Budget or Calculation of Performance Funding System Operating Subsidy

**U.S. Department of Housing and Urban Development**
Office of Public and Indian Housing

OMB Approval No. 2577-0026 (Exp. 10/31/97)

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collecton displays a valid OMB control number.

This information is required by Section 6(c)(4) of the U.S. Housing Act of 1937. The information is the operating budget for the low-income housing program and provides a summary of proposed/budgeted receipts and expenditures, approval of budgeted receipts and expenditures, and justification of certain specified amounts. HUD reviews the information to determine if the operating plan adopted by the PHA and the amounts are reasonable and that the PHA is in compliance with procedures prescribed by HUD. Responses are required to obtain benefits. This information does not lend itself to confidentiality.

Acting on behalf of the Board of Commissioners of the below-named Public Housing Agency (PHA)/Indian Housing Authority (IHA), as its Chairman, I make the following certifications and agreements to the Department of Housing and Urban Development (HUD) regarding the Board's approval of (check one or more as applicable):

(date)

☐ Operating Budget Submitted on: _____

☐ Operating Budget Revision Submitted on: _____

☐ Calculation of Performance Funding System Submitted on: _____

☐ Revised Calculation of Performance Funding System Submitted on: _____

I certify on behalf of the: (PHA/IHA Name) _____ that:

1. All regulatory and statutory requirements have been met;
2. The PHA has sufficient operating reserves to meet the working capital needs of its developments;
3. Proposed budget expenditures are necessary in the efficient and economical operation of the housing for the purpose of serving low-income residents;
4. The budget indicates a source of funds adequate to cover all proposed expenditures;
5. The calculation of eligibility for Federal funding is in accordance with the provisions of the regulations;
6. All proposed rental charges and expenditures will be consistent with provisions of law;
7. The PHA/IHA will comply with the wage rate requirements under 24 CFR 968.110(e) and (f) or 24 CFR 905.120(c) and (d);
8. The PHA/IHA will comply with the requirements for access to records and audits under 24 CFR 968.110(i) or 24 CFR 905.120(g); and
9. The PHA/IHA will comply with the requirements for the reexamination of family income and composition under 24 CFR 960.209, 990.115 and 905.315.

I hereby certify that all the information stated within, as well as any information provided in the accompaniment herewith, is true and accurate.

**Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

| Board Chairman's Name (type) | Signature: | Date: |
|---|---|---|
| | | |

Previous edition is obsolete

form **HUD-52574** (10/95)
ref. Handbook 7575.1

[FR Doc. 97–23388 Filed 9–3–97; 8:45 am]
BILLING CODE 4210–33–C

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4263–N–17]**

### Office of the Assistant Secretary for Policy Development and Research; Notice of Proposed Information Collection for Public Comment

**AGENCY:** Office of Public and Indian Housing—HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposal.

**DATES:** The due date for comments is: September 8, 1997.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB Control Number and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB an information collection package with respect the Corrections and Challenges to the Indian Housing Block Grant Formula Allocation. This information collection package submission to OMB for review is required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Department has submitted the proposal for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Department has requested emergency clearance of the collection of information, as described below, with approval being sought by September 8, 1997:

*Title of Proposal:* Correcting and Challenging Data Used in the Indian Housing Block Grant Formula Allocation.

*Description of the need for the information and proposed use:* The Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA or the Act) mandated that funding for Native American housing programs be allocated through use of a block grant formula. The block grant formula, as developed by the NAHASDA negotiated rulemaking committee, uses data from multiple sources, including the 1990 U.S. Census, HUD records, and the Indian Health Service. In developing the formula, the negotiated rulemaking committee recognized that the data available had significant limitations and may be inaccurate for some tribes. As such, the group agreed to include the option that allows tribes to challenge the data. This information request is the guidance to tribes on how they can challenge, or simply make corrections, to the data so that it is fair and equitable for all tribes receiving funds through the formula.

*Members of affected public:* 578 Native American tribes may make corrections or challenge the data.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* Tribes will be able to challenge or make corrections to the data at any time. However, the challenge or correction will need to be made by September 15 of the current Fiscal Year to have impact on the next Fiscal Year allocation. The number of hours needed to prepare the information collection, frequency of response, and hours of response will depend on each tribe's specific challenge. The average amount of time to make data corrections will likely be 15 minutes for all 578 tribes. We anticipate only 30 tribes a year challenging the data at an average burden of 150 hours per challenge. In total, the department expects this request will have a total annual burden reporting burden of 4,643 hours.

*Status of the proposed information collection:* Pending OMB approval.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: August 28, 1997.

**David S. Cristy,**

*Director, IRM Policy and Management Division.*

[FR Doc. 97–23468 Filed 9–3–97; 8:45 am]

BILLING CODE 4210–33–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4263–N–19]**

### Submission for OMB Review: Comment Request

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments due date: October 6, 1997.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval

number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 27, 1997.

**David S. Cristy,**

*Acting Director, Information Resources Management, Policy and Management Division.*

### Notice of Submission of Proposed Information Collection to OMB

*Title of Proposal:* Progress Report for Innovative Project Funding Program.

*Office:* Community Planning and Development.

*OMB Approval Number:* 2506–0147.

*Description of the Need for the Information and Its Proposed Use:* Annual Progress Reports will be completed at the end of each program year by State and local governments and nonprofit organizations who have received funding under the Innovative Homeless Initiative Demonstration program. Grant recipients who have been approved for less than twelve months are also required to submit a progress report. These reports will provide necessary information for program monitoring and evaluation.

*Form Number:* HUD–40119.

*Respondents:* State, Local, or Tribal Government and not-for-profit institutions.

*Frequency of Submission:* Annually and recordkeeping.

*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Progress Report | 48 | | 1 | | 20 | | 960 |
| Recordkeeping | 48 | | 1 | | 45 | | 2,160 |

*Total Estimated Burden Hours:* 3,120.

*Status:* Reinstatement, without changes.

*Contact:* Gloria Montgomery, HUD, (202) 708–1226 x4975, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: August 27, 1997.

[FR Doc. 97–23466 Filed 9–3–97; 8:45 am]

BILLING CODE 4210–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4263–N–18]**

## Submission for OMB Review; Comment Request

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments due date: October 6, 1997.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 27, 1997.

**David S. Cristy,**

*Acting Director, Information Resources Management, Policy and Management Division.*

### Notice of Submission of Proposed Information Collection to OMB

*Title of Proposal:* Contract and Subcontract Activity Report for Public and Indian Housing.

*Office:* Public and Indian Housing.

*OMB Approval Number:* 2577–0088.

*Description of the Need for the Information and Its Proposed Use:* Executive Orders 11625 and 12432 established the Department's responsibility for collecting data from Minority Businesses participating in HUD programs. The collection of this data is vital to program monitoring. The affected public includes Housing Agencies, contractors, and minority businesses.

*Form Number:* HUD–2516.

*Respondents:* State, Local, or Tribal Government and Business or Other For-Profit.

*Frequency of Submission:* Annually.

*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | × | =Burden hours |
|---|---|---|---|---|---|---|---|
| Public Housing Agencies | 3,230 | | 1 | | 1 | | 3,230 |
| Indian Housing Authorities | 170 | | 1 | | 1 | | 170 |

*Total Estimated Burden Hours:* 3,400.

*Status:* Reinstatement, with changes.

*Contact:* Bill Popmarkoff, HUD, (202) 708–3642 x4130, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: August 27, 1997.

[FR Doc. 97–23467 Filed 9–3–97; 8:45 am]

BILLING CODE 4210–01–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–020–1430–10]**

### Notice of Availability of Plan Amendment

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

**ACTION:** Notice of Availability.

**SUMMARY:** The Bureau of Land Management, Winnemucca District, has completed an Environmental Assessment/Finding of No Significant Impact of the Proposed Plan Amendments to the Paradise-Denio and Sonoma-Gerlach Management Framework Plans.

**DATES:** The protest period for these Proposed Plan Amendments will commence with the date of publication of this notice and last 30 days. Protests must be received on or before October 3, 1997.

**ADDRESSES:** Protests must be addressed to the Director, Bureau of Land Management, Attn: Ms. Brenda Williams, Protests Manager (WO 210), 1849 C Street NW/LS–1075, Washington, DC 20240, within 30 days after the date of publication of this Notice of Availability.

**FOR FURTHER INFORMATION CONTACT:** Mary Figarelle, Lands Specialist, Winnemucca District Office, 5100 E. Winnemucca Boulevard, Winnemucca, Nevada 89445, (702) 623–1500.

Copies of the Environmental Assessment and Proposed Plan Amendments are available for review at the Winnemucca District Office.

**SUPPLEMENTARY INFORMATION:** This action is announced pursuant to section 202(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR part 1610. The Proposed Amendments are subject to protest from any party who has participated in the planning process. Protests must be specific and contain the following information:

- The name, mailing address, phone number, and interest of the person filing the protest.
- A statement of the issue(s) being protested.
- A statement of the part(s) of the proposed amendment being protested and citing pages, paragraphs, maps etc., of the Proposed Amendment.
- A copy of all documents addressing the issue(s) submitted by the protestor during the planning process or a reference to the date when the protester discussed the issue(s) for the record.
- A concise statement as to why the protester believes the BLM State Director is incorrect.

Dated: August 25, 1997.

**Ron Wenker,**

*District Manager.*

[FR Doc. 97–23262 Filed 9–3–97; 8:45 am]

BILLING CODE 4310–HC–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of July, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

### Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA–W–33,546; Gould Pump (PA), Inc., Ashland, PA*

*TA–W–33,498; Flextronics International USA, Inc., Richardson, TX*

*TA–W–33,595; Continental Sprayers, Inc., El Paso, TX*

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

*TA–W–33,569; EG&G Instruments, Inc., Princeton Applied Research Div., Trenton, NJ*

*TA–W–33,622; Lightolier, Compton, CA*

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

*TA–W–33,633; A.K. Stampings Co., Inc., Mountainside, NJ*

*TA–W–33,608, TA–W–33,609, TA–W–33,610 & TA–W–33,611; Occidental Oil & Gas Corp. Headquartered & Operating in Bakersfield, CA & at Various Locations Throughout the Following States; OK, KS and TX*

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

*TA–W–33,536; Tenneco Packaging, Rittman, OH*

*TA–W–33,615; Heat-N-Glo, Savage, MN*

*TA–W–33,605; Goss Graphics Systems, Wyomissing, PA*

*TA–W–33,650; Quo Vadis, Inc., a Division of Quo Vadis France, Hamburg, NY*

*TA–W–33,638; Lucas-Varity Dayton Welther Portsmouth Casting Center, Portsmouth, OH*

*TA–W–33,635; Flowers Industries, Inc., Aunt Fanny's Bakery of PA., Inc., North East, PA*

Increased imports did not contribute importantly to worker separations at the firm.

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

*TA–W–33,522; North Dafety Products, Cranston, RI: May 14, 1996.*
*TA–W–33,415; Toastmaster, Inc., Boonville, MO: March 31, 1996.*
*TA–W–33,618; Economy Color Card Co., Inc., Ellizabeth, NJ: June 10, 1996.*
*TA–W–33,665; Anvil Knitwear, Inc., Aynor, SC: May 24, 1996.*
*TA–W–33,381; Collins and Aikman, U.S. Automotive Carpet Div., Port Huron, MI: March 25, 1996.*
*TA–W–33,623 & A; Motor Coils Manufacturing Co., Braddock, PA and Lawrenceville, PA: June 12, 1996.*
*TA–W–33,666; EMESS Lighting, Inc., Ellwood City, PA: May 9, 1997.*
*TA–W–33,641; Givaudan-Roure Corp, Clifton, NJ: June 18, 1996.*
*TA–W–33,572; Aquatech, Inc., Cookeville, TN: May 22, 1996.*
*TA–W–33,591; B.E.L. Tronics Limited, Covington, GA: June 10, 1996.*
*TA–W–33,532; Varon, Inc., Division of Biscayne Apparel, Inc., DBA Amy Industries, Inc., Colquitt, GA: May 20, 1996.*
*TA–W–33,677; Henry I. Siegel Co., Inc., Tiptonville, TN: July 11, 1996.*
TA–W–33,630; Sutter Corp., An Orthologic Co., San Diego, CA: June 17, 1996.
TA–W–33,584 & A, B; The Lovable Co., Buford, GA, Braselton, GA and Gainesville, GA: June 9, 1996.
TA–W–33,672; Ithaca Industries, Inc., Robbins, NC: June 27, 1996.
TA–W–33,582; Pawnee Pants Mfg Co., Inc., Olyphant, PA: June 10, 1996.
TA–W–33,550; City Shirt Co., Frackville, PA: May 22, 1996.
TA–W–33,377; Gor-Mill Manufacturing Co., Milaca, MN: March 19, 1996.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of July, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

**Negative Determination NAFTA–TAA**

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–01713; R.C. Hatton Farms, Inc./Morningstar Harvesting, Pahokee, FL
NAFTA–TAA–01643; Vision Technologies, LLC, Iron Ridge, WI
NAFTA–TAA–01719; M and N Fruit, Inc., Waverly, FL
NAFTA–TAA–01709; Eagle Lake Harvesting, Labelle, FL
NAFTA–TAA–01748; Rivergold, Inc., Fort Pierce, FL
NAFTA–TAA–01752; Tricor Direct, Inc., d/b/a/ Hirol Division, Ft. Lauderdale, FL
NAFTA–TAA–01678; Gould Pumps (PA), Inc., Ashland, PA
NAFTA–TAA–01743; Continental Sprayers, Inc., El Paso, TX
NAFTA–TAA–01823; Givaudan-Roure Corp., Clifton, NJ
NAFTA–TAA–01795; A.K. Stamping Co., Inc., Mountainside, NJ
NAFTA–TAA–01690; Purcell Ranch, Leadore, ID

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–01825; Lightolier, Compton, CA

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

**Affirmative Determination NAFTA–TAA**

The following certifications have been issued; the date following the company name & location for each determination references the impact data for all workers for such determination.

NAFTA–TAA–01839; Ithaca Industries, Inc., Robbins, NC: June 24, 1996.
NAFTA–TAA–01786; Sutter Corp., An Orthologic Co., San Diego, CA: June 27, 1996.
NAFTA–TAA–01595; Gorecki (Gor-Mill) Mfg Co., Inc., Milaca, MN: March 24, 1996.
NAFTA–TAA–01787; Economy Color Card Co., Inc., Elizabeth, NJ: June 10, 1996.
NAFTA–TAA–01817; Xentek, Inc., San Marcos, CA: July 2, 1996.
NAFTA–TAA–01702; B.E.L.-Tronics Limited, Covington, GA: June 10, 1996.
NAFTA–TAA–01656; Square D Company/Groupe Schneider, Huntington, IN: May 12, 1996.

I hereby certify that the aforementioned determinations were issued during the month of July, 1997. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 11, 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 97–23424 Filed 9–3–97; 8:45 am]

BILLING CODE 4510–30–M

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## DEPARTMENT OF LABOR

### Employment and Training Administration

### California Fashions Industries, Inc.

**[TA–W–33,018 and TA–W–018A]**

### Los Angeles, California and New York, New York; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the

Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 28, 1997, applicable to all workers of California Fashions Industries, Inc. located in Los Angeles, California. The notice was published in the **Federal Register** on February 13, 1997 (62 FR 6805).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations have occurred at the New York, New York location of California Fashions Industries, Inc. The New York, New York location is the showroom and sales office for California Fashions' production facility in Los Angeles, California. The workers are engaged in the production of ladies' garments.

The intent of the Department's certification is to include all workers of California Fashions Industries, Inc. who were adversely affected by increased imports of ladies' garments. Accordingly, the Department is amending the certification to cover the workers of California Industries, Inc., New York, New York.

The amended notice applicable to TA–W–33,018 is hereby issued as follows:

''All workers of California Fashions Industries, Inc., Los Angeles, California (TA–W–33,018), and New York, New York (TA–W–33,018A) who became totally or partially separated from employment on or after November 26, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 22nd day of August, 1997.

**Russell T. Kile,**

*Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 97–23430 Filed 9–3–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

## Employment and Training Administration

**[TA–W–33,209]**

## Parker Abex NWL Aerospace Kalamazoo, Michigan; Notice of Revised Determination on Reconsideration

On July 24, 1997, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice will soon be published in the **Federal Register**.

The workers at Parker Abex NWL Aerospace in Kalamazoo, Michigan produced flight control systems including hydraulic actuators, flight controls, and hydraulic pumps. The worker petition for TAA was initially denied because the ''contributed importantly'' test of the Group Eligibility Requirements of Section 222 of the Trade Act of 1974, as amended, was not met. The layoffs were attributable to the transfer of production from Kalamazoo, Michigan to other plants located domestically.

The petitioner presented information regarding import impact that had not been considered in the initial determination.

On reconsideration the Department surveyed the major declining customers of the subject firm. The survey results revealed that customers increased import purchases of flight control systems from 1995 to 1996.

### Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the workers of Parker Abex, NWL Aerospace, Kalamazoo, Michigan were adversely affected by increased imports of articles like or directly competitive with transformers produced at the subject firm.

''All workers of Parker Abex NWL Aerospace, Kalamazoo, Michigan, engaged in employment related to the production of flight control systems, who became totally or partially separated from employment on or after February 1, 1996 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC, this 22nd day of August 1997.

**Russell T. Kile,**

*Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 97–23427 Filed 9–3–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

## Employment and Training Administration

**[TA–W–33,269; TA–W–33,269A]**

## Sun Apparel, Incorporated, Concepcion Plant, El Paso, Texas; Armour Drive, El Paso, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 21, 1997, applicable to all workers of Sun Apparel, Incorporated, Concepcion Plant, located in El Paso, Texas. The notice was published in the **Federal Register** on April 15, 1997 (62 FR 18362).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations have occurred at the Armour Drive, El Paso, Texas location of Sun Apparel, Incorporated. The Armour Drive facility is the administrative office and cutting department for Sun Apparel's Concepcion Plant also located in El Paso, Texas. The workers are engaged in the production of men's and women's jeans.

The intent of the Department's certification is to include all workers of Sun Apparel, Incorporated who were adversely affected by increased imports of men's and women's jeans.

Accordingly, the Department is amending the certification to cover the workers of Sun Apparel, Incorporated, Armour Drive, El Paso, Texas.

The amended notice applicable to TA–W–33,269 is hereby issued as follows:

''All workers of Sun Apparel, Incorporated, Concepcion Plant, El Paso, Texas (TA–W–33,269), and Armour Drive, El Paso, Texas (TA–W–33,269A) who become totally or partially separated from employment on or after April 18, 1997 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC, this 22nd day of August, 1997.

**Russell T. Kile,**

*Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 97–23425 Filed 9–3–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

## Employment and Training Administration

**[TA–W–33,470]**

## Vision-Ease Lens, a Subsidiary of BMC, Inc., Fort Lauderdale, Florida; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Correction

This notice corrects the notice of Affirmative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for TA–W–

33,470 which was published in the **Federal Register** on June 13, 1997 (62 FR 32376) in FR Document 97–15595.

This revises the subject firm name for TA–W–33,470 on page 32376 to read Vision-Ease Lens, a Subsidiary of BMC, Inc.

Signed in Washington, DC, this 20th day of August 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 97–23426 Filed 9–3–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Proposed Information Collection Request Submitted for Public Comment and Recommendations; Youth Opportunity Area Pilot

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning proposed information collection on the Youth Opportunity Area Pilot. A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

**DATES:** Written comments must be submitted on or before November 3, 1997. Written comments should:

—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 use;

—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 submission of responses.

**ADDRESSES:** David Lah, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N–5637, Washington, D.C., 202–219–5782.

**SUPPLEMENTARY INFORMATION:**

### Background

The Youth Opportunity Area Pilot is an attempt on the part of the Department of Labor to improve the labor market prospects of out-of-school youth in a small number of high poverty areas. In this pilot, funds will be provided to three new Opportunity Areas. These new areas in the cities of New York and Boston, and in Kentucky's Lake County Area Development District. Funds will be used to expand employment, education, and training opportunities for out-of-school youth ages 16–24, with priority given to high school dropouts. Each Opportunity Area will consist of an identified target area within a designated empowerment zone (EZ) or enterprise community (EC) with a population of between 10,000 and 20,000 persons and a poverty rate in the 1990 Census that is among the highest in the EZ/EC. Under this evaluation, a baseline youth employment rate will be determined for the three Opportunity Areas. This will be compared to an employment rate similarly calculated at the end of the pilot to determine its impact on the ability of youth in these areas to find jobs. In addition, information will be collected on whether the subject young people are parents and on any exposure they may have had to the criminal justice system.

*Type of Review:* Paperwork Reduction.

*Agency:* Employment and Training Administration.

*Title:* Youth Opportunity Area Pilot.

*Affected Public:* Individuals and households.

*Total Respondents:* 720.

*Frequency:* One follow-up survey.

*Total Responses:* 1440.

*Average Time Per Response:* One-half hour.

*Estimated Total Burden Hours:* 720.

*Estimated Total Burden Cost:* $400,000.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 28, 1997.

**Gerard F. Fiala,**

*Administrator, Office of Policy and Research.*

[FR Doc. 97–23431 Filed 9–3–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–01367]**

### California Fashions Industries, Inc. Los Angeles, California and NAFTA—01367A New York, New York; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 as amended (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 29, 1997, applicable to all workers at California Fashions Industries, Inc. located in Los Angeles, California. The notice was published in the **Federal Register** on February 13, 1997 (62 FR 6806).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations have occurred at the New York, New York location of California Fashions Industries, Inc. The New York, New York location is the showroom and sales office of California Fashions' production facility in Los Angeles, California. The workers are engaged in the production of ladies' garments.

The intent of the Department's certification is to include all workers of California Fashions Industries, Inc. who were adversely affected by increased imports from Mexico. Accordingly, the Department is amending the certification to cover the workers of California Fashions Industries, Inc., New York, New York.

The amended notice applicable to NAFTA—01367 is hereby issued as follows:

''All workers of California Fashions Industries, Inc., Los Angeles, California

(NAFTA—01367), and New York, New York (NAFTA—01367A) who became totally or partially separated from employment on or after November 26, 1995, are eligible to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974.''

Signed at Washington, DC this 22nd day of August, 1997.

**Russell T. Kile,**

*Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 97–23429 Filed 9–3–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–01595]**

### Gorecki (Gor-Mill) Mfg. Co., Inc., Milaca, Minnesota; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on July 30, 1997, applicable to all workers of Gorecki (Gor-Mill) Mfg. Co., Inc., Milaca, Minnesota. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New findings show that only the workers engaged in the production of overhead projector ''model 2000'' were separated from Gorecki (Gor-Mill) Mfg. Co., Inc., Milaca, Minnesota due to a shift in production to Juarez, Mexico.

Accordingly, the Department is amending the certification to cover only those workers who are engaged in the production of overhead projector ''model 2000'' at the subject firms' Milaca, Minnesota plant.

The intent of the Department's certification is to cover all workers of Gorecki (Gor-Mill) Mfg. Co., Inc., Milaca, Minnesota adversely affected by a shift in production to Mexico.

The amended notice applicable to NAFTA–01595 is hereby issued as follows:

''All workers of Gorecki (Gor-Mill) Mfg. Co., Inc., Milaca, Minnesota engaged in employment related to the production of overhead projector ''model 2000'' who became totally or partially separated from employment on or after March 24, 1996 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.''

Signed at Washington, DC, this 19th day of August, 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 97–23428 Filed 9–3–97; 8:45 am]

BILLING CODE 4510–30–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (97–129)]**

### NASA Advisory Council (NAC), Aeronautics and Space Transportation Technology Advisory Committee (ASTTAC); Propulsion Systems Subcommittee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting change.

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 62FR44491, NOTICE NUMBER 97–118, August 21, 1997.

**PREVIOUSLY ANNOUNCED DATES AND ADDRESSES OF MEETING:** September 15, 1997, 8:00 a.m. to 5 p.m., September 16, 1997, 8:00 a.m. to 5 p.m., and September 17, 1997, 8:00 a.m. to 5 p.m. National Aeronautics and Space Administration, Lewis Research Center, Building 3, Room 215, 21000 Brookpark Road, Cleveland, OH 44135.

**CHANGES IN THE MEETING:** Dates changed to September 15, 1997, and September 16, 1997.

**FOR FURTHER INFORMATION CONTACT:** Dr. Carol J. Russo, National Aeronautics and Space Administration, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135, 216/433–2965.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: August 28, 1997.

**Leslie M. Nolan,**

*Advisory Committee Management Officer.*

[FR Doc. 97–23434 Filed 9–3–97; 8:45 am]

BILLING CODE 7510–01–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (97–128)]**

### NASA Advisory Council (NAC), Aeronautics and Space Transportation Technology Advisory Committee (ASTTAC); Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee.

**DATES:** September 30, 1997, 8:30 a.m. to 5:00 p.m.

**ADDRESSES:** National Aeronautics and Space Administration, Room 7H46, 300 E Street, S.W., Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mary-Ellen McGrath, Office of Aeronautics and Space Transportation Technology, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–4729).

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Aeronautics and Space Transportation Technology Overview
—Subcommittee Reports
—Scenario-Based Vehicle Study
—Aviation Safety Research Initiative
—Update of Enterprise Planning

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: August 28, 1997.

**Leslie M. Nolan,**

*Advisory Committee Management Officer.*

[FR Doc. 97–23435 Filed 9–3–97; 8:45 am]

BILLING CODE 7510–01–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 97–130]**

### Notice of Prospective Copyright License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of prospective Copyright License.

**SUMMARY:** NASA hereby gives notice that Merrimac Interactive Media Corporation, of Voorhees, NJ, has applied for an exclusive license for the technology entitled ''ISO 9000 Training Simulation,'' KSC–11961, which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license to Merrimac Interactive Media Corporation should be sent to Beth Vrioni, John F. Kennedy Space Center, Mail Code: DE–TPO, Kennedy Space Center, FL 32899.

**DATES:** Responses to this Notice must be received on or before November 3, 1997.

**FOR FURTHER INFORMATION CONTACT:** Beth Vrioni at (407) 867–6225.

Dated: August 27, 1997.

**Edward A. Frankle,**

*General Counsel.*

[FR Doc. 97–23433 Filed 9–3–97; 8:45 am]

BILLING CODE 7510–01–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Meetings of Humanities Panel

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice of additional meetings.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

**FOR FURTHER INFORMATION CONTACT:** Nancy E. Weiss, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

**SUPPLEMENTARY INFORMATION:** The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that this meeting will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* September 29, 1997.
*Time:* 8:30 a.m. to 5:00 p.m.
*Room:* 315.
*Program:* This meeting will review applications for Education Development and Demonstration in Focus Grants I, submitted to the Division of Research and Education for projects at the September 15, 1997 deadline.

2. *Date:* September 30, 1997.
*Time:* 8:30 a.m. to 5:00 p.m.
*Room:* 315.
*Program:* This meeting will review applications for Education Development and Demonstration in Focus Grants I, submitted to the Division of Research and Education for projects at the September 15, 1997 deadline.

**Nancy E. Weiss,**

*Advisory Committee Management Officer.*

[FR Doc. 97–23436 Filed 9–3–97; 8:45 am]

BILLING CODE 7536–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–155]**

### Consumers Energy 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 Consumers Energy Company (the licensee) to withdraw its October 15, 1996, as supplemented on April 22, 1997, application for proposed amendment to Facility Operating License No. DPR–6 for the Big Rock Point Plant, located in Charlevoix County, Michigan.

The proposed changes would have modified the facility technical specifications pertaining to the use of Option B, Performance Based Requirements, of Appendix J to 10 CFR Part 50, for the Type A, Type B, and Type C tests. In addition, the amendment request proposed several editorial changes to the Big Rock Point technical specifications.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on June 4, 1997 (62 FR 30630). However, by letters dated April 22, 1997, and August 25, 1997, the licensee withdrew the proposed changes.

For further details with respect to this action, see the application for amendment dated October 15, 1996, and the licensee's letters dated April 22, 1997, and August 25, 1997, which withdrew the application for license amendment. 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 North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Dated at Rockville, Maryland, this 28th day of August 1997.

For the Nuclear Regulatory Commission.

**Linh N. Tran,**

*Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 97–23473 Filed 9–3–97; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–331]**

### Order Approving Application Regarding Merger Agreement Between IES Industries Inc., WPL Holdings, Inc., and Interstate Power Corporation

In the Matter of IES Utilities Inc. (Duane Arnold Energy Center).

**I**

IES Utilities Inc. (IESU) is a wholly owned subsidiary of IES Industries Inc. (IESI). IESU is the operator and a 70-percent owner of the Duane Arnold Energy Center (DAEC). IESU and the minority owners, Central Iowa Power Cooperative and Corn Belt Power Cooperative, hold Facility Operating License DPR–49 issued by the U.S. Atomic Energy Commission pursuant to part 50 of Title 10 of the Code of Federal Regulations (10 CFR part 50) on February 22, 1974. IESU has authority to possess, use, and operate the facility, and the minority owners have the authority to possess the facility. DAEC is located in Linn County, Iowa.

**II**

By letter dated September 27, 1996, IESU informed the U.S. Nuclear Regulatory Commission (the Commission) of a proposed merger of IESI, WPL Holdings, Inc. (WPLH), and Interstate Power Corporation (IPC). Under the merger agreement, IESI will merge with and into WPLH, of which IESU would become a wholly owned subsidiary, and IPC will become a subsidiary of WPLH. In addition, WPLH will be renamed Interstate Energy Corporation (IEC). IESU will remain the holder of its license for DAEC. Furthermore, current stockholders of IESI and IPC will become stockholders of IEC, in addition to current WPLH stockholders, pursuant to a formula stipulated in the merger agreement. IESU requested the Commission's approval, pursuant to 10 CFR 50.80,

regarding the proposed transactions to the extent they effect an indirect transfer of control of the DAEC license. On February 26, 1997, a notice of consideration of approval of application regarding corporate restructuring was published in the **Federal Register** (62 FR 8783). An Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on May 5, 1997 (62 FR 24515).

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information submitted in the letter of September 27, 1996, and other information before the Commission, the NRC staff has determined that the proposed merger will not affect the qualifications of IESU as a holder of the license, and that the transfer of control of the license, to the extent effected by the proposed merger, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. These findings are supported by a Safety Evaluation dated August 28, 1997.

**III**

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234, and 10 CFR 50.80, *it is hereby ordered* that the Commission approves the application regarding the merger agreement between IESI, WPLH, and IPC subject to the following: (1) IESU shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from IESU to its parent or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent of IESU's consolidated net utility plant, as recorded on IESU's books of account; and (2) should the merger not be completed by June 30, 1998, this Order shall become null and void unless, upon application and for good cause shown, this date is extended.

This Order is effective upon issuance.

**IV**

By October 6, 1997, any person adversely affected by this Order may file a request for a hearing with respect to issuance of the Order. Any person requesting a hearing shall set forth with particularity how such person's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is to be held, the Commission will issue an order designating the time and place of such hearing.

The issue to be considered at any such hearing shall be whether this Order should be sustained.

Any request for a hearing must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Copies also should be sent to the Office of the General Counsel and to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Alvin H. Gutterman, Morgan, Lewis and Bockius LLP, 1800 M Street, NW., Washington, DC 20036–5869, attorney for IESU.

For further details with respect to this action, see the application dated September 27, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Cedar Rapids Public Library, 500 First Street, SE, Cedar Rapids, IA 52401.

Dated at Rockville, Maryland, this 28th day of August, 1997.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 97–23472 Filed 9–3–97; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 70–3085]**

## Draft Environmental Impact Statement—Decommissioning of the Babcock & Wilcox Shallow Land Disposal Area in Parks Township, Pennsylvania

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has published a Draft Environmental Impact Statement (DEIS) regarding the proposed decommissioning of the Babcock & Wilcox (B&W) Shallow Land Disposal Area (SLDA) in Parks Township, Pennsylvania. This DEIS describes and evaluates the potential environmental impacts of B&W's proposed approach to decommissioning the radiologically contaminated waste. The B&W preferred approach would allow radioactive material to remain on-site. The wastes would be stabilized by installing an engineered cover system and a system of hydrologic barriers and controls surrounding the trench areas to provide groundwater protection. The coal mine underlying the SLDA would be stabilized by injecting grout into the voids under the trenches to prevent subsidence. Institutional controls would be required in perpetuity to prevent inadvertent intrusion into the waste. The DEIS evaluates the radiological and nonradiological impacts associated with the B&W proposed action and four alternative actions, including no action. Based on the evaluations in this DEIS, the staff's preliminary conclusion is that another alternative, modified stabilization in-place, would protect public health and the environment and would be less costly than the other alternatives. This alternative would include institutional controls and backfilling of the coal mine, but the engineered barriers and cap would not be implemented. For any of the alternatives, off-site impacts would be low and no off-site dose is expected. The DEIS is a preliminary analysis of the environmental impacts of B&W's proposed approach and alternative actions. The issuance of a final EIS, and any NRC decisionmaking based on a final EIS, will not be made until public comments on the DEIS are received and evaluated.

**DATES:** Written comments on the DEIS should be received at the address listed below by December 15, 1997. Comments received after this date will be considered if it is practical to do so, but NRC is able to assure consideration only for comments received on or before this date.

To the extent practicable, NRC staff will grant reasonable requests for extensions of time for comment up to fifteen (15) days.

**ADDRESSES:** Mail written comments to David L. Meyer, Chief, Rules and Directives Branch, Mail Stop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm, Federal workdays.

Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC 20555. A single copy of the DEIS

(NUREG–1613) may be requested by those considering public comment by writing to the U.S. Nuclear Regulatory Commission, Printing and Graphics Branch, Washington, DC 20555–0001. A copy of the DEIS is available for inspection and/or copying in the NRC Public Document Room, 2120 L St. NW., Washington, DC 20555–0001. A copy is being made available for public inspection at the local Public Document Room in the Apollo Memorial Library, 219 North Pennsylvania Avevue, Apollo, Pennsylvania 15613; telephone number (412) 478–4214.

**FOR FURTHER INFORMATION CONTACT:** Dr. Phyllis Sobel, Low-Level Waste and Decommissioning Projects Branch, Mail Stop T7F–27, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001. Telephone 301–415–6714.

**SUPPLEMENTARY INFORMATION:** NRC has prepared a DEIS that evaluates the environmental impacts and alternatives associated with B&W's proposed action to decommission radiologically contaminated wastes in trenches at the SLDA. NRC noticed its intent to prepare an EIS on the decommissioning of the SLDA facility in Parks Township, Pennsylvania (59 FR 67344) on December 29, 1994, and conducted a public meeting to obtain comments on the intended scope of the EIS in Leechburg, Pennsylvania, on January 26, 1995.

Until 1970, the SLDA at Parks Township, Pennsylvania, was used for the disposal of hazardous and low-level wastes from a nuclear fuel fabrication facility in nearby Apollo, Pennsylvania. The materials placed in the trenches consisted of wastes, scrap and trash. These disposals were made pursuant to the requirements of 10 CFR 20.304, which was in effect at the time. The radioactive materials in the SLDA include natural uranium, enriched and depleted uranium, and lesser quantities of thorium, americium, and plutonium.

The SLDA is currently owned by B&W, which maintains the site under an active NRC license no. SNM–2001 for use in possession, storage, monitoring, and characterization of the SLDA. B&W intends to decommission the site as part of license termination activities. The site requires decommissioning because it contains activities higher than NRC regulations allow for release of the property for unrestricted use and termination of the license. The site is listed in NRC's Site Decommissioning Management Plan because it warrants special NRC oversight to ensure safe and timely decommissioning.

B&W's preferred approach to decommissioning would allow radioactive material to remain on-site. The wastes would be stabilized by installing an engineered cover system and a system of hydrologic barriers and controls surrounding the trench areas to provide groundwater protection. The coal mine underlying the SLDA would be stabilized by injecting grout into the voids under the trenches to prevent subsidence. Institutional controls would be required in perpetuity to prevent inadvertent intrusion into the waste. Because the licensee's proposed decommissioning alternative would allow radioactive material to remain on-site and the quantities of materials in some areas would exceed existing radiological criteria for decommissioning for unrestricted release, approval of the licensee's proposal requires the preparation of an EIS in accordance with the National Environmental Policy Act and NRC's implementing requirements in 10 CFR part 51.

The DEIS evaluates the radiological and nonradiological impacts associated with the B&W proposed action (stabilization in-place) and four alternative actions (no action, disposal off-site, stabilization on-site, and modified stabilization in-place). Under the no action alternative, wastes in the SLDA would be retained in their current configuration within the trenches without any additional processing, stabilization, or controls. This alternative is analyzed in the EIS to provide a baseline for comparison with the other alternatives; however, the no action alternative cannot be considered because the on-site doses exceed NRC's criteria for unrestricted use and thereby require institutional controls. Disposal off-site would involve excavating all wastes, treating the waste, as necessary, to meet disposal facility acceptance criteria, and shipping the waste to an off-site facility licensed for disposal. No wastes would remain in the trenches at the site after remediation, but contaminated soil and rock that are below NRC and EPA cleanup limits would remain on-site. Under the stabilization on-site alternative, all wastes would be excavated, treated, and stored in a newly constructed on-site disposal cell. Under NRC's staff-developed alternative, modified stabilization in-place, institutional controls and backfilling of the coal mine would be used, but the engineered barriers and cap would not be implemented.

The DEIS assesses the impacts of the B&W proposed action and the four alternative actions for socioeconomics, land use, cultural resources, geology, air quality, water quality, human health, biological resources, and wetlands. Additionally an analysis and comparison of the costs and benefits of each alternative has been performed. The analyses indicate that the radioactive and chemical contaminants at the SLDA, in their current condition (i.e., no action alternative) would leach extremely slowly from the trenches and would be heavily diluted to near background levels both by groundwater and by surface water. For any of the alternatives, off-site impacts would be low and no off-site dose is expected.

Based on the evaluations in this DEIS, the staff's preliminary conclusion is that modified stabilization in-place would protect public health and the environment and would be less costly than the other alternatives. Since the uranium is highly immobile, the barriers proposed in the stabilization in-place alternative are not needed to prevent migration. The air quality and noise impacts of the modified stabilization in-place alternative would be similar but not as large as those for the stabilization in-place alternative in that there will be some construction on-site for the mine stabilization and erosion controls around Dry Run. However, the air quality and noise impacts would be less because the cap, slurry wall, and grout curtain would not be built and construction times would be much shorter than for stabilization in-place. Human health impacts of the modified stabilization in-place alternative would be similar to those for stabilization in-place. The costs for modified stabilization in-place would be about 31 percent of the cost for stabilization in-place, but slightly greater (approximately $7 million) than no action because of costs associated with mine stabilization and institutional controls. The stabilization on-site alternative would offer no advantages. The disposal off-site alternative would allow the SLDA property to be released for unrestricted use, but there would be increased risks associated with the removal and processing of the material from the trenches.

The principal health concern related to leaving wastes on-site would be the effects of possible future human intrusion directly into the waste. Direct intrusion into the waste could be prevented by continuing institutional controls on the site in perpetuity. Under the modified stabilization in-place alternative, institutional controls would be used to: (1) Prevent people from

intruding into the trenches or living on the site; (2) provide for a maintenance program to maintain the soil cap in its present condition and to prevent any erosion of the cap caused by runoff or headward erosion of Dry Run; and (3) provide for a monitoring program to continue monitoring the wells on-site to ensure off-site doses continue to be negligible.

NRC is offering an opportunity for public review and comment on the DEIS in accordance with NRC requirements in 10 CFR 51.73, 51.74, and 51.117. Any comments of Federal, State, and local agencies, Indian tribes, or other interested parties will be made available for public inspection when received. The DEIS is a preliminary analysis of the environmental impacts of B&W's proposed approach. The issuance of a final EIS, and any NRC decisionmaking based on a final EIS, will not be made until public comments on the DEIS are received and evaluated. NRC staff will review the comments, conduct any necessary analyses, and make appropriate revisions in developing the final EIS on the decommissioning of the SLDA facility in Parks Township, Pennsylvania. NRC anticipates completing the EIS on this facility in 1998; however, this schedule may need to be adjusted during the review of public comments.

NRC is also arranging a public meeting on the DEIS to be held in the vicinity of Parks Township, Pennsylvania, during the public comment period in the fall of 1997. The meeting will consist of an overview of the DEIS and an opportunity for the NRC to hear any public comments on the DEIS. NRC will announce the date and location for this meeting in a subsequent **Federal Register** notice in advance of the public meeting.

## Opportunity for a Hearing

Pursuant to the Commission's rules in 10 CFR part 2, subpart L, an opportunity for a hearing is hereby offered with respect to the licensee's proposed action, stabilization in place, or any alternative described in the DEIS that the licensee may include in a request to amend its license to incorporate a decommissioning plan. Pursuant to § 2.1205(a), any person whose interest may be affected by the licensee's decommissioning actions (the ''proceeding'') may file a request for a hearing in accordance with § 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Rulemakings and Adjudications staff, Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemakings and Adjudications staff.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

3. The requester's areas of concern about the proposed activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

In accordance with 10 CFR § 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The licensee, B & W Nuclear Environmental Services, Inc., 2220 Langhorne Road, P.O. Box 10548, Lynchburg, VA 24506–0548 Attention: Mr. Philip R. Rosenthal; and

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dated at Rockville, Maryland, this 28th day of August 1997.

For the Nuclear Regulatory Commission.

**John W. N. Hickey,**

*Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 97–23475 Filed 9–3–97; 8:45 am]

BILLING CODE 7590–01–P

# NUCLEAR REGULATORY COMMISSION

## Advisory Committee on Reactor Safeguards; Procedures for Meetings

### Background

This notice describes procedures to be followed with respect to meetings conducted by the Nuclear Regulatory Commission's (NRC's) Advisory Committee on Reactor Safeguards (ACRS) pursuant to the Federal Advisory Committee Act. These procedures are set forth so that they may be incorporated by reference in future notices for individual meetings.

The ACRS is a statutory group established by Congress to review and report on applications for the licensing of nuclear power reactor facilities and on certain other nuclear safety matters. The Committee's reports become a part of the public record.

The ACRS meetings are conducted in accordance with the Federal Advisory Committee Act; they are normally open to the public and provide opportunities for oral or written statements from members of the public to be considered as part of the Committee's information gathering process. ACRS reviews do not normally encompass matters pertaining to environmental impacts other than those related to radiological safety.

The ACRS meetings are not adjudicatory hearings such as those conducted by the NRC's Atomic Safety and Licensing Board Panel as part of the Commission's licensing process.

### General Rules Regarding ACRS Meetings

An agenda is published in the **Federal Register** for each full Committee meeting. There may be a need to make changes to the agenda to facilitate the conduct of the meeting. The Chairman of the Committee is empowered to conduct the meeting in a manner that, in his/her judgment, will facilitate the orderly conduct of business, including making provisions to continue the discussion of matters not completed on the scheduled day on another meeting day. Persons planning to attend the meeting may contact the Chief of the Nuclear Reactors Branch, ACRS, prior to the meeting to be advised of any changes to the agenda that may have occurred. This individual can be contacted (telephone: 301/415–7364) between 7:30 a.m. and 4:15 p.m., Eastern Time.

The following requirements shall apply to public participation in ACRS full Committee meetings:

(a) Persons wishing to submit written comments regarding the agenda items

may do so by sending a readily reproducible copy addressed to the Chief of the Nuclear Reactors Branch specified in the **Federal Register** Notice, care of the Advisory Committee on Reactor Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments should be limited to items being considered by the Committee. Comments should be in the possession of the Designated Federal Official at least five days prior to a meeting to allow time for reproduction and distribution.

Written comments may also be submitted by providing a readily reproducible copy to the Designated Federal Official at the beginning of the meeting.

(b) Persons desiring to make oral statements at the meeting should make a request to do so to the Designated Federal Official. If possible, the request should be made five days before the meeting, identifying the topics to be discussed and the amount of time needed for presentation so that orderly arrangements can be made. The Committee will hear oral statements on topics being reviewed at an appropriate time during the meeting as scheduled by the Chairman.

(c) Information regarding topics to be discussed, changes to the agenda, whether the meeting has been cancelled or rescheduled and the time allotted to present oral statements can be obtained by contacting the Chief of the Nuclear Reactors Branch, ACRS (telephone: 301/415–7364) between 7:30 a.m. and 4:15 p.m., Eastern Time.

(d) During the ACRS meeting presentations and discussions, questions may be asked by ACRS members, Committee consultants, NRC staff, and the ACRS staff.

(e) The use of still, motion picture, and television cameras will be permitted at the discretion of the Chairman and subject to the condition that the physical installation and presence of such equipment will not interfere with the conduct of the meeting. The Designated Federal Official will have to be notified prior to the meeting and will authorize the installation or use of such equipment after consultation with the Chairman. The use of such equipment will be restricted as is necessary to protect proprietary or privileged information that may be in documents, folders, etc., in the meeting room. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

(f) A transcript is kept for certain open portions of the meeting and will be available in the NRC Public Document Room, 2120 L Street, NW, Washington, DC 20555, for use within one week following the meeting. A copy of the certified minutes of the meeting will be available at the same location on or before three months following the meeting. Copies may be obtained upon payment of appropriate reproduction charges.

ACRS meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the ''NRC MAIN MENU.'' The Direct Dial Access number to FedWorld is (800) 303–9672 or ftp.fedworld. These documents and the meeting agenda are also available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

### ACRS Subcommittee Meetings

ACRS Subcommittee meetings will also be conducted in accordance with the above procedures, as appropriate. When Subcommittee meetings are held at locations other than at NRC facilities, reproduction facilities may not be available at a reasonable cost. Accordingly, 25 additional copies of the materials to be used during the meeting should be provided for distribution at such meetings.

### Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of the ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The Designated Federal Official should be informed of such an agreement at least five working days prior to the meeting so that it can be confirmed, and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Official prior to the beginning of the meeting for admittance to the closed session.

Dated: August 28, 1997.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 97–23471 Filed 9–3–97; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–213]**

## Office of Nuclear Reactor Regulation; Connecticut Yankee Atomic Power Company; Haddam Neck Plant; Notice of Receipt of and Availability for Comment of Post-Shutdown Decommission Activities Report

The U.S. Nuclear Regulatory Commission (NRC) is in receipt of and is making available for public inspection and comment, the Post-Shutdown Decommissioning Activities Report (PSDAR), dated August 22, 1997, for the Haddam Neck Plant (HNP) located in Middlesex County, Connecticut, Town of Haddam.

The licensee has selected the DECON alternative for decommissioning the site.[1] The Connecticut Yankee Atomic Power Company (CYAPCo or licensee) plans to decontaminate the main coolant system in early 1998 and to initiate large component removal, (e.g. reactor vessel, steam generators and pressurizer) in mid-1998. Decontamination and removal of all structures and systems, except the Spent Fuel Storage Building (SFSB), is scheduled for completion by the end of 2002. The SFSB removal is projected for 2022. Soil remediation and the final site survey, excluding the SFSB, are scheduled for mid-2004. The licensee states, in the PSDAR, that environmental impacts due to decommissioning will be within the bounds of the NRC Final Generic Environmental Impact Statement, NUREG–0586, the GEIS and the estimated total cost of decommissioning expected to be about $426,726,000.

HNP has been shut down since July 22, 1996. CYAPCo informed the NRC, by letter dated December 5, 1996, that as required by 10 CFR 50.82(a)(1)(i) and (ii), it had permanently ceased power operations and had removed the nuclear fuel from the reactor vessel. The fuel is now stored, onsite, in the spent fuel pool.

The PSDAR is available for public inspection at the local public document

[1] DECON is the alternative in which the equipment, structures, and portions of the facility and site containing radioactive contaminants are removed or decontaminated to a level that permits the property to be released for unrestricted use shortly after cessation of operations.

room located in the Russell Library, 123 Broad Street, Middletown, Connecticut 06457, and at the Commission Public Document Room, 2120 L Street, NW., Washington, DC 20037.

The NRC will hold a public meeting in the vicinity of the HNP within the next 60 days. The NRC will publish a notice in the **Federal Register** and in the local media announcing the date, time, and location of this meeting along with a brief description of the purpose of the meeting.

Comments regarding the PSDAR should be submitted in writing to Mr. Morton B. Fairtile, Mail Stop 011–B 20, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 within 30 days after the date of this notice.

Dated at Rockville, Maryland, this 27th day of August 1997.

For the Nuclear Regulatory Commission.

**Seymour H. Weiss,**

*Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 97–23474 Filed 9–3–97; 8:45 am]

BILLING CODE 7590–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–22802; File No. 812–10566]**

## Great-West Life & Annuity Insurance Company, et al.

August 27, 1997.

**AGENCY:** The Securities and Exchange Commission (''Commission'')

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (''1940 Act'').

**APPLICANTS:** Great-West Life & Annuity Insurance Company (''GWL&A''), Retirement Plan Series Account (the ''Separate Account''), Maxim Series Fund, Inc. (''Maxim'') and One-Orchard Equities, Inc. (''Orchard'').

**RELEVANT 1940 ACT SECTIONS:** Order requested pursuant to sections 17(b) and 26(b).

**SUMMARY OF APPLICATION:** Applicants request an order pursuant to section 26(b) of the 1940 Act approving a proposed substitution of securities, and pursuant to section 17(b) of the 1940 Act exempting related transactions from section 17(a) of the 1940 Act.

**FILING DATE:** The application was filed on March 12, 1997, and amended on April 18, 1997, July 29, 1997 and August 20, 1997.

**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 should be received by the Commission by 5:30 p.m. on September 17, 1997, and should 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 writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Josephine Cicchetti, Esq., Jorden Burt Berenson & Johnson, LLP, 1025 Thomas Jefferson Street, NW., Suite 400 East, Washington, DC 20007–0805.

**FOR FURTHER INFORMATION CONTACT:** Ethan D. Corey, Senior Counsel 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. GWL&A, a Colorado stock life insurance company, does business in the District of Columbia, Puerto Rico, and in all states of the United States, except New York.

2. GWL&A is wholly-owned by The Great-West Life Assurance Company, which is a subsidiary of Great-West Lifeco Inc., an insurance holding company. Great-West Lifeco Inc. is a subsidiary of Power Financial Corporation of Canada, which is controlled by Power Corporation of Canada.

3. The Separate Account, established by GWL&A pursuant to Colorado law, is registered with the Commission as a unit investment trust. The Separate Account acts as a funding vehicle for certain individual flexible premium deferred contracts (the ''Contracts''). The Separate Account currently has fifteen investment divisions, each of which invest exclusively in one of the corresponding portfolios of Maxim, an open-end management investment company.

4. Orchard, the principal underwriter of the Contracts, is registered as a broker-dealer pursuant to the Securities Exchange Act of 1934, and is a member of the National Association of Securities Dealers, Inc.

5. The Contracts expressly reserve GWL&A's right, both on its own behalf and on behalf of the Separate Account, to eliminate investment divisions, combine two or more investment divisions, or substitute one or more underlying funds for others in which its investment divisions are invested.

6. GWL&A, on its own behalf and on behalf of the Separate Account, proposes to exercise its contractual right to substitute shares of the Maxim Series Fund Blue Chip Portfolio (''Substituted Portfolio'') for respective shares of the Maximum Series Fund Total Return Portfolio (''Eliminated Portfolio'') (the ''Substitution''). Applicants believe the Substitution will benefit the Contract owners by eliminating a portfolio with below average historical returns and consolidating Contract owners investments in the Substituted Portfolio, which has investment objectives similar to the Eliminated Portfolio.

7. The Substituted Portfolio has been in existence since May 1, 1997, and does not have a performance record. However, the Substituted Portfolio has the same investment objective and the same investment strategy as the Founders Blue Chip Portfolio, which has consistently provided better total returns than the Eliminated Portfolio. In addition, the Substituted Portfolio is sub-advised by the same portfolio manager that advises the Founders Blue Chip Portfolio.

8. Contract owners will be advised that they can transfer their shares in the Eliminated Portfolio to the remaining portfolios of Maxim or leave their shares in the Eliminated Portfolios until the date of the Substitution. As of the date of the Substitution, all Contract values allocated to the Eliminated Portfolio will be automatically reallocated to the Substituted Portfolio. Maxim intends to cease offering shares of the Eliminated Portfolio after the date of the Substitution. Contract owners can always exercise their own judgment as to the most appropriate alternative investment and transfer their Contract values from the Substituted Portfolio to any one of the remaining thirteen investment divisions. No sales load deductions or transfer charges will be assessed in connection with any transfers among the portfolios because of the Substitution or otherwise.

9. Applicants represent that the total expenses of the Substituted Portfolio will be 1.15% while the total expenses of the Eliminated Portfolio are 0.60%. Should Contract owners with current

allocations in the Eliminated Portfolio determine that another investment is more appropriate due to the change in portfolio expenses, such Contract owners can transfer their Contract value to any of the remaining thirteen investment divisions.

**Applicants Legal Analysis And Conditions**

1. Section 26(b) of the 1940 Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution; and the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act. Section 26(b) protects the expectation of investors that the unit investment trust will accumulate shares of a particular issuer and is intended to insure that unnecessary or burdensome sales loads, additional reinvestment costs or other charges will not be incurred due to unapproved substitutions of securities.

2. Applicants request an order pursuant to section 26(b) of the 1940 Act approving the Substitution. Applicants represent that the purposes, terms, and conditions of the Substitution are consistent with section 26(b). Applicants believe the Substitution will benefit the participants by eliminating a portfolio with below average historical returns which, due to its small size, is difficult to manage in compliance with applicable diversification requirements. Applicants represent that the Eliminated Portfolio, when compared to funds with similar objectives, has been performing below average and Maxim Series Fund, Inc. plans to cease offering the Eliminated Portfolio. Its one, five and since inception returns of 19.77%, 12.56%, and 10.15% respectively, have been below average compared to similar funds. GWL&A proposes to provide Contract owners with an investment in the Substituted Portfolio which has similar investment objectives to the Eliminated Portfolio. The Substitution will effectively remove a poorly performing portfolio from the Separate Account while the similarity in investment objectives provides a means for Contract owners to continue their current investment goals and risk expectations.

3. Applicants represent that the Substitution will be effected at net asset value in conformity with sections 22(c) and 22(g) of the 1940 Act and Rule 22c–1 thereunder. The Substitution may be effected primarily for cash, but also may involve partial redemptions in-kind of securities (''Related Transactions''). The use of in-kind redemptions in conformity with section 22(g) of the 1940 Act would alleviate the impact of the brokerage fees and expenses upon GWL&A or the investment adviser or sub-adviser of the Substituted Portfolios, as these entities will bear all expenses related to the Substitution. The Related Transactions will be effected to the extent consistent with the investment objectives and any applicable diversification requirements.

4. Either GWL&A or the investment adviser of the Substituted Portfolio will assume the transfer and custodial expenses and legal and accounting fees incurred with respect to the Substitution. Participants will not incur any fees or charges as a result of the transfer of account values from any portfolio. Applicants represent that there will be no increase in the Contract or Separate Account fees and charges after the Substitution. Applicants further represent that the Substitution is designed to avoid any adverse federal tax impact to the Contract owners or participants.

5. Section 17(a)(1) of the 1940 Act prohibits any affiliated person or an affiliate of an affiliated person, of a registered investment company, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any affiliated person as described above from purchasing any security or other property from such registered investment company.

6. Section 17(b) of the 1940 Act authorizes the Commission to issue an order exempting a proposed transaction from section 17(a) if: (a) The terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act.

7. Applicants request an order pursuant to section 17(b) of the 1940 Act exempting the Related Transactions from the provisions of sections 17(a) of the 1940 Act.

8. Applicants represent that the terms of the Substitution are reasonable and fair and do not involve overreaching on the part of any person concerned. The Substitution will be effected at the net asset value of the securities involved and the interests of Contract owners will not be diluted. In-kind redemptions will alleviate some of the expenses involved with the Substitution and only will be used to the extent they are consistent with the investment objectives and applicable diversification requirements of the affected portfolios. All in-kind redemptions will be conducted in a manner conforming with the conditions of Rule 17a–7 under the 1940 Act.

9. Applicants represent that the Substitution and Related Transactions are consistent with the policies of each investment company involved and the general purposes of the 1940 Act, and comply with the requirements of section 17(b).

**Conclusion**

Applicants assert that, for the reasons summarized above, the requested order approving the Substitution and Related Transactions should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–23390 Filed 9–3–97; 8:45 am]

BILLING CODE 8010–01–M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–38986; File No. SR–Amex–97–28]**

## Self-Regulatory Organizations, Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by American Stock Exchange, Inc. Relating to the Extension of the Exchange's Pilot Program for Specialists in Portfolio Depositary Receipts and Index Fund Shares To Participate in the After-Hours Trading Facility

August 27, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 6, 1997, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange 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 and to grant accelerated approval to the proposed rule change.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organizations 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 the Statutory Basis for, the Proposed Rule Change*

(1) Purpose

The Exchange seeks to continue the pilot program permitting specialists in Portfolio Depositary Receipts (''PDRs''), investments trust securities and Index Fund Shares [1] to participate in the after-hours trading (''AHT'') facility to ''clean-up'' order imbalances and to effect closing price coupled orders.[2]

The Exchange believes that extension of the Exchange's pilot program to permit specialists in PDRs, investment trust securities and Index Fund Shares to participate in the AHT facility in order to ''clean-up'' order imbalances and effect closing price coupled orders would benefit investors by providing additional liquidity to the listed cash market for derivative securities based upon well known market indexes. The market price of these securities is based upon transactions largely effected in markets other than the Amex. (In the case of Index Fund Shares, the market price of these securities is based exclusively on transactions occurring outside the Amex.) The specialist in the Amex listed derivatives has no unique access to market sensitive information regarding the market for the underlying securities or closing index values. The Exchange, therefore, believes that specialist participation in the AHT facility in PDRs, investment trust securities and Index Fund Shares in the manner previously approved by the Commission does not raise any market integrity issues. In addition, should a customer not care for an execution at the closing price, the rules of the Exchange's AHT facility permit cancellation of an order up to the close of the AHT session at 5 p.m. (Order in the AHT facility are not executed until the 5 p.m. close of the After-Hours session.) A customer, therefore, has approximately 40 minutes to determine if an execution at the closing price suits its needs, and may cancel its order if it believes that the closing price does not suit its objectives.

(2) Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b) in particular in that it is designed to prevent fraudulent manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Amex does not believe the proposed extension of the pilot program 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 were solicited or received with respect to the proposed rule change.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–Amex–97–28 and should be submitted by September 25, 1997.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has carefully reviewed PCX's proposed rule change and believes, for the reasons set forth below, the proposal 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 Sections 6(b)(5) in that it is designed to prevent fraudulent, manipulative acts and practices and to promote just and equitable principles of trade, and to remove impediments to and protect the mechanism of a free and open market and to protect investors and the public interest.[3]

Under the pilot program, specialists in PDRs, investment trust securities, and Index Fund Shares may participate in the AHT facility to clean up order imbalances by entering an order for their own account. The pilot program also allows specialists in PDRs, investment trust securities, and Index Fund Shares to participate in a coupled closing price order as long as the other side of the order is not for an account in which a member or member organization has a direct or indirect interest. Moreover, the pilot program eliminates the mitigation of limit orders for PDRs, investment trust securities and Index Fund Shares from the specialists' limit order book to the AHT

[1] The Exchange currently lists two Portfolio Depositary Receipts, viz., Standard and Poor's Depositary Receipts on the S&P 500 and MidCap Indexes (''SPDRs''). The Exchange currently lists 17 Index Fund Shares which are commonly referred to as WEBS[sm]. WEBS are shares issued by an open-end management investment company that seek to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic equity market index. The Exchange currently lists WEBS based on the following Morgan Stanley Capital International (''MSCI'') indices: MSCI Australia Index; MSCI Austria Index; MSCI Belgium Index; MSCI Canada Index; MSCI France Index; MSCI Germany Index; MSCI Hong Kong Index; MSCI Italy Index; MSCI Japan Index; MSCI Malaysia Index; MSCI Mexico Index; MSCI Netherlands Index; NSCI Singapore (Free) Index; MSCI Spain Index; MSCI Sweden Index; MSCI Switzerland Index; and MSCI United Kingdom Index (*See* SR–AMEX–95–43).

[2] According to the Exchange, there was very limited trading volume in the AHT for SPDRs, investment trust securities and Index Fund Shares during August 1, 1996 to May 30, 1997. The Exchange, nevertheless, is optimistic that there could be increased after hours trading activity in these securities given their increasing popularity.

[3] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

facility to prevent the potential for manipulation or misuse of specialists' information regarding which limit orders are eligible for execution in the AHT facility.

In the original approval order, the Commission observed that the pilot program should assist specialists in their obligation to minimize temporary disparity between supply and demand. Moreover, the Commission agreed with the Exchange that the pilot program should benefit investors by providing additional liquidity to the listed cash market for derivative securities based upon well-known market indexes. The Commission also noted that the proposed rule change struck a reasonable balance between the Exchange's need to accommodate the needs of investors by providing additional liquidity to the listed cash market for derivative securities based on market indexes, and the need to prevent the potential for manipulation or misuses of information.

The Commission initially approved the pilot program for one year. The pilot program has been extended several times to allow the Exchange and the Commission to evaluate further whether there were additional issues that needed to be addressed. At the Commission's request, the Exchange submitted a report with this rule filing describing the Exchange's experience with the pilot program. According to the report, there was very limited trading volume in the AHT for SPDRs, investment trust securities and Index Fund Shares during August 1, 1996 to May 30, 1997. Given the experience Amex has gained through extended operation and renewal of the pilot program, the Commission expects the Amex to determine, at least two months prior to expiration of the current pilot, whether to seek permanent approval of, or discontinue, the pilot. Should the Exchange decide to seek permanent approval of the pilot program, it should submit another report to the Commission by May 1, 1998, describing its experiences with the pilot program.

The Commission believes that there is good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. This will permit the pilot program to continue on an uninterrupted basis for another year, until August 29, 1998. The Exchange proposes to continue using the identical procedures contained in the pilot program as originally approved. In addition, the rule change that implemented the pilot program was published in the **Federal Register** for the full comment period and no comments were received. Accordingly, the Commission believes that it is consistent with Sections 6 and 19(b) of the Act[4] to accelerate approval of the proposal rule change.

*It is therefore, ordered,* pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (SR–Amex–97–28) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–23392 Filed 9–3–97; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f and 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–38985; File No. SR–NASD–97–53]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Trading in Exchange-Listed Securities in the Third Market

August 27, 1997.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 28, 1997, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. 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 NASD is proposing to amend several rules governing the trading in exchange-listed securities in the over-the-counter market. Specifically, the NASD is proposing to amend rules of the NASD to: (1) Codify permissible uses of computer-generated quote systems with respect to exchange-listed securities; (2) eliminate the excess spread rule for market makers in exchange-listed securities; (3) reduce the minimum quotation size applicable to market makers in exchange-listed securities to one unit of trading (*i.e.*, 100 shares), regardless of whether the CQS market maker[2] is displaying a customer's limit order or quoting for its own proprietary account; (4) extend exemptive provisions of the NASD's limit order protection rule applicable to Nasdaq-listed securities (the ''Manning Rule'') to exchange-listed securities; and (5) reduce from 1000 to 100 the number of shares that the Computer Assisted Execution System (''CAES'') will execute automatically. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

*6330. Obligations of CQS Market Makers*

(a) No Change.

(b) [CQS market makers shall be required to input a minimum quotation size of 200 or 500 shares in each reported security (as established and published from time to time by the Association) depending on trading characteristics of the security; provided that a CQS market maker may input a quotation size less than such minimum quotation size to display a limit order in compliance with SEC Rule 11Ac1–4. A limit order displayed in a] *A* CQS market maker's quotation [pursuant to SEC Rule 11Ac1–4] must be for at least one normal unit of trading [or a multiple thereof].

[(c) Excess Spreads.

A market maker shall not enter quotations in CQS securities that exceed the parameters for maximum allowable spreads as approved by the Association's Board of Governors and that may be published from time to time by the Association. The maximum allowable spreads for CQS securities shall be 125 percent of the average of the three (3) narrowest market maker spreads in each security, which average spread calculations shall include quotations from national securities exchanges (if the number of CQS market makers in a security plus the number of national securities exchanges trading that security is less than three (3), the maximum allowable spread will be 125 percent of the average spread); provided, however, that the maximum allowable spread shall never be less than ¼ of a point.]

(d) redesignated as paragraph (c)

*(d) Computer-Generated Quotations.*

*(1) General Prohibition—Except as provided below, this rule prohibits the*

[2] Quotations and quotation sizes in reported securities may be entered into the Consolidated Quotations Service (CQS) through The Nasdaq Stock Market only by an Association member registered with it as a CQS market maker. See NASD rule 6320.

*automatic updating or tracking of inside quotations in CQS by computer-generated quote systems. This ban is necessary to offset the negative impact on the capacity and operation of Nasdaq systems regarding certain systems that track changes to the inside quotation and automatically react by generating another quote to keep the market maker's quote away from the best market, without any cognizable human intervention.*

*(2) Exceptions to the General Prohibition—Automated updating of quotations is permitted when: (1) the update is in response to an execution in the security by that firm (such as execution of an order that partially fills a market maker's quotation size); (2) it requires a physical, cognizable entry (such as a manual entry to the market maker's internal system which then automatically forwards the update to a Nasdaq system); (3) the update is to reflect the receipt, execution, or cancellation of a customer limit order; (4) it is used to expose a customer's market or marketable limit order for price improvement opportunities; or (5) it is used to equal or improve either or both sides of the national best bid or offer (''NBBO''), or add size to the NBBO.*

* * * * *

*6440. Trading Practices*

(a)–(e) No Change
(f)(1) No Change
(f)(2) No Change
(3) The provisions of this paragraph shall not apply:
(A) No Change
(B) No Change
(C) No Change
*(D) to any purchase or sale for which a member has negotiated specific terms and conditions applicable to the acceptance of limit orders that are:*
*(i) for customer accounts that meet the definition of an ''institutional account'' as that term is defined in Rule 3110(c)(4); or*
*(ii) for 10,000 shares or more, unless such orders are less than $100,000 in value.*

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and statutory 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

In light of the implementation of the Commission's Order Execution Rules,[3] and the impending implementation of the ''1% Rule''[4] to all exchange-listed securities, the NASD is proposing the following amendments to the rules governing trading in exchange-listed securities in the over-the-counter market, the so-called ''third market.''

a. Permissibility of the Use of Certain Automated Quotation Generation Systems

The plan governing the Intermarket Trading System (''ITS Plan'') currently provides that exchange specialists and CQS market makers may use ''automated quotation tracking systems,'' provided that the quotations generated by such systems are for 100 shares or less (''100-Share Autoquoting Limitation''). Despite the ITS Plan's allowance of 100-share autoquotes, the NASD prohibits CQS market makers from using autoquote systems to effect automated quote updates or to track the inside market. In addition, the NASD requires CQS market makers to maintain a minimum quotation size of 500 shares, with the exception of displaying a customer limit order, which also effectively prohibits CQS market makers from autoquoting.

In expanding the 1% Rule, the Commission recognized that it raised an issue with respect to the ability of NASD members to autoquote. The Commission stated that ''a total prohibition on the use of computer generated quotes is not appropriate'' and that ''[s]uch an approach excessively limits the use of sophisticated trading strategies that rely on automation in the quotation process for their success, and it also may act as a competitive disadvantage to market makers and specialists that would otherwise rely on technology to meet their quotation obligations more efficiently.''[5] While the Commission noted that it ''recognizes traditional concerns related to the accessibility of computer generated quotes and the impact of such quotes on system capacity, it believes that more can and should be done in this area.''[6] The Commission stressed that more should be done particularly ''given the enhanced quotation obligations that will be imposed on some market participants under the revised Quote Rule.''[7] The Commission, therefore, urged the ''NASD, ITS Participants, and other interested market participants to develop revised standards that would permit the use of computer generated quotes that contribute value to the market.''[8]

Accordingly, the NASD is proposing to explicitly accommodate computer-generated quotations that add value to the market and do not raise quotation accessibility concerns or compromise the capacity or integrity of Nasdaq. Specifically, the proposed rule change amends NASD Rule 6330 to permit computer-generated quotations in exchange-listed securities that generate proprietary quotes for 100 shares or more if such quote systems equal or improve either or both sides of the NBBO. For example, if a CQS market marker utilized a computer-generated quotation program to match the best offer (bid) and the market responsible to the best offer (bid) subsequently increased (decreased) its offer (bid) price, the CQS market maker could not use the program to track such inferior price. Thus, if the best offer is 20¼, a CQS market maker could use the program to improve its offer to 20¼. If the market responsible for the 20¼ offer moved to 20⅜, however, the CQS market maker could not use the program to move its offer to 20⅜.

In addition, the proposed rule change amends Rule 6330 to permit computer-generated quotations that add size to the NBBO, or are used to expose a customer's market or marketable limit order for price improvement

[3] See Securities Exchange Act Release No. 37619A (September 6, 1997), 61 FR 48290 (September 12, 1997) (''Adopting Release''). The Commission adopted Rule 11Ac1–4 (''Limit Order Display Rule'') and amendments to Rule 11Ac1–1 (''Quote Rule'') (collectively ''Order Execution Rules'').

[4] An amendment to the Quote Rule expanded the quotation requirements of substantial OTC market makers and exchange specialists to require that they publicly disseminate continuous two-sided quotations for any exchange-listed security for which they account for one percent or more of the trading volume (commonly referred to as the ''1% Rule''). See Adopting Release. While the amendments to the Quote Rule extended the quotation requirement to all exchange-listed securities, the Commission, by exemptive order, has provided relief from compliance with the 1% Rule, with respect to non-19c–3 securities, until September 30, 1997. See Exchange Act Release No. 38870 (July 24, 1997), 62 FR 40732 (July 30, 1997). Therefore, currently, OTC market makers and exchange specialists publicly disseminate quotations only when they are responsible for one percent or more of the trading volume in a 19c–3 security.

[5] See Adopting Release at Section III.B.3.c.i.

[6] *Id.*

[7] *Id.*

[8] *Id.*

opportunities. These uses would be in addition to three other forms of computer-enhanced quotation maintenance programs referenced in the NASD's Autoquote Policy which are also being incorporated into Rule 6330 with respect to exchange-listed securities.[9] With the exception of these types of computer-generated quotation and maintenance systems, all other types of computer-generated quotations would continue to be prohibited. Thus, market makers could not use computer-generated quotations to track away from the inside market (''autoquoting away'').[10]

In approving this proposal, the NASD was fully cognizant of and carefully considered the views of some industry participants that prohibiting autoquoting away would subject CQS market makers to a competitive disadvantage vis-a-vis specialists on regional exchanges.[11] The NASD also considered contrary arguments raised by some industry participants that permitting autoquoting away would undermine the integrity of the third market and facilitate the generation of inaccessible market maker quotes. After considering these views, the NASD remains concerned with the potential adverse impacts on market integrity and Nasdaq system capacity that restricted autoquoting away could cause. Specifically, the NASD believes that the potential increase in the number of OTC market makers and corresponding quote changes in the third market due to the expansion of the 1% Rule, coupled with more CQS market makers registering and electing to quote in conjunction with the SEC's Limit Order Display Rule, creates a market environment where unfettered autoquoting away would subject Nasdaq systems to capacity constraints that would compromise the integrity of The Nasdaq Stock Market and the protection of investors. In addition, the NASD is concerned by the prior experience with unlimited autoquoting by regional exchange specialists. Unlimited autoquoting away from the market creates ephemeral quotations which can appear to be at the best price for a few seconds only to disappear before an order realistically can be routed to the quote. In short, the NASD believes that unlimited computer-generated quotations would diminish the positive impact on quotation transparency obtained from the Commission's expansion of the 1% Rule.

The NASD continues to believe that autoquoting away should not be fostered as a policy matter. The NASD, however, is extremely concerned with the competitive implications on CQS market makers raised by the prospect that while they are prohibited from autoquoting away, specialists on regional exchanges will continue to do so. Accordingly, the NASD and Nasdaq Boards considered alternatives designed to provide CQS market markers with the ability to update their quotes in an efficient and cost effective manner while minimizing the impact on the operation and capacity of Nasdaq systems that collect, process, and disseminate quotation changes. Ultimately, as discussed in more detail below, the NASD voted to eliminate the excess spread rule applicable to CQS market makers in conjunction with prohibiting autoquoting away. The NASD believes that the elimination of the excess spread rule for CQS securities in conjunction with the retention of the NASD's ban on autoquoting away is a prudent, balanced, and rational approach to the resolution of an issue critically important to the preservation of the integrity and efficiency of Nasdaq. As noted above, the NASD believes that allowing autoquoting away will have a profound adverse impact on the quality of the third market and the operational soundness of Nasdaq. However, in light of the competitive implications to CQS market makers, the NASD proposes to enhance the quotation flexibility of CQS market makers by eliminating the excess spread rule for CQS securities. The NASD trusts that eliminating the excess spread rule for CQS securities will nullify any competitive advantages that specialists on regional exchanges, who can autoquote away, may have over CQS market makers who can not. Thus, as a policy matter, not a capacity matter, the NASD believes this to be a compromise solution that is more beneficial to the market place than allowing unfettered computer-generated quotations.

b. Elimination of the Excess Spread Rule

The NASD's excess spread rule applicable to CQS securities currently provides that a CQS market maker shall not enter a quotation spread in excess of 125 percent of the average of the three narrowest market marker spreads in such security, which average spread calculation shall include quotations from national securities exchanges.

As discussed above, the analysis of the proposed elimination of the CQS excess spread rule was joined with the NASD's analysis of whether to permit autoquoting away. The NASD determined that the potential adverse competitive consequences on highly automated CQS market making firms who are prohibited from autoquoting away could be minimized if the excess spread rule was eliminated. Specifically, by eliminating the excess spread rule for CQS securities, the NASD believes that CQS market makers will have more flexibility in quoting, Nasdaq capacity will not be needlessly consumed by processing voluminous quote updates away from the market, and the competitiveness of the third market will not be compromised.

The NASD continues to believe that an excess spread rule provides important benefits for the competitiveness and integrity of the market in instances where Nasdaq is the primary market. On the other hand, in the third market, where Nasdaq is not the primary market, the NASD believes that imposition of an excess spread rule may unduly hamper Nasdaq's ability to compete with the primary market and other markets because it may constrain the number of CQS market makers. Because Nasdaq is not the primary market for issues traded in the third market, the NASD does not find it inconsistent to eliminate the excess spread rule for exchange-trade securities while maintaining an excess spread rule for Nasdaq securities. Accordingly, the NASD is proposing to eliminate the excess spread rule for CQS market makers.

c. Changes to the Minimum Quote Size Rule for CQS Market Makers

NASD Rule 6330(b) presently provides that a CQS market maker must display a minimum quotation size of 500 shares (''500 Share Quote Rule''), with the exception of displaying a customer limit order, which may be for less than 500 shares.

In an environment where CQS market makers were the only market participants who could impact quotes in

[9] See NASD IM–4613. Specifically, these three forms are: (1) Quotations updates in response to an execution in the security by that firm (such as execution of an order that partially fills a market maker's quotation size); (2) quotation updates that require a physical entry (such as manual entry to the market maker's internal system which then automatically forwards the update to Nasdaq); and (3) quotation updates that reflect the receipt, execution, or cancellation of a customer limit order.

[10] To the extent that approval of the proposed amendments to Rule 6330 would result in NASD rules permitting computer-generated quotations in CQS securities to a greater degree than that permitted under Section 8(d)(ii) of the ITS Plan, the NASD requests that the Commission's order approving these amendments to Rule 6330 specifically provide that adherence to Rule 6330 supersedes adherence to Section 8(d)(ii) of the ITS Plan until such time as the ITS Plan is amended to contain similar provisions.

[11] See letter from David E. Shaw, Chairman, D.E. Shaw & Co., Inc. to Alfred R. Berkeley, III, President, The Nasdaq Stock Market, dated June 2, 1997, attached as Exhibit 2 (''D.E. Shaw Letter'').

the third market, it was believed to be desirable and appropriate to impose a minimum quotation size requirement to ensure an acceptable level of market liquidity and depth. However, now that the SEC's Limit Order Display Rule permits investors to directly impact quoted prices in the third market by having their limit orders displayed publicly, the NASD believes it is appropriate to treat CQS market makers in a manner equivalent to exchange specialists and not subject them to minimum quote size requirements. In sum, the NASD believes the increased order-driven nature of the third market brought about the SEC's Limit Order Display Rule obviates the justification for the 500 Share Quote Rule. Accordingly, the NASD is proposing to amend the 500 Share Quote Rule to permit a CQS market maker to post quotations commensurate with their own freely-determined trading interest, provided, however, that the quotations must be for at least one normal unit of trading.

d. Modifications to CAES

CAES is an automated system operated by Nasdaq that allows NASD members to direct both agency and principal orders (in stocks in which they make a market) in exchange-listed securities to CAES for automated execution in the third market. All CQS market makers must be CAES market makers.

The implementation of the SEC's Limit Order Display Rule has exacerbated a shortcoming in the design of the current CAES system. Specifically, while CAES volume is minimal, CAES permits other CQS market makers to send preferenced orders of up to 1,000 shares to a CQS market maker for automatic execution at the best bid or offer among CQS market makers. CAES will execute such orders regardless of whether the CQS market maker is at the best bid or offer (''BBO''), regardless of whether the quote driving the BBO is for less than 1,000 shares, and regardless of whether the CQS market maker wants to accept preferenced orders from the order entry firm or market maker. Thus, since the implementation of the Order Execution Rules has required market makers to display customer limit orders, CQS market makers are not only obligated to execute trades up to 1,000 shares at another market maker's quote, they must now also execute trades at superior-priced limit orders displayed by any other CQS market maker, even if such limit orders are only for 100 shares. In addition, because Nasdaq no longer quotes,[12] CAES executes orders at the best bid or offer price in the third market instead of the national best bid or offer (''NBBO''). As a result, when there are no CQS market makers at the NBBO, CAES is providing inferior executions to customer orders.

In order to facilitate the best execution of customer orders and not subject CQS market makers to automatic executions at prices other than their posted quotes, the NASD believes it is imperative that CAES be appropriately modified. Accordingly, the NASD has established a two-step process to amend the operation of CAES—one a short-term solution and the other a long-term solution.

In the short term, and as part of the instant filing, the NASD is proposing to amend the operation of CAES so that it automatically executes orders up to 100 shares instead of 1,000 shares. This eliminates much of a market maker's exposure, although it does not completely address the core deficiencies with CAES noted above.

As a long-term solution, the NASD plans a future proposal to amend the operation of CAES so that: (1) It only accepts priced orders; and (2) orders will only be executed against a market maker if the market maker's quote is equal to or better than the price of the order (*i.e.*, if a market maker's bid was 20 it would be obligated to execute orders to sell priced equal to 20 or below).

e. Modifications to the Limit Order Protection Rule Applicable to COS Securities

NASD Rule 6440 provides that no member shall trade ahead of a customer limit order. Unlike the limit order protection rule applicable to Nasdaq securities (the ''Manning Rule''), however, the limit order rule applicable to CQS securities does not on its face permit a member to negotiate special terms and conditions with a customer that would enable the firm to trade ahead of, or at the same price as, the limit order price. Specifically, under the Manning Rule, member firms may attach terms and conditions with respect to the handling of limit orders that are either: (1) For institutional accounts; [13] or (2) limit orders that are for 10,000 shares or greater, regardless of whether they are for institutional accounts, provided that the order is $100,000 or more in value.

The NASD believes there is no basis to differentiate between limit orders in Nasdaq securities and limit orders in exchange-listed securities with respect to the protections afforded under NASD rules. Accordingly, the NASD is proposing to extend the ''terms and conditions'' language of the Manning Rule to the CQS limit order protection rule.

The NASD believes that the proposed rule change is consistent with the provisions of Sections 11A(a)(1)(D), 11A(a)(2) and 15A(b)(6) of the Act. Section 11A(a)(1)(D) of the Act states that the linking of all markets for qualified securities through communications and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers and investors, facilitate the offsetting of investor's orders and contribute to best execution of such orders, and subsection (a)(2) thereunder directs the Commission to facilitate the establishment of a national market system for qualified securities. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. The proposed rule change will enhance the national market system for exchange-listed securities and will further the implementation of the Commission's Order Execution Rules with respect to exchange-listed securities, thereby benefitting all market participants and investors.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

[12] *See* Exchange Act Release No. 37663, September 10, 1996 (61 FR 48725) (order approving File No. SR–NASD–96–26).

[13] Institutional limit orders are orders for institutional accounts. NASD Rule 3110(c) defines an institutional account as an account for: (1) Banks, savings and loan associations, insurance companies, or registered investment companies; (2) investment advisers registered under Section 203 of the Investment Advisers Act of 1940; and (3) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 25, 1997.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–23391 Filed 9–3–97; 8:45 am]

BILLING CODE 8010–01–M

## TENNESSEE VALLEY AUTHORITY

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Tennessee Valley Authority (Meeting No. 1497).

**TIME AND DATE:** 9 a.m. (CDT), September 8, 1997.

**PLACE:** Glasgow Electric Plant Board Building Auditorium, 100 Mallory Drive, Glasgow, Kentucky.

**STATUS:** Open.

**AGENDA:** Approval of minutes of meeting held on August 5, 1997.

**New Business**

*A—Budget and Financing*

A1. Approval of short-term borrowing from the Treasury.

A2. Delegation of authority to the Treasurer, or the designee of such officer, to enter into a new fiscal agency agreement with the Federal Reserve Banks and any amendments thereto that the Chief Financial Officer may approve.

*B—Purchase Awards*

B1. Increase in amount of blanket purchase order with ABB Power T&D Company, Inc.

*E—Real Property Transactions*

E1. Abandonment of easement rights requested by the Electric Power Board of Chattanooga, affecting 1.3 acres of Tract No. VR–26, in exchange for identical rights on a relocated right-of-way.

E2. Sale of permanent easement for Trade Center/Conferencing Center Development, affecting approximately 2.34 acres of land in Hamilton County, Tennessee (Tract No. XCOFC–3E).

E3. Amendment to the Chickamauga Reservoir Land Management Plan to remove a 1.34-acre portion of Tract No. XCR–44PT from the plan and grant of a permanent easement for a fire station to the City of Soddy Daisy for the same area on Chickamauga Lake (Tract No. XTCR–191B) in Hamilton County, Tennessee.

E4. Amendment to the Kentucky Reservoir Land Management Plan to change the allocated use from public recreation, historic preservation, and trails to commercial recreation for approximately 20 acres of Tract No. XGIR–175PT and authorization of a 19-year commercial recreation lease for marina development in Humphreys County, Tennessee (Tract No. XGIR–931L).

E5. Amendment to the Kentucky Reservoir Land Management Plan to change the allocated use from public recreation to commercial recreation for approximately 27.5 acres of Tract No. XGIR–24PT and authorization of a 19-year commercial recreation lease to Riverwood Campgrounds in Marshall County, Kentucky (Tract No. XGIR–927L).

E6. Abandonment of certain easement rights and modification of a restrictive covenant affecting approximately 0.119 acre of land on Boone Lake (a portion of Tract No. BR–198F) in Sullivan County, Tennessee.

E7. Grant of a 25-year public recreation easement to Meigs County, Tennessee, affecting approximately 28.6 acres of land on Chickamauga Lake (Tract No. XTCR–188RE) to develop a memorial park.

E8. Grant of permanent easement for public recreation, historical interpretation, and environmental education to the Town of Triana, Alabama, affecting approximately 0.4 acre of land on Wheeler Lake (Tract No. XTWR–106RE) in Madison County, Alabama.

E9. Grant of permanent easement to the State of Tennessee, affecting approximately 0.14 acre of land on Tims Ford Lake (Tract No. XTTMFR–12H), for highway improvements where U.S. Highway 41A crosses Hessey Branch in Franklin County, Tennessee.

**Unclassified**

F1. Approval to file condemnation cases in connection with the following power transmission lines: Alpha-Center Point, Murray County, Georgia; Freeport-Miller, DeSoto County, Mississippi; Lowndes-Kerr McGee and Lowndes-Columbus No. 2, Lowndes County, Mississippi; Walker-Fuller, Gordon County, Georgia; and Colbert-Tupelo Tap to Belmont, Tishomingo County, Mississippi.

F2. TVA contribution at the rate of 4.04 percent of members' payroll to the TVA Retirement System for Fiscal Year 1998.

**Information Items**

1. Delegation of authority to the Senior Vice President of Procurement, or such officer's designee, to enter into a uranium procurement contract with Power Resources, Inc.

2. Appointment of Wallace T. Tanksley, Senior Vice President, Human Resources, as the TVA Designated Agency Safety and Health Official.

3. Amendments to resolutions adopted on October 24, 1995, relating to the sale of Tennessee Valley Authority Bonds.

4. Approval for submission of a proposal with Tata Electric Companies to the Tamil Nadu Electricity Board in India for refurbishment of fossil generating units.

5. Approval to purchase subbituminous coal under Requisition 35 for Allen and Shawnee Fossil Plants.

6. Delegation of authority to the Vice President of Fuel Supply and

Engineering, or such officer's designee, to enter into an extension to and modification of Contract No. P–94P07–115471 with Cane Patch Mining Company, Inc.

7. Delegation of authority to the Vice President of Fuel Supply and Engineering, or such officer's designee, to enter into an extension to and modification of Contract No. P–90P07–115734 with Arch Coal Sales Company, Inc.

8. Approval for TVA Director William H. Kennoy to be an incorporator and director of the East Tennessee Intermodal Transportation Commerce Center, Inc.

9. Approval to file a condemnation case related to the Dunmar-Paradise Tap to Ennis Transmission Line, Muhlenberg County, Kentucky.

10. Approval for TVA Nuclear to enter into a contract in which Westinghouse Electric Corporation would purchase from TVA a spare reactor coolant pump internals package located at the Watts Bar Nuclear Plant Unit 2.

11. Expansion of participation in the Interruptible Power Pilot Project and delegation of authority to the Executive Vice President, Customer Service and Marketing, to execute the contractual arrangements.

12. Sale of noncommercial, nonexclusive permanent easement to Lakeside Properties, Inc., affecting 2.47 acres of land on Tellico Lake in Monroe County, Tennessee (Tract No. XTELR–191RE), for the construction, operation, and maintenance of private water-use facilities.

13. Amendment of the Pickwick Reservoir Land Management Plan and grant of a permanent easement to the City of Florence, Alabama, affecting approximately 121 acres and a temporary construction easement affecting approximately 4 acres of land on Pickwick Lake in Lauderdale County, Alabama (Tract No. XPR–457E), for a wastewater treatment plant, sewer lagoons, and a sewerline.

14. Proposed rate schedules for ancillary services to be included in 1997 edition of the Transmission Service Guidelines, approved July 10, 1997, providing open access transmission service over the TVA system.

15. Proposed 1997 edition of the Transmission Service Guidelines providing open access transmission service over the TVA system.

*For more information:* Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: August 29, 1997.

**Edward S. Christenbury,**

*General Counsel and Secretary.*

[FR Doc. 97–23584 Filed 9–2–97; 11:42 am]

BILLING CODE 8120–08–M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Report On The Andean Trade Preference Act: Request For Public Comment

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice.

**SUMMARY:** The Trade Policy Staff Committee (TPSC) is seeking the views of interested parties on the operation of the Andean Trade Preference Act, as amended (19 U.S.C. 3201 *et seq*) (''the ATPA''). Section 203(f) of the ATPA requires the President to submit a report to the Congress regarding the operation of the ATPA on or before December 4, 1997, the sixth anniversary of the date of the enactment of the ATPA. The TPSC invites written comments concerning the issues to be examined in preparing such a report, including the considerations described in subsections 203(c) and (d) of the ATPA.

**DATES:** Public comments are due at USTR by October 17, 1997.

**ADDRESSES:** Director for Mexican Affairs, Office of the Western Hemisphere, Office of the U.S. Trade Representatives, 600 17th Street NW., Room 523, Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:** Michael Koplovsky, Director for Mexican Affairs, Office of the Western Hemisphere, Office of the United States Trade Representative, (202) 395–3142.

**SUPPLEMENTARY INFORMATION:** Interested parties are invited to submit comments on any aspect of the program's operation, including the status of beneficiary countries—Bolivia, Colombia, Ecuador, and Peru—under the criteria described in subsections 203 (c) and (d) of the ATPA. Issues to be examined in this report include: The program's effect on the volume and composition of trade and investment between the United States and the Andean beneficiary countries; its effect on the economic growth and development of the beneficiary countries; the extent to which the program has advanced narcotics eradication; related sustainable alternative development efforts in coca-growing areas; and the degree to which the program has encouraged the trade and investment policies cited in the ATPA.

**Written Notice**

All written comments should be addressed to: Michael Koplovsky, Director for Mexican Affairs, Office of the Western Hemisphere, Office of the U.S. Trade Representative, 600 17th Street, NW., Room 522, Washington, DC 20506.

All submissions must be in English and should conform to the information requirements of 15 CFR part 2003.

A submitter must provide twenty copies of any comments. Comments must be received at USTR no later than 5 p.m., October 17, 1997. If the comments contain business confidential information, twenty copies of a non-confidential version must also be submitted. Comments containing business confidential information must include a justification as to why the information contained in the submission should be treated confidentially, and should be clearly marked ''business confidential'' at the top of each page. The non-confidential version should also be clearly marked at the top of each page ''public version'' or ''non-confidential''.

Comments submitted in response to this notice, except for comments granted ''business confidential'' status pursuant to 15 CFR 2003.6, will be available for public inspection after the filing deadline. Inspection is by appointment only with the USTR Public Reading Room, and can be arranged by calling (202) 395–6186. Other requests and questions should be directed to the Office of the Western Hemisphere at USTR by calling (202) 395–3142.

**Frederick L. Montgomery,**

*Chairman, Trade Policy Staff Committee.*

[FR Doc. 97–23497 Filed 9–3–97; 8:45 am]

BILLING CODE 3190–01–M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Generalized System of Preferences (GSP); Schedule of Hearings and Deadlines for Submitting Comments on Petitions for the GSP 1997 Product Review and Country Practices Review

**AGENCY:** Office of the United States Trade Representative (USTR).

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to set forth the timetable for hearings, and for providing public comments on petitions requesting: (1) Changes in the eligibility for duty-free treatment under the GSP program of products accepted for the 1997 Product Review; and (2) modifications in the status of GSP beneficiary countries in regard to their

practices, as specified in 15 CFR 2007.0 (a) and (b).

**FOR FURTHER INFORMATION CONTACT:** GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW, Room 518, Washington, DC 20508 (Tel. 202/395–6971). Public versions of all documents relating to this review may be seen by appointment in the USTR public Reading Room between 9:30–12 a.m. and 1–4 p.m. (Tel. 202/395–6186).

**SUPPLEMENTARY INFORMATION:** The GSP program is authorized pursuant to Title V of the Trade Act of 1974, as amended (''the Trade Act'') (19 U.S.C. 2461 *et seq.*). The GSP program grants duty-free treatment to designated eligible articles that are imported from designated beneficiary developing countries. In a **Federal Register** notice dated August 13, 1997 (62 FR 43408), USTR announced the acceptance of product petitions for review. In addition, USTR has received a number of petitions requesting that certain practices in certain beneficiary developing countries be reviewed to determine whether such countries are in compliance with the eligibility criteria set forth in sections 502(b) and 502(c) of the Trade Act (19 U.S.C. 2462(b) and 2462(c)).

## I. Subject of Reviews

### *A. Petitions Requesting Modifications of Product Eligibility*

As described in a **Federal Register** notice dated August 13, 1997 (62 FR 43408), USTR accepted petitions from interested parties and foreign governments to: (1) Designate articles as eligible for the GSP; (2) withdraw, suspend or limit GSP duty-free treatment accorded either to eligible articles under the GSP or to individual beneficiary developing countries with respect to specific GSP eligible articles; and (3) waive competitive need limits.

USTR has requested the advice of the U.S. International Trade Commission (USITC) on the probable economic effects of granting the requested GSP changes on U.S. industries producing like or directly competitive articles and on consumers. A nonconfidential version of the USITC analysis will be made available to the public as of approximately December 30, 1997.

Any modifications to the list of articles eligible for duty-free treatment under the GSP program resulting from the GSP 1997 Product Review will be announced on or about May 1, 1998, and will take effect July 1, 1998.

### *B. Petitions Accepted for Review Regarding Country Practices*

Pursuant to 15 CFR 2007.0(b), the Trade Policy Staff Committee has accepted petitions to review the GSP status of (1) Belarus and Swaziland based on the alleged failure of each to provide adequate and effective protection for internationally recognized worker rights, and (2) the Philippines based on its alleged failure to provide equitable and reasonable access to its markets. (The decision on the Philippines intellectual property rights case has been deferred.)

Any modifications to the list of beneficiary developing countries for purposes of the GSP program resulting from the Country Practices Review will take effect on such date as will be notified in a future **Federal Register** notice.

## II. Opportunities for Public Comment and Inspection of Comments

The GSP Subcommittee of the TPSC invites comments in support of, or in opposition to, any petition which is the subject of this notice. Submissions should comply with 15 CFR Part 2007, including sections 2007.0, and 2007.1. All submissions should identify the subject article(s) in terms of the current Harmonized Tariff Schedule of the United States (''HTS'') nomenclature.

Comments should be submitted in fourteen (14) copies, in English, to the Chairman of the GSP Subcommittee of the Trade Policy Staff Committee, 600 17th Street, NW., Room 518, Washington, DC 20508. Information submitted will be subject to public inspection by appointment with the staff of the USTR public reading room, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6 and other qualifying information submitted in confidence pursuant to 15 CFR 2007.7. If the document contains business confidential information, an original and fourteen (14) copies of a nonconfidential version of the submission along with an original and fourteen (14) copies of the confidential version must be submitted. In addition, any document containing confidential information should be clearly marked ''confidential'' at the top and bottom of each page of the document. The version that does not contain confidential information (the public version) should also be clearly marked at the top and bottom of every page (either ''public version'' or ''nonconfidential''). Comments should be submitted no later than 5:00 p.m. on September 30, 1997.

## III. Notice of Public Hearings

Hearings will be held on October 22, 23, (and October 24, 1997, if needed) beginning at 10:00 a.m. at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC 20436. The hearings will be open to the public and a transcript of the hearings will be made available for public inspection or can be purchased from the reporting company. No electronic media coverage will be allowed.

All interested parties wishing to present oral testimony at the hearings must submit the name, address, and telephone number of the witness(es) representing their organization to the Chairman of the GSP Subcommittee. Such requests to present oral testimony at the public hearings should be accompanied by fourteen (14) copies, in English, of a written brief or statement, and should be received by 5 p.m. on September 30, 1997. Oral testimony before the GSP Subcommittee will be limited to five minute presentations that summarize or supplement information contained in the briefs or statements submitted for the record. Post-hearing and rebuttal briefs or statements should conform to the regulations cited above and be submitted in fourteen (14) copies, in English, no later than 5 p.m. November 19, 1997.

Interested persons not wishing to appear at the public hearings may also submit pre-hearing written briefs or statements by 5:00 p.m. on September 30, 1997, and post-hearing and rebuttal written briefs or statements by November 19, 1997. Comments by interested persons on the USITC Report should be submitted in fourteen (14) copies, in English, by 5 p.m. January 15, 1998.

**Frederick L. Montgomery,**

*Chairman, Trade Policy Staff Committee.*

[FR Doc. 97–23493 Filed 9–3–97; 8:45 am]

BILLING CODE 3190–01–M

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# DEPARTMENT OF TRANSPORTATION

## Federal Railroad Administration

## Notice of Safety Advisory

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of Safety Advisory.

**SUMMARY:** FRA is issuing Safety Advisory 97–1 addressing safety practices to reduce the risk of casualties from train derailments caused by damage to tracks, roadbed, and bridges resulting from uncontrolled flows of

water and similar weather-related phenomena.

**FOR FURTHER INFORMATION CONTACT:** Gordon A. Davids, P.E., Bridge Engineer, Office of Safety Assurance and Compliance, FRA, 400 Seventh Street, S.W., RRS–15, Mail Stop 25, Washington, D.C. 20590 (telephone 202–632–3340) or Daniel L. Alpert, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., RCC–12, Mail Stop 10, Washington, D.C. 20590 (telephone 202–632–3186).

**SUPPLEMENTARY INFORMATION:** A recent derailment involving train number 4 of the National Railroad Passenger Corporation (Amtrak) on The Burlington Northern and Santa Fe Railway Company (BNSF) near Kingman, Arizona, on August 9, 1997, has caused FRA to focus on the effectiveness of railroad procedures for protection of trains and personnel from hazards caused by severe weather conditions. The investigation of that accident by the National Transportation Safety Board (NTSB) and FRA continues. The facts and findings developed in the investigation will be published when the investigation is complete.

## Special Inspection Procedures

The Federal Track Safety Standards (49 CFR part 213) state, ''In the event of fire, flood, severe storm, or other occurrence which might have damaged track structure, a special inspection must be made of the track involved as soon as possible after the occurrence.'' (49 CFR 213.239). This provision is purposely general in nature, because it is not practicable to specify in a minimum safety standard all the conditions which could trigger a special inspection, nor the manner in which any particular special inspection must be conducted. However, in accordance with the primary purpose of the Track Safety Standards and associated railroad safety laws, these special inspections should be conducted so as to effectively prevent derailments. In light of recent occurrences and past experience, FRA now believes it necessary to issue this safety advisory to provide railroads with recommended procedures to further this objective.

FRA has investigated several train derailments in which damage from unexpected moving water was a causal factor. Incidents reported to FRA between January 1982 and March 1996 included 26 derailments caused by washouts of bridges or bridge approaches, and 16 derailments caused by washouts or water damage to culverts or subgrade not near a bridge. In most cases, the railroad had some form of notification of the severe weather conditions and either initiated or performed an inspection. When the derailment occurred, either the inspector had not reached the derailment site before the train, had inspected the track and not recognized a hazardous condition, or had performed the inspection before the damage had become detectible. FRA believes that more specific measures can be taken by each railroad that conducts operations on track subject to hazards from flowing water to reduce the likelihood of future derailments caused by those hazards.

## Vulnerable Structures and Track

FRA believes that several types of bridge and drainage structure components should be identified as vulnerable and be given special consideration in any decision related to the operation of trains both during and following a severe rainstorm. In particular, bents, piers, and abutments that rest directly on soil or degradable rock near the surface might be rapidly undermined in a severe rainstorm. Similarly, stream bed configurations in which the water course takes a bend or a change in slope near the track are often unpredictable in times of heavy flow. During such conditions, soil displacement can progress rapidly in an unpredictable manner in locations that are not visible to a person above the water surface. The size of a drainage structure, and whether it is categorized as a bridge or a culvert, is not as important as the vulnerability of the structure and its supported track to the effects of flowing water.

## Recommended Action

FRA believes that the chance of further derailments, such as occurred near Kingman, Arizona, on August 9, 1997, would be greatly reduced by the inclusion of certain additional measures into the procedures for special inspections followed in the railroad industry in the event of a threat of a severe rainstorm, at the level of a flash flood. FRA has determined that each railroad that controls the operation of trains on Class 4 or higher track, or passenger trains in commuter or intercity service, should have in place a program to protect its train operations from the effects of damage to tracks and structures caused by severe weather conditions, particularly flash floods. Therefore, FRA issues the following advisory to each affected railroad:

1. The railroad should have in place a procedure that will assure that all notifications issued by the National Weather Service (NWS) of flash flood warnings will be received within 15 minutes of issuance from the NWS, directly or through a contract weather forecasting service, by the train dispatchers or other employees controlling the movement of trains on all track of Class 4 or higher or upon which passenger trains operate in commuter or intercity service, within the warning area. In the case of such track located outside of the warning area but subject to damage from water resulting from the storm, the information should be obtained in time to permit timely response by the railroad.

2. After the receipt of a warning of a flash flood which might damage track or bridges, the railroad should notify train crews and limit the speed of all freight and passenger trains to that which will permit the train to operate safely, consistent with the potential water levels and visibility conditions, on all track subject to damage from the flood. The limitations should continue until a special inspection in accordance with 49 CFR 213.239 has been performed of that track and it is determined that a hazard no longer exists. In making that inspection and determination, the time taken for the heaviest flow of water to reach the track should be considered.

3. Each railroad affected by this advisory should identify its bridges carrying track of Class 4 or higher or over which passenger trains operate in commuter or intercity service, which are vulnerable to damage from flash floods or similar weather-related phenomena. Particular attention should be given to bridges which incorporate piers, bents, or abutments, which are founded on soil or degradable rock which could lose its integrity as a result of scour by moving water, and which are commonly referred to as ''mud sills'' or ''spread footings.''

4. The information developed in paragraph 3 should be compiled and made available to each person who can be called upon to perform special inspections on the subject track following a flash flood warning. Consideration should be given to placing identifying marks on bridges that need particular attention in special inspections, along with the bridge number, to assist inspectors in locating them with certainty during inclement weather. Consideration should also be given to the use of automated high water detectors or similar sensing and warning systems on specific bridges which could incur water damage that would be hidden from or not otherwise detectible by a human inspector.

5. In addition to the bridge-specific information called for in paragraph 3,

each affected railroad should implement a training program for the persons performing special inspections. The training should include methods to recognize and protect the safety of railroad operations from the damaging characteristics of flowing water in general, with particular regard to the effects of a watercourse that takes a significant change in horizontal direction or vertical profile near the track; the effects of drift material accumulation on scour and the capacity of the waterway opening; and the potential for damage by impact of heavy floating objects.

6. Refresher training of track inspectors on the subjects addressed in paragraph 5 should be conducted at least once each calendar year. Where practicable, that refresher training should include a joint inspection by a track inspector and a cognizant bridge maintenance or engineering employee over the inspector's assigned territory. During that joint inspection they should locate the vulnerable components in the bridges identified in paragraph 3, discuss the precautions to be taken in the event of indications of distress in those components, observe drainage conditions on and adjacent to the right-of-way, and note changes for inclusion in the revisions of information called for in paragraph 9.

7. If a track inspector is assigned to perform a special inspection in accordance with paragraph 2, and bridges identified as vulnerable are in the track segment subject to damage from the flash flood, a cognizant bridge maintenance or engineering employee should be readily available by telephone or radio to assist in the interpretation of findings by the track inspector.

8. Each affected railroad should brief all of its track and bridge inspectors on the contents of this advisory. These briefings should occur within 14 calendar days of the date of publication of this safety advisory in the **Federal Register**.

9. FRA believes that the actions described in paragraphs 3, 4, and 5 should be completed within 60 calendar days of the date of publication of this safety advisory in the **Federal Register**. During this period, each affected railroad should complete an initial review of its bridges for vulnerability to high or rapidly flowing water and provide that information to its inspectors. More detailed reviews should be substantially completed and provided to inspectors during calendar year 1998 and then maintained in a current status.

10. FRA requests a letter within 45 calendar days of the date of publication of this safety advisory in the **Federal Register** from each affected railroad specifying the actions it has taken and will initiate to enhance the safety of train operations in the event of a flood or a high or rapid water condition. Such letters should be addressed to the Associate Administrator for Safety, FRA, RRS–1, Mail Stop 25, 400 Seventh Street S.W., Washington, DC 20590.

**Paperwork Reduction Act Provisions**

This advisory does not require that any records or reports be kept or submitted. It merely recommends that railroads collect or provide certain information. Nevertheless, because some might see these recommendations as paperwork burdens, FRA will seek approval of them. Under the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR 1320.13, FRA is requesting the Office of Management and Budget (OMB) to conduct an emergency review and approval of the information collection items contained in this safety advisory. FRA is seeking OMB's approval of these information collection items by September 5, 1997.

FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). See 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that the agency organizes information collection items in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. See 44 U.S.C. 3501.

Provided below are summaries of the seven information collection activities FRA will submit for clearance by OMB as required by the PRA:

*Title:* Identify vulnerable bridges.

*OMB Control Number:* New.

*Abstract:* Each railroad affected by this advisory should identify its bridges carrying track of Class 4 or higher, or over which passenger trains operate in commuter or intercity service, which are vulnerable to damage from flash floods or other weather-related events that may be included in its severe weather operating program.

*Form Number(s):* N/A.

*Affected Public:* Businesses.

*Respondent Universe:* 25 railroads with 20,000 bridges.

*Frequency of Submission:* One time.

*Total Responses:* 25.

*Average Time Per Response:* 10 minutes per bridge.

*Estimated Total Annual Burden Hours:* 3,400 hours one time.

*Status:* Emergency processing by OMB.

*Title:* Compile and publish information to inspectors.

*OMB Control Number:* New.

*Abstract:* The information developed in paragraph 3 should be compiled and made available to each person who can be called upon to perform special inspections on the subject track following a flash flood warning.

*Form Number(s):* N/A.

*Affected Public:* Businesses.

*Respondent Universe:* 25 railroads.

*Frequency of Submission:* No submission.

*Total Responses:* 1,200.

*Average Time Per Response:* 2.5 hours initially, 1 hour annually thereafter.

*Estimated Total Annual Burden Hours:* 3,000 hours one time, 1,200 hours annually thereafter.

*Status:* Emergency processing by OMB.

*Title:* Place identifying markings on bridges that need special attention.

*OMB Control Number:* New.

*Abstract:* Consideration should be given to placing identifying marks on bridges that need particular attention in special inspections, along with the bridge number, to assist inspectors in locating them with certainty during inclement weather.

*Form Number(s):* N/A.

*Affected Public:* Businesses.

*Respondent Universe:* 25 railroads.

*Frequency of Submission:* No submission.

*Total Responses:* 1,000.

*Average Time Per Response:* 3 hours initially, 15 minutes annually thereafter.

*Estimated Total Annual Burden Hours:* 3,000 hours one time, 250 hours annually thereafter.

*Status:* Emergency processing by OMB.

*Title:* Training Program for Inspectors.

*OMB Control Number:* New.

*Abstract:* Each affected railroad should implement a training program for the persons performing special inspections.

*Form Number(s):* N/A.

*Affected Public:* Businesses.

*Respondent Universe:* 25 railroads.

*Frequency of Submission:* No submission.

*Total Responses:* 25.

*Average Time Per Response:* 441.6 hours one time, 88 hours annually thereafter.

*Estimated Total Annual Burden Hours:* 11,040 hours one time, 2,200 hours annually thereafter.

*Status:* Emergency processing by OMB.

*Title:* Provide initial briefing to inspectors.

*OMB Control Number:* New.

*Abstract:* Each affected railroad should brief all of its track and bridge inspectors on the contents of this advisory. These briefings should occur within 14 calendar days of the date of publication of this safety advisory in the **Federal Register**.

*Form Number(s):* N/A.

*Affected Public:* Businesses.

*Respondent Universe:* 25 railroads.

*Frequency of Submission:* None.

*Total Responses:* 300.

*Average Time Per Response:* 4 hours.

*Estimated Total Annual Burden Hours:* 2,400 hours.

*Status:* Emergency processing by OMB.

*Title:* Review of bridges for vulnerability to high water, initial and annual.

*OMB Control Number:* New.

*Abstract:* FRA believes that the actions described in paragraphs 3, 4, and 5 should be completed within 60 calendar days of the date of publication of this safety advisory in the **Federal Register**. During this period, each affected railroad should complete an initial review of its bridges for vulnerability to high or rapidly flowing water and provide that information to its inspectors. More detailed reviews should be substantially completed and provided to inspectors during calendar year 1998 and then maintained in a current status.

*Form Number(s):* N/A.

*Affected Public:* Businesses.

*Respondent Universe:* 25 railroads.

*Frequency of Submission:* None.

*Total Responses:* 1,000.

*Average Time Per Response:* 2 hours initially in 1998, 30 minutes annually thereafter.

*Estimated Total Annual Burden Hours:* 2,000 hours initially in 1998, 500 hours annually thereafter.

*Status:* Emergency processing by OMB.

*Title:* Notify FRA of bridge safety inspection programs in place.

*OMB Control Number:* New.

*Abstract:* FRA requests a letter within 45 calendar days of the date of publication of this safety advisory in the **Federal Register** from each affected railroad specifying the actions it has taken and will initiate to enhance the safety of train operations in the event of a flood or a high or rapid water condition. Such letters should be addressed to the Associate Administrator for Safety, FRA, RRS–1, Mail Stop 25, 400 Seventh Street S.W., Washington, DC 20590.

*Form Number(s):* N/A.

*Affected Public:* Businesses.

*Respondent Universe:* 25 railroads.

*Frequency of Submission:* One time.

*Total Responses:* 25.

*Average Time Per Response:* 4 hours one time.

*Estimated Total Annual Burden Hours:* 200 hours one time.

*Status:* Emergency processing by OMB.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. Here, of course, FRA is not issuing information collection requirements and has no intention of imposing penalties under any provisions of this safety advisory. FRA intends to obtain current OMB control numbers for any information collection items contained in this Safety Advisory. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

For further information please contact Ms. Gloria Swanson, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone: (202) 632–3318) or MaryAnn Johnson, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone: (202) 632–3226). (These telephone numbers are not toll-free.)

FRA may modify Safety Advisory 97–1, issue additional safety advisories, or take other appropriate necessary action to ensure the highest level of safety on the Nation's railroads.

Issued in Washington, DC, on September 2, 1997.

**James T. Schultz,**

*Associate Administrator for Safety.*

[FR Doc. 97–23618 Filed 9–3–97; 8:45 am]

BILLING CODE 4910–06–P

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## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board [1]

**[Finance Docket No. 32530]**

## Kansas City Southern Railway Company—Construction and Operation Exemption—Geismar Industrial Area Near Gonzales and Sorrento, Louisiana

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of extension of time for comment period for draft environmental impact statement (EIS).

**SUMMARY:** The Kansas City Southern Railway Company (KCS) applied to the Interstate Commerce Commission (ICC), now the Surface Transportation Board (Board), for authority to construct and operate an 8.62-mile rail line from the Geismar Industrial area to its mainline near Gonzales and Sorrento, in Ascension Parish, Louisiana. On July 16, 1997, the Board's Section of Environmental Analysis (SEA) issued a draft EIS. Consistent with Council on Environmental Quality (CEQ) regulations for implementing the National Environmental Policy Act (NEPA), SEA provided a 45-day comment period for the public review of the draft EIS, with comments due by September 8, 1997.

Several parties, including the Concerned Citizens of Ascension Parish (CCAP), Illinois Central Railroad (IC), members of Congress, and local individuals have requested that the comment period be extended an

[1] The ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to section 49 U.S.C. 10901. Therefore, this notice applies the law in effect prior to the Act, and citations are to the former section of the statute, unless otherwise indicated.

additional 60 days and also requested a public hearing. KCS replied to these petitions stating in essence that petitioners had not provided sufficient reason why the 45-day comment period was inadequate.

In carefully reviewing CCAP's concerns, as well as those expressed by other parties, SEA believes that the 45-day comment period specified by CEQ guidelines is sufficient in this case. However, in order to allow every opportunity for public input into the Board's NEPA process in this case, SEA will accept comments to the draft EIS for an additional 15 days past the current due date of September 8, 1997. Comments to the draft EIS will now be due on September 23, 1997.

If you wish to file comments on the draft EIS, send an original and 10 copies to: Vernon A. Williams, Secretary, Surface Transportation Board, Suite 700, 1925 K Street, NW, Washington, DC 20423. Mark the lower left corner of the envelope: Attention: Michael Dalton, Environmental Comments, Finance Docket No. 32530.

**FOR FURTHER INFORMATION CONTACT:** Michael Dalton, Section of Environmental Analysis, Room 528, Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423; phone number (202) 565–1530. TDD for the hearing impaired: (202) 565–1695.

**SUPPLEMENTARY INFORMATION:** Because the Board served the draft EIS on the parties of record on July 16, 1997 and the 45-day comment period did not begin until the Environmental Protection Agency (EPA) published the Notice of EIS Availability in the **Federal Register** on July 25, 1997, the actual total time between the service and distribution of the draft EIS and the end of the comment period is 55 days. The additional 15-day extension results in a 70-day comment period.

In addition, CEQ guidelines and the Board's environmental rules do not require a public hearing to solicit comments on a draft EIS. SEA believes that the submission of written comments, which is the Board's normal procedure, is sufficient to develop the record in this case. In this regard, the Board has found that written comments provide necessary and effective written documentation of environmental issues and concerns for our public record.

By the Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 97–23462 Filed 9–3–97; 8:45 am]

BILLING CODE 4915–00–P

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### Fee Schedule for the Service to the TREASURY DIRECT Investor of Selling Securities Held in TREASURY DIRECT Accounts in the Secondary Market

**AGENCY:** Bureau of the Public Debt, Fiscal Service, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury is announcing the schedule of fees to be charged to the TREASURY DIRECT investor for the service of selling unmatured securities held in TREASURY DIRECT in the secondary market. The service will be provided by a designated Federal Reserve Bank acting as fiscal agent of the United States.

**EFFECTIVE DATE:** September 4, 1997.

**FOR FURTHER INFORMATION CONTACT:** Richard Koch, Director, Division of Customer Service, Bureau of the Public Debt, (304) 480–6748; Susan Klimas, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, (304) 480–5192; Edward C. Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, (304) 480–5192.

**SUPPLEMENTARY INFORMATION:** On September 4, 1997, the Department of the Treasury amended the general regulations governing book-entry Treasury Bonds, Notes and Bills to offer TREASURY DIRECT investors the service of selling their unmatured marketable securities held in their TREASURY DIRECT accounts in the secondary market. At the request of the investor, the securities will be transferred to the designated Federal Reserve Bank, acting as fiscal agent of the United States, to be sold on behalf of the investor.

A transaction fee will be charged for each security sold on behalf of the investor. For purposes of computing the transaction fee, a security is considered as any amount within a TREASURY DIRECT account which is identified by a separate CUSIP number. Thus, if an investor has several holdings within a TREASURY DIRECT account of varying amounts, but all are identified by the same CUSIP number, and all are transferred in one transaction, only one transaction fee will be charged, since the holdings are considered as one security. If the investor has several holdings within a TREASURY DIRECT account, each with a different CUSIP number, then a separate transaction fee will be charged for each holding, as each holding with a separate CUSIP number is considered a separate security. If an investor has two TREASURY DIRECT accounts, and each account has a security with a CUSIP identical to the security in the other account, then a separate transaction fee will be charged for each security, since each security within each account is considered a separate security. If the Federal Reserve Bank is unable to complete the sale of the security, no transaction fee will be charged. The transaction fee will be deducted from the settlement amount by the Federal Reserve Bank.

#### Schedule of Fees for the Sale of Securities in the Secondary Market

The fee schedule for the sale of an unmatured security held in TREASURY DIRECT by the designated Federal Reserve Bank in the secondary market on behalf of the investor is as follows: a fee of $34 will be charged for each security held in a TREASURY DIRECT account which is sold in the secondary market on behalf of the investor by the designated Federal Reserve Bank acting as fiscal agent of the United States.

Dated: August 29, 1997.

**Richard L. Gregg,**

*Commissioner of the Public Debt.*

[FR Doc. 97–23570 Filed 9–3–97; 8:45 am]

BILLING CODE 4810–39–M

## UNITED STATES INFORMATION AGENCY

### Training Programs for Slovakia, Slovenia, Bosnia/Croatia/Serbia, the Baltics and Poland

**ACTION:** Request for proposals.

**SUMMARY:** The Office of Citizen Exchanges of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop training programs that link their international exchange interests in Central and Eastern Europe with counterpart institutions/groups in ways supportive of the aims of the Bureau of Educational and Cultural Affairs. Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States

and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program cited above is provided through the Fulbright-Hays Act.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

*Announcement Title and Number:* All communications with USIA concerning this RFP should refer to the announcement's title and reference number E/P–98–04.

*Deadline for Proposals:* All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, November 14, 1997. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted. Grants may begin on March 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** The Office of Citizens Exchange, E/PE, Room 220, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547, telephone: 202–619–5319; fax: 202–619–4350; Internet Address: {cminer@usia.gov} to request a Solicitation Package containing more detailed forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

*To Download a Solicitation Package Via Internet:* The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

*To Receive a Solicitation Package Via Fax on Demand:* The entire Solicitation Package may be received via the Bureau's ''Grants Information Fax on Demand System'', which is accessed by calling 202/401–7616. Please request a ''Catalog'' of available documents and order numbers when first entering the system.

Please specify USIA Program Officer Christina Miner on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

*Submissions:* Applicants must follow all instructions given in the Solicitation Package. The original and ten copies of the application should be sent to: U.S. Information Agency, Ref.: E/P–98–04, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

## Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy'', USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

**SUPPLEMENTARY INFORMATION:** Diminished resources have forced USIA to limit the scope of this announcement; regrettably, proposals for countries and themes other than the ones described below will not be eligible for consideration.

USIA is interested in proposals in the following areas and countries:

*Slovakia:* Projects should focus on the free-flow of information for Slovak libraries. Objectives of the project would be to introduce the practical use of new technologies and new library services for citizens. There is particular interest in assisting the parliamentary library to become a source of information about the parliament and lawmaking for the whole country and not just a research service for its members. In addition, Slovak partners should include the librarian's association and leading university and public libraries, particularly Bratislava's University Library. Proposals for less than $110,000 will receive preference. Costs of up to $10,000 may be used to cover equipment purchases and subscriptions to the Internet.

*Slovenia:* Projects should focus on municipal administration and devolving greater administrative power from the federal level to municipalities. The first phase of the project should consist of in-country workshops for mayors from many of the 147 counties or ''opcina'' in Slovenia. Workshop topics could include how local governments raise revenue, economic development for municipalities and the provision of municipal services. During the second phase of the project six to eight mayors should participate in a U.S. study tour which would include site visits to municipal governments in small to medium sized cities. Proposals for less than $75,000 will receive preference.

*Bosnia/Croatia/Serbia:* Proposals for this multi-country project should focus on the themes of diversity in a democracy, the protection of minority rights, and human rights law. The first phase of the project would consist of in-country workshops held in Bosnia, Croatia, and Serbia for 20 to 30 participants in each country. The workshops may be held outside of the capital cities. Phase two should be a U.S. program for approximately three participants from each country. Proposals for less than $75,000 will be given preference.

*Estonia/Latvia/Lithuania:* Proposals for this multi-country project should focus on intellectual property rights (IPR), with a special concentration on copyright protection for films/videos, music recordings, computer software, and similar products subject to piracy. Participants should include: (1) Government officials responsible both for drafting and enforcing laws and regulations; (2) lawyers, judges and distributors or licensing organizations involved with presenting and deciding infringement cases; and (3) press and media, to engage them in raising public consciousness about IPR protection. The first phase of the project would bring U.S. project staff to Estonia, Latvia and

Lithuania in order to become familiar with the particular legal regime and market environment in each country and to meet with the principal players in the copyright enforcement arena. Project staff would also familiarize themselves with the efforts of organizations such as the WTO, EU Phare, WIPO, and embassy elements that are already working in the area.

The second phase of the project would include one to two day training workshops in each country. The workshops would consist of seminars for customs officers on techniques for identifying and seizing infringing goods; for lawyers and judges on the elements of proving infringement, damages and remedies allowed by statute; and the licensees, copyright owners and media representatives on informing the public about the value of protecting copyrights. A final workshop component should bring the above groups of people together to facilitate understanding of the full scope of the issue and to develop an effective solution to issues of piracy. The third phase of the project would be a U.S. training program for a selected group of participants. Participants would receive first-hand exposure to piracy investigation techniques, customs inspection practices, licensing policies of collective rights organizations, preparation and presentation of a case in court, public relations strategies and related IPR enforcement and protection endeavors. Projects for less than $100,000 will receive preference.

*Poland:* Projects should consist of two parts. Part one should focus on intellectual property rights and copyright law. Participants should be representatives of both large and small Polish presses. The second part should focus on economic survival techniques for small press operations. Participants should include representatives of Poland's small, serious presses. The project goals should be to foster better respect of intellectual property rights in Poland and to help serious, small presses survive in Poland's free market economy. Projects for less than $90,000 will receive preference.

Exchange and training programs supported by institutional grants should operate at two levels: They should enhance institutional relationships; and they should offer practical and comparative information to individuals to assist them with their professional responsibilities. Strong proposals usually have the following characteristics: An existing partner relationship between an American organization and a host-country institution; a proven track record of conducting program activity; cost sharing from American or in-country sources, including donations of air fares, hotel and housing costs; experienced staff with language facility; and a clear, convincing plan showing how permanent results will be accomplished as a result of the activity funded by the grant. USIA wants to see tangible forms of time and money contributed to the project by the prospective grantee institution, as well as funding from third party sources.

**Note:** Research projects or projects limited to technical issues are not eligible for support nor are film festivals or exhibits. Exchange programs for students or faculty or proposals that request support for the development of university curricula or for degree-based programs are also ineligible under this RFP. Proposals to link university departments or to exchange faculty and/or students are funded by USIA's Office of Academic Programs (E/A) under the University Affiliation Program and should not be submitted in response to this RFP.

## Guidelines

1. All grant proposals must clearly describe the type of persons who will participate in the program as well as the process by which participants will be selected. In the selection of all foreign participants, USIA and USIS posts retain the right to nominate participants and to approve or reject participants recommended by the program institution. Programs must also comply with J–1 visa regulations.

2. Programs that include internships in the U.S. should provide letters tentatively committing host institutions to support the internships. Letters of commitment from the hosts of study tour site visits should also be included, if applicable.

3. Applicants are encouraged to consult with USIS offices regarding program content and partner institutions before submitting proposals. Award-receiving applicants will be expected to maintain contact with the USIS post throughout the grant period.

## Proposed Budget

Please refer to the Solicitation Package for complete budget instructions. Applicants must submit a detailed line item budget based on specific instructions in the Program and Budget Guidelines of Proposal Submission Instructions. Proposals for the following amounts will receive preference:

*Slovakia:* $110,000.
*Slovenia:* $75,000.
*Croatia/Bosnia/Serbia:* $75,000.
*Estonia/Latvia/Lithuania:* $100,000.
*Poland:* $90,000.

Proposals with strong cost-sharing will be given priority.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a breakdown reflecting both the administrative budget and the program budget. For further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding.

Allowable costs for the program include the following:

(1) International and domestic air fares; visas; transit costs; ground transportation costs.

(2) Per Diem. For the U.S. program, organizations have the option of using a flat $140/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S., the published Federal per diem rates must be used.

**Note:** U.S. escorting staff must use the published Federal per diem rates, not the flat rate.

(3) Interpreters. If needed, interpreters for the U.S. program are provided by the U.S. State Department Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $140/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

(4) Book and cultural allowance. Participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. staff do not get these benefits.

(5) Consultants. May be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

(6) Room rental, which generally should not exceed $250 per day.

(7) Materials development. Proposals may contain costs to purchase, develop, and translate materials for participants.

(8) One working meal per project. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one.

(9) All USIA-funded delegates will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

(10) Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package.

**Review Process**

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package.

Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of East European and Newly Independent States Affairs and the USIA post overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

**Review Criteria**

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

*1. Program planning ability to achieve objectives:* Program objectives should be stated clearly and precisely and should reflect the applicant's expertise in the subject area and the region. Objectives should respond to the priority topics in this announcement and should relate to the current conditions in each of the countries. They should be reasonable and attainable. A detailed work plan should explain step by step how objectives will be achieved. The substance of seminars, presentations, consulting, internships, and itineraries should be spelled out in detail. A timetable indicating when major program tasks will be undertaken should be provided. Responsibilities of in-country partners should be clearly described.

*2. Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

*3. Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. The narrative should demonstrate proven ability to handle logistics. Proposal should reflect the institution's expertise in the subject area and knowledge of the country. Proposals should demonstrate the institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

*4. Project Evaluation:* USIA is results-oriented. Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire and/or plan for use of another measurement technique (such as focus group) to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

*5. Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events.

*6. Cost-effectiveness/cost sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible.

All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

**Notice**

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements. Organizations will be expected to cooperate with USIA in evaluating their programs under the principles of the Government Performance and Results Act of 1993, which requires federal agencies to measure and report on the results of their programs and activities.

**Notification**

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: September 28, 1997.

**James D. Whitten,**

*Acting Deputy Associate Director for Educational and Cultural Affairs.*

[FR Doc. 97–23432 Filed 9–3–97; 8:45 am]

BILLING CODE 8230–01–M

# Corrections

**Federal Register**

Vol. 62, No. 171

Thursday, September 4, 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 THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 20

**RIN 1018-AE14**

### Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations

*Correction*

In proposed rule document 97–22535, published in Part IV in the issue of Monday, August 25, 1997, the running head should be corrected to read as follows:

**Federal Register** / Vol. 62, No. 164 / Monday, August 25, 1997 / Proposed Rules

BILLING CODE 1505-01-D

federal register

Thursday
September 4, 1997

# Part II

# Environmental Protection Agency

**40 FR Part 63**

**National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production; Proposed Rule**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

**[AD–FRL–5879–7]**

**RIN 2060–AE81**

## National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production

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

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

**SUMMARY:** The proposed rule will reduce emissions of hazardous air pollutants (HAP) from existing and new facilities that manufacture polyether polyols and are located at major source plant sites. Polyether polyols are used to make a variety of products. Urethane grade polyether polyols are used as raw material in the production of polyurethanes, including slabstock and molded flexible foams, rigid foams, and other polyurethanes including microcellular products, surface coatings, elastomers, fibers, adhesives, and sealants. Nonurethane polyether polyols are used as surfactants, lubricants, degreasing agents, hydraulic fluids, cosmetics, and pharmaceuticals.

In the production of these polyols, HAP are used primarily as reactants or extraction solvents. The HAP emitted by the facilities covered by this proposed rule include ethylene oxide (EO), propylene oxide (PO), hexane, toluene, and incidental emissions of several other HAP. Some of these pollutants are considered to be probable human carcinogens when inhaled and all can cause toxic effects following exposure. The proposed rule is estimated to reduce emissions of these pollutants by 1,810 Mg/yr. Because all of the pollutants are also volatile organic compounds (VOC), which are precursors to ambient ozone, the proposed rule would aid in the reduction of tropospheric ozone.

The emission reductions achieved by these standards when combined with the emission reductions achieved by other similar standards, will achieve the primary goal of the Clean Air Act, which is to ''enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.'' The intent of this rule is to protect the public by requiring the maximum degree of reduction in emissions of HAP from new and existing major sources, taking into consideration the cost of achieving such emission reduction, and any non-air quality, health and environmental impacts, and energy requirements.

**DATES:** *Comments.* Comments must be received on or before November 3, 1997.

*Public Hearing.* If anyone contacts EPA requesting to speak at a public hearing by September 25, 1997, a public hearing will be held in Research Triangle Park, North Carolina on October 6, 1997, beginning at 10 a.m. Persons interested in attending the hearing should call Ms. Maria Noell at (919) 541–5607 to verify that a hearing will be held.

*Request to Speak at Hearing.* Persons wishing to present oral testimony must contact EPA by September 25, 1997 by contacting Ms. Maria Noell, Organic Chemicals Group (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5607.

**ADDRESSES:** *Comments.* Comments should be submitted (in duplicate, if possible) to the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–96–38, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed under the **FOR FURTHER INFORMATION CONTACT** section. Comments and data may also be submitted electronically by following the instructions provided in the **SUPPLEMENTARY INFORMATION** section. No Confidential Business Information (CBI) should be submitted through electronic mail.

*Public Hearing.* The public hearing, if requested, will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina.

*Docket.* The official record for this rulemaking, as well as the public version, has been established under Docket No. A–96–38 (including comments and data submitted electronically as described above). A public version of this record, including printed, paper versions of electronic comments and data, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking docket is located at the address in the **ADDRESSES** section above. Alternatively, a docket index, as well as individual items contained within the docket, may be obtained by calling (202) 260–7548. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** For information concerning the proposed rule, contact Mr. David Svendsgaard at (919) 541–2380, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

**SUPPLEMENTARY INFORMATION:** *Electronic Filing.* Electronic comments can be sent directly to the EPA at: a-and-r-docket@epamail.epa.gov. Electronic comments and data 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 or 6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–96–38. Electronic comments may be filed online at many Federal Depository Libraries.

*Regulated entities.* Entities potentially regulated by this action upon promulgation are polyether polyols production facilities. Regulated categories and entities include:

| Category | Examples of regulated entities |
|---|---|
| Industry ..... | Producers of polyether polyols. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.1420 of the proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

In addition to its inclusion in this notice, the regulatory text is available in Docket No. A–96–38, or from the EPA contact person designated in this notice. The proposed regulatory language is also available on the Technology Transfer Network (TTN) on the EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a telephone call. Dial (919) 541–5742 for up to a 14,400 bps modem. For further information, call the TTN HELP line at (919) 541–5384, from 1 p.m. to 5 p.m., Monday through Friday, or access the TTN Web site at: http://ttnwww.rtpnc.epa.gov.

The Basis and Purpose Document, which contains the rationale for the various components of the standard, is available in the docket and on the TTN. This document is entitled Hazardous Air Pollutant Emissions from the Production of Polyether Polyols—Basis and Purpose Document for Proposed Standards, May 1997, and has been assigned document number EPA–453/R–97–003a.

Other materials related to this rulemaking are also available for review in the docket. Some of the technical memoranda have been compiled into a single document, the Supplementary Information Document (SID), to allow interested parties more convenient access to the information. The SID is entitled Hazardous Air Pollutant Emissions from the Production of Polyether Polyols—Supplementary Information Document for Proposed Standards, May 1997, and has been assigned document number EPA–453/R–97–003c.

The information presented in this preamble is organized as follows:

I. List of Source Categories
II. A Summary of Considerations Made in Developing This Standard
III. Authority for National Emission Standards for Hazardous Air Pollutants Decision Process
A. Source of Authority for NESHAP Development
B. Criteria for Development of NESHAP
IV. Summary of Proposed Standard
A. Source Category to be Regulated
B. Relationship to Other Rules
C. Pollutants to be Regulated
D. Affected Emission Points
E. Format of the Standards
F. Proposed Standards
G. Recordkeeping and Reporting Requirements
V. Discussion of Major Issues
VI. Summary of Environmental, Energy, Cost and Economic Impacts
A. Facilities Affected by These NESHAP
B. Primary Air Impacts
C. Other Environmental Impacts
D. Energy Impacts
E. Cost Impacts
F. Economic Impacts
VII. Administrative Requirements
A. Public Hearing
B. Docket
C. Executive Order 12866
D. Enhancing the Intergovernmental Partnership Under Executive Order 12875
E. Paperwork Reduction Act
F. Regulatory Flexibility Act
G. Unfunded Mandates Reform Act
H. Miscellaneous

## I. List of Source Categories

The EPA identified a total of approximately 84 plant sites producing polyether polyols. Of the 84 facilities, 78 are considered in the analysis supporting this proposed rule, and are believed to be major sources according to the 1990 Amendments criterion of having the potential to emit 10 tons per year of any one HAP or 25 tons per year of combined HAP. The proposed rule would apply to all major sources that produce polyether polyols. Area sources would not be subject to this proposed rule.

In developing the background information to support the proposed rule, the EPA decided it was appropriate to subcategorize the source category for purposes of analyzing the maximum achievable control technology (MACT) floors and regulatory alternatives. The subcategories are: Polyether polyols made from the polymerization of epoxides; and polyether polyols made from the polymerization of tetrahydrofuran (THF). (An ''epoxide'' is a chemical compound consisting of a three-membered cyclic ether. Ethylene oxide and propylene oxide are the only epoxides that are listed as HAP under section 112(b) of the Clean Air Act.) Subcategorization was necessary due to the distinctively different nature of the epoxide and THF processes and its effect on the applicability of controls. One noteworthy distinction between the two subcategories is that the first group, polyols made with epoxides, uses a HAP as the monomer, whereas the second group does not use a HAP monomer. Additionally, the first group performs the reaction primarily on a batch basis, while the second group, polyols made with THF, performs the reaction on a continuous basis. Although the level of the proposed standard is identical for wastewater, storage vessels, and equipment leaks, the technical analyses were conducted separately for each subcategory to determine the appropriate level of the standard.

The Agency obtained data from facilities that make polyether products by polymerizing a compound having multiple reactive hydrogen atoms, resulting in the formation of a ''polyol,'' and from facilities that make polyethers by polymerizing a compound with a single reactive hydrogen, which forms a ''mono-ol.'' The Agency then investigated the distinctions between the production units and the emissions controls for products from these two groups. The Agency found no fundamental difference between the processes, the chemistry, the emissions, or the types of control equipment. Further, many producers use the same process equipment to produce polyols and mono-ols, yet they generically refer to both types of products as ''polyols.'' Therefore, for the purposes of this regulation, the Agency intends the term ''polyether polyols'' to represent both polyether polyols and polyether mono-ols.

## II. Summary of Considerations Made in Developing This Standard

The Clean Air Act was created in part ''to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population'' (Clean Air Act, section 101(b)(1)). Available emission data, collected during the development of these proposed National Emission Standards for Hazardous Air Pollutants (NESHAP), show that the primary pollutants emitted by polyether polyols production that are listed in Section 112(b)(1) are ethylene oxide (EO), propylene oxide (PO), hexane and toluene and other incidental HAP. The proposed emission limits are projected to reduce HAP emissions by 47 percent from both subcategories. All reported HAP from polyether polyol producers are volatile organic compounds (VOC), therefore, this regulation is projected to reduce VOC emissions by 1,810 megagram per year (Mg/yr). The following is a summary of the potential health effects associated with exposure to these HAP that would be reduced by the standard.

Acute (short-term) exposure to high concentration of ethylene oxide in air can cause nausea, vomiting, neurological disorders, and even death. Lower concentrations may irritate the eyes, skin, and lungs. Chronic (long-term) exposure to EO irritates the eyes, skin, and mucous membranes and impairs central nervous system (CNS) function. Inhalation exposure may increase miscarriage rates in workers, and animal studies have shown adverse reproductive effects in males and females. Developmental effects, such as malformations and decreased fetal weight have been noted in animals. Long-term exposure to high levels of EO (c. 7000 ppm or more) may lead to cataracts in humans. Limited data exist suggesting elevated rates of leukemia, stomach and pancreatic cancer, and Hodgkin's disease in workers exposed to EO by inhalation; animal studies indicate that inhalation of EO causes lung and uterine tumors. EPA has classified EO as a Group B1 (probable) human carcinogen.

Acute exposure of workers to PO has been linked to CNS effects such as headache, weakness, loss or coordination, and coma. Propylene oxide also irritates the eyes and respiratory tract, causing coughing and difficulty in breathing, possibly leading

to pulmonary edema and pneumonia. No adverse health effects from chronic PO exposure in humans have been reported. Chronic animal studies have reported neurological disorders and inflammatory lesions of the nasal cavity, trachea, and lungs. EPA has classified PO as a Group B2 (probable) human carcinogen on the basis of nasal tumors observed in rodents exposed by inhalation.

Acute inhalation of toluene by humans may cause CNS effects such as fatigue, headache, and nausea, as well as irregular heartbeat. Repeated exposure to high concentrations may induce loss of coordination, tremors, decreased brain size, and involuntary eye movements, and may impair speech, hearing, and vision. Chronic exposure to toluene in humans has also been reported to irritate the skin, eyes, and respiratory tract, and to cause dizziness, headaches, and difficulty with sleep. Children exposed to toluene before birth may suffer nervous system dysfunction, attention deficits, and minor face and limb defects. Inhalation of toluene by pregnant women may increase the risk of spontaneous abortion. Because data are inadequate to assess potential cancer risk the EPA has classified toluene in Group D, not classifiable as to human carcinogenicity.

Acute exposure by humans to high levels of hexane causes mild CNS depression and irritation of the skin and mucous membranes. Nervous system effects include dizziness, nausea, and headaches. Chronic exposure to hexane is associated with numbness in the extremities, muscular weakness, blurred vision, headache, and fatigue. No information is available on reproductive or developmental effects of hexane exposure in humans, but inhalation studies have reported testicular damage. Because data are inadequate to assess potential cancer risk, the EPA has classified hexane in Group D, not classifiable as to human carcinogenicity.

The effects of these HAP vary in severity based on the level and length of exposure and are influenced by source-specific characteristics such as emission rates and local meteorological conditions. Health impacts are also dependent on multiple factors that affect human variability such as genetics, age, health status (e.g., presence of pre-existing disease) and lifestyle. The EPA does not have sufficient detailed data to conduct an intensive analysis to determine the actual population exposures to the HAP and resulting health effects around these facilities. This rule is technology-based; i.e., based on maximum achievable control technology. In addition, it is not a ''significant'' rule as defined by Executive Order 12866, and a benefits analysis is not required. Considering these factors, the EPA chose not to expend the resources required to collect additional data and conduct an intensive health impacts analysis. Therefore, the EPA does not know the extent to which the adverse health effects described above occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, the proposed standard will substantially reduce emissions and exposures to the level achievable with MACT. The seriousness of risks remaining after impositions of the final MACT standards will be examined at a later date, as provided for under section 112(f) of the Clean Air Act.

The alternatives considered in the development of this regulation, including those alternatives selected as standards for new and existing polyether polyols production facilities, are based on process and emission data received from a questionnaire sent to urethane and nonurethane polyether polyols producing facilities, and on additional information submitted by the Society of the Plastics Industry (SPI). The EPA met with industry and State representatives several times to discuss these data. In addition, facilities and State regulatory authorities had the opportunity to comment on draft versions of the MACT regulatory provisions, and to provide additional information. Several facilities and States did provide comments, and these comments were considered in preparing the proposed standard.

The proposed standards give existing facilities three years from the date of promulgation to comply. This is the maximum amount of time allowed under the Clean Air Act. New sources are required to comply with the requirements of the standards upon startup. The number of existing plants considered to be major sources, and therefore affected by this rule, is estimated to be 78.

Included in the proposed rule are methods for determining initial compliance, as well as monitoring, recordkeeping, and reporting requirements. All of these components are necessary to ensure that sources will comply with the standards both initially and over time. However, the EPA has made every effort to simplify the requirements in the rule. The Agency has also attempted to maintain consistency with existing regulations by either incorporating applicable text from existing regulations or referencing existing regulations, depending on which method would be less confusing for a given situation.

This rule introduces the concept of ''extended cookout,'' which is a pollution prevention technique that has been employed by some industry members as an alternative to installing traditional add-on control devices. The EPA worked with the industry and State agency representatives to delineate requirements for demonstrating compliance from the use of extended cookout.

As described in the Basis and Purpose document, regulatory alternatives were considered that included a combination of requirements equal to, and above, the minimum level of control allowed by the Clean Air Act (i.e., the ''floor''—see section III.B.). Cost-effectiveness was a factor considered in evaluating options above the floor; in cases where options more stringent than the floor were selected, they were judged to have a reasonable cost effectiveness. Non-air environmental and health factors, as well as energy impacts were also considered for the proposed standards.

Representatives from other interested EPA offices and programs, as well as representatives from State regulatory agencies, are included in the regulatory development process. Therefore, the EPA believes that the implications to other EPA offices and programs have been adequately considered during the development of these standards.

## III. Authority for National Emission Standards for Hazardous Air Pollutants Decision Process

### *A. Source of Authority for NESHAP Development*

Section 112 of the 1990 Amendments gives the EPA the authority to establish national standards to reduce air emissions from sources that emit one or more HAP. Section 112(b) contains a list of HAP to be regulated by NESHAP. Section 112(c)directs the EPA to use this pollutant list to develop and publish a list of source categories for which NESHAP will be developed. The EPA must list all known source categories and subcategories of ''major sources'' (defined below) that emit one or more of the listed HAP. A major source is defined in section 112(a) as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit in the aggregate, considering controls, 10 tons per year or more of any one HAP or 25 tons per year or more of any combination of HAP. This list of source categories was published in the **Federal**

**Register** on July 16, 1992 (57 FR 31576) and included polyether polyols.

*B. Criteria for Development of NESHAP*

The NESHAP are to be developed to control HAP emissions from both new and existing sources according to the statutory directives set out in section 112(d) of the 1990 Amendments. The statute requires the standards to reflect the maximum degree of reduction in emissions of HAP that is achievable for new or existing sources. This control level is referred to as the MACT.

The MACT ''floor'' is the least stringent level allowed for MACT standards. For new sources, the standards for a source category or subcategory ''shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator'' (section 112(d)(3)). Existing source standards shall be no less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources for categories and subcategories with 30 or more sources or the average emission limitation achieved by the best performing five sources for categories or subcategories with fewer than 30 sources (section 112(d)(3)). These two minimum levels of control define the MACT floor for new and existing sources. When the selection of MACT considers control levels more stringent than the MACT floor described above, its selection must reflect consideration of the cost of achieving the emission reduction, any non-air quality, health, and environmental impacts, and energy requirements.

## IV. Summary of Proposed Standards

This section provides a summary of the proposed regulation. The full regulatory text is printed in today's notice and is also available in Docket No. A–96–38, directly from the EPA, or from the Technology Transfer Network (TTN) on the EPA's electronic bulletin boards. More information on how to obtain a copy of the proposed regulation is provided at the beginning of the **SUPPLEMENTARY INFORMATION** section of this document.

*A. Source Category To Be Regulated*

These proposed standards would regulate HAP emissions from polyether polyols manufacturing process units (PMPU) provided that a PMPU is a major source or is located at a plant site that is a major source. Polyether polyols are defined as the products formed by the reaction of ethylene oxide (EO), propylene oxide (PO), or other cyclic ethers with compounds having one or more reactive hydrogens (i.e., a hydrogen atom bonded to nitrogen, sulfur, oxygen, phosphorous, etc.). This definition excludes materials regulated as glycols or glycol ethers under the Hazardous Organic NESHAP (HON). For the proposed rule, an affected source is defined as each group of one or more PMPU, that is manufacturing polyether polyols and that is located at a plant site that is a major source.

If a plant site with an existing affected source producing a polyether polyol as its primary product constructs a new PMPU also producing a polyether polyol as its primary product, the new PMPU is a new affected source if the new PMPU has the potential to emit more than 10 tons per year of a single HAP, or 25 tons per year of all HAP. In this situation, the plant site would have an existing affected source and a new source. Each subsequent new PMPU with potential HAP emissions above the levels cited above would be a separate new affected source.

New affected sources are also created when a PMPU is constructed at a major source plant site where the polyether polyol product was not previously produced (with no consideration of the potential HAP emissions from the PMPU). Another instance where a new affected source is created is if a new PMPU is constructed at a new plant site (i.e., green field site) that will be a major source. The final manner in which a new affected source is created is when an existing affected source undergoes reconstruction, thus making the previous existing source subject to new source standards.

*B. Relationship to Other Rules*

Sources subject to the proposed rule are also subject to other existing rules. In some cases, the proposed rule supersedes existing rules and affected sources are no longer required to comply with the existing rule. In other cases, there is no conflict between the existing rule and the proposed rule, and in these cases, the affected source must comply with both rules.

Sources subject to the proposed rule may have storage vessels subject to the NSPS for Volatile Organic Liquid Storage Vessels (40 CFR part 60, subpart Kb). After the compliance date for this rule, such storage vessels are only subject to this rule and are no longer required to comply with subpart Kb.

Sources subject to the proposed rule may have cooling towers subject to the NESHAP for Industrial Cooling Towers (40 CFR part 63, subpart Q). There is no conflict between the requirements of subpart Q and the proposed rule. Therefore, sources subject to both rules must comply with both rules.

*C. Pollutants To Be Regulated*

The source categories covered by the proposed rule emit a variety of HAP. The most significant emissions are of the following HAP: EO, PO, hexane, and toluene. These proposed standards would regulate emissions of these compounds, as well as all other organic HAP that are emitted during the production of polyether polyols.

*D. Affected Emission Points*

Emissions from the following types of emission points (i.e., emission source types) are being covered by the proposed rule: Storage vessels, process vents, equipment leaks, and wastewater operations.

*E. Format of the Standards*

As discussed in more detail in Section IV.F, the proposed standards, the HON (subparts F, G, and H of 40 CFR part 63) and the Group I Polymers and Resins NESHAP (subpart U of 40 CFR part 63) provided a basis for selection of the proposed formats. In most instances, the format of these proposed standards is the same as those found in the HON and/or the Group I Polymers and Resins NESHAP. The following paragraphs summarize the selected formats, including those that are different from the HON and/or the Group I Polymers and Resins NESHAP. The formats and their basis for selection are discussed in more detail in the Basis and Purpose Document for this proposed regulation.

For storage vessels for both subcategories, the format of these proposed standards is dependent on the method selected to comply with the standards. If tank improvements (e.g., internal or external floating roofs with proper seals and fittings) are selected, the format is a combination of design, equipment, work practice, and operational standards. If a closed vent system and combustion, recovery, or recapture device are selected, the format is a combination of design and equipment standards.

For process vents that make polyether polyols using epoxides or THF, the format of these proposed standards is a percent aggregate emission reduction.

For equipment leaks from both subcategories, these proposed standards incorporate several formats: Equipment, design, lowest allowable performance levels (e.g., maximum allowable percent leaking valves), work practices, and operational practices. Different formats are necessary for different types of equipment, available control techniques, and applicability of the

measurement method. In addition, a work practice standard is adopted for equipment leaks resulting in the emission of HAP from cooling towers at all facilities producing polyether polyols. This standard requires the leak detection and repair of leaks of HAP into cooling tower water.

For wastewater streams requiring control from both subcategories of the source category, these proposed standards incorporate several formats: Equipment, operational, work practice, and emission standards. The particular format selected depends on which portion of the wastewater stream is involved. For transport and handling equipment, the selected format is a combination of equipment standards and work practices. For the reduction of HAP from the wastewater stream itself, several alternative formats are incorporated, including five alternative numerical emission limit formats (overall percent reduction for total organic HAP, individual HAP percent reduction, effluent concentration limit for total organic HAP, individual organic HAP effluent concentration limits, and mass removal for HAP) and equipment design and operation standard for a steam stripper. For vapor recovery and destruction devices other than flares, the format is a weight percent reduction. For flares, the format is a combination of equipment and operating specifications.

*F. Proposed Standards*

The standards being proposed for the following emission sources at new and existing facilities have the same applicability (i.e., group determination criteria) and control requirements as those promulgated for the corresponding emission source types at existing sources subject to the HON (Subpart F for general requirements, Subpart G for process vents, wastewater and storage vessels, and subpart H for equipment leaks): storage vessels; process vents from polyether polyol production with THF; process vents from continuous unit operations that emit nonepoxide HAP while making or modifying the polyol; equipment leaks, and wastewater. The requirements for process vents that emit nonepoxide HAP from making or modifying the product are based on the process vent sections of subpart G (for vents from continuous unit operations) and subpart U (for vents from batch unit operations), except that the Group 1/Group 2 criteria are applied to the combination of process vents associated with the use of nonepoxide HAP to make or modify the product, rather than on individual vents. The process vent provisions for epoxide emission and nonepoxide HAP emissions from catalyst extraction require a specified emission reduction for the combination of all process vent streams at an affected source.

Tables 1 and 2 summarize the level of control being proposed for new and existing sources, respectively. Where the applicability criteria and required level of control is the same as the HON, this is indicated in the table as ''HON.'' When the table lists ''epoxides'' it is referring to EO and PO, the HAP monomers used in the polyether polyols process. ''Nonepoxide HAP'' refers to organic HAP other than EO and PO that are used in this process. The following sections describe these proposed standards in more detail, by emission source type. The rationale for the selection of the proposed standards is contained in the Basis and Purpose Document. The Basis and Purpose Document is available as described in the **SUPPLEMENTARY INFORMATION** section of this Preamble.

TABLE 1.—SUMMARY OF LEVEL OF PROPOSED STANDARDS FOR EXISTING SOURCES

| Source, category, subcategory | Emission sources | | | | | |
|---|---|---|---|---|---|---|
| | Storage | Process vents [a] | | | Waste water | Equip; leaks |
| Polyether Polyols made with THF. | HON ..... | The Group 1/Group 2 criteria are from § 63.115(d)(1) or (d)(2), and (d)(3) of subpart G. If the collection of vents is Group 1, the control requirement is 98% emission reduction | | | HON ..... | HON |
| | | Epoxides | Nonepoxide HAP in making or modifying the product | Nonepoxide HAP in catalyst extraction | | |
| Polyether Polyols made with Epoxides. | HON ..... | 98 percent aggregate emission reduction. | For process vents from batch unit operations, the Group 1/Group 2 criteria are from 40 CFR 63 Subpart U. If the collection of vents is Group 1, the control requirement is a 90 percent aggregate emission reduction.<br>For process vents from continuous unit operations, the Group 1/Group 2 criteria are from § 63.115(d)(1) or (d)(2), and (d)(3) of subpart G. If the collection of vents is Group 1, the control requirement is a 98 percent aggregate emission reduction. | 90 percent aggregate emission reduction. | HON ..... | HON |

[a] For Group1/Group 2 determination, the appropriate criteria are applied to the combination of all applicable process vents and not to individual process vents.

TABLE 2.—SUMMARY OF LEVEL OF PROPOSED STANDARDS FOR NEW SOURCES

| Source, category, subcategory | Emission sources | | | |
|---|---|---|---|---|
| | Storage | Process vents [a] | Waste water | Equip; leaks |
| Polyether Polyols made with THF. | HON ..... | The Group 1/Group 2 criteria are from § 63.115(d)(1) or (d)(2), and (d)(3) of subpart G. If the collection of vents is Group 1, the control requirement is 98% emission reduction | HON ..... | HON |

TABLE 2.—SUMMARY OF LEVEL OF PROPOSED STANDARDS FOR NEW SOURCES—Continued

| | | | | | | |
|---|---|---|---|---|---|---|
| | | Epoxides | Nonepoxide HAP in making or modifying the product | Nonepoxide HAP in catalyst extraction | | |
| Polyether Polyols made with Epoxides. | HON ..... | 99.9 percent aggregate emission reduction. | For process vents from batch unit operations, the Group 1/Group 2 criteria are from 40 CFR 63 Subpart U. If the collection of vents is Group 1, the control requirement is a 90 percent aggregate emission reduction.<br>For process vents from continuous unit operations, the Group 1/Group 2 criteria are from § 63.115(d)(1) or (d)(2), and (d)(3) of subpart G. If the collection of vents is Group 1, the control requirement is a 98 percent aggregate emission reduction. | 98 percent aggregate emission reduction. | HON ..... | HON |

[a] For Group1/Group 2 determination, the appropriate criteria are applied to the combination of all applicable process vents and not to individual process vents.

1. Storage Vessels

For polyether polyols made with either epoxides or THF, the storage vessel requirements at new and existing affected sources are identical to the HON storage vessel requirements in subpart G for existing sources. For this proposed rule ''storage vessel'' is a tank or other vessel that is associated with a PMPU and that stores a liquid containing one or more organic HAP. The proposed rule specifies assignment procedures for determining whether a storage vessel is associated with a polyether polyols process unit. The storage vessel provisions do not apply to the following (1) vessels permanently attached to motor vehicles, (2) pressure vessels designed to operate in excess of 204.9 kPa (29.7 psia), (3) vessels with capacities smaller than 38 $m^3$ (10,000 gal), (4) wastewater tanks, and (5) vessels storing liquids that contain HAP only as impurities. An impurity is produced coincidentally with another chemical substance and is processed, used, or distributed with it. The owner or operator must determine if the storage vessel is Group 1 or Group 2; Group 1 storage vessels require control while Group 2 do not. The criteria for determining whether a storage vessel is Group 1 or Group 2 are shown in Table 3, and are the same as the HON criteria for existing sources.

TABLE 3.—GROUP 1 STORAGE VESSEL CRITERIA

| Vessel capacity (cubic meters) | Vapor pressure[a] (kPa) |
|---|---|
| Existing and new sources: | |
| 75<=capacity<151 ..... | >=13.1 |
| 151>=capacity ..... | >=5.2 |

[a] Maximum true vapor pressure of total HAP at average storage temperature.

The storage provisions require that one of the following control systems be applied to Group 1 storage vessels: (1) An internal floating roof with proper seals and fittings; (2) an external floating roof with proper seals and fittings; (3) an external floating roof converted to an internal floating roof with proper seals and fittings; or (4) a closed vent system with a 95 percent efficient combustion, recovery, or recapture device. The storage provisions give details on the types of seals and fittings required. Monitoring and compliance provisions include periodic visual inspections of vessels, roof seals, and fittings, as well as internal inspections. If a closed vent system and combustion, recovery, or recapture device is used, the owner or operator must establish appropriate monitoring procedures. Reports and records of inspections, repairs, and other information necessary to determine compliance are also required by the storage provisions.

2. Process Vents

There are separate process vent provisions in the proposed rule for the two polyether polyol subcategories. These requirements are discussed in the following sections.

a. *Control requirements.* i. *Polyether polyols that use epoxides as a reactant.* For the polyols that use epoxides, the process vent provisions are separated into three groups, which are based on the function of the organic HAP in the production process. These groups are (1) EO and PO (i.e., epoxide) emissions resulting from the use of these chemicals as reactants; (2) emissions of organic HAP other than EO or PO (i.e., ''nonepoxide HAP'') from their use in making or modifying the polyether polyol product; and (3) emissions of nonepoxide HAP from their use in catalyst extraction.

*Requirements for Epoxide Emissions.* The process vent provisions for epoxide emissions require the owner or operator of existing sources using epoxides to reduce the aggregate total epoxide process vent emissions by 98 weight-percent, and by 99.9 weight-percent for new sources. In the determination of the control efficiency, uncontrolled emissions are measured at the outlet of the unit operation, and controlled emissions at the outlet of the combustion, recovery, or recapture device. Primary condensers operating as reflux condensers are considered part of the unit operation and not a recovery device.

In addition to achieving the 98 (or 99.9) percent reduction using a combustion, recovery, or recapture device, the proposed rule also allows the use of ''extended cook-out'' as a means of reducing emissions by the required percentage. This pollution prevention technique reduces emissions by extending the time of reaction, thus leaving less unreacted epoxides to be emitted downstream.

If a combustion, recovery, or recapture device is used to reduce epoxide emissions, an owner or operator can comply by demonstrating that each outlet stream after the control option has a concentration of 20 ppmv epoxide for existing sources. This is considered to be equivalent to demonstrating a 98 percent control efficiency from a combustion, recovery or recapture device.

As an alternative to the 98 percent emission reduction, owners or operators of existing sources can maintain a epoxide emission factor from the PMPU of no more than $1.7 \times 10^{-2}$ kilograms of epoxide emissions per megagram of product made (kg/Mg). The corresponding emission factor for new sources is $4.4 \times 10^{-3}$ kg/Mg. Compliance with this alternative

limitation will be achieved by developing and following an epoxide annual emissions plan, which must include provisions for the monitoring of the process and any combustion, recovery, or recapture device parameters to demonstrate continuous compliance with the emission limitation.

*Requirements for nonepoxide HAP emissions from catalyst extraction.* The process vent provisions require the owner or operator of existing sources using epoxides to reduce the aggregate total nonepoxide organic HAP emissions by 90 weight-percent from process vents associated with catalyst extraction at existing sources. For new sources the requirement is a reduction in these emissions of 98 weight-percent. This provision only applies if a nonepoxide organic HAP is used in the catalyst extraction process. As with the epoxide provisions, uncontrolled emissions are measured at the outlet of the unit operation, and controlled emissions at the outlet of the combustion, recovery, or recapture device. Primary condensers operating as reflux condensers are considered part of the unit operation and not a recovery device.

*Requirements for nonepoxide HAP used to make or alter the product.* There are separate provisions for batch and continuous processes for process vents associated with the use of nonepoxide organic HAP to make or alter the product. The approach for vents from both batch and continuous unit operations is to determine if the collection of process vents in each PMPU that are associated with the use of nonepoxide organic HAP to make or alter the product is Group 1 or Group 2. If the combination of vents is determined to be Group 1, the aggregate nonepoxide organic HAP emissions are required to be reduced by 90 percent for batch processes and 98 percent for continuous processes. These requirements are the same for new and existing sources.

For vents from batch unit operations, the Group 1 criteria are the same as the criteria in the Group 1 Polymers and Resins rule, except that these criteria are applied to the combination of all vents for this proposed polyether polyol rule, and the criteria are applied to individual vents in the Polymers and Resins rule. The Group status is determined by calculating the annual emissions from all the applicable vents, and using these emissions to calculate a ''cut-off'' flow rate. This cutoff flow rate is then compared to the actual combined annual average flow rate for all the vents. If the actual annual average flow rate is less than the cutoff flow rate, the group of vents is Group 1, and must be controlled by 90 percent.

For continuous vents, the HON Group 1 criteria are used, except that they are again applied to the aggregated vent streams. The group of vents are Group 1 if they have a combined flow rate greater than or equal to 0.005 standard cubic meters per minute, a combined HAP concentration greater than or equal to 50 parts per million by volume (ppmv), and a total resource effectiveness index value (TRE) less than or equal to 1.0.

There is one notable difference in the provisions for nonepoxide HAP emissions from making or altering the product for continuous processes and the other continuous process vent provisions in the proposed rule for epoxide processes (i.e., Epoxide emission requirements and nonepoxide HAP emissions from catalyst extraction). For the nonepoxide HAP emissions from making or altering the product, the TRE of the combined vent streams is calculated after the final recovery device. Therefore, the recovery device may be used to reduce emissions so that the TRE is increased and the combined stream is Group 2, but the recovery device may not be used to achieve the required percentage reduction for the combination of vents that are Group 1.

Monitoring is required for those Group 2 continuous process vent streams whose combined stream characteristics result in a TRE index value between 1.0 and 4.0, to ensure that the combination of those streams do not become Group 1, which would then require control.

For either batch or continuous processes, the owner or operator can make the Group 1/Group 2 determination, or the owner or operator can elect to comply directly with the control requirements. As noted above, the TRE index value is determined after the final recovery device in the process or prior to venting to the atmosphere. The TRE calculation involves an emissions test or engineering assessment and use of the TRE equations in § 63.115 of subpart G.

ii. *Polyether polyols that use THF as a reactant.* The proposed rule directly references the HON process vent provisions in subpart G for polyether polyols processes that use THF as a reactant. These provisions require a Group 1/Group 2 determination (on an individual vent basis), and the control of Group 1 process vent streams by 98 percent or the use of a flare.

b. *Monitoring, reporting, and recordkeeping provisions for process vents.* Monitoring, reporting, and recordkeeping provisions necessary to demonstrate compliance are also included in the process vent provisions. Compliance with the monitoring provisions is based on parametric monitoring of the combustion, recovery, or recapture device, or monitoring of the process parameters if extended cook-out is used to control epoxide emissions. Daily monitoring parameters are recorded to determine compliance.

3. Wastewater Operations

For both polyether polyol subcategories the proposed wastewater provisions are identical to the wastewater provisions in subparts F and G. The proposed rule applies to any HAP-containing water, raw material, intermediate, product, co-product, or waste material that exits any polyether polyols production process unit equipment and has either (1) a total organic HAP concentration of 5 ppmw or greater and a flow rate of 0.02 liters per minute (lpm) or greater; or (2) a total organic HAP concentration of 10,000 parts per million by weight (ppmw) or greater at any flow rate. ''Wastewater,'' as defined in § 63.101 of subpart F, encompasses both maintenance wastewater and process wastewater. The process wastewater provisions also apply to HAP-containing residuals that are generated from the management and treatment of Group 1 wastewater streams. Examples of process wastewater streams include, but are not limited to, wastewater streams exiting process unit equipment (e.g., condenser stream decanter water), feed tank drawdown, vessel washout/cleaning that is part of the routine batch cycle, and residuals recovered from waste management units. Examples of maintenance wastewater streams are those generated by descaling of heat exchanger tube bundles, cleaning of distillation column traps, and draining of pumps into an individual drain system.

a. *Maintenance wastewater.* For maintenance wastewater, the proposed rule incorporates the requirements of § 63.105 of subpart F for maintenance wastewater. This requires owners or operators to prepare a description of procedures that will be used to manage HAP-containing wastewater created during maintenance activities, and to implement these procedures.

b. *Process wastewater.* The Group 1/Group 2 approach from the HON is also used for these proposed wastewater provisions, with Group 1 process wastewater streams requiring control and Group 2 process wastewater streams not requiring control. For existing and new sources, a Group 1 wastewater

stream is one with an average flow rate greater than or equal to 10 lpm and a total organic HAP average concentration greater than or equal to 1,000 ppmw.

An owner or operator may determine the organic HAP concentration and flow rate of wastewater stream either (1) at the point of determination; or (2) downstream of the point of determination. If wastewater stream characteristics are determined downstream of the point of determination, an owner or operator must make corrections for (1) losses by air emissions; (2) reduction of organic HAP concentration or changes in flow rate by mixing with other water or wastewater streams; and (3) reduction in flow rate or organic HAP concentration by treating or otherwise handling the wastewater stream to remove or destroy HAP. An owner or operator can determine the flow rate and organic HAP concentration for the point of determination by (1) sampling; (2) using engineering knowledge; or (3) using pilot-scale or bench-scale test data. Both the applicability determination and the Group 1/Group 2 determination must reflect the wastewater characteristics before losses due to volatilization, a concentration differential due to dilution, or a change in organic HAP concentration or flow rate due to treatment.

There are instances where an owner or operator can bypass the group determination. An owner or operator is allowed to designate a wastewater stream or mixture of wastewater streams to be a Group 1 wastewater stream without actually determining the flow rate and organic HAP concentration for the point of determination. Using this option, an owner or operator can simply declare that a wastewater stream or mixture of wastewater streams is a Group 1 wastewater stream and that the emissions from the stream(s) are controlled from the point of determination through treatment. An owner or operator is required to determine the wastewater stream characteristics (i.e., organic HAP concentration and flow rate) for the designated Group 1 wastewater stream in order to establish the treatment requirements in § 63.138. Also, an owner or operator who elects to use the process unit alternative in § 63.138(d) of subpart G or the 95-percent biological treatment option in section 63.138(e) of subpart G is not required to make a Group 1/Group 2 determination.

Controls must be applied to Group 1 wastewater streams, unless the source complies with the source-wide mass flow rate provisions of §§ 63.138(c)(5) or (c)(6) of subpart G; or implements process changes that reduce emission as specified in § 63.138(c)(7) of subpart G. Control requirements include (1) suppressing emissions from the point of determination to the treatment device; (2) recycling the wastewater stream or treating the wastewater stream to the required Fr values for each organic HAP as listed in table 9 of subpart G (The required Fr values in table 9 of subpart G are ''fraction removed'' (or removal efficiency) based on a steam stripper, with specified operating parameters, as the control technology); (3) recycling any residuals or treating any residuals to destroy the total combined HAP mass flow rate by 99 percent or more; and (4) controlling the air emissions generated by treatment processes. While emission controls are not required for Group 2 wastewater streams, owners or operators may opt to include them in management and treatment options.

Suppression of emissions from the point of determination to the treatment device will be achieved by using covers and enclosures and closed-vent systems to collect organic HAP vapors from the wastewater and convey them to treatment devices. Air emissions routed through closed-vent systems from covers, enclosures, and treatment processes must be reduced by 95 percent for combustion or recovery devices; or to a level of 20 ppmv for combustion devices.

The treatment requirements are designed to reduce the organic HAP content in the wastewater prior to placement in units without air emissions controls, and thus to reduce the HAP emissions to the atmosphere. Section G of the preamble provides several compliance options, including percent reduction, effluent concentration limitations, and mass removal.

For demonstrating compliance with the various requirements, owners or operators have a choice of using a specified design, conducting performance tests, or documenting engineering calculations. Appropriate compliance, monitoring, reporting, and recordkeeping provisions are included in the regulation.

4. Equipment Leaks

The equipment leak provisions in the proposed rule refer directly to the requirements contained in subpart H. The standards would apply to equipment in organic HAP service 300 or more hours per year that is associated with a PMPU, including valves, pumps, connectors, compressors, pressure relief devices, open-ended valves or lines, sampling connection systems, instrumentation systems, surge control vessels, bottoms receivers, and agitators. The provisions also apply to closed-vent systems and combustion, recovery, or recapture devices used to control emissions from any of the listed equipment.

a. *Pumps and valves.* This proposed standard requires leak detection and repair (LDAR) for pumps in light liquid service and for valves in gas or light liquid service. Standards for both are implemented in three phases. The first and second phases for both types of equipment consist of an LDAR program, with lower leak definitions in the second phase. The LDAR program involves a periodic check for organic vapor leaks with a portable instrument; if leaks are found, they must be repaired within a certain period of time. In the third phase, the periodic monitoring (a work practice standard) is combined with a performance requirement for an allowable percent leaking components.

The standard requires monthly monitoring of pumps using an instrument and weekly visual inspections for indications of leaks. In the first two phases of the valve standard, quarterly monitoring is required. In phase three, semiannual or annual monitoring may be used by process units with less than 1 percent and less than 0.5 percent leaking valves, respectively.

In phase three, if the base performance levels for a type of equipment are not achieved, owners or operators must, in the case of pumps, enter into a quality improvement program (QIP), and in the case of valves may either enter into a QIP or implement monthly LDAR. The QIP is a concept that enables plants exceeding the base performance levels to eventually achieve the desired levels without incurring penalty or being in a noncompliance status. As long as the requirements of the QIP are met, the plant is in compliance. The basic QIP consists of information gathering, determining superior performing technologies, and replacing poorer performers with the superior technologies until the base performance levels are achieved.

b. *Connectors.* The rule also requires LDAR of connectors in gas or light liquid service. The monitoring frequency for connectors is determined by the percent leaking connectors in the process unit and the consistency of performance. Process units that have 0.5 percent or greater leaking connectors are required to monitor all connectors annually. Units that have less than 0.5 percent may monitor biannually and units that show less than 0.5 percent for

two monitoring cycles may monitor once every four years.

c. *Other equipment.* Subpart H also contains standards for other types of equipment, compressors, open-ended lines, pressure relief devices, and sampling connection systems. Compressors are required to be controlled using a barrier-fluid seal system, by a closed vent system to a combustion, recovery, or recapture device, or must be demonstrated to have no leaks greater than 500 ppm HAP. Sampling connections must be closed-purge or closed-loop system, or must be controlled using a closed vent system to a combustion, recovery, or recapture device. Agitators must either be monitored for leaks or use systems that are better designed such as dual mechanical seals. Pumps, valves, connectors, and agitators in heavy liquid service; instrumentation systems; and pressure relief devices in liquid service are subject to instrumental monitoring only if evidence of a potential leak is found through sight, sound, or smell. Instrumentation systems consist of smaller pipes and tubing that carry samples of process fluids to be analyzed to determine process operating conditions or systems for measurement of process conditions.

Surge control vessels and bottoms receivers are required to be controlled using a closed vent system vented to a combustion, recovery, or recapture device. However, the applicability of controls to surge control vessels and bottoms receivers is based on the size of the vessel and the vapor pressure of the contents. The criteria for determining whether controls are required for surge control vessels and bottoms receivers are the same as for storage vessels.

d. *Other provisions.* Under certain conditions, delay of repair beyond the required period may be acceptable. Examples of these situations include where: (1) A piece of equipment cannot be repaired without a process shutdown, (2) equipment is taken out of HAP service, (3) emissions from repair will exceed emissions from delay of repair until the next shutdown, and (4) equipment with better leak performance such as pump with single mechanical seals are replaced with dual mechanical seals.

In addition, specific alternative standards are included for batch processes and enclosed buildings. For batch processes, the owner or operator can choose either to meet similar standards to those for continuous processes with monitoring frequency pro-rated to time in use of HAP, or to periodically pressure test the entire system. For enclosed buildings, the owner or operator may forego monitoring if the building is kept under a negative pressure and emissions are routed through a closed vent system to an approved combustion, recovery, or recapture device.

The equipment leak standards require the use of Method 21 of appendix A of part 60 to detect leaks. Method 21 requires a portable organic vapor analyzer to monitor for leaks from equipment in use. Test procedures using either a gas or a liquid for pressure testing the batch system are specified to detect for leaks.

The standards would require certain records to demonstrate compliance with the standard, and the records must be retained in a readily accessible recordkeeping system. Subpart H requires the records be maintained for equipment that would be subject to the standards, testing associated with batch processes, design specifications of closed vent systems and combustion, recovery, or recapture devices, test results from performance tests, and information required by equipment in the QIP.

*G. Recordkeeping and Reporting Requirements*

Specific recordkeeping and reporting requirements related to each emission source type are included in the applicable sections of the proposed rule. Section 63.1439 of the proposed rule provides general reporting, recordkeeping, and testing requirements.

The general reporting, recordkeeping, and testing requirements of this subpart are very similar to those found in subparts F, G, and U. The proposed rule also incorporates provisions of subpart A of part 63. A table included in the proposed rule designates which sections of subpart A apply to the proposed rule. This rule incorporates by reference the General Provisions in subpart A as promulgated on March 13, 1994. However, the EPA is in the process of drafting amendments to the General Provisions. If this subpart is promulgated subsequent to the promulgation of the amendments to the General Provisions, the amended General Provisions will be incorporated into this subpart.

The proposed rule requires sources to keep records and submit reports of information necessary to determine applicability and document compliance. The proposed rule requires retention of hourly average values of monitored parameters for continuous process vents. For batch process vents, the proposed rule requires daily average values of monitored parameters. If there is a monitoring parameter excursion, the 15-minute values for the excursion period must be retained. The proposed rule also requires that records of all residual HAP content test results must be kept for five years.

Section 63.1439 of the proposed rule lists the following types of reports that must be submitted to the Administrator as appropriate: (1) Start-up, shutdown, and malfunction plan; (2) Application for Approval of Construction or Reconstruction; (3) Initial Notification; (4) Precompliance Report, (5) Notification of Compliance Status; (6) Periodic Reports; (7) Other reports, and; (8) Operating permit application. Operating permit may be substituted for a Precompliance Report. The requirements for each of the eight types of reports are summarized below. As can be noted, § 63.1435 incorporates the reporting requirements of subpart H, which require owners and operators to submit three types of reports: (1) An Initial Notification; (2) a Notification of Compliance Status; and (3) Periodic Reports.

1. Start-up, Shutdown, and Malfunction Plan

The plan would describe procedures for operating and maintaining the affected source during periods of start-up, shutdown, and malfunction and a program for corrective action for malfunctioning process and air pollution equipment used to comply with this subpart.

2. Application for Approval of Construction or Reconstruction

The proposed rule requires that the owners or operator comply with § 63.5 of subpart A regarding the application for approval of construction or reconstruction, excluding the provisions specified in § 63.5(d)(1)(ii)(H), (d)(1)(iii), (d)(2), and (d)(3)(ii) of subpart A.

3. Initial Notification

The Initial Notification would be required within 120 calender days after the effective date of the rule and shall provide the following information:

(a) The name and address of the owner or operator;

(b) The address (i.e., physical location) of the affected source;

(c) An identification of the relevant standard, or other requirement, that is the basis of the notification and the source's compliance date;

(d) A brief description of the nature, size, design, and method of operation of the source, including its operating design capacity and an identification of each point of emission for each HAP, or if a definitive identification is not yet

possible, a preliminary identification of each point of emission for each HAP, and;

(e) A statement of whether or not the affected source is a major source.

4. Precompliance Report

Affected sources requesting an extension for compliance, or requesting approval to use alternative monitoring parameters, alternative continuous monitoring and recordkeeping, or alternative controls, shall submit a Precompliance Report.

5. Notification of Compliance Status

The Notification of Compliance Status would be required to be submitted within 150 days after the source's compliance date. It contains the information for emission points that need to comply with the rule, that are necessary to demonstrate that compliance has been achieved. Such information includes, but is not limited to, the results of any performance test for continuous and/or batch process vents, an ECO, and wastewater emission points; one complete test report for each test method used for a particular kind of emission point; design analyses for storage vessels and wastewater emission points; and monitored parameter levels for each emission point and supporting data for the designated level. The Notification of Compliance Status required by subpart H must be submitted within 90 days after the compliance date.

6. Periodic Reports

Generally, Periodic Reports would be submitted semiannually. However, there is an exception. If monitoring results show that the parameter values for an emission point are above the maximum or below the minimum established levels for more than one percent of the operating time in a reporting period, or the monitoring system is out of service for more than five percent of the time, the regulatory authority may request that the owner or operator submit quarterly reports for that emission point. After one year, semiannual reporting can be resumed, unless the regulatory authority requests continuation of quarterly reports.

All Periodic Reports would include information required to be reported under the recordkeeping and reporting provisions for each emission point.

For continuously monitored parameters, the Periodic Report must report when ''excursions'' occur. Table 5 shows what constitutes an excursion.

TABLE 5.—SUMMARY OF EXCURSIONS

| Emission source type | Type of excursion | Description of excursion |
|---|---|---|
| Continuous Process Vents. | Daily average exceedance. | When the daily average of a monitored parameter is above the maximum, or below the minimum, established level. |
| | Insufficient monitoring data. | Insufficient monitoring data is when an owner or operator fails to obtain a valid hour of data for at least 75 percent of the operating hours during an operating day. Four 15-minute parameter measurements must be obtained to constitute a valid hour of data. |
| Batch Process Vents ... | Batch cycle daily average exceedance. | When the batch cycle daily average of a monitored parameter is above the maximum, or below the minimum, established level. |
| | Insufficient monitoring data. | Insufficient monitoring data is when an owner or operator fails to obtain valid parameter measurements for at least 75 percent of the 15-minute periods during an operating day. |

Periodic Reports would also include results of any performance tests conducted during the reporting period and instances when required inspections revealed problems. Additional information on the source is required to report under its operating permit would also be described in Periodic Reports.

Periodic Reports for subpart H must be submitted every six months and must contain summary information on the LDAR program changes to the process unit, changes in monitoring frequency or monitoring alternatives, and/or initiation of a QIP.

7. Other Reports

Other reports required under the proposed rule include process changes that change the compliance status of process vents, and request for extensions of the allowable repair period and notifications of inspections for storage vessels and wastewater.

8. Operating Permit Application

An owner or operator who submits an operating permit application instead of a Precompliance Report shall submit the information specified in the Precompliance Report, as applicable, with the operating permit application.

## V. Discussion of Major Issues

The Administrator welcomes comments from interested persons on any aspect of the proposed standards, and on any statement in the preamble or the referenced supporting documents. The proposed standards were developed on the basis of information available. The Administrator is specifically requesting factual information that may support either the approach taken in the proposed standards or an alternative approach. To receive proper consideration, documentation or data should be provided. Specifically, the EPA is requesting comment and data on the following issues: (1) The ECO definition and onset point, (2) the performance test protocol for determining compliance of combustion, recovery and recapture devices on short, batch process vent episodes, (3) the specifications of the performance test for the ECO, (4) the approach to determine an outlet concentration cutoff that is appropriate, if any, for the process vent epoxide limitation for new affected sources, (5) the subcategorization of the industry based on the nature of the feed to the combustion, recovery, or recapture device, (6) the monitoring, recordkeeping and reporting requirements, (7) the epoxide emission factor as an alternative to the percent emission reduction requirement, (8) the nonepoxide organic HAP process vent emissions requirements, (9) whether the HAP list in table 4 is all inclusive, and (10) the definition of an applicable source and a PMPU.

The extended cook-out (ECO) is included as a control option for the first time in this standard, and the EPA requests comments on the definition of the ECO, and the calculation procedures that were used to determine the onset value (i.e., the point when uncontrolled emissions are calculated). The definition of the ECO is based on the input of a team of industry representatives who have used the ECO to control their process vent epoxide emissions. For the purposes of determining a default onset for an ECO, the EPA used information provided by SPI representatives. Some of the SPI facilities have used this control option for a number of years with permit

restrictions based on this control option. The SPI representatives provided the EPA with calculations that demonstrated the breakpoint for when a cookout is no longer economically feasible, which is defined as the onset for the ECO. This calculation contains confidential business information regarding the batch times, profit margins, and reaction rate equations for four different product types and, therefore, is not available for public review. However, the approach used to establish the onset of an ECO, as the point in time when continuing the reaction is no longer economically advantageous, and the approach used to determine the default onset of an ECO, are available for review (Docket No. A–96–38, Item No. II–B–7). The SPI determined, using conservative assumptions, that the ECO for four product types occurred when the amount of epoxide in the reactor is 25 percent of the amount in the reactor at the end of the epoxide feed step. These four product types were: EO-capped surfactants, PO-capped surfactants, EO-capped functional fluids, and PO-capped functional fluids. It was explained to the EPA that these are four typical product types in the polyether polyols industry. The onset value determined by SPI was established as the default ECO onset value for the purposes of this regulation. Facilities may accept this default value as the onset for an ECO at their facility, or they may calculate their own ECO onset point. To calculate a site-specific ECO onset, facility representatives are directed to the Definition of Extended Cookout Memorandum (Docket No. A–96–38, Item No. II–B–7).

Also, with respect to the ECO control option, a first order reaction rate equation, with respect to the epoxide, was used to determine the concentration of the unreacted epoxide in the reactor vessel. The EPA is requesting documentation to support or refute the first order reaction rate equation used in the ECO calculations.

The proposed rule requires an initial performance test to demonstrate that the ECO meets the performance represented by the engineering equations used to estimate the amount of unreacted epoxide in the reactor. This would be a one time test similar to the performance testing required for add-on combustion, recovery, or recapture devices. The proposed rule is requiring that samples of the liquid and vapor space be taken both before and after the ECO, and that these samples be analyzed for unreacted epoxide concentration. The proposed rule is requiring that the samples be analyzed using Method 18. The EPA is requesting comments on the specifics of the test method and sample procedure required.

The EPA is proposing to require facilities to sample the inlet and outlet streams to the combustion, recovery or recapture device in order to determine compliance with the process vent provisions. Industry representatives have expressed several concerns with the requirement to sample emissions from process vents in batch unit operations. Industry representatives are concerned with the feasibility, accuracy, and safety of taking such samples. Typically, in batch unit operations, material exits the reactor in a short period of time following each batch, and the flow and concentration of the process vent emissions are not constant. As a result, industry asserts, that capturing representative and meaningful samples is not feasible using traditional stack sampling methods found in Appendix A of 40 CFR Part 60. Industry representatives also indicate that because there is a significant drop in pressure during the brief course of the venting, the results of any performance test are not likely to be very accurate. Industry also has expressed concerns that attempting to take samples during venting would raise significant safety issues for plant personnel given the potential flammability and toxicity of the stream. Industry maintains that pre-vent and post-vent samples with appropriate engineering calculations on flow rates would provide adequate results to demonstrate the performance of the combustion, recovery or recapture device. However, no specific procedures to use in this regulation were provided. The EPA, therefore, is asking for comment and information on alternatives to the proposed testing to determine compliance for process vents from batch unit operations.

The proposed standard for EO and PO process vent emissions at existing sources includes an alternative concentration limit of 20 ppmv. Thus, an existing source can comply with the control requirements of the NESHAP by either achieving an emission reduction of 98 percent (by weight), or maintaining an outlet concentration of 20 ppmv from the outlet of a combustion, recovery, or recapture device, whichever is less stringent. Including this option in the NESHAP recognizes that, as inlet concentrations to a control device drop, there is a corresponding decrease in percent reduction of the device and a leveling off of the outlet concentration from the device.

Industry representatives requested that an alternative concentration limit also be developed for EO and PO process vent emissions at new sources. As with existing sources, the new sources would have the option to either achieve 99.9 percent control or a specified concentration limit, whichever is less stringent.

In responding to this request, EPA considered a concentration limit of 1 ppmv. This was based on concentration levels achieved, and verified by emission testing, by the facility identified as the best performer. These outlet concentrations were achieved even though high concentrations were being fed to the device. Industry representatives argued in a May 7, 1997 letter (Docket No. A–96–38, Item No. II-D–55) that 1 ppmv may not be achievable. They asserted that the EPA method used for the performance test does not speciate organic HAP and, therefore, should not be used to support a concentration limit unless the same test method is permitted within the NESHAP to demonstrate compliance. They also contended that EPA has historically used 20 ppmv as an alternative for standards that are combustion control-based. EPA has pointed out, however, that these other standards are based on incinerators required to meet only a 98 percent destruction efficiency.

Therefore, the EPA has decided to not include an alternative outlet concentration limit for new sources in the proposed rule, but is requesting information for determining an appropriate alternative limit for the standard based on an incinerator achieving 99.9 percent control. For example, test data from the 99.9 percent incinerator using the test methods and procedures prescribed in the proposed rule would establish a basis for such an alternative. If public comments provide sufficient information, the EPA will consider establishing an alternative concentration limit for the final rule.

The EPA is soliciting comment on the appropriateness of the new source MACT requirements for process vents that emit epoxides. As explained in the Basis and Purpose Document, the EPA set the control efficiency based on the data from the best performing facility. The SPI representatives, however, have contended that this facility is not a similar source because, its reactor vents during the epoxide feed step of the reaction. The SPI asserts that ''the impacts of this method of operation would be to send a very high concentration of HAP to the control device as a continuous or semi-continuous stream, resulting in an artificially high destruction efficiency (compared to a facility that does not

vent continuously)'' (Docket No. A–96–38, Item No. II-D–46). They argue that this is not the typical mode of operation for this industry, and that this facility should be in a subcategory of its own. The EPA recognizes that different facilities may vent their reactors at different times in the reaction resulting in different concentrations and flows. The EPA also recognizes that the number of reactor trains feeding to the same recapture, recovery, or control device will affect the flow characteristics of the feed stream.

The EPA does not have data on the process vent epoxide concentration, description of when in the process the venting occurs, or venting episode duration from any of the facilities in the database. Therefore, at this time, the EPA has no basis for determining whether subcategorization of the industry is appropriate, or for determining where a subcategorization line should be drawn, if appropriate. Data to substantiate the SPI's argument that the facility setting the new source MACT floor is not a similar source will be necessary before the EPA can consider making revisions to the new source MACT floor level of control for process vent epoxide emissions.

The EPA is requesting the following information needed from industry in order to determine if a subcategory is appropriate, and what it should be.

(1) Facility name and location
(2) Product categories (i.e., surfactants, polyols, etc.) made at the facility in 1993
(3) Process vent uncontrolled and controlled HAP emissions for 1993
(4) Description of the combustion, recovery, or recapture device, including
  (a) Type of device (e.g., scrubber, flare etc.)
  (b) Control efficiency and basis
(5) Information about the reactor feed characteristics to the control device, submitted in either of the following formats:
  (a) Flow and concentration data (from monitoring instrumentation) for a single, typical day; or,
  (b) A narrative description of a typical day's feed to a common combustion, recovery, or recapture device. In the narrative, an estimate of the total amount of time per day there is feed to the device is required along with an estimate of the range of HAP concentration during the typical day, on an episode or daily basis
(6) A statement regarding whether the facility vents excess pressure from the reactor during oxide addition

The monitoring, recordkeeping and reporting provisions in this regulation differ slightly from those in the HON. This proposed regulation will require that monitors continue to operate during periods of start-up, shutdown, and malfunction. Monitoring records from periods of start-up, shutdown, and malfunction will provide evidence of whether start-up, shutdown, and malfunction plans are followed and will provide the Agency with valuable information for assessment of the adequacy of the source's start-up, shutdown, and malfunction plan. These records will also provide evidence of whether start-ups, shutdowns, and malfunctions occur during periods at issue and whether the source takes necessary steps to mitigate environmental impacts. Also, this proposed regulation enables a source that is subject to this regulation and to provisions in either 40 CFR part 264 or 40 CFR part 265 to continue to demonstrate compliance in accordance with 40 CFR part 264 or 265, except the source must report all excursions (as defined in this proposed regulation) in the semiannual report. The EPA is asking for comments on these provisions to determine whether the Agency should adopt these additional requirements in the final regulation.

For epoxide emissions, the proposed rule allows sources to comply with the process vent requirements by maintaining epoxide emissions at a level below the specified emission factors of $1.7 \times 10^{-2}$ kilograms of epoxide emissions per megagram of product made (kg/Mg) for existing sources and $4.4 \times 10^{-3}$ kg/Mg for new sources. The approach used for determining these emission factors is explained in the Supplementary Information Document. To verify compliance with this option, the owner or operator is required to calculate annual epoxide emissions and divide the emissions by the annual polyether polyol production. The annual production is annual mass of polyether polyol product produced from the applicable PMPU. The EPA is requesting comments on the method of calculation of the emission factors and whether the rule adequately describes the units of production for this determination.

In some instances, nonepoxide organic HAP are used in the reactor in making the polyether polyol product or modifying the product properties before final storage. Examples of such uses would include organic HAP used as an initiator, a catalyst, or as a reaction solvent. The proposed regulation requires that a group determination be made on the combination of all process vents that emit these nonepoxide HAP, and that combinations of vents that are Group 1 be controlled. The EPA recognizes that a process vent from which these nonepoxide HAP are emitted would be subject to the epoxide emission reduction requirements as well as the requirements for nonepoxide organic HAP emissions. If a combustion, recovery, or recapture device is used to reduce epoxide emissions from the vent, then that same device would also reduce the emissions of the nonepoxide HAP. However, if extended cookout is the control technique utilized by the facility to reduce epoxide emissions, then the nonepoxide HAP emissions would not be affected, resulting in the need to address these emissions. The EPA is interested in methods to address the nonepoxide HAP emissions from making or modifying the product that alleviate the dual requirement problem mentioned above. Some of the approaches that the EPA has considered include: Requiring a group determination only for nonepoxide HAP emissions that are not controlled along with epoxide emissions; requiring all HAP emissions (epoxide and nonepoxide) from making or modifying the product to be reduced by the amount specified in the proposed rule for epoxide emissions; eliminating the group determination provisions and requiring a specified percent reduction for nonepoxide HAP emissions from all vents above a de minimis level, and; making all nonepoxide HAP emissions (from making or modifying the product and from catalyst extraction) subject to the same requirements. The EPA is requesting comments on input of these options, or the identification of other options. Comments should include a recommended approach, along with rationale for the recommendation.

The proposed rule lists specific HAP in table 4 used to determine compliance. The EPA requests comments on whether this list is all inclusive.

The EPA is requesting comments on the definition of the affected source, the PMPU and ''make or modify the product.'' The EPA is asking for these comments in an attempt to ensure that all emission types related to the manufacture of polyether polyols are included in the affected source.

## VI. Summary of Environmental, Energy, Cost, and Economic Impacts

This section presents the air, non-air environmental (waste and solid waste), energy, cost and economic impacts resulting from the control of HAP emissions under this rule.

*A. Facilities Affected by These NESHAP*

The proposed rule will affect facilities that produce polyether polyols and are major sources in themselves, or that are located at a major source plant site. Based on available information, 92 percent of the facilities at which polyether polyols are produced were assumed to be major sources for the purpose of developing these standards. Final determination of major source status occurs as part of the compliance determination process undertaken by each individual source.

Impacts are presented relative to a baseline reflecting the level of control in the absence of the rule. Baseline impacts were extrapolated from the database to an estimated 78 polyether polyol facilities affected by the NESHAP nationwide. See the baseline emissions memorandum in the Basis and Purpose Document for a detailed discussion of this approach. The impacts for existing sources were estimated by bringing each facility's control level up to the levels of the proposed standards. According to the SPI representatives, no new sources are projected to be constructed in the next five years. Therefore, no new source impacts were estimated.

*B. Primary Air Impacts*

These proposed standards are estimated to reduce HAP emissions from all existing sources of polyether polyols by 1,810 Mg/yr. This represents a 47 percent reduction from the baseline level of emissions. This reduction is relatively low since several affected facilities have already installed stringent pollution controls in response to State air toxics rules.

*C. Other Environmental Impacts*

All the HAP being reduced by this regulation are also volatile organic compounds (VOC); thus, a reduction of 1,810 Mg/yr of VOC is anticipated as a result of implementing these standards. However, emissions of criteria pollutants are estimated to increase by 80 Mg/yr as a result of operating process vent and wastewater emission control systems to comply with the standards. Therefore, the net reduction in criteria pollutants resulting from this regulation is anticipated to be 1,730 Mg/yr.

*D. Energy Impacts*

The total nationwide energy demands that would result from implementing the process vent and wastewater requirements are around $4.7 \times 10^{10}$ British thermal units annually (Btu/yr).

*E. Costs Impacts*

Cost impacts include the capital costs of new control equipment, the cost of energy (supplemental fuel, steam, and electricity) required to operate control equipment, operation and maintenance costs, and the cost savings generated by reducing the loss of valuable raw materials in the form of emissions. Also, cost impacts include the costs of monitoring, recordkeeping, and reporting associated with these proposed standards.

The rule requirements are based on the floor level of control for the following emission types for polyether polyols made with epoxides: Storage vessels, process vent epoxide emissions, process vent nonepoxide emissions from catalyst extraction, and equipment leaks. The Agency selected requirements more stringent than the floor for wastewater emissions and for nonepoxide organic HAP process vent emissions from making or modifying the product. For polyether polyols made with THF, the Agency selected requirements more stringent than the MACT floor level of control for all of the emission types (i.e., storage, process vent emissions, equipment leaks and wastewater). The HON level of control was considered as the level of control more stringent than the MACT floor level of control for each of the emission types listed above, except for process vents from batch unit operations where control levels established in the ''Control of Volatile Organic Compound Emissions From Batch Processes—Alternative Control Techniques Information Document'' (EPA–453/R–94–020) (''Batch ACT'') were considered. The HON level of control was considered because polyether polyols manufacturing plants are fairly similar to sources that are subject to the HON. Additionally, the HON level of control had received extensive evaluation during the development of the HON, at which time the EPA concluded that the cost and other impacts of the HON levels were reasonable. Similarly, the estimated cost-effectiveness for the Batch ACT was determined to be comparable to the cost-effectiveness of the HON continuous vent provisions.

Under the proposed rule, it is estimated that total capital costs for existing sources would be $10.2 million (August 1996 dollars) and that total annual costs would be $7.7 million per year. It is expected that the actual compliance cost impacts of the proposed rule could be less than presented because of the potential to use common combustion, recovery, or recapture devices, upgrade existing combustion, recovery, or recapture devices, use other less expensive control technologies, or implement pollution prevention. Because the effect of such practices is highly site-specific and data were unavailable to estimate how often the lower cost compliance practices could be utilized, it is not possible to quantify the amount by which actual compliance cost would be reduced.

*F. Economic Impacts*

The goal of the economic impact analysis is to estimate the market response of the polyether polyols industry to the emission standards and determine any adverse effects that may result from the regulation. Approximately 78 facilities owned by 36 different companies producing polyether polyols domestically may potentially be affected by the regulation.

Since the nationwide annualized cost of this regulation of $7.7 million represents approximately 0.06 percent of the estimated 1996 sales revenues for domestically produced polyether polyols, the EPA determined that the regulation is not likely to have a significant impact on this industry as a whole. For this reason, a streamlined economic analysis was performed to determine facility-specific impacts. Facility-specific impacts were examined by calculating the ratio of the estimated annualized costs of controls for each facility to the estimated revenues per facility (i.e., cost-to-sales ratio) to assess the likelihood of facility closures and employment impacts. A cost-to-sales ratio exceeding one percent was determined to be an initial indicator of the potential for a significant facility impact.

For only one facility out of the 78 facilities affected by the regulation do costs exceed one percent of sales. This firm is estimated to experience a cost-to-sales ratio of 1.5 percent. Based on an analysis of the costs of compliance compared to facility and company financial data for this firm, the EPA concludes it is unlikely that the company owning this facility will choose to close it. The company is financially robust and the costs are a small share of the total company sales and net income. Therefore, the facility-specific impacts are not considered to be significant for any facility affected by the regulation. The generally small scale of the impacts suggests that there will also be no significant impacts on markets for the products made using polyether polyols, such as polyurethanes. For more information, consult the economic impact report entitled ''Economic Analysis Of Air Pollution Regulations: Polyether Polyols Production, May 1997.''

## VIII. Administrative Requirements

### *A. Public Hearing*

A public hearing will be held, if requested, to discuss the proposed standard in accordance with section 307(d)(5) of the Act. Persons wishing to make oral presentation on the proposed standards for polyether polyols production should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section address given in the **ADDRESSES** section of this preamble and should refer to Docket No. A–95–20.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Air Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

### *B. Docket*

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

1. To allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process; and
2. To serve as the record in case of judicial review (except for interagency review materials (section 307(d)(7)(A)).

### *C. Executive Order 12866*

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

### *D. Enhancing the Intergovernmental Partnership Under Executive Order 12875*

In compliance with Executive Order 12875, EPA has involved State, local, and tribal governments where the sources occur in the development of this rule. These governments are not directly impacted by the rule; i.e., they are not required to purchase control systems to meet the requirements of the rule. However, they will be required to implement this rule; e.g., incorporate the rule into permits and enforce the rule. They will collect permit fees that will be used to offset the resource burden of implementing the rule.

### *E. Paperwork Reduction Act*

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1811.01), and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division (2137); U.S. Environmental Protection Agency; 401 M Street SW; Washington, DC 20460, or by calling (202) 260–2740. The public reporting burden for this collection of information is estimated to average 1,046 hours per respondent for the first year and 162 hours for each of the second and third years, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. 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 Ch. 15.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, 2136, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

### *F. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA analyzed the potential impact of the rule on small entities and determined that only 7 of the 36 polyether polyol producing firms are small entities—not a substantial number of entities. Of these 7, no small companies will experience an increase in costs as a result of the promulgation of today's rule that is greater than one percent of revenues. Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), I certify that this rule will not have a significant impact on a substantial number of small entities. Therefore, the Agency did not prepare an initial regulatory flexibility analysis.

Although the statute does not require the EPA to prepare an RFA because the Administrator has certified that the rule will not have a significant economic impact on a substantial number of small entities, the EPA did undertake a limited assessment, to the extent it could, of possible outcomes and the economic effect of these on small polyether polyol producing entities. The initial version of that evaluation is available in the administrative record for today's action.

### *G. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 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, and to seek input from State, local, and tribal governments on certain regulatory actions. EPA has determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. (The analysis of the costs associated with this action is referenced in paragraph VI.E of this preamble.) Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA. The requirements of sections 203 and 204 of UMRA which relate to regulatory requirements that might significantly or uniquely affect small governments and to regulatory proposals that contain a significant Federal intergovernmental

mandate, respectively, also do not apply to today's rule because the rule affects only the private sector, i.e., facilities that manufacture chemical products for sale.

*H. Miscellaneous*

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed regulation, including health, economic and technical issues, and on the proposed requirements for testing.

This regulation will be reviewed 8 years from the date of promulgation. This review will include an assessment of such factors as evaluation of the residual health and environmental risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

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

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

Dated: August 15, 1997.

**Carol M. Browner,**

*Administrator.*

For the reasons set out in the preamble, part 63 of title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

## PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR AFFECTED SOURCE CATEGORIES

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

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

2. It is proposed that part 63 be amended by adding subpart PPP, consisting of §§ 63.1420 through 63.1439, to read as follows:

### Subpart PPP—National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production

Sec.

63.1420 Applicability and designation of affected sources.
63.1421 Delegation of authority.
63.1422 Compliance schedule and relationship to existing applicable rules.
63.1423 Definitions.
63.1424 Emission standards.
63.1425 Process vent control requirements.
63.1426 Process vent requirements for determining organic HAP concentration, control efficiency, and overall organic HAP emission reduction for a PAPPU.
63.1427 Process vent requirements for processes using extended cookout as an epoxide emission reduction device.
63.1428 Process vent requirements for group determination of PMPUs using a nonepoxide organic HAP to make or modify the product.
63.1429 Process vent monitoring requirements.
63.1430 Process vent reporting and recordkeeping requirements.
63.1431 Emission Factor Plan Requirements.
63.1432 Storage vessel provisions.
63.1433 Wastewater provisions.
63.1434 Equipment leak provisions.
63.1435 Heat exchanger provisions.
63.1436 [Reserved]
63.1437 Additional test methods and procedures.
63.1438 Parameter monitoring levels and excursions.
63.1439 General recordkeeping and reporting provisions.

### Subpart PPP—National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production

#### § 63.1420 Applicability and designation of affected sources.

(a) *Definition of affected source.* The provisions of this subpart apply to each affected source. Affected sources are described in paragraphs (a)(1) through (a)(4) of this section.

(1) An affected source is either an existing affected source or a new affected source. Existing affected source is defined in paragraph (a)(3) of this section, and new affected source is defined in paragraph (a)(4) of this section.

(2) *Emission points and equipment.* The affected source also includes the emission points and equipment specified in paragraphs (a)(2)(i) through (a)(2)(vi) of this section that are associated with each group of polyether polyol manufacturing process units (PMPU) making up an affected source, as defined in § 63.1423.

(i) Each waste management unit.

(ii) Maintenance wastewater.

(iii) Each heat exchange system.

(iv) Equipment required by, or utilized as a method of compliance with, this subpart which may include control techniques and recovery devices.

(v) Product finishing operation.

(vi) Each feed or catalyst operation.

(3) An existing affected source is defined as each group of one or more PMPU that is not part of a new affected source, as defined in paragraph (a)(4) of this section, and that is located at a plant site that is a major source.

(4) A new affected source is defined as a source meeting the criteria of paragraph (a)(4)(i), (a)(4)(ii), or (a)(4)(iii) of this section.

(i) At a site previously without organic HAP emission points (i.e., a ''greenfield'' site), each group of one or more PMPUs that is part of a major source, and on which construction for the PMPU(s) commenced after September 4, 1997;

(ii) A PMPU meeting the criteria in paragraph (g)(1)(i) of this section; or

(iii) A reconstructed affected source meeting the criteria in paragraph (g)(2)(i) of this section.

(b) *PMPUs without organic HAP.* The owner or operator of a PMPU that is part of an affected source, as defined in paragraph (a) of this section, that does not use or manufacture any organic HAP shall comply with the requirements of paragraphs (b)(1) and (b)(2) of this section. Such a PMPU is not subject to any other provisions of this subpart and is not required to comply with the provisions of subpart A of this part.

(1) Retain information, data, and analyses used to document the basis for the determination that the PMPU does not use any organic HAP. Types of information that could document this determination include, but are not limited to, records of chemicals purchased for the process, analyses of process stream composition, engineering calculations, or process knowledge.

(2) When requested by the Administrator, demonstrate that the PMPU does not use any organic HAP.

(c) *Emission points not subject to the provisions of this subpart.* The affected source includes the emission points listed in paragraphs (c)(1) through (c)(12) of this section, but these emission points are not subject to the requirements of this subpart or the provisions of subpart A of this part.

(1) Equipment that does not contain organic HAP and is located at a PMPU that is part of an affected source;

(2) Stormwater from segregated sewers;

(3) Water from fire-fighting and deluge systems in segregated sewers;

(4) Spills;

(5) Water from safety showers;

(6) Water from testing of deluge systems;

(7) Water from testing of firefighting systems;

(8) Vessels and equipment storing and/or handling material that contains no organic HAP or organic HAP as impurities only;

(9) Equipment that operates in organic HAP service for less than 300 hours during the calendar year;

(10) Loading racks, loading arms, or loading hoses that only transfer liquids containing HAP as impurities;

(11) Loading racks, loading arms, or loading hoses that vapor balance during all loading operations; and

(12) Utility fluids, such as heat transfer fluids.

(d) *Processes exempted from the affected source.* The processes specified in paragraphs (d)(1) through (d)(3) of this section are not part of the affected source and are exempted from the requirements of both this subpart and from the provisions of subpart A of this part.

(1) Research and development facilities; and

(2) Solvent reclamation, recovery, or recycling operations at hazardous waste treatment, storage, and disposal facilities (TSDF) requiring a permit under 40 CFR part 270 that are separate entities and not part of a PMPU to which this subpart applies.

(3) Reactions or processing that occur after the manufacture of polyether polyol products.

(e) *Primary product determination and applicability.* The primary product of a process unit shall be determined according to the procedures specified in paragraphs (e)(1) and (e)(2) of this section. Paragraphs (e)(3) through (e)(4) of this section describe whether or not a process unit is subject to this subpart. Paragraphs (e)(5) through (e)(7) of this section discuss compliance for those PMPUs operated as flexible operation units, as specified in paragraph (e)(2) of this section.

(1) If a process unit only manufactures one product, then that product shall represent the primary product of the process unit.

(2) If a process unit is designed and operated as a flexible operation unit, the primary product shall be determined as specified in paragraphs (e)(2)(i) or (e)(2)(ii) of this section based on the anticipated operations for the 5 years following [insert date of publication of final rule] for existing affected sources and for the first 5 years after initial start-up for new affected sources.

(i) If the flexible operation unit will manufacture one product for the greatest operating time over the five year period, then that product shall represent the primary product of the flexible operation unit.

(ii) If the flexible operation unit will manufacture multiple products equally based on operating time, then the product with the greatest production on a mass basis over the five year period shall represent the primary product of the flexible operation unit.

(3) If the primary product of a process unit is a polyether polyol product, then that process unit is considered a PMPU. That PMPU is either an affected source or is part of an affected source comprised of other PMPU at the same plant site that also make polyether polyols, if the plant site is a major source. The status of a process unit as a PMPU, and as an affected source or part of an affected source shall not change regardless of which polyether polyol products are produced in the future by the PMPU, with the exception noted in paragraph (e)(3)(i) of this section.

(i) If a process unit terminates the production of all polyether polyol products and does not anticipate the production of any polyether polyol products in the future, the process unit is no longer a PMPU, is no longer an affected source or part of an affected source, and is not subject to the provisions of this subpart after notification is made as specified in paragraph (e)(3)(ii) of this section.

(ii) The owner or operator of a process unit that wishes to remove the PMPU designation from the process unit, as specified in paragraph (e)(3)(i) of this section, shall notify the Administrator. This notification shall be accompanied by rationale for why it is anticipated that no polyether polyol products will be produced in the process unit in the future.

(iii) If a process unit meeting the criteria of paragraph (e)(3)(i) of this section begins the production of a polyether polyol product in the future, the owner or operator shall use the procedures in paragraph (e)(4)(i) of this section to determine if the process unit is re-designated as a PMPU.

(4) If the primary product of a process unit is not a polyether polyol product, then that process unit is not an affected source, nor is it part of any affected source subject to this subpart. The process unit is not subject to this subpart at any time, regardless of what product is being produced. The status of the process unit as not being a PMPU, and therefore not being an affected source or part of an affected source subject to this subpart, shall not change regardless of what products are produced in the future by the PMPU, with the exception noted in paragraph (e)(4)(i) of this section.

(i) If, at any time beginning [insert date 5 years from date of publication of final rule], the owner or operator determines that a polyether polyol product is the primary product for the process unit based on actual production data for any preceding consecutive five-year period, then the process unit shall be classified as a PMPU. If that PMPU is not subject to another subpart of 40 CFR part 63, it is either an affected source or part of an affected source and shall be subject to this subpart. If the PMPU is subject to another subpart of 40 CFR part 63, it is not an affected source for the purposes of this subpart.

(ii) If a process unit meets the criteria of paragraph (e)(4)(i) of this section, the owner or operator shall notify the Administrator within 6 months of making this determination. The PMPU, as the entire affected source or part of an affected source, shall be in compliance with the provisions of this rule within 3 years from the date of such notification.

(5) Once the primary product of a process unit has been determined to be a polyether polyol product, the owner or operator of the affected source shall comply with the provisions of this subpart, as specified in either paragraph (e)(5)(i) or (e)(5)(ii) of this section, except as specified in paragraph (e)(5)(iii) of this section.

(i) Each owner or operator shall determine the applicability of the provisions for each emission point that is part of that flexible operation unit based on emission point characteristics when a polyether polyol is being manufactured. Based on this finding, the owner or operator shall comply with the applicable standards of this subpart for each emission point, as appropriate, at all times, regardless of what product is being produced.

(ii) Alternatively, each owner or operator shall determine the applicability of the provisions of this subpart to each emission point that is part of the flexible operation unit based on the emission point characteristics when each product produced by the flexible operation unit is manufactured, regardless of whether the product is a polyether polyol product or not. Based on these findings, the owner or operator shall comply with the applicable requirements, as appropriate, regardless of what product is being produced.

**Note:** Under this scenario, it is possible that the group status, and therefore the requirement to achieve emission reductions, for an emission point may change depending on the product being manufactured.

(iii) Whenever a flexible operation unit manufactures a product that meets the criteria of paragraph (b) of this section (i.e., does not use or manufacture any organic HAP), the owner or operator shall comply only with either paragraph (b)(1) or (b)(2) of this section to demonstrate compliance

for activities associated with the manufacture of that product. This subpart does not require compliance with the provisions of subpart A of this part for activities associated with the manufacture of a product that meets the criteria of paragraph (b) of this section.

(6) The determination of the primary product for a process unit, to include the determination of applicability of this subpart to process units that are designed and operated as flexible operation units, shall be reported in the Notification of Compliance Status required by § 63.1439(e)(5) when the primary product is determined to be a polyether polyol product. The Notification of Compliance Status shall include the information specified in either paragraph (e)(6)(i) or (e)(6)(ii) of this section. If the primary product is determined to be something other than a polyether polyol product, the owner or operator shall retain information, data, and analysis used to document the basis for the determination that the primary product is not a polyether polyol product.

(i) If the PMPU manufactures only polyether polyol products, identification of that fact.

(ii) If the PMPU is designed and operated as a flexible operation unit, the information specified in paragraphs (e)(6)(ii)(A) through (e)(6)(ii)(C) of this section, as appropriate.

(A) Identification of polyether polyols as the primary product.

(B) Identification of the compliance option (either paragraph (e)(5)(i) or (e)(5)(ii) of this section), that has been selected by the owner or operator.

(7) To demonstrate compliance with the rule during those periods when a flexible operation unit that is subject to this subpart is producing a product that is not a polyether polyol, the owner or operator shall comply with either paragraphs (e)(7)(i) and (e)(7)(ii) or paragraph (e)(7)(iii) of this section.

(i) Establish parameter monitoring levels as specified in § 63.1438, for those applicable emission points designated as Group 1 (or emission points subject to these provisions); and

(ii) Submit the parameter monitoring levels developed under paragraph (e)(7)(i) of this section and the basis for them in the Notification of Compliance Status report, as specified in § 63.1439(e)(6); or

(iii) Demonstrate that the parameter monitoring levels established are also appropriate for those periods when products other than polyether polyols are being produced. Material demonstrating this finding shall be submitted in the Notification of Compliance Status report as specified in § 63.1439(e)(5).

(f) *Storage vessel ownership determination.* The owner or operator shall follow the procedures specified in paragraphs (f)(1) through (f)(7) of this section to determine to which process unit a storage vessel shall belong. Paragraph (f)(8) of this section specifies when an owner or operator is required to redetermine to which process unit a storage vessel belongs.

(1) If a storage vessel is already subject to another subpart of 40 CFR part 63 on [insert date of publication of final rule], that storage vessel shall belong to the process unit subject to the other subpart and none of the other provisions in this subpart shall apply to that storage vessel.

(2) If a storage vessel is dedicated to a single process unit, the storage vessel shall belong to that process unit.

(3) If a storage vessel is shared among process units, then the storage vessel shall belong to that process unit located on the same plant site as the storage vessel that has the greatest input into or output from the storage vessel (i.e., the process unit that has the predominant use of the storage vessel.)

(4) If predominant use cannot be determined for a storage vessel that is shared among process units and if only one of those process units is a PMPU subject to this subpart, the storage vessel shall belong to that PMPU.

(5) If predominant use cannot be determined for a storage vessel that is shared among process units and if more than one of the process units are PMPUs that have different primary products and that are subject to this subpart, then the owner or operator shall assign the storage vessel to any one of the PMPUs sharing the storage vessel.

(6) If the predominant use of a storage vessel varies from year to year, then predominant use shall be determined based on the utilization that occurred during the year preceding [insert date of publication of final rule] or based on the expected utilization for the 5 years following [insert date of publication of final rule] for existing affected sources, whichever is more representative of the expected operations for that storage vessel, and based on the expected utilization for the 5 years after initial start-up for new affected sources. The determination of predominant use shall be reported in the Notification of Compliance Status, as required by § 63.1439(e)(5)(vi).

(7) Where a storage vessel is located at a major source that includes one or more process units which place material into, or receive materials from the storage vessel, but the storage vessel is located in a tank farm (including a marine tank farm), the applicability of this subpart shall be determined according to the provisions in paragraphs (f)(7)(i) through (f)(7)(iv) of this section.

(i) The storage vessel may only be assigned to a process unit that utilizes the storage vessel and does not have an intervening storage vessel for that product (or raw materials, as appropriate). With respect to any process unit, an intervening storage vessel means a storage vessel connected by hard-piping to both the process unit and to the storage vessel in the tank farm so that product or raw material entering or leaving the process unit flows into (or from) the intervening storage vessel and does not flow directly into (or from) the storage vessel in the tank farm.

(ii) If there is no process unit at the major source that meets the criteria of paragraph (f)(7)(i) of this section with respect to a storage vessel, this subpart does not apply to the storage vessel.

(iii) If there is only one process unit at the major source that meets the criteria of paragraph (f)(7)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to that process unit. Applicability of this subpart to the storage vessel shall then be determined according to the provisions of paragraph (a) of this section.

(iv) If there are two or more process units at the major source that meet the criteria of paragraph (f)(7)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to one of those process units according to the provisions of paragraphs (f)(3) through (f)(6) of this section. The predominant use shall be determined among only those process units that meet the criteria of paragraph (f)(7)(i) of this section.

(8) If there is a change in the utilization of the storage vessel that could reasonably be expected to change the predominant use, the owner or operator shall redetermine to which process unit the storage vessel belongs by reperforming the procedures specified in paragraphs (f)(2) through (f)(7) of this section, as appropriate.

(g) *Changes or additions to plant sites.* The provisions of paragraphs (g)(1) through (g)(3) of this section apply to owners or operators that change or add to their plant site or affected source. Paragraph (g)(4) provides examples of what are and are not considered process changes for purposes of paragraph (g) of this section.

(1) *Adding a PMPU to a plant site.* The provisions of paragraphs (g)(1)(i)

and (g)(1)(ii) of this section apply to owners or operators that add PMPUs to a plant site.

(i) If one or more PMPU is added to a plant site, the addition shall be a new affected source and shall be subject to the requirements for a new affected source in this subpart upon initial start-up or by [insert date of publication of final rule], whichever is later, if the addition meets the criteria specified in paragraphs (g)(1)(i)(A) and (g)(1)(i)(B) and either (g)(1)(i)(C) or (g)(1)(i)(D) of this section:

(A) It is an addition that meets the definition of construction in § 63.2 of subpart A;

(B) Such construction commenced after September 4, 1997; and

(C) The addition has the potential to emit 10 tons per year or more of any organic HAP or 25 tons per year or more of any combination of organic HAP, and a polyether polyol is the primary product of the addition and polyether polyols are currently produced at the plant site as the primary product of an affected source; or

(D) A polyether polyol is not currently produced at the plant site as the primary product of an affected source, and the plant site meets, or after the addition is constructed will meet, the definition of a major source in § 63.2 of subpart A.

(ii) If a PMPU is added to a plant site, the addition shall be subject to the requirements for an existing affected source in this subpart upon initial start-up or by 3 years after [insert date of publication of final rule], whichever is later, if the addition does not meet the criteria specified in paragraph (g)(1)(i) of this section and the plant site meets, or after the addition is completed will meet, the definition of major source.

(2) *Adding emission points or making process changes to existing affected sources.* The provisions of paragraphs (g)(2)(i) and (g)(2)(ii) of this section apply to owners or operators that add emission points or make process changes to an existing affected source.

(i) If any process change is made or emission point is added to an existing affected source, the entire affected source shall be a new affected source and shall be subject to the requirements for a new affected source in this subpart upon initial start-up or by [insert date of publication of final rule], whichever is later, if the process change or addition meets the criteria specified in paragraphs (g)(2)(i)(A) through (g)(2)(i)(B) of this section:

(A) It is a process change or addition that meets the definition of reconstruction in § 63.2 of subpart A; and

(B) Such reconstruction commenced after September 4, 1997.

(ii) If any process change is made or emission point is added to an existing affected source, and the process change or addition does not meet the criteria specified in paragraphs (g)(2)(i)(A) and (g)(2)(i)(B) of this section, the resulting emission point(s) shall be subject to the requirements for an existing affected source in this subpart. The resulting emission point(s) shall be in compliance upon initial start-up or by 3 years after [insert date of publication of final rule], whichever is later.

(3) *Existing affected source requirements for Group 2 emission points that become Group 1 emission points.* If a process change or addition that does not meet the criteria in paragraph (g)(1)(i) or (g)(2)(i) of this section is made to an existing plant site or existing affected source, and the change causes a Group 2 emission point to become a Group 1 emission point, for that emission point the owner or operator shall comply with the requirements of this subpart for existing Group 1 emission points. Compliance shall be achieved as expeditiously as practical, but in no event later than 3 years after the emission point becomes a Group 1 emission point.

(4) *Determining what are and are not process changes.* For purposes of paragraph (g) of this section, examples of process changes include, but are not limited to, additions in process equipment resulting in changes in production capacity, production of a product outside the scope of the compliance demonstration, or whenever there is a replacement, removal, or addition of recovery equipment. For purposes of paragraph (g) of this section, process changes do not include: Process upsets, unintentional temporary process changes, and changes that are within the equipment configuration and operating conditions documented in the Notification of Compliance Status report required by § 63.1439(e)(5).

(h) *Applicability of this subpart except during periods of start-up, shutdown, malfunction, or non-operation.* Paragraphs (h)(1) through (h)(3) of this section shall be followed during periods of start-up, shutdown, malfunction, and non-operation of the affected source or any part thereof.

(1) The provisions set forth in this subpart and the provisions referred to in this subpart shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies, or periods of start-up or shutdown, malfunction. However, if a start-up, shutdown, malfunction, or period of non-operation of one portion of an affected source 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 during the start-up, shutdown, malfunction, or period of non-operation. For example, the degassing of a storage vessel would not affect the ability of a process vent to meet the requirements of §§ 63.1425 through 63.1430.

(2) The owner or operator shall not shut down items of equipment that are required or utilized for compliance with this subpart 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 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 affected source or portion thereof.

(3) During start-ups, shutdowns, and malfunctions when the requirements of this subpart do not apply pursuant to paragraphs (h)(1) through (h)(3) of this section, the owner or operator shall implement, to the extent reasonably available, measures to prevent or minimize excess emissions. 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. 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 affected source. Back-up control techniques are not required, but may be used if available.

**§ 63.1421 Delegation of authority**

(a) In delegating implementation and enforcement authority to a State under section 112(l) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities which will not be delegated to the States: The permission to use an alternative means of emission

limitation, from § 63.6(g) of subpart A, and the authority of § 63.177 of subpart H.

**§ 63.1422 Compliance schedule and relationship to existing applicable rules.**

(a) Affected sources are required to achieve compliance on or before the dates specified in paragraphs (b) through (d) of this section. Paragraph (e) of this section provides information on requesting compliance extensions. Paragraphs (f) through (j) of this section discuss the relationship of this subpart to subpart A and to other applicable rules. Where an override of another authority of the Act is indicated in this subpart, only compliance with the provisions of this subpart is required. Paragraph (k) of this section specifies the meaning of time periods.

(b) New affected sources that commence construction or reconstruction after September 4, 1997 shall be in compliance with this subpart upon initial start-up or by [insert date of publication of final rule], whichever is later, as provided in § 63.6(b) of subpart A.

(c) Existing affected sources shall be in compliance with this subpart (except for § 63.1434 for which compliance is covered by paragraph (d) of this section) no later than 3 years after [insert date of publication of final rule], as provided in § 63.6(c) of subpart A, unless an extension has been granted as specified in paragraph (e) of this section.

(d) Except as provided for in paragraphs (d)(1) through (d)(5) of this section, existing affected sources shall be in compliance with § 63.1434 no later than [date 6 months from date of publication of final rule] unless an extension has been granted pursuant to section 112(i)(3)(B) of the Act, as discussed in § 63.182(a)(6) of subpart H.

(1) Compliance with the compressor provisions of § 63.164 of subpart H shall occur no later than [date 1 year from date of publication of final rule] for any compressor meeting one or more of the criteria in paragraphs (d)(1)(i) through (d)(1)(iv) of this section, if the work can be accomplished without a process unit shutdown, as defined in § 63.161 of subpart H.

(i) The seal system will be replaced;

(ii) A barrier fluid system will be installed; or

(iii) A new barrier fluid will be utilized which requires changes to the existing barrier fluid system.

(iv) The compressor must be modified to permit connecting the compressor to a closed vent system.

(2) Compliance with the compressor provisions of § 63.164 of subpart H shall occur no later than [date 18 months from date of publication of final rule], for any compressor meeting all the criteria in paragraphs (d)(2)(i) through (d)(2)(iv) of this section.

(i) The compressor meets one or more of the criteria specified in paragraphs (d)(1)(i) through (d)(1)(iv) of this section;

(ii) The work can be accomplished without a process unit shutdown as defined in § 63.161 of subpart H;

(iii) The additional time is necessary, due to the unavailability of parts beyond the control of the owner or operator; and

(iv) The owner or operator submits the request for a compliance extension to the appropriate U.S. Environmental Protection Agency (EPA) Regional Office at the addresses listed in § 63.13 of subpart A no later than 45 days before [date 6 months from date of publication of final rule]. The request for a compliance extension shall contain the information specified in § 63.6(i)(6)(i)(A), (B), and (D) of subpart A. Unless the EPA Regional Office objects to the request for a compliance extension within 30 days after receipt of the request, the request shall be deemed approved.

(3) If compliance with the compressor provisions of § 63.164 of subpart H cannot reasonably be achieved without a process unit shutdown, as defined in § 63.161 of subpart H, the owner or operator shall achieve compliance no later than [date 2 years after date of publication of final rule]. The owner or operator who elects to use this provision shall submit a request for an extension of compliance in accordance with the requirements of paragraph (d)(2)(iv) of this section.

(4) Compliance with the compressor provisions of § 63.164 of subpart H shall occur not later than [date 3 years from date of publication of final rule] for any compressor meeting one or more of the criteria in paragraphs (d)(4)(i) through (d)(4)(iii) of this section. The owner or operator who elects to use these provisions shall submit a request for an extension of compliance in accordance with the requirements of paragraph (d)(2)(iv) of this section.

(i) Compliance cannot be achieved without replacing the compressor;

(ii) Compliance cannot be achieved without recasting the distance piece; or

(iii) Design modifications are required to connect to a closed-vent system.

(5) Compliance with the surge control vessel and bottoms receiver provisions of § 63.170 of subpart H shall occur no later than [date 3 years from date of publication of final rule].

(e) Pursuant to section 112(i)(3)(B) of the Act, an owner or operator may request an extension allowing the existing affected source up to 1 additional year to comply with section 112(d) standards. For purposes of this subpart, a request for an extension shall be submitted to the permitting authority as part of the operating permit application or to the Administrator as a separate submittal or as part of the Precompliance Report. Requests for extensions shall be submitted no later than 120 days prior to the compliance dates specified in paragraphs (b) through (d) of this section, except as discussed in paragraph (e)(3) of this section. The dates specified in § 63.6(i) of subpart A for submittal of requests for extensions shall not apply to this subpart.

(1) A request for an extension of compliance shall include the data described in § 63.6(i)(6)(i)(A), (B), and (D) of subpart A.

(2) The requirements in § 63.6(i)(8) through § 63.6(i)(14) of subpart A shall govern the review and approval of requests for extensions of compliance with this subpart.

(3) An owner or operator may submit a compliance extension request after the date specified in paragraph (e) of this section, provided that the need for the compliance extension arose after that date, and the need arose due to circumstances beyond reasonable control of the owner or operator. This request shall include, in addition to the information specified in paragraph (e)(1) of this section, a statement of the reasons additional time is needed and the date when the owner or operator first learned of the problem.

(f) Table 1 of this subpart specifies the provisions of subpart A of this part that apply and those that do not apply to owners and operators of affected sources subject to this subpart. For the purposes of this subpart, Table 3 of subpart F of this part is not applicable.

(g) Table 2 of this subpart summarizes the provisions of subparts F, G, and H of this part that apply and those that do not apply to owners and operators of affected sources subject to this subpart.

(h)(1) After the compliance dates specified in this section, an affected source subject to this subpart that is also subject to the provisions of 40 CFR part 63, subpart I, is required to comply only with the provisions of this subpart.

(2) Sources subject to 40 CFR part 63, subpart I that have elected to comply through a quality improvement program, as specified in § 63.175 or § 63.176 or both of subpart H, may elect to continue these programs without interruption as a means of complying with this subpart. In other words, becoming subject to this subpart does not restart or reset the ‘‘compliance

clock'' as it relates to reduced burden earned through a quality improvement program.

(i) After the compliance dates specified in this section, a storage vessel that belongs to an affected source subject to this subpart that is also subject to the provisions of 40 CFR part 60, subpart Kb is required to comply only with the provisions of this subpart. After the compliance dates specified in this section, that storage vessel shall no longer be subject to 40 CFR part 60, subpart Kb.

(j) *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 this subpart, 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, the owner or operator may comply with either paragraph (j)(1) or (j)(2) of this section. If, after the compliance dates specified in this subpart, any combustion device, recovery device, or recapture device subject to this subpart is subject to monitoring and recordkeeping requirements in 40 CFR part 265 subpart AA or CC, the owner or operator may comply with either paragraph (j)(1) or (j)(3) of this section. If the owner or operator elects to comply with either paragraph (j)(2) or (j)(3) of this section, the owner or operator shall notify the Administrator of this choice in the Notification of Compliance Status required by § 63.1439(e)(5).

(1) The owner or operator shall comply with the monitoring, recordkeeping and reporting requirements of this subpart.

(2) The owner or operator shall comply with the monitoring, recordkeeping and reporting requirements in 40 CFR part 264, with the following exception. All excursions, as defined in § 63.1438(f) of this subpart, shall be reported in the periodic report. Compliance with this paragraph shall constitute compliance with the monitoring, recordkeeping and reporting requirements of this subpart.

(3) The owner or operator shall comply with the monitoring and recordkeeping requirements of 40 CFR part 265 subpart AA or CC and 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, with the following exception. All excursions, as defined in § 63.1438(f) of this subpart, shall be reported in the periodic report. Compliance with this paragraph shall constitute compliance with the monitoring, recordkeeping and reporting requirements of this subpart.

(k)(1) Notwithstanding time periods specified in this subpart for completion of required tasks, such time periods may be changed by mutual agreement between the owner or operator and the Administrator, as specified in subpart A of this part (e.g., a period could begin on the compliance date or another date, rather than on the first day of the standard calendar period). For each time period that is changed by agreement, the revised period shall remain in effect until it is changed. A new request is not necessary for each recurring period.

(2) Where the period specified for compliance is a standard calendar period, if the initial compliance date occurs after the beginning of the period, compliance shall be required according to the schedule specified in paragraphs (k)(2)(i) or (k)(2)(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 2 weeks for tasks that must be performed monthly, at least 1 month for tasks that must be performed each quarter, or at least 3 months for tasks that must be performed annually; or

(ii) In all other cases, compliance shall be required before the end of the first full standard calendar period after the period within which the initial compliance deadline occurs.

(3) In all instances where a provision of this subpart requires completion of a task during each of multiple successive periods, an owner or operator may perform the required task at any time during the specified period, provided that the task is conducted at a reasonable interval after completion of the task during the previous period.

**§ 63.1423 Definitions.**

(a) The following terms used in this subpart shall have the meaning given them in subparts A (§ 63.2), F (§ 63.101), G (§ 63.111), and H (§ 63.161) as specified after each term:

Act (subpart A)
Administrator (subpart A)
Automated monitoring and recording system (subpart G)
Boiler (subpart G)
Bottoms receiver (subpart H)
By-product (subpart F)
Car-seal (subpart G)
Closed-vent system (subpart G)
Combustion device (subpart G)
Commenced (subpart A)
Compliance date (subpart A)
Compliance schedule (subpart A)
Construction (subpart A)
Continuous monitoring system (subpart A)
Emission standard (subpart A)
EPA (subpart A)
Equipment (subpart H)
Equipment leak (subpart H)
Flow indicator (subpart G)
Fuel gas (subpart F)
Fuel gas system (subpart F)
Hard-piping (subpart G)
Heat exchange system (subpart F)
Impurity (subpart F)
Incinerator (subpart G)
In organic hazardous air pollutant (HAP) service (subpart H)
Major source (subpart A)
Malfunction (subpart A)
New source (subpart A)
Open-ended valve or line (subpart H)
Operating permit (subpart F)
Organic monitoring device (subpart G)
Owner or operator (subpart A)
Performance evaluation (subpart A)
Performance test (subpart A)
Permitting authority (subpart A)
Plant site (subpart F)
Potential to emit (subpart A)
Primary fuel (subpart G)
Process heater (subpart G)
Process unit shutdown (subpart H)
Process wastewater (subpart F)
Process wastewater stream (subpart G)
Reactor (subpart G)
Recapture device (subpart G)
Reconstruction (subpart A)
Relief valve (subpart G)
Research and development facility (subpart F)
Run (subpart A)
Secondary fuel (subpart G)
Sensor (subpart H)
Specific gravity monitoring device (subpart G)
Start-up, shutdown, and malfunction plan (subpart F)
State (subpart A)
Surge control vessel (subpart H)
Temperature monitoring device (subpart G)
Test method (subpart A)
Total resource effectiveness index value (subpart G)
Treatment process (subpart G)
Visible emission (subpart A)

(b) All other terms used in this subpart shall have the meaning given them in this section. If a term is defined in a subpart referenced above and in this section, it shall have the meaning given in this section for purposes of this subpart.

*Affected source* is defined in § 63.1420(a).

*Annual average concentration,* as used in conjunction with the wastewater provisions, means the flow-weighted annual average concentration and is determined by the procedures in § 63.144(b) of subpart G.

*Annual average flow rate,* as used in conjunction with the wastewater provisions, is determined by the procedures in § 63.144(c).

*Batch cycle* means the step or steps, from start to finish, that occur in a batch unit operation.

*Batch unit operation* means a unit operation involving intermittent or discontinuous feed into equipment, and, in general, involves the emptying of equipment after the batch cycle ceases and prior to beginning a new batch cycle. Mass, temperature, concentration and other properties of the process may vary with time. Addition of raw material and withdrawal of product do not simultaneously occur in a batch unit operations.

*Catalyst extraction* means the removal of the catalyst using either solvent or physical extraction method.

*Combination of process vents that are Group 1* means a group of process vents that has a total resource effectiveness index value, calculated according to § 63.115 of subpart G, less than or equal to 1.0 for process vents from continuous unit operations. For process vents from batch unit operations, the combination of process vents that are Group 1 means a group of process vents that has a cutoff flow greater than the annual average flow, calculated according to § 63.488(b) of subpart U.

*Combination of process vents that are Group 2* means a group of process vents that has a total resource effectiveness index value, calculated according to § 63.115 of subpart G, greater than 1.0 for process vents from continuous unit operations. For process vents from batch unit operations, the combination of process vents that are Group 2 streams means a group of process vents that has a cutoff flow less than the annual average flow, calculated according to § 63.488(b) of subpart U.

*Continuous record* means documentation, either in hard copy or computer readable form, of data values measured at least once during approximately equal intervals of 15 minutes and recorded at the frequency specified in § 63.1439(d).

*Continuous recorder* is defined in § 63.111, except that when the definition in § 63.111 reads ''or records 15-minute or more frequent block average values,'' the phrase ''or records 1-hour or more frequent block average values'' shall apply for purposes of this subpart.

*Continuous unit operation* means a unit operation where the inputs and outputs flow continuously. Continuous unit operations typically approach steady-state conditions. Continuous unit operations typically involve the simultaneous addition of raw material and withdrawal of the product.

*Control technique* means any equipment or process control used for capturing, recovering, or oxidizing organic hazardous air pollutant vapors. Such equipment includes, but is not limited to, absorbers, adsorbers, boilers, condensers, flares, incinerators, process heaters, and scrubbers, or any combination thereof. Process control includes extended cookout (as defined in this section). Condensers operating as reflux condensers that are necessary for processing, such as liquid level control, temperature control, or distillation operation, shall be considered inherently part of the process and will not be considered control techniques.

*Day* means calendar day for the purposes of this subpart.

*Emission point* means an individual process vent, storage vessel, wastewater stream, or equipment leak.

*Epoxide* means a chemical compound consisting of a three-membered cyclic ether. Only emissions of epoxides listed in Table 4 (ethylene oxide and propylene oxide) are regulated by the provisions of this subpart.

*Existing affected source* is defined in § 63.1420(a)(3).

*Extended Cookout* means a control technique that reduces the amount of unreacted EO and/or PO (epoxides) in the reactor. This is accomplished by allowing the product to react for a longer time period, thereby having less unreacted epoxides and reducing epoxides emissions that may have otherwise been emitted.

*Flexible operation unit* means a process unit that manufactures different chemical products in addition to polyether polyols periodically by alternating raw materials or operating conditions. These units are also referred to as campaign plants or blocked operations.

*Group 1 storage vessel* means a storage vessel that meets the applicability criteria specified in Table 3 of this subpart.

*Group 2 storage vessel* means a storage vessel that does not fall within the definition of a Group 1 storage vessel.

*Group 1 wastewater stream* means a process wastewater stream at an existing or new affected source that meets the criteria for Group 1 status in § 63.132(c) of subpart G, with the exceptions listed in § 63.1433(a)(10) for the purposes of this subpart (i.e., for organic HAP listed on Table 5 of this subpart only).

*Group 2 wastewater stream* means any process wastewater stream as defined in § 63.101 of subpart F at an existing affected source that does not meet the definition (in this section) of a Group 1 wastewater stream.

*Initial start-up* means the first time a new or reconstructed affected source begins production, or, for equipment added or changed as described in § 63.1420(g), the first time the equipment is put into operation. Initial start-up does not include operation solely for testing equipment. Initial start-up does not include subsequent start-ups of an affected source or portion thereof following malfunctions or shutdowns or following changes in product for flexible operation units. Further, for purposes of § 63.1422, initial start-up does not include subsequent start-ups of affected sources or portions thereof following malfunctions or process unit shutdowns.

*Maintenance wastewater* is defined in § 63.101 of subpart F, except that the term ''polyether polyol manufacturing process unit'' shall apply whenever the term ''chemical manufacturing process unit'' is used. Further, the generation of wastewater from the routine rinsing or washing of equipment between batch cycles is not maintenance wastewater, for the purposes of this subpart.

*Make or modify the product* means to produce the polyether polyol with epoxides or other cyclic ethers with compounds having one or more reactive hydrogens, and to add any preservatives/antioxidants in order to maintain the quality of the finished product before shipping. Making and modifying the product for this regulation does not include grafting, polymerizing the polyol, or modifying it with compounds other than EO or PO.

*Maximum true vapor pressure* is defined in § 63.111 of subpart G, except that the terms ''transfer'' and ''transferred'' shall not apply for the purposes of this subpart.

*Month* means either a calendar month or a repeating 30-day period.

*New affected source* is defined in § 63.1420(a)(4).

*On-site or on site* means, with respect to records required to be maintained by this subpart or required by another subpart referenced by this subpart, a location within the plant site where the affected source is located. On-site storage of records includes, but is not limited to, a location at the affected source or PMPU to which the records pertain or a location elsewhere at the plant site where the affected source is located.

*Operating day* refers to the 24-hour period defined by the owner or operator in the Notification of Compliance Status required by § 63.1439(e)(5). That 24-hour period may be from midnight to midnight or another 24-hour period. The operating day is the 24-hour period for which daily average monitoring values are determined.

*Organic hazardous air pollutant(s) (organic HAP)* means one or more of the

chemicals listed in Table 4 of this subpart, or any other chemical which:

(1) Is knowingly introduced into the manufacturing process other than as an impurity, or has been or will be reported under any Federal or State program, such as EPCRA section 311, 312, or 313 or Title V; and

(2) Is listed in Table 2 of subpart F of this part.

*Polyether polyol* means a compound formed through the polymerization of ethylene oxide (EO) or propylene oxide (PO) or other cyclic ethers with compounds having one or more reactive hydrogens (i.e., a hydrogen atom bonded to nitrogen, oxygen, phosphorus, sulfur, etc.) to form polyethers. This definition excludes materials regulated under the HON, such as glycols and glycol ethers.

*Polyether polyol manufacturing process unit (PMPU)* means a collection of equipment assembled and connected by process pipes or ducts, used to process raw materials and to manufacture a polyether polyol product as its primary product. A polyether polyol process unit consists of more than one unit operation. This collection of equipment includes reactors and their associated product separators and recovery devices, distillation units and their associated distillate receivers and recovery devices, other associated unit operations, storage vessels, surge control vessels, bottoms receivers, product transfer racks, connected ducts and piping, combustion, recovery, or recapture devices or systems, and the equipment (i.e., all pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems that are associated with the polyether polyol product process unit) that are subject to the equipment leak provisions as specified in § 63.1434.

*Primary product* is defined in and determined by the procedures specified in § 63.1420(e).

*Process* means a logical grouping of processing equipment which collectively function to produce a polyether polyols. A process may consist of one or more unit operations. For the purpose of this subpart, process includes all or a combination of reaction, recovery, separation, purification, or other activity, operation, manufacture, or treatment which are used to produce a polyether polyol.

*Process condenser* means a condenser whose primary purpose is to recover material as an integral part of a unit operation. The condenser must support a vapor-to-liquid phase change for periods of source equipment operation that are above the boiling or bubble point of substance(s). Examples of process condensers include distillation condensers, reflux condensers, process condensers in line prior to the vacuum source, and process condensers used in stripping or flashing operations.

*Process unit* means a collection of equipment assembled and connected by pipes or ducts to process raw materials and to manufacture a product.

*Process vent* means a point of emission from a unit operation having a gaseous emission stream. Unit operations that may have process vents are condensers, distillation units, reactors, or other unit operations within the PMPU. Process vents are points of emission from a unit operation having a gaseous stream that is discharged to the atmosphere either directly or after passing through one or more control, recovery, or recapture devices. Process vents exclude pressure relief valve discharges, gaseous streams routed to a fuel gas system(s), and leaks from equipment regulated under § 63.1434.

*Product* means a compound or material which is manufactured by a process unit. By-products, isolated intermediates, impurities, wastes, and trace contaminants are not considered products.

*Product class* means a group of polyether polyols with a similar curve representing the decline in pressure versus time. All products within a product class will have an essentially similar pressure decline curve, and operate within a given set of operating conditions. These operating conditions are: A minimum reaction temperature; the number of —OH groups in the polyol; a minimum catalyst concentration; the type of catalyst (e.g., self-catalyzed, base catalyst, or acid catalyst); the epoxide ratio, or a range for that ratio, and; the reaction conditions of the system (e.g., the size of the reactor, or the size of the batch).

*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 (except reflux condensers, because they are part of the reactor unit operation), oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin film evaporation units. When this subpart requires compliance with monitoring, recordkeeping, or recording requirements of this subpart, recapture devices are considered recovery devices.

*Residual* is defined in § 63.111 of subpart G, except that when the definition in § 63.111 uses the term ''Table 9 compounds,'' the term ''organic HAP listed in Table 9 of subpart G'' shall apply, for the purposes of this subpart.

*Shutdown* means for purposes including, but not limited to, periodic maintenance, replacement of equipment, or repair, the cessation of operation of an affected source, a PMPU within an affected source, or a unit operation within an affected source, including equipment required or used to comply with this subpart, or the emptying or degassing of a storage vessel. Shutdown does not include the normal periods between batch cycles. For purposes of the wastewater provisions, shutdown does not include the routine rinsing or washing of equipment between batch cycles.

*Start-up* means the setting into operation of an affected source, a PMPU within the affected source, or a unit operation within an affected source, or equipment required or used to comply with this subpart, or a storage vessel after emptying and degassing. For all processes, start-up includes initial start-up and operation solely for testing equipment. Start-up does not include the recharging of batch unit operations. For continuous unit operations, start-up includes transitional conditions due to changes in product for flexible operation units. For batch unit operations, start-up does not include transitional conditions due to changes in product for flexible operation units.

*Steady-state conditions* means that all variables (temperatures, pressures, volumes, flow rates, etc.) in a process do not vary significantly with time; minor fluctuations about constant mean values can occur.

*Storage vessel* means a tank or other vessel that is used to store liquids that contain one or more organic HAP and that has been assigned, according to the procedures in § 63.1420(f), to a PMPU that is subject to this subpart. Storage vessels do not include:

(1) Vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) Pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere;

(3) Vessels with capacities smaller than 38 cubic meters;

(4) Vessels and equipment storing and/or handling material that contains no organic HAP, or organic HAP as impurities only;

(5) Surge control vessels and bottoms receiver tanks; and

(6) Wastewater storage tanks.

*Total organic compounds (TOC)* are those compounds, excluding methane and ethane, measured according to the procedures of Method 18 or Method 25A of 40 CFR part 60, appendix A.

*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 columns, extraction columns, absorbers, decanters, condensers, and filtration equipment.

*Vent stream*, as used in reference to process vents, means the emissions from a process vent.

*Waste management unit* is defined in § 63.111, except that when the definition in § 63.111 of subpart H uses the term ''chemical manufacturing process unit,'' the term ''PMPU'' shall apply for the purposes of this subpart.

*Wastewater* means water that:

(1) Contains either

(a) an annual average concentration of organic HAP listed in Table 5 of this subpart 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

(b) an annual average concentration of organic HAP listed on Table 5 of this subpart of at least 10,000 parts per million by weight at any flow rate, and that

(2) is discarded from a PMPU that is part of an affected source. Wastewater is process wastewater or maintenance wastewater.

*Wastewater stream* means a stream that contains wastewater as defined in this section.

*Year* means any consecutive 12-month period or 365 rolling days.

(c) Sections 63.1432, 63.1433, 63.1434, and 63.1435, of this subpart directly reference sections of subparts F, G, and H of this part. Terms used in the referenced sections of subparts F, G, and H of this part shall have the meanings given them in those subparts, as appropriate, unless a term is also defined in paragraph (b) of this section. If a term in a referenced section is defined in subpart F, G, or H of this part and in paragraph (b) of this section, the definition provided in paragraph (b) of this section shall override the definition of the term in subpart F, G, or H of this part, for the purposes of this subpart.

**§ 63.1424 Emission standards.**

(a) Except as provided under paragraphs (b) through (d) of this section, the owner or operator of an existing or new affected source shall comply with the provisions in:

(1) Sections 63.1425 through 63.1430 for process vents

(2) Section 63.1432 for storage vessels;

(3) Section 63.1433 for wastewater;

(4) Section 63.1434 for equipment leaks;

(5) Section 63.1435 for heat exchangers;

(6) Section 63.1437 for additional test methods and procedures;

(7) Section 63.1438 for monitoring levels and excursions; and

(8) Section 63.1439 for general reporting and recordkeeping requirements.

(b) When emissions of different kinds (i.e., emissions from process vents subject to § 63.1425, storage vessels subject to § 63.1432, process wastewater, and/or in-process equipment subject to § 63.149 of subpart G) are combined, and at least one of the emission streams would require control according to the applicable provision in the absence of combination with other emission streams, the owner or operator shall comply with the requirements of either paragraph (b)(1) or (b)(2) of this section.

(1) Comply with the applicable requirements of this subpart for each kind of emission in the stream as specified in paragraphs (a)(1) through (a)(6) of this section; or

(2) Comply with the first set of requirements identified in paragraphs (b)(2)(i) through (b)(2)(iv) 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 requiring control in the absence of combination with other emission streams, or the owner chooses to consider that emission stream to require control for the purposes of this paragraph. Compliance with the first applicable set of requirements identified in paragraphs (b)(2)(i) through (b)(2)(iv) of this section constitutes compliance with all other requirements in paragraphs (b)(2)(i) through (b)(2)(iv) of this section applicable to other types of emissions in the combined stream.

(i) The requirements of this subpart for process vents subject to § 63.1425 through § 63.1430 and that require controls, including applicable monitoring, recordkeeping, and reporting;

(ii) The requirements of § 63.119(e) of subpart G, as specified in § 63.1432, for control of emissions from Group 1 storage vessels, including applicable monitoring, recordkeeping, and reporting;

(iii) The requirements of § 63.139 of subpart G, as specified in § 63.1433, for control techniques used to control emissions from waste management units, including applicable monitoring, recordkeeping, and reporting; or

(iv) The requirements of § 63.139 of subpart G, as specified in § 63.1433, for closed vent systems for control of emissions from in-process equipment subject to § 63.149 of subpart G, as specified in § 63.1433, including applicable monitoring, recordkeeping, and reporting.

**§ 63.1425 Process Vent Control Requirements.**

(a) For each process vent at an affected source, the owner or operator shall comply with the provisions of this section. Paragraphs (b), (c), and (d) of this section are applicable to affected sources that produce polyether polyol products using epoxides. There are three separate emission limitations for process vents at affected sources using epoxides. Paragraph (b) of this section contains emission limitations for epoxide emissions; paragraph (c) of this section contains limitations for organic HAP emissions resulting from the use of nonepoxide organic HAP (in addition to epoxides) to make or modify the polyether polyol product; and paragraph (d) of this section contains limitations for emissions of organic HAP resulting from the use of organic HAP in catalyst extraction. Owners and operators of all affected sources using epoxides in the production of polyether polyol products are subject to the requirements of paragraph (b) of this section. Owners or operators are subject to the requirements of paragraph (c) of this subpart only if nonepoxide organic HAP are used to make or modify the polyether polyol product. Similarly, owners or operators are subject to the requirements of paragraph (d) of this section only if organic HAP are used in catalyst extraction. Paragraph (e) of this section provides an overview of how other sections of this subpart relate to demonstrating compliance with the control requirements of paragraphs (b), (c), and (d) of this section. The owners or operator of an affected source where polyether polyol products are produced using tetrahydrofuran shall comply with paragraph (f) of this section.

(b) *Requirements for epoxide emissions.* The owner or operator of an affected source where polyether polyol products are produced using epoxides shall reduce epoxide emissions from process vents from batch process unit operations and continuous process unit operations within each PMPU in accordance with either paragraph (b)(1) or (b)(2) of this section.

(1) For new affected sources, the owner or operator shall comply with

either paragraph (b)(1)(i), (b)(1)(ii) or (b)(1)(iii) of this section.

(i) Reduce the total epoxide emissions from the sum total of all process vents by an aggregated 99.9 percent;

(ii) [Reserved]; or

(iii) Maintain a PMPU-wide emission factor of no greater than $4.43\times10^{-3}$ kilogram epoxide emissions per megagram of product.

(2) For existing affected sources, the owner or operator shall comply with either paragraph (b)(2)(i), (b)(2)(ii), or (b)(2)(iii) of this section.

(i) Reduce the total epoxide emissions from the sum total of all process vents by an aggregated 98 percent;

(ii) Maintain an outlet concentration of total epoxides after combustion, recapture or recovery devices of 20 ppmv or less; or

(iii) Maintain a PMPU-wide emission factor of no greater than $1.69\times10^{-2}$ kilogram epoxide emissions per megagram of product.

(c) *Requirements for nonepoxide HAP emissions making or modifying the product.* The owner or operator of a new or existing affected source where polyether polyol products are produced using epoxides shall determine the group status for the combination of process vents in each PMPU that are associated with the use of one or more nonepoxide organic HAP to make or modify the product. The group status shall be determined using the procedures in § 63.1428 (a) through (f) for process vents from batch unit operations and § 63.1428(h) for process vents from continuous unit operations. Depending on the results of the group status determination, the owner or operator shall comply with the provisions of paragraph (c)(1), (c)(2), (c)(3), or (c)(4) of this section, as applicable. A PMPU that does not use any nonepoxide organic HAP to make or modify the polyether polyol product is exempt from the requirements of this paragraph.

(1) *Process vents from batch unit operations—Group 1 requirements.* For PMPUs where nonepoxide organic HAP is used to make or modify the product in batch unit operations, the owner or operator shall reduce total nonepoxide organic HAP emissions from the combination of process vents from batch unit operations associated with making or modifying the product by an aggregated 90 percent if the combination of process vents meets the Group 1 criteria contained in § 63.1428 of this subpart.

(2) *Process vents from batch unit operations—Group 2 requirements.* For PMPUs where nonepoxide organic HAP is used to make or modify the product in batch unit operations, and the combination of process vents from batch unit operations associated with making or modifying the product meets the Group 2 criteria, the owner or operator shall comply with the provisions of § 63.1428(g) of this subpart. No other control requirements apply to these process vents.

(3) *Process vents from continuous unit operations—Group 1 requirements.* For PMPUs where nonepoxide organic HAP is used to make or modify the product in continuous unit operations, the owner or operator shall reduce total nonepoxide organic HAP emissions from the combination of process vents from continuous unit operations that make or modify the product by an aggregated 98 percent, if the combination of process vents meets the Group 1 criteria contained in § 63.1428 of this subpart.

(4) *Process vents from continuous unit operations—Group 2 requirements.* For PMPUs where nonepoxide organic HAP is used to make or modify the product in continuous unit operations, and the combination of process vents from continuous unit operations that make or modify the product meets the Group 2 criteria, the owner or operator shall comply with paragraphs (c)(4)(i) or (c)(4)(ii) of this section, as applicable. No control requirements apply to these Group 2 process vents.

(i) If the TRE for the combination of process vents is greater than 1.0 but less than 4.0, the owner or operator shall comply with the monitoring provisions in § 63.1429, the recordkeeping provisions in § 63.1430(d) and the provisions in § 63.1428(h)(4).

(ii) If the TRE for the combination of process vents is greater than 4.0, the owner or operator shall comply with the provisions in § 63.1428(h)(2).

(d) *Requirements for nonepoxide organic HAP emissions from catalyst extraction.* The owner or operator of a new or existing affected source where polyether polyol products are produced using epoxide compounds shall reduce emissions of nonepoxide organic HAP from the sum total of all process vents associated with catalyst extraction by an aggregated 90 percent for each PMPU. A PMPU that does not use any nonepoxide organic HAP in catalyst extraction is exempt from the requirements of this paragraph.

(e) This paragraph describes how §§ 63.1426 through 63.1431 of this subpart shall be used with the control requirements specified in (b), (c), and (d) of this section.

(1) *Compliance with requirements for epoxide emissions.* (i) If an owner or operator chooses to comply with the control efficiency provisions in paragraph (b)(1)(i) or (b)(2)(i) of this section, the owner or operator shall comply with the provisions of paragraph (b)(1)(i) or (b)(2)(i) of this section by determining the epoxide emissions before and after control.

(A) If extended cookout is not being used as a control technique to reduce epoxide emissions, control efficiency shall be determined in accordance with § 63.1426 of this subpart. After the initial determination of compliance, monitoring of combustion, recovery, or recapture device performance shall be conducted in accordance with § 63.1429 of this subpart.

(B) If extended cookout is being used as a control technique to reduce epoxide emissions, uncontrolled and controlled emissions and control efficiency shall be determined in accordance with § 63.1427 of this subpart. After the initial determination of compliance, monitoring of the use of extended cookout shall be conducted in accordance with the requirements of § 63.1427(h) of this subpart.

(ii) If an owner or operator chooses to comply with the outlet concentration provision in paragraph (b)(2)(ii) of this section, the owner or operator shall determine the outlet concentration in accordance with § 63.1427 of this subpart. After the initial determination of compliance, monitoring of combustion, recovery, or recapture device performance or outlet concentration shall be conducted in accordance with § 63.1429 of this subpart.

(iii) If an owner or operator chooses to comply with the emission factor limitation provisions in paragraph (b)(1)(iii) or (b)(2)(iii) of this section, the owner or operator shall develop an epoxide annual emissions plan, as specified in § 63.1431 of this subpart. The owner or operator shall demonstrate compliance with this plan and monitor process and/or combustion, recovery, or recapture device parameters, in accordance with § 63.1431(c), (d), (e), and (f), as appropriate.

(2) *Compliance with requirements for nonepoxide organic HAP emissions from making or modifying the product.* The owner or operator shall comply with the provisions of paragraph (c) of this section in accordance with paragraph (e)(2)(i) of this section, and with either paragraph (e)(2)(ii) or (e)(2)(iii) of this section.

(i) For each PMPU, determine if the combination process vents from unit operations that are associated with the use of a nonepoxide organic HAP to make or modify the product meet the

Group 1 criteria provided in § 63.1428(a) for the combination of process vents from batch unit operations or § 63.1428(b) for the combination of process vents from continuous unit operations.

(ii) For combinations of process vents that are Group 1, demonstrate compliance with paragraph (c)(1) or (c)(2) of this section by complying with the performance test requirements contained in § 63.1426. After the initial determination of compliance, compliance shall be demonstrated by monitoring of combustion, recovery, or recapture device performance, in accordance with § 63.1429.

(iii) For combination of process vents that are Group 2, comply with the monitoring requirements in § 63.1429.

(f) *Requirements for process vents at PMPUs that produce polyether polyol products using tetrahydrofuran.* For each process vent in a PMPU that uses tetrahydrofuran (THF) to produce one or more polyether polyol products that is, or is part of, an affected source the owner or operator shall comply with the requirements of §§ 63.113 through 63.118 of subpart G, except as provided for in paragraphs (f)(1) through (f)(10) of this section.

(1) When December 31, 1992 (i.e., the proposal date for subpart G) is referred to in § 63.113 of subpart G, it shall be replaced with September 4, 1997 for the purposes of this subpart.

(2) When §§ 63.151(f), alternative monitoring parameters, and 63.152(e), submission of an operating permit, of subpart G are referred to in §§ 63.114(c) and 63.117(e) of subpart G, § 63.1439(f), alternative monitoring parameters, and § 63.1439(e)(8), submission of an operating permit, respectively, shall apply for the purposes of this subpart.

(3) When the Notification of Compliance Status requirements contained in § 63.152(b) of subpart G are referred to in §§ 63.114, 63.117, and 63.118 of subpart G, the Notification of Compliance Status requirements contained in § 63.1439(e)(5) shall apply for the purposes of this subpart.

(4) When the Periodic Report requirements contained in § 63.152(c) of subpart G are referred to in §§ 63.117 and 63.118 of subpart G, the Periodic Report requirements contained in § 63.1439(e)(6) shall apply for the purposes of this subpart.

(5) When the definition of excursion in § 63.152(c)(2)(ii)(A) of subpart G is referred to in § 63.118(f)(2) of subpart G, the definition of excursion in § 63.1438(f) shall apply for the purposes of this subpart.

(6) When § 63.114(e) of subpart G specifies that an owner or operator shall submit the information required in § 63.152(b) of subpart G in order to establish the parameter monitoring range, the owner or operator shall comply with the provisions of § 63.1438 for establishing the parameter monitoring level and shall comply with § 63.1439(e)(5)(ii) or § 63.1439(e)(8) for the purposes of reporting information related to the establishment of the parameter monitoring level, for the purposes of this subpart. Further, the term ''level'' shall apply whenever the term ''range'' is used in §§ 63.114, 63.117, and 63.118.

(7) When reports of process changes are required under § 63.118(g), (h), (i), or (j) of subpart G, paragraphs (e)(7)(i) through (e)(7)(iv) of this section shall apply for the purposes of this subpart.

(i) For the purposes of this subpart, whenever a process change, as defined in § 63.115(e) of subpart G, is made that causes a Group 2 process vent to become a Group 1 process vent, the owner or operator shall submit a report within 180 days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report. The following information shall be submitted:

(A) A description of the process change; and

(B) A schedule for compliance with the provisions of this subpart, as required under § 63.1439(e)(6)(iii)(D)(*1*).

(ii) Whenever a process change, as defined in § 63.115(e) of subpart G, is made that causes a Group 2 process vent with a TRE greater than 4.0 to become a Group 2 process vent with a TRE less than 4.0, the owner or operator shall submit a report within 180 days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report. The following information shall be submitted:

(A) A description of the process change; and

(B) A schedule for compliance with the provisions of this subpart, as required under § 63.1439(e)(6)(iii)(D)(*2*).

(iii) Whenever a process change, as defined in § 63.115(e) of subpart G, is made that causes a Group 2 process vent with a flow rate less than 0.005 standard cubic meter per minute (scmm) to become a Group 2 process vent with a flow rate of 0.005 scmm or greater and a TRE index value less than or equal to 4.0, the owner or operator shall submit a report within 180 days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report. The following information shall be submitted:

(A) A description of the process change; and

(B) A schedule for compliance with the provisions of this subpart, as required under § 63.1439(e)(6)(iii)(D)(*2*).

(iv) Whenever a process change, as defined in § 63.115(e) of subpart G, is made that causes a Group 2 process vent with an organic HAP concentration less than 50 parts per million by volume (ppmv) to become a Group 2 process vent with an organic HAP concentration of 50 ppmv or greater and a TRE index value less than or equal to 4.0, the owner or operator shall submit a report within 180 days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report. The following information shall be submitted:

(A) A description of the process change; and

(B) A schedule for compliance with the provisions of this subpart, as required under § 63.1439(e)(6)(iii)(D)(*2*).

(8) When § 63.118 of subpart G refers to § 63.152(f) of subpart G, the recordkeeping requirements in § 63.1439(d) shall apply for the purposes of this subpart.

(9) When §§ 63.115 and 63.116 of subpart G refer to Table 2 of subpart F, the owner or operator shall only consider organic HAP as defined in this subpart.

(10) When the provisions of § 63.116 (c)(3) and (c)(4) of subpart G specify that Method 18, 40 CFR part 60, appendix A shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A may be used for the purposes of this subpart. The use of Method 25A, 40 CFR part 60, appendix A shall comply with paragraphs (f)(10)(i) and (f)(10)(ii) of this section.

(i) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A shall be the single organic HAP representing the largest percent by volume of the emissions.

(ii) The use of Method 25A, 40 CFR part 60, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

**§ 63.1426 Process vent requirements for determining organic HAP concentration, control efficiency, and aggregated organic HAP emission reduction for a PMPU.**

(a) *Use of a flare.* When a flare is used to comply with § 63.1425 (b)(1)(iii),

(b)(2)(i), (b)(2)(ii), (b)(2)(iii), (c)(1), (c)(3), or (d) of this subpart, the owner or operator shall comply with the flare provisions in § 63.11(b) of subpart A, and is not required to demonstrate the control efficiency. In order to use only a flare to comply with § 63.1425(b)(1)(i), an owner or operator shall submit a request in accordance with § 63.6(g) of subpart A.

(b) *Exceptions to performance tests.* An owner or operator is not required to conduct a performance test when a combustion, recovery, or recapture device specified in paragraphs (b)(1) through (b)(5) of this section is used to comply with § 63.1425 (b), (c), or (d) of this subpart.

(1) A boiler or process heater with a design heat input capacity of 44 megawatts or greater.

(2) A boiler or process heater where the process vent stream is introduced with the primary fuel or is used as the primary fuel.

(3) A combustion, recovery, or recapture 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.

(4) A boiler or process heater burning hazardous waste for which the owner or operator:

(i) Has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H; or

(ii) Has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(5) 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.

(c) *Determination of organic HAP concentration and control efficiency.* Except as provided in paragraphs (a) and (b) of this section, an owner or operator using a combustion, recovery, or recapture device to comply with an organic HAP percent reduction efficiency requirement in § 63.1425, (b)(2)(i), (c)(1), (c)(3), or (d) an organic HAP concentration limitation in § 63.1425 (b)(1)(ii) or (b)(2)(ii), or an annual epoxide emission limitation § 63.1425 (b)(1)(iii) or (b)(2)(iii), shall conduct a performance test using the procedures in paragraphs (c)(1) through (c)(4) of this section. The organic HAP concentration and percent reduction may be measured as either total organic HAP or as TOC minus methane and ethane according to the procedures specified. When conducting testing in accordance with this section, the owner or operator is only required to measure HAP of concern for the specific requirement for which compliance is being determined. For instance, to determine compliance with the epoxide emission requirement of § 63.1426(b), the owner or operator is only required to measure epoxide control efficiency or outlet concentration.

(1) Method 1 or 1A of 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites.

(i) For determination of compliance with a percent reduction of total epoxide requirement in § 63.1425 (b)(1)(i), (b)(2)(i), or a percent reduction of total organic HAP requirement in paragraph (b)(1), (b)(3), or (c) of this section, sampling sites shall be located at the inlet of the combustion, recovery, or recapture device as specified in paragraphs (c)(1)(i)(A), (c)(1)(i)(B), and (c)(1)(i)(C) of this section, and at the outlet of the combustion, recovery, or recapture device.

(A) For process vent from continuous unit operations, the inlet sampling site shall be determined in accordance with either paragraph (c)(1)(i)(A)(*1*) or (c)(1)(i)(A)(*2*) of this section.

(*1*) To demonstrate compliance with either the provisions for epoxide emissions in § 63.1425(b) or the provisions for organic HAP emissions from catalyst extraction in § 63.1425(d), the inlet sampling site shall be located at the exit from the continuous unit operation before any recovery devices, or

(*2*) To demonstrate compliance with the requirements for organic HAP emissions from the use of nonepoxide organic HAP in making or altering the product in § 63.1425(c), the inlet sampling site shall be located after the final recovery device.

(B) For process vents from batch unit operations, the inlet sampling site shall be located at the exit from the batch unit operation before any recovery device.

(C) If a process vent stream is introduced with the combustion air or as a secondary fuel into a boiler or process heater with a design capacity less than 44 megawatts, selection of the location of the inlet sampling sites shall ensure the measurement of total organic HAP or TOC (minus methane and ethane) concentrations in all process vent streams and primary and secondary fuels introduced into the boiler or process heater.

(ii) For determination of compliance with a parts per million by volume total organic HAP limit in § 63.1425 (b)(1)(ii) or (b)(2)(iii), the sampling site shall be located at the outlet of the combustion, recovery, or recapture device.

(2) The gas volumetric flow rate shall be determined using Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as appropriate.

(3) To determine compliance with a parts per million by volume total organic HAP limit in § 63.1425 (b)(1)(ii) or (b)(2)(ii), the owner or operator shall use Method 18 of 40 CFR part 60, appendix A to measure either TOC minus methane and ethane or total organic HAP (of the HAP of concern). Alternatively, any other method or data that has been validated according to the applicable procedures in Method 301 of appendix A of this part, may be used. For combustion devices, the following procedures shall be used to calculate parts per million by volume concentration, corrected to 3 percent oxygen:

(i) Test duration shall be as specified in paragraphs (c)(3)(i)(A) through (c)(3)(i)(E) of this section, as appropriate.

(A) Testing of process vents from continuous unit operations will consist of three 1-hour runs. Gas stream volumetric flow rates shall be measured at approximately equal intervals of about 15 minutes during each 1-hour run. The HAP concentration shall be determined from samples collected in an integrated sample over the duration of each 1-hour test run, or from grab samples collected simultaneously with the flow rate measurements (at approximately equal intervals of about 15 minutes). If an integrated sample is collected for laboratory analysis, the sampling rate shall be adjusted proportionally to reflect variations in flow rate. For gas streams from continuous unit operations, the organic HAP concentration or control efficiency used to determine compliance shall be the average organic HAP concentration or control efficiency of the three test runs.

(B) Testing of process vents from batch unit operations shall, at a minimum, include testing for the worst-case episode or aggregated episodes(s) in the batch cycle or cycles (in the event that equipment is manifolded and vented through a common stack). Gas stream volumetric flow rates shall be measured at 15-minute intervals, or at least once during the emission episode. The HAP or TOC concentration shall be

determined from samples collected in an integrated sample over the duration of the worst case episode(s), or from grab samples collected simultaneously with the flow rate measurements (at approximately equal intervals of about 15 minutes). If an integrated sample is collected for laboratory analysis, the sampling rate shall be adjusted proportionally to reflect variations in flow rate. The worst case episode shall be characterized by the criteria presented in paragraph (c)(3)(i)(B)(*1*), (c)(3)(i)(B)(*2*), or (c)(3)(i)(B)(*3*) of this section.

(*1*) The period of a batch cycle or combined cycles in which a process vent gas will contain at least 50 percent of the total HAP load (in lb) from the entire cycle or combined cycles (if more than one cycle is vented through the same process vent) over a time duration that is sufficient to include all batch cycles routed to the common process vent. An emission profile as described in paragraph (c)(3)(i)(C) of this section shall be used to identify the worst case episode.

(*2*) A 1-hour period of time in which a process vent from the batch cycle or combination of cycles (if more than one cycle is vented through the same process vent) will contain the highest HAP mass loading rate, in lb/hr, experienced over a time duration that is sufficient to include all batch cycles routed to the common process vent. An emission profile as described in paragraph (c)(3)(i)(C) of this section shall be used to identify the worst case episode.

(*3*) If a condenser is used to control the process vent stream(s), the worst case emission episode(s) shall represent a 1-hour period of time in which a process vent from the batch cycle or combination of cycles (if more than one cycle is vented through the same process vent) will require the maximum heat removal capacity, in Btu/hr, to cool the process vent stream to a temperature that, upon calculation of HAP concentration, will yield the required removal efficiency for the entire cycle. The calculation of maximum heat load shall be based on the emission profile described in paragraph (c)(3)(i)(C) of this section and a concentration profile that will allow calculation of sensible and latent heat loads.

(*4*) For the purposes of testing the combustion, recovery, or recapture device, the worst case episode may be simulated based on the emissions profile described in paragraph (c)(3)(i)(C) of this section. A simulated worst case episode must have a representative composition, HAP load, and duration that would be predicted from the emission profile.

(C) For process vents from batch unit operations, the owner or operator may choose to perform tests only during those periods of the worst-case episode(s) that the owner or operator selects to control as part of achieving the required emission reduction. The owner or operator must develop an emission profile for the process vent, based on either process knowledge or test data collected, to demonstrate that test periods are representative. The emission profile must profile HAP loading rate (in lb/hr) versus time for all emission episodes contributing to the process vent stack for a period of time that is sufficient to include all batch cycles venting to the stack. Examples of information that could constitute process knowledge include calculations based on material balances, and process stoichiometry. Previous test results may be used to develop an emissions profile, provided the results are still representative of the current process vent stream conditions.

(D) For testing of batch emission episodes of duration greater than 8 hours, the owner or operator shall perform at least 8 hours of testing. The test period must include the period of time in which the worst case emission episode(s) is predicted by the emission profile.

(E) For testing of batch emission episodes of greater than 1 hour, the emission rate from a single test run may be used to determine compliance. For testing of episodes less than or equal to 1 hour, testing shall include three runs, each of a duration not less than the duration of the worst case episode.

(ii) The concentration of either TOC (minus methane or ethane) or total organic HAP, of the HAP of concern, shall be calculated according to paragraph (c)(3)(ii)(A) or (c)(3)(ii)(B) of this section.

(A) The TOC concentration ($C_{TOC}$) is the sum of the concentrations of the individual components and shall be computed for each run using the following equation:

$$C_{TOC} = \sum_{i=1}^{x} \frac{\left(\sum_{j=1}^{n} C_{ji}\right)}{x} \qquad \text{[Equation 1]}$$

Where:

$C_{TOC}$ = Concentration of TOC (minus methane and ethane), dry basis, parts per million by volume.

$C_{ji}$ = Concentration of sample components j of sample i, dry basis, parts per million by volume.

n = Number of components in the sample.

x = Number of samples in the sample run.

(B) The total organic HAP concentration ($C_{HAP}$) shall be computed according to equation 1, except that only the organic HAP species shall be summed.

(iii) The concentration of TOC or total organic HAP shall be corrected to 3 percent oxygen if a combustion device is used.

(A) 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 ($\%0_{2d}$). The samples shall be taken during the same time that the TOC (minus methane or ethane) or total organic HAP samples are taken.

(B) The concentration corrected to 3 percent oxygen ($C_c$) shall be computed using equation 2, as follows:

$$C_c = C_m\left(\frac{17.9}{20.9\text{-}\%O_{2d}}\right) \qquad \text{[Equation 2]}$$

Where:

$C_c$ = Concentration of TOC or organic HAP corrected to 3 percent oxygen, dry basis, parts per million by volume.

$C_m$ = Concentration of TOC (minus methane and ethane) or organic HAP, dry basis, parts per million by volume.

$\%0_{2d}$ = Concentration of oxygen, dry basis, percent by volume.

(4) To determine compliance with a percent reduction requirement of § 63.1425(b)(1)(i), (b)(2)(i), (c)(1), (c)(3), or (d), the owner or operator shall use Method 18 of 40 CFR part 60, appendix A; alternatively, any other method or data that has been validated according to the applicable procedures in Method 301 of appendix A of this part may be used. The following procedures shall be used to calculate percent reduction efficiency:

(i) Test duration shall be as specified in paragraphs (c)(3)(i)(A) through (c)(3)(i)(E) of this section, as appropriate.

(ii) The mass rate of either TOC (minus methane and ethane) or total organic HAP of the HAP of concern ($E_i$, $E_o$) shall be computed.

(A) The following equations shall be used:

$$E_i = K_2\left(\sum_{j=1}^{n} C_{ij}M_{ij}\right)Q_i \qquad \text{[Equation 3]}$$

$$E_o = K_2\left(\sum_{j=1}^{n} C_{oj}M_{oj}\right)Q_o \qquad \text{[Equation 4]}$$

Where:

$C_{ij}$, $C_{oj}$ = Concentration of sample component j of the gas stream at the inlet and outlet of the combustion, recovery, or recapture device, respectively, dry basis, parts per million by volume.

$E_i$, $E_o$ = Mass rate of TOC (minus methane and ethane) or total organic HAP at the inlet and outlet of the combustion, recovery, or recapture device, respectively, dry basis, kilogram per hour.

$M_{ij}$, $M_{oj}$ = Molecular weight of sample component j of the gas stream at the inlet and outlet of the combustion, recovery, or recapture device, respectively, gram/gram-mole.

$Q_i$, $Q_o$ = Flow rate of gas stream at the inlet and outlet of the combustion, recovery, or recapture device, respectively, dry standard cubic meter per minute.

$K_2$ = Constant, $2.494 \times 10^{-6}$ (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature (gram-mole per standard cubic meter) is 20 °C.

(B) Where the mass rate of TOC is being calculated, all organic compounds (minus methane and ethane) measured by Method 18 of 40 CFR part 60, appendix A are summed using equations 3 and 4 in paragraph (c)(4)(ii)(A) of this section.

(C) Where the mass rate of total organic HAP is being calculated, only the organic HAP species shall be summed using equations 3 and 4 in paragraph (c)(4)(ii)(A) of this section.

(iii) The percent reduction in TOC (minus methane and ethane) or total organic HAP shall be calculated using equation 5 as follows:

$$R = \frac{E_i - E_o}{E_i}(100) \qquad \text{[Equation 5]}$$

Where:

R = Control efficiency of combustion, recovery, or recapture device, percent.

$E_i$ = Mass rate of TOC (minus methane and ethane) or total organic HAP at the inlet to the combustion, recovery, or recapture device as calculated under paragraph (c)(4)(ii) of this section, kilograms TOC per hour or kilograms organic HAP per hour.

$E_o$ = Mass rate of TOC (minus methane and ethane) or total organic HAP at the outlet of the combustion, recovery, or recapture device, as calculated under paragraph (c)(4)(ii) of this section, kilograms TOC per hour or kilograms organic HAP per hour.

(iv) If the process vent stream entering a boiler or process heater with a design capacity less than 44 megawatts is introduced with the combustion air or as a secondary fuel, the weight-percent reduction of total organic HAP or TOC (minus methane and ethane) across the device shall be determined by comparing the TOC (minus methane and ethane) or total organic HAP in all combusted process vent streams and primary and secondary fuels with the TOC (minus methane and ethane) or total organic HAP exiting the combustion device, respectively.

(d) *Determination of uncontrolled organic HAP emissions.* For each process vent at a PMPU that is complying with § 63.1425 (b)(1)(i), (b)(1)(iii), (b)(2)(i), (b)(2)(iii), (c)(1), (c)(3), or (d) using a combustion, recovery, or recapture device, the owner or operator shall determine the uncontrolled organic HAP emissions in accordance with the provisions of this paragraph, with the exceptions noted in paragraph (d)(1) of this section. The provisions of this paragraph shall also be used to calculate uncontrolled epoxide emissions prior to the onset of an extended cook out and uncontrolled epoxide emissions prior to the end of the extended cook out.

(1) The owner or operator is not required to determine uncontrolled organic HAP emissions for process vents in a PMPU if the conditions in paragraph (d)(1) (i), (ii), or (iii) of this section are met.

(i) For PMPUs where all process vents subject to the epoxide emission reduction requirements of § 63.1425(b) are controlled at all times using a combustion, recovery, or recapture device, or extended cookout, the owner or operator is not required to determine uncontrolled epoxide emissions.

(ii) For PMPUs where the combination of process vents associated with the use of nonepoxide organic HAP to make or modify a polyether polyol product is subject to the Group 1 requirements of either § 63.1425 (c)(1) or (c)(3), the owner or operator is not required to determine uncontrolled nonepoxide organic HAP emissions for those process vents if every process vent associated with the use of nonepoxide organic HAP to make or modify the polyether polyol product in the PMPU is controlled at all times using a combustion, recovery, or recapture device.

(iii) For PMPUs where all process vents associated with catalyst extraction that are subject to the organic emission reduction requirements of § 63.1425(d) are controlled at all times using a combustion, recovery, or recapture device, the owner or operator is not required to determine uncontrolled organic HAP emissions for those process vents.

(2) *Process vents from batch unit operations.* The uncontrolled organic HAP emissions from an individual batch cycle for each process vent from a batch unit operation shall be determined using the procedures in § 63.488 (b)(1) through (b)(7) of subpart U. Uncontrolled emissions from process vents from batch unit operations shall be determined at the exit from the batch unit operation before any recovery device.

(3) *Process vents from continuous unit operations.* The uncontrolled organic HAP emissions for each process vent from a continuous unit operation in a PMPU shall be determined, at the location specified in paragraph (d)(3)(i) of this section, using the procedures in paragraph (d)(3)(ii) of this section.

(i)(A) For process vents subject to either the provisions for epoxide emissions in § 63.1425(b) or the provisions for organic HAP emissions from catalyst extraction in § 63.1425(d), uncontrolled emissions shall be determined at the exit from the continuous unit operation before any recovery devices, or

(B) For process vents subject to the Group 1 requirements for process vents associated with the use of nonepoxide organic HAP to make or modify the polyether polyol product in § 63.1425(c)(3) of this subpart, uncontrolled nonepoxide organic HAP emissions shall be determined after the final recovery device.

(ii) The owner or operator shall determine the hourly uncontrolled organic HAP emissions from each process vent from a continuous unit operation in accordance with paragraph (c)(4)(ii) of this section, except that the emission rate shall be determined at the location specified in paragraph (d)(2)(i) of this section.

(e) *Determination of Organic HAP Emission Reduction for a PMPU.* (1) The owner or operator shall determine the organic HAP emission reduction for process vents in a PMPU using Equation 6. The organic HAP emission reduction must be determined for each group of

process vents subject to the same paragraph of § 63.1425 of this subpart. For instance, process vents that emit epoxides are subject to paragraph (b) of § 63.1425. Therefore, the organic HAP (i.e., epoxide) emission reduction must be determination for the group of vents in a PMPU that are subject to this paragraph.

$$RED_{PMPU} = \left( \frac{\sum_{i=1}^{n} \left(E_{unc,i}\right)\left(R_i\right)}{\sum_{i=1}^{n} \left(E_{unc,i}\right) + \sum_{j=1}^{m} \left(E_{unc,j}\right)} \right) * 100 \qquad \text{[Equation 6]}$$

Where:

$RED_{PMPU}$ = Organic HAP emission reduction for the group of process vents exclusively subject to § 63.1425 (b), (c), or (d) of this subpart, percent

$E_{unc,i}$ = Uncontrolled organic HAP emissions from process vent i that is controlled using a combustion, recovery, or recapture device, kg/batch cycle for process vents from batch unit operations, kg/hr for process vents from continuous unit operations

n = Number of process vents in the PMPU that are exclusively subject to § 63.1425 (b), (c), or (d) of this subpart and that are controlled using a combustion, recovery, or recapture device

$R_i$ = Control efficiency of the combustion, recovery, or recapture device used to control organic HAP emissions from vent i, determined in accordance with paragraph (e)(2) of this section.

$E_{unc,j}$ = Uncontrolled organic HAP emissions from process vent j that is not controlled using a combustion, recovery, or recapture device, kg/batch cycle for process vents from batch unit operations, kg/hr for process vents from continuous unit operations

m = Number of process vents in the PMPU that are exclusively subject to § 63.1425 (b), (c), or (d) of this subpart and that are not controlled using a combustion, recovery, or recapture device.

(2) The control efficiency, $R_i$, shall be assigned as specified below in paragraph (e)(2)(i) or (ii) of this section.

(i) If the process vent is controlled using a flare, or a combustion device specified in paragraph (b)(1), (b)(2), (b)(4), or (b)(5) of this section and a performance test has not been conducted, the control efficiency shall be assumed to be 98 percent.

(ii) If the process vent is controlled using a combustion, recovery, or recapture device for which a performance test has been conducted in accordance with the provisions of paragraph (c) of this section, or for which a performance test that meets the requirements of paragraph (b)(3) of this section has been previously performed, the control efficiency shall be the efficiency determined by the performance test.

**§ 63.1427 Process vent requirements for processes using extended cookout as an epoxide emission reduction device.**

(a) Owners or operators of affected sources that produce polyether polyol products using epoxides, and that are using extended cookout (ECO) as a control technique to reduce epoxide emissions in order to comply with percent emission reduction requirements in § 63.1425(b)(1)(i) or (b)(2)(i) shall determine the batch cycle percent epoxide emission reduction for each product class in accordance with the provisions of paragraphs (b) through (g) of this section. Owners or operators shall also comply with the testing, monitoring, and recordkeeping and reporting requirements associated with extended cookout listed in paragraphs (h), (i), (j), and (k) of this section.

(1) For each product class, the owner or operator shall determine the batch cycle percent epoxide emission reduction for the most difficult to control product in the product class, where the most difficult to control product is the polyether polyol product that is manufactured with the slowest pressure decay curve.

(2) The owner or operator may determine the batch cycle percent epoxide emission reduction by directly measuring the concentration of the unreacted epoxide, or by using process knowledge, reaction kinetics, and engineering knowledge. If the owner or operator elects to use any method other than direct measurement, the percent reduction must be determined by direct measurement for one product for each PMPU to verify the accuracy of the estimation method selected.

(b) *Define the end of epoxide feed.* The owner or operator shall define the end of the epoxide feed in accordance with paragraph (b)(1) or (b)(2) of this section.

(1) The owner or operator shall determine the concentration of epoxide in the reactor liquid at the point in time when all epoxide has been added to the reactor and prior to any venting. This concentration shall be determined in accordance with the procedures in paragraph (f)(1)(i) of this section.

(2) If the conditions in paragraph (b)(2)(i), (ii), and (iii) of this section are met, the end of the epoxide feed may be defined by the reactor epoxide partial pressure at the point in time when all epoxide reactants have been added to the reactor. This reactor epoxide partial pressure shall be determined in accordance with the procedures in paragraph (g) of this section.

(i) No epoxide is emitted before the end of the ECO, and

(ii) Extended cookout is the only control technique to reduce epoxide emissions, and

(iii) The owner or operator elects to determine the percent epoxide emission reduction for the ECO using reactor epoxide partial pressure in accordance with paragraph (e)(2) of this section.

(c) *Define the onset of the ECO.* The owner or operator shall calculate the uncontrolled emissions for the batch cycle by calculating the epoxide emissions prior to the onset of the ECO, if any, plus the epoxide emissions at the onset of the ECO. The default onset of the ECO is defined as the point in time when the combined unreacted epoxide concentration in the reactor liquid is equal to 25 percent of the concentration of epoxides at the end of the epoxide feed, which was determined in accordance with paragraph (b) of this section.

(1) The uncontrolled epoxide emissions for the batch cycle shall be determined using Equation 7.

$$E_{epox,uncontrolled} = (C_{liq,i})(V_{liq,i})(D_{liq,i}) + (C_{vap,i})(V_{vap,i})(D_{vap,i}) + (E_{epox,before})$$

[Equation 7]

Where:

$E_{epox,uncontrolled}$ = Uncontrolled epoxide emissions at the onset of the ECO, kilograms per (kg/)batch

$C_{liq,i}$ = Concentration of epoxide in the reactor liquid at the onset of the

ECO, which is equal to 25 percent of the concentration of epoxide at the end of the epoxide feed, determined in accordance with paragraph (b)(1) of this section, weight percent

$V_{liq,i}$ = Volume of reactor liquid at the onset of the ECO, liters

$D_{liq,i}$ = Density of reactor liquid, kg/liter

$C_{vap,i}$ = Concentration of epoxide in the reactor vapor space at the onset of the ECO, determined in accordance with paragraph (f)(2) of this section, weight percent

$V_{vap,i}$ = Volume of the reactor vapor space at the onset of the ECO, liters

$D_{vap,i}$ = Vapor density of reactor vapor space at the onset of the ECO, kg/liter

$E_{epox,before}$ = Epoxide emissions that occur prior to the onset of the ECO, determined in accordance with the provisions of § 63.1426(d), kilograms

(2) If the conditions in paragraphs (b)(2)(i), (ii), and (iii) of this section are met, the owner or operator may define the onset of the ECO as the point in time when the reactor epoxide partial pressure equals 25 percent of the reactor epoxide partial pressure at the end of the epoxide feed, and is not required to determine the uncontrolled epoxide emissions in accordance with paragraph (c)(1) of this section.

(3) The owner or operator may request to define the onset of the ECO differently than described in paragraph (c)(1) or (c)(2) of this section by submitting a request, along with a justification for the alternative definition of the onset of the ECO to the Administrator in the Precompliance report.

(d) *Determine emissions at the end of the ECO.* The owner or operator shall calculate the epoxide emissions at the end of the ECO, where the end of the ECO is defined as the point immediately before the time when the reactor contents are emptied and/or the reactor vapor space purged to the atmosphere or to a combustion, recovery, or recapture device.

(1) The epoxide emissions at the end of the ECO shall be determined using Equation 8.

$$E_{epox,ECO} = (C_{liq,f})(V_{liq,f})(D_{liq,f}) + (C_{vap,f})(V_{vap,f})(D_{vap,f})$$

[Equation 8]

Where:

$E_{epox,\ ECO}$ = Epoxide emissions at the end of the ECO, kg

$C_{liq,f}$ = Concentration of epoxide in the reactor liquid at the end of the ECO, determined in accordance with paragraph (f)(1) of this section, weight percent

$V_{liq,f}$ = Volume of reactor liquid at the end of the ECO, liters

$D_{liq,f}$ = Density of reactor liquid, kg/liter

$C_{vap,f}$ = Concentration of epoxide in the reactor vapor space as it exits the reactor at the end of the ECO, determined in accordance with paragraph (f)(2) of this section, weight percent

$V_{vap,f}$ = Volume of the reactor vapor space as it exits the reactor at the end of the ECO, liters

$D_{vap,f}$ = Vapor density of reactor vapor space at the end of the ECO, kg/liter

(2) If the conditions in paragraph (b)(2)(i), (ii), and (iii) of this section are met, the owner or operator may determine the reactor epoxide partial pressure at the end of the ECO instead of determining the uncontrolled epoxide emissions at the end of the ECO in accordance with paragraph (d)(1) of this section.

(e) (1) The owner or operator shall determine the percent epoxide emission reduction for the batch cycle using Equation 9.

$$R_{batchcycle} = \left[\frac{E_{e,u} - \left(E_{e,E}\right)\left(R_{addon,i}\right) + \left(E_{e,o}\right)\left(R_{addon,j}\right)}{E_{e,u}}\right] * 100 \qquad \text{[Equation 9]}$$

Where:

$R_{batchcycle}$ = Epoxide emission reduction for the batch cycle, percent

$E_{e,E}$ = Epoxide emissions at the end of the ECO determined in accordance with paragraph (d)(1) of this section, kilograms

$R_{addon,i}$ = Control efficiency of combustion, recovery, or recapture device that is used to control epoxide emissions after the ECO, determined in accordance with the provisions of § 63.1426(c), percent

$E_{e,o}$ = Epoxide emissions that occur before the end of the ECO, determined in accordance with the provisions of § 63.1426(d), kilograms

$R_{addon,j}$ = Control efficiency of combustion, recovery, or recapture device that is used to control epoxide emissions that occur before the end of the ECO, determined in accordance with the provisions of § 63.1426(c), percent

$E_{e,u}$ = Uncontrolled epoxide emissions determined in accordance with paragraph (c)(1) of this section, kilograms

(2) If the conditions in paragraphs (b)(2)(i), (ii), and (iii) of this section are met, the owner or operator may determine the percent epoxide emission reduction for the batch cycle using reactor epoxide partial pressure and Equation 10, instead of using the procedures in paragraph (e)(1) of this section.

$$R_{batchcycle} = \left[1 - \frac{P_{epox,f}}{P_{epox,i}}\right] * 100 \qquad \text{[Equation 10]}$$

Where:

$R_{batchcycle}$ = Epoxide emission reduction for the batch cycle, percent

$P_{epox,i}$ = Reactor epoxide partial pressure at the onset of the ECO, determined in accordance with paragraph (c)(2) of this section, mm Hg

$P_{epox,f}$ = Reactor epoxide partial pressure at the end of the ECO, determined in accordance with paragraph (c)(2) of this section, mm Hg

(f) *Determination of epoxide concentrations.* The owner or operator shall determine the epoxide concentrations in accordance with the procedures in this paragraph.

(1) *Determination of epoxide concentration in reactor liquid.* The owner or operator shall determine the concentration of epoxide in the reactor liquid using either direct measurement in accordance with paragraph (f)(1)(i) of

this section or reaction kinetics in accordance with paragraph (f)(1)(ii) of this section. An owner or operator may also request to use an alternative methodology in accordance with paragraph (f)(1)(iii) of this section.

(i) The owner or operator shall submit a standard operating procedure for obtaining the liquid sample, along with the test method used to determine the epoxide concentration. This information shall be submitted in the precompliance report.

(ii) Determine the epoxide concentration in the reactor liquid using Equation 11.

$$C_{liq,f} = C_{liq,i}e^{-kt}$$

[Equation 11]

**Note:** This equation assumes a first order reaction with respect to epoxide concentration.

Where:

$C_{liq,f}$ = Concentration of epoxide in the reactor liquid at the end of the time period, weight percent

$C_{liq,i}$ = Concentration of epoxide in the reactor liquid at the beginning of the time period, weight percent

k = Reaction rate constant, 1/hr

t = Time, hours

(iii) If the owner/operator deems that the methods listed in paragraph (f)(1) (i) and (ii) of this section are not appropriate for the reaction system for a PMPU, then the owner/operator may submit a request for the use of an alternative method.

(2) *Determination of concentration of epoxide in the reactor vapor space.* The owner or operator shall determine the concentration of epoxide in the reactor vapor space using either direct measurement in accordance with paragraph (f)(2)(i) of this section or by engineering estimation in accordance with paragraph (f)(2)(ii) of this section. An owner or operator may also request to use an alternative methodology in accordance with paragraph (f)(2)(iii) of this section.

(i) The owner or operator shall take two representative samples from a bleed valve off the reactor's process vent. The owner or operator shall determine the total epoxide concentration using 40 CFR part 69, Appendix A, Method 18.

(ii) Determine the epoxide concentration in the vapor space using Raoult's Law or another appropriate phase equilibrium equation and the liquid epoxide concentration, determined in accordance with paragraph (f)(1) of this section.

(iii) If the owner/operator deems that the methods listed in paragraph (f)(1) (i) and (ii) of this section are not appropriate for the reaction system for a PMPU, then the owner/operator may submit a request for the use of an alternative method.

(g) *Determination of pressure.* The owner or operator shall determine the total pressure of the system using standard pressure measurement devices calibrated in accordance with manufacturer's recommendations.

(h) *ECO Monitoring Requirements.* The owner or operator using ECO shall comply with the monitoring requirements of this paragraph to demonstrate continuous compliance with the emission limitation. Paragraphs (h)(1) through (h)(3) of this section address monitoring of the extended cookout.

(1) To comply with the provisions of this section, the owner or operator shall monitor one of the parameters listed in paragraphs (h)(1) (i) through (iii) of this section, or may utilize the provision in paragraph (h)(1)(iv) of this section.

(i) Time from the end of the epoxide feed;

(ii) The epoxide partial pressure in the reactor; and

(iii) Direct measurement of epoxide concentration in the reactor liquid at the end of the ECO; or

(iv) An owner or operator may submit a request to the Administrator to monitor a parameter other than the parameters listed in paragraphs (h)(1) (i) through (iii) of this section, as described in § 63.1439(f).

(2) During the determination of the percent epoxide emission reduction in paragraphs (b) through (e) of this section, the owner or operator shall establish, as a level that must be maintained during periods of operation, one of the parameters in paragraphs (h)(2)(i) through (h)(2)(iii) of this section, or may utilize the procedure in paragraph (h)(2)(iv) of this section, for each product class.

(i) The time from the end of the epoxide feed to the end of the ECO;

(ii) The reactor epoxide partial pressure at the end of the ECO; and

(iii) The epoxide concentration in the reactor liquid at the end of the ECO; or

(iv) An owner or operator may submit a request to the Administrator to monitor a parameter other than the parameters listed in paragraphs (h)(2) (i) through (iii) of this section, as described in § 63.1439(f).

(3) For each batch cycle where ECO is used to reduce epoxide emissions, the owner or operator shall record the value of the monitored parameter at the end of the ECO. This parameter is then compared with the level established in accordance with paragraph (h)(2) of this section to determine if an excursion has occurred. An ECO excursion is defined as one of the situations described in paragraphs (h)(3) (i) through (v) of this section.

(i) When the time from the end of the epoxide feed to the end of the ECO is less than the level established in paragraph (h)(2)(i) of this section;

(ii) When the reactor epoxide partial pressure at the end of the ECO is greater than the level established in paragraph (h)(2)(ii) of this section;

(iii) When the epoxide concentration in the reactor liquid at the end of the ECO is greater than the level established in paragraph (h)(2)(iii) of this section;

(iv) When the parameter is not measured and recorded at the end of the ECO; or

(v) When the alternative monitoring parameter is outside the range established under § 63.1439(f) for proper operation of the ECO as a control technique.

(i) *Recordkeeping requirements.* The owner or operator shall maintain the records specified in this paragraph.

(1) *Records for each product class.* The owner or operator shall maintain the records specified in paragraph (i)(1) (i) and (ii) of this section for each product class. The owner or operator shall also maintain the records related to the initial determination of the percent epoxide emission reduction specified in paragraph (i)(1) (iii) through (x) of this section, as applicable, for each product class.

(i) Operating conditions of the product class, including

(A) Pressure decline curve

(B) Minimum reaction temperature

(C) Number of −OH groups in the catalyst feed

(D) Minimum catalyst concentration

(E) The EO/PO ratio

(F) Reaction conditions, including the size of the reactor or batch

(ii) A listing of all products in the product class, along with the information specified in paragraph (i)(1)(i) (A) through (F) of this section for each product.

(iii) The concentration of epoxide at the end of the epoxide feed, determined in accordance with paragraph (b)(1) of this section.

(iv) The concentration of epoxide at the end of onset of the ECO, determined in accordance with paragraph (c) of this section.

(v) The uncontrolled epoxide emissions at the onset of the ECO, determined in accordance with paragraph (c)(1) of this section. The records shall also include all the background data, measurements, and assumptions used to calculate the uncontrolled epoxide emissions.

(vi) The epoxide emissions at the end of the ECO, determined in accordance with paragraph (d)(1) of this section. The records shall also include all the background data, measurements, and assumptions used to calculate the epoxide emissions.

(vii) The percent epoxide reduction for the batch cycle, determined in accordance with paragraph (e)(1) of this section. The records shall also include all the background data, measurements, and assumptions used to calculate the percent reduction.

(viii) The parameter level, established in accordance with paragraph (h)(3) of this section.

(ix) If a combustion, recovery, or recapture device is used to reduce emissions, the owner or operator shall maintain the records specified in § 63.1430 (b) and (c).

(x) If epoxide emissions occur before the end of the ECO, the owner or operator shall maintain records of the time and duration of all such emission episodes that occur during the initial demonstration of batch cycle efficiency.

(xi) If the conditions in paragraphs (b)(2) (i), and (ii), and (iii) of this section are met, the owner or operator is not required to maintain the records specified in paragraphs (i)(1) (iii) through (iv) of this section, but shall maintain the records specified in paragraphs (i)(1)(xi) (A), (B), and (C) of this section.

(A) The reactor epoxide partial pressure at the following times,

(*1*) at end of the epoxide feed, determined in accordance with paragraph (b)(2) of this section,

(*2*) at the onset of the ECO, established in accordance with paragraph (c)(2) of this section,

(*3*) at the end of the ECO, determined in accordance with paragraph (d)(2) of this section.

(B) The percent epoxide reduction for the batch cycle, determined in accordance with paragraph (e)(2) of this section. The records shall also include all the measurements and assumptions used to calculate the percent reduction.

(C) The reactor epoxide partial pressure at the end of the ECO.

(2) *Continuous records.* The owner or operator shall maintain the records specified in paragraphs (i)(2) (i) through (iv) of this section.

(i) For each batch cycle, the product being produced and the product class to which it belongs.

(ii) For each batch cycle, the owner or operator shall record the value of the parameter monitored in accordance with paragraph (h)(3) of this section.

(iii) If a combustion, recovery, or recapture device is used in conjunction with ECO, the owner or operator shall record the information specified in § 63.1430(d) and comply with the monitoring provisions in § 63.1429 of this subpart.

(iv) If a combustion, recovery, or recapture device is used to reduce emissions, the owner or operator shall maintain the records specified in § 63.1430(d) of this subpart.

(v) If epoxide emissions occur before the end of the ECO, the owner or operator shall maintain records of the time and duration of all such emission episodes.

(j) *Reporting requirements.* The owner or operator shall comply with the reporting requirements for this paragraph.

(1) *Precompliance report.* The information specified in paragraphs (j)(1) (i) through (iii) of this section shall be provided in the Precompliance Report, as specified in § 63.1439(e)(4) of this subpart.

(i) A request to define the onset of the ECO in a manner different than provided in paragraphs (c)(1) and (c)(2) of this section, as provided for in paragraph (c)(3) of this section.

(ii) A standard operating procedure for obtaining the reactor liquid sample and a method that will be used to determine the epoxide concentration in the liquid, in accordance with paragraph (f)(1)(i) of this section.

(iii) A request to monitor a parameter other than those specified in paragraph (h)(1) (i), (ii), or (iii) of this section, as provided for in paragraph (h)(1)(iv) of this section.

(2) *Notification of compliance status report.* The information specified in paragraphs (j)(2) (i) through (iv) of this section shall be provided in the Notification of Compliance Status report, as specified in § 63.1439(e)(5) of this subpart.

(i) For each product class, the information specified in paragraphs (j)(2)(i) (A) through (C) of this section.

(A) The operating conditions of this product class, as specified in paragraph (i)(1)(i) of this section.

(B) A list of all products in the product class.

(C) The percent epoxide emission reduction, determined in accordance with paragraph (e) of this section.

(ii) The parameter for each product class, as determined in accordance with paragraph (h)(2) of this section,

(iii) If a combustion, recovery, or recapture device is used to reduce emissions, the information specified in § 63.1430(g) of this subpart

(iv) If epoxide emissions occur before the end of the ECO, a listing of the time and duration of all such emission episodes that occur during the initial demonstration of batch cycle efficiency.

(3) *Periodic reports.* The information specified in paragraphs (j)(3) (i) through (iii) of this section shall be provided in the periodic report, as specified in § 63.1439(e)(6) of this subpart.

(i) Reports of each batch cycle for which an ECO excursion occurred, as defined in paragraph (h)(3) of this section.

(ii) Notification of each batch cycle when the time and duration of epoxide emissions before the end of the ECO, recorded in accordance with paragraph (i)(2)(iv) of this section, exceed the time and duration of the emission episodes during the initial epoxide emission percentage reduction determination, as recorded in paragraph (i)(1)(viii) of this section.

(iii) If a combustion, recovery, or recapture device is used to reduce emissions, the information specified in § 63.1430(h) of this subpart.

(k) *New polyether polyol products.* If an owner or operator wishes to utilize extended cookout as a control option for a polyether polyol product not previously assigned to a product class and reported to the Agency in accordance with either paragraph (j)(2)(i)(B), (k)(1)(ii), or (k)(2)(iii) of this section, the owner or operator shall comply with the provisions of paragraph (k) (1) or (2) of this section.

(1) If the operating conditions of the new polyether polyol product are consistent with the operating conditions for an existing product class, the owner or operator shall comply with the requirements in paragraphs (k)(1)(i) and (2) of this section.

(i) The owner or operator shall update the list of products for the product class required by paragraph (i)(1)(ii) of this section, and shall record the information in paragraphs (i)(1)(i) (A) through (G) of this section for the new product,

(ii) Within 180 days of the production of the new polyether polyol product, the owner or operator shall submit a report updating the product list originally for the product class. This information may be submitted along with the next Periodic Report.

(2) If the operating conditions of the new polyether product do not conform with the operating characteristics of an existing product class, the owner or operator shall establish a new product class and shall comply with provisions of paragraphs (k)(2) (i) through (iii) of this section.

(i) The owner or operator shall establish the batch cycle percent epoxide emission reduction in accordance with paragraphs (b) through (g) of this section for the product class,

(ii) The owner or operator shall establish the records specified in paragraph (i)(1) of this section for the product class,

(iii) Within 180 days of the production of the new polyether polyol product, the owner or operator shall submit a report containing the information specified in paragraph (j)(2)(i) and (ii) of this section.

(l) *Polyether polyol product changes.* If a change in operation, as defined in paragraph (l)(1) of this section, occurs for a polyether polyol product that has been assigned to a product class and reported to the Agency in accordance with either paragraph (j)(2)(i)(B), (k)(1)(ii), or (k)(2)(iii) of this section, the owner or operator shall comply with the provisions of paragraph (l) (2) through (3) of this section.

(1) A change in operation for a polyether polyol product is defined as a change in any one of the parameters listed in paragraph (l)(1) (i) through (ix) of this section.

(i) A significant change in reaction kinetics,

(ii) Use of a different oxide reactant,

(iii) Use of a different EO/PO ratio,

(iv) A lower reaction temperature,

(v) A lower catalyst feed on a mole/mole fraction OH basis,

(vi) A shorter cookout,

(vii) A lower reactor pressure,

(viii) A different type of reaction (e.g., a self-catalyzed vs. catalyzed reaction), or

(ix) A marked change in reaction conditions (e.g., a markedly different liquid level).

(2) If the operating conditions of the product after the change in operation remain within the operation conditions of the product class to which the product was assigned, the owner or operator shall only update the records specified in paragraphs (i)(1)(i) (A) through (G) of this section for the product.

(3) If the operating conditions of the product after the change in operation are outside of the operating conditions of the product class to which the product was assigned, the owner or operator shall comply with the requirements in paragraph (g)(3) (i) or (ii) of this section, as appropriate.

(i) If the new operating conditions of the polyether polyol product are consistent with the operating conditions for another existing product class, the owner or operator shall comply with the requirements in paragraphs (l)(3)(i) (A) and (B) of this section.

(A) The owner or operator shall update the list of products for the product class required by paragraph (i)(1)(ii) of this section, and shall record the new information in paragraphs (i)(1)(i) (A) through (G) of this section for the product.

(B) Within 180 days of the change in operating conditions for the polyether polyol product, the owner or operator shall submit a report updating the product list originally for the product class. This information may be submitted along with the next Periodic Report.

(ii) If the new operating conditions of the polyether product do not conform with the operating characteristics of an existing product class, the owner or operator shall establish a new product class and shall comply with provisions of paragraphs (l)(3)(i) (A) through (C) of this section.

(A) The owner or operator shall establish the batch cycle percent epoxide emission reduction in accordance with (b) through (g) of this section for the product class.

(B) The owner or operator shall establish the records specified in paragraph (i)(1) of this section for the product class.

(C) Within 180 days of the change in operating conditions for the polyether polyol product, the owner or operator shall submit a report containing the information specified in paragraphs (j)(2) (i) and (ii) of this section.

**§ 63.1428 Process vent requirements for group determination of PMPUs using a nonepoxide organic HAP to make or modify the product.**

(a) *Process vents from batch unit operations.* The owner or operator shall determine, for each PMPU located at an affected source, the group status of the combination of all process vents from batch unit operations that are associated with the use of nonepoxide organic HAP to make or modify a polyether polyol product. This group status shall be determined in accordance with paragraph (f) of this section using the annual uncontrolled nonepoxide organic HAP emissions determined in accordance with paragraph (b) of this section, the annual average flow rate determined in accordance with paragraph (d) of this section, and the cutoff flow rate determined in accordance with paragraph (e) of this section.

(b) *Determination of annual nonepoxide organic HAP emissions.* The owner or operator shall determine, for each PMPU, the total annual nonepoxide organic HAP emissions from the combination of all process vents from batch unit operations that are associated with the use of a nonepoxide organic HAP to make or modify a polyether polyol product in accordance with paragraphs (b)(1) and (b)(2) of this section.

(1) The annual nonepoxide organic HAP emissions for each process vent from a batch unit operation associated with the use of a nonepoxide organic HAP to make or modify a polyether polyol product shall be determined using the procedures in § 63.488(b) of subpart U.

(2) The owner or operator shall sum the annual nonepoxide organic HAP emissions from all individual process vents from batch unit operations in a PMPU, determined in accordance with paragraph (b)(1) of this section, to obtain the total nonepoxide organic HAP emissions from the combination of process vents associated with the use of a nonepoxide organic HAP to make or modify a polyether polyol product, for the PMPU.

(c) *Minimum emission level exemption.* If the annual emissions of TOC or nonepoxide organic HAP from the combination of process vents from batch unit operations that are associated with the use of nonepoxide organic HAP to make or modify a polyether polyol for a PMPU are less than 11,800 kg/yr, the combination is considered to be Group 2, and the owner or operator of that PMPU shall comply with the requirements in § 63.1425(c)(4). The owner or operator of that PMPU is not required to comply with the provisions in paragraphs (d) through (f) of this section.

(d) *Determination of average flow rate and annual average flow rate.* The owner or operator shall determine, for each PMPU, the total annual average flow rate for the combination of all process vents from batch unit operations that are associated with the use of a nonepoxide organic HAP to make or modify a polyether polyol product in accordance with paragraphs (d)(1) and (d)(2) of this section.

(1) The annual average flow rate for each process vent from batch unit operations that is associated with the use of nonepoxide organic HAP to make or modify a polyether polyol product shall be determined using the procedures in § 63.488(e) of subpart U.

(2) The owner or operator shall sum the annual average flow rates from the individual process vents from batch unit operations in a PMPU, determined in accordance with paragraph (d)(2) of this section, to obtain the total annual average flow rate for the combination of process vents associated with the use of a nonepoxide organic HAP to make or modify a polyether polyol product, for the PMPU.

(e) *Determination of cutoff flow rate.* For each PMPU at an affected source

that uses nonepoxide organic HAP to make or modify a polyether polyol product, the owner or operator shall calculate the cutoff flow rate using Equation 12.

CFR = (0.00437)(*AE*)- 51.6

[Equation.12]

Where:

CFR = Cutoff flow rate, standard cubic meters per minute (scmm).

AE = Annual TOC or nonepoxide organic HAP emissions from the combination of process vents from batch unit operations that are associated with the use of nonepoxide organic HAP to make or modify a polyether polyol product, as determined in paragraph (b)(2) of this section, kg/yr.

(f) *Group 1/Group 2 status determination.* To determine the group status of the combination of process vents in a PMPU from batch unit operations that are associated with the use of nonepoxide organic HAP to make or modify a polyether polyol product, the owner or operator shall compare the cutoff flow rate, calculated in accordance with paragraph (e) of this section, with the annual average flow rate, determined in accordance with paragraph (d)(2) of this section. The group determination status shall be made using the criteria specified in paragraphs (f)(1) and (f)(2) of this section.

(1) If the cutoff flow rate is greater than or equal to the annual average flow rate of the streams, the combination of process vents from batch unit operations in a PMPU that are associated with the use of nonepoxide organic HAP to make or modify a polyether polyol is classified as Group 1.

(2) If the cutoff flow rate is less than the annual average flow rate of the streams, the combination of process vents from batch unit operations in a PMPU that are associated with the use of nonepoxide organic HAP to make or modify a polyether polyol is classified as Group 2.

(g) *Process changes affecting Group 2 combinations of process vents in a PMPU that are from batch unit operations.* Whenever process changes, as described in paragraph (g)(1) of this section, are made that affect a Group 2 combination of process vents from batch unit operations in a PMPU that are associated with the use of nonepoxide organic HAP to make or modify a polyether polyol and that could reasonably be expected to change the group status from Group 2 to Group 1, the owner or operator shall comply with paragraphs (g)(2) and (g)(3) of this section.

(1) Examples of process changes include, but are not limited to, changes in production capacity, production rate, feedstock type, or catalyst type; or whenever there is replacement, removal, or modification of recovery equipment considered part of the batch unit operation. Any change that results in an increase in the annual nonepoxide organic HAP emissions from the estimate used in the previous group determination constitutes a process change, for the purpose of these provisions. For purposes of this paragraph, process changes do not include: Process upsets; unintentional, temporary process changes; and changes that are within the margin of variation on which the original group determination was based.

(2) For each process affected by a process change, the owner or operator shall redetermine the group status by repeating the procedures specified in paragraphs (b) through (f) of this section, as applicable. Alternatively, engineering assessment, as described in § 63.488(b)(6)(i) of subpart U, may be used to determine the effects of the process change.

(3) Based on the results of paragraph (g)(2) of this section, owners or operators shall comply with either paragraph (g)(3) (i) or (ii) of this section.

(i) If the redetermination described in paragraph (g)(2) of this section indicates that the group status of the combination of process vents from batch unit operations in a PMPU that are associated with the use of nonepoxide organic HAP to make or modify a polyether polyol changes from Group 2 to Group 1 as a result of the process change, the owner or operator shall submit a report as specified in § 63.1439(e)(6)(iii)(D)(*1*) and shall comply with Group 1 provisions in this subpart, as specified in § 63.1420(g)(3).

(ii) If the redetermination described in paragraph (g)(2) of this section indicates no change in group status, the owner or operator is not required to submit a report.

(h) *Process Vents from Continuous Unit Operations.* (1) The owner or operator shall determine the total resource effectiveness (TRE) index value for the combination of all process vents from continuous unit operations in a PMPU that are associated with the use of nonepoxide organic HAP to make or modify a polyether polyol product. To determine the TRE index value, the owner or operator shall conduct a TRE determination and calculate the TRE index value according to the procedures in § 63.115 (d)(1) or (d)(2) of subpart G and the TRE equation in § 63.115(d)(3) of subpart G, with the following exception. The procedures in § 63.115(d) of subpart G are to determine the TRE index value for an individual process vent. For the purposes of this subpart, the TRE index value shall be determined for the combination of all process vents from continuous unit operations in a PMPU that are associated with the use of nonepoxide organic HAP to make or modify a polyether polyol product by summing the values in the individual process vent streams.

(2) The owner or operator of a group of process vents from continuous unit operations that is Group 2 shall recalculate the TRE index value as necessary to determine whether the group of process vents is Group 1 or Group 2, whenever process changes are made that could reasonably be expected to change the group of process vents to Group 1. Examples of process changes include, but are not limited to, changes in production capacity, production rate, feedstock type, or catalyst type, or whenever there is replacement, removal, or addition of recovery equipment. For purposes of this paragraph, process changes do not include: process upsets; unintentional, temporary process changes; and changes that are within the range on which the original TRE calculation was based.

(i) The TRE index value shall be recalculated based on measurements of process vent stream flow rate, TOC, and nonepoxide organic HAP concentrations, and heating values as specified in § 63.115 (a), (b), (c), and (d) of subpart G, as applicable, or on best engineering assessment of the effects of the change. Engineering assessments shall meet the specifications in § 63.115(d)(1) of subpart G.

(ii) Where the recalculated TRE index value is less than or equal to 1.0, or less than or equal to 4.0 but greater than 1.0, the owner or operator shall submit a report as specified in § 63.1430(j) or (k) and shall comply with the appropriate provisions in § 63.1425 of this subpart by the dates specified in § 63.1422 of this subpart.

**§ 63.1429 Process vent monitoring requirements.**

(a) Each owner or operator of a process vent that uses a combustion, recovery, or recapture device to comply with the requirements in § 63.1425(b)(1), (b)(2), (c)(1), (c)(3), or (d) of this subpart shall install monitoring equipment specified in paragraph (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), or (a)(7), of this section, depending on the type of device used.

Also, each owner or operator that uses a recovery or recapture device to comply with § 63.1425(c)(4) shall install monitoring equipment specified in paragraph (a)(4), (a)(5), (a)(6), or (a)(7) of this section. All monitoring equipment shall be installed, calibrated, maintained, and operated according to manufacturers specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

(1) Where an incinerator is used, a temperature monitoring device equipped with a continuous recorder is required.

(i) Where an incinerator other than a catalytic incinerator is used, a temperature monitoring device shall be installed in the firebox or in the ductwork immediately downstream of the firebox in a position before any substantial heat exchange occurs.

(ii) Where a catalytic incinerator is used, temperature monitoring devices shall be installed in the gas stream immediately before and after the catalyst bed.

(2) Where a flare is used, the following monitoring equipment is required: A device (including but not limited to a thermocouple, ultra-violet beam sensor, or infrared sensor) capable of continuously detecting the presence of a pilot flame.

(3) Where a boiler or process heater of less than 44 megawatts design heat input capacity is used, the following monitoring equipment is required: A temperature monitoring device in the firebox equipped with a continuous recorder. Any boiler or process heater in which all process vent streams are introduced with primary fuel or are used as the primary fuel is exempt from this requirement.

(4) Where an absorber is used, a scrubbing liquid temperature monitoring device and a specific gravity monitoring device are required, each equipped with a continuous recorder.

(5) Where a condenser is used, a condenser exit temperature (product side) monitoring device equipped with a continuous recorder is required.

(6) 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 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 are required.

(7) As an alternate to paragraphs (b)(4) through (b)(6) of this section, the owner or operator may install an organic monitoring device equipped with a continuous recorder.

(b) An owner or operator of a process vent may request approval to monitor parameters other than those listed in paragraph (a) of this section. The request shall be submitted according to the procedures specified in § 63.1430(j) and § 63.1439(f). Approval shall be requested if the owner or operator:

(1) Uses a combustion device other than an incinerator, boiler, process heater, or flare; or

(2) For the combination of all process vents from continuous unit operations that are associated with the use of organic HAP to make or modify a polyether polyol product, maintains a TRE greater than 1.0 but less than or equal to 4.0 without a recovery device or with a recovery device other than the recovery devices listed in paragraph (a) of this section; or

(3) Uses one of the combustion, recovery, or recapture devices listed in paragraph (a) of this section, but seeks to monitor a parameter other than those specified in paragraph (a) of this section.

(c) *Monitoring of bypass lines.* The owner or operator of a process vent using a process vent system that contains bypass lines that could divert a process vent stream away from the combustion, recovery, or recapture device used to comply with § 63.1425 (b), (c), or (d) shall comply with paragraph (c)(1), (c)(2), or (c)(3) of this section. Equipment such as low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and pressure relief valves needed for safety purposes are not subject to this paragraph.

(1) Properly install, maintain, and operate a flow indicator that takes a reading at least once at approximately equal intervals of about 15 minutes. Records shall be generated as specified in § 63.1430(d)(3). The flow indicator shall be installed at the entrance to any bypass line that could divert emissions away from the combustion, recovery, or recapture device and to the atmosphere;

(2) Secure the bypass line valve in the non-diverting position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve is maintained in the non-diverting position and emissions are not diverted through the bypass line. Records shall be generated as specified in § 63.1430(d)(4)(i); or

(3) Continuously monitor the bypass line damper or valve position using computer monitoring and record any periods when the position of the bypass line damper or valve has changed as specified in § 63.1430(d)(4)(ii).

(d) *Establishment of parameter monitoring levels.* Parameter monitoring levels for process vents from continuous or batch unit operations using combustion, recovery, or recapture devices to comply with § 63.1425 (b), (c), or (d) shall be established as specified in paragraphs (d)(1) through (d)(3) of this section.

(1) For each parameter monitored under paragraph (a) or (b) of this section, the owner or operator shall establish a level, defined as either a maximum or minimum operating parameter as denoted in Table 5 of this subpart, that indicates that the combustion, recovery, or recapture device is operated in a manner to ensure compliance with the provisions of this subpart. The level shall be established in accordance with the procedures specified in § 63.1430(d). The level 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 § 63.1426, provided that the prior performance test meets the conditions of § 63.1426(b)(3).

(2) The established level, along with supporting documentation, shall be submitted in the Notification of Compliance Status or the operating permit application as required in § 63.1439(e)(5) or § 63.1439(e)(8), respectively.

(3) The operating day shall be defined as part of establishing the parameter monitoring level and shall be submitted with the information in paragraph (d)(2) of this section. The definition of operating day shall specify the times at which an operating day begins and ends.

**§ 63.1430 Process vent reporting and recordkeeping requirements.**

(a) This section contains process vent reporting and recordkeeping requirements. Paragraph (b) of this section specifies records that shall be kept to demonstrate compliance with the process vent provisions of this subpart, and paragraph (c) of this section specifies records that shall be kept regarding the establishment of parameter monitoring levels. Paragraph (d) specifies records that shall be kept to demonstrate continuous compliance with the process vent provisions of this subpart. Paragraph (e) of this section specifies records that shall be kept

related to the group determination for process vents that are associated with the use of organic HAP to make or modify a polyether polyol product. Paragraph (f) of this section specifies records that shall be kept for combinations of process vents from unit operations that are associated with the use of organic HAP to make or modify a polyether polyol product. Paragraph (g) of this section specifies reporting requirements.

(b) *Records to demonstrate compliance.* Each owner or operator complying with § 63.1425 (b), (c), or (d) shall keep the following records, as applicable, up-to-date and readily accessible:

(1) When using a flare to comply with § 63.1425 (b), (c), or (d):

(i) The flare design (i.e., steam-assisted, air-assisted, or non-assisted);

(ii) All visible emission readings, heat content determinations, flow rate determinations, and exit velocity determinations made during the compliance determination required by § 63.11(b) of subpart A; and

(iii) All periods during the compliance determination required by § 63.11(b) of subpart A when the pilot flame is absent.

(2) The following information when using a combustion, recovery, or recapture device (other than a flare) to achieve compliance with § 63.1425 (b), (c), or (d):

(i) For a combustion, recovery, or recapture device being used to comply with a percent reduction requirement of § 63.1425 (b)(1)(i), (b)(2)(i), (c)(1), (c)(2), or (d), or the annual epoxide emission limitation in § 63.1425 (b)(1)(iii) or (b)(2)(iii), the percent reduction of organic HAP or TOC achieved, as determined using the procedures specified in § 63.1426 of this subpart;

(ii) For a combustion device being used to comply with an outlet concentration limitation of § 63.1425 (b)(1)(ii) or (b)(2)(ii), the concentration of organic HAP or TOC outlet of the combustion device, as determined using the procedures specified in § 63.1426 of this subpart;

(iii) For a boiler or process heater, a description of the location at which the process vent stream is introduced into the boiler or process heater;

(iv) For a boiler or process heater with a design heat input capacity of less than 44 megawatts and where the process vent stream is introduced with combustion air or is used as a secondary fuel and is not mixed with the primary fuel, the percent reduction of organic HAP or TOC achieved, as determined using the procedures specified in § 63.1426.

(c) *Records related to the establishment of parameter monitoring levels.* For each parameter monitored according to § 63.1429(a) and Table 5 of this subpart, or for alternate parameters and/or parameters for alternate control techniques monitored according to § 63.1439(f) as allowed under § 63.1429(b), maintain documentation showing the establishment of the level that indicates that the combustion, recovery, or recapture device is operated in a manner to ensure compliance with the provisions of this subpart, as required by § 63.1429(d) for parameters specified in § 63.1429(a) and as required by § 63.1439(f) for alternate parameters. This documentation shall include the parameter monitoring data used to establish the level.

(d) *Records to demonstrate continuous compliance.* Each owner or operator that uses a combustion, recovery, or recapture device to comply with § 63.1425 (b), (c), or (d) shall keep the following records readily accessible:

(1) Continuous records of the equipment operating parameters specified to be monitored under § 63.1429(a) as applicable, and listed in Table 5 of this subpart, or specified by the Administrator in accordance with § 63.1439(f) as allowed under § 63.1429(b). These records shall be kept as specified under § 63.1438(b)(2), except as specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this section.

(i) For flares, the records specified in Table 5 of this subpart shall be maintained in place of continuous records.

(ii) For carbon adsorbers used for process vents from batch unit operations, the records specified in Table 5 of this subpart shall be maintained in place of batch cycle daily averages.

(2) Records of the daily average value for process vents from continuous unit operations or batch cycle daily average value for process vents from batch unit operations of each continuously monitored parameter, except as provided in paragraph (d)(2)(ii) of this section.

(i) Monitoring data recorded during periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments shall not be included in computing the daily averages. In addition, monitoring data recorded during periods of non-operation of the process resulting in cessation of organic HAP emissions shall not be included in computing the batch cycle daily averages.

(ii) If all recorded values for a monitored parameter during an operating day are above the minimum or below the maximum level established in accordance with § 63.1429(d), the owner or operator may record that all values were above the minimum or below the maximum level established, rather than calculating and recording a daily average or batch cycle daily average for that operating day.

(3) Hourly records of whether the flow indicator for bypass lines specified under § 63.1429(c)(1) was operating and whether a diversion was detected at any time during the hour. Also, records of the times of all periods when the process vent is diverted from the combustion, recovery, or recapture device, or the flow indicator specified in § 63.1429(c)(1) is not operating.

(4) Where a seal or closure mechanism is used to comply with § 63.1429(c)(2) or where computer monitoring of the position of the bypass damper or valve is used to comply with § 63.1429(c)(3), hourly records of flow are not required.

(i) For compliance with § 63.1429(c)(2), the owner or operator shall record whether the monthly visual inspection of the seals or closure mechanism 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 been broken.

(ii) For compliance with § 63.1429(c)(3), the owner or operator shall record the times of all periods when the bypass line valve position has changed.

(5) Records specifying the times and duration of periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high level adjustments. In addition, records specifying any other periods of process or combustion, recovery, or recapture device operation when monitors are not operating.

(e) *Records related to the group determination for process vents that are associated with the use of organic HAP to make or modify a polyether polyol product*—(1) *Process vents from batch unit operations.* Except as provided in paragraphs (e)(1)(vi) and (e)(1)(vii) of this section, each owner or operator of an affected source shall maintain the records specified in paragraphs (e)(1)(i) through (e)(1)(v) of this section for each PMPU that uses organic HAP to make or modify a polyether polyol product in batch unit operations. The records required to be maintained by this paragraph are limited to the information developed and used to make the group

determination under § 63.1428 (a) through (f), as appropriate. If an owner or operator did not need to develop certain information (e.g., annual average flow rate) to determine the group status, this paragraph does not require that additional information be developed.

(i) A description of, and an emission estimate for, each batch emission episode, and the total emissions associated with one batch cycle for each unique product class made in the PMPU.

(ii) Total annual uncontrolled TOC or nonepoxide organic HAP emissions from the combination of process vents from batch unit operations associated with the use of nonepoxide organic HAP to make or modify a polyether polyol product, as determined in accordance with § 63.1428(b).

(iii) The annual average flow rate for the combination of process vents from batch unit operations associated with the use of organic HAP to make or modify a polyether polyol product, as determined in accordance with § 63.1428(d).

(iv) The cutoff flow rate, determined in accordance with § 63.1428(e).

(v) The results of the PMPU group determination, conducted in accordance with § 63.1428(f).

(vi) If the combination of all process vents from batch unit operations associated with the use of an organic HAP to make or modify a polyether polyol product process vent is in compliance with § 63.1425(c)(1), and the combustion, recovery, or recapture device is operating at all times, none of the records in paragraphs (b)(1)(i) through (b)(1)(v) of this section are required.

(vii) If the total annual emissions from the combination of process vents from batch unit operations associated with the use of an organic HAP to make or modify a polyether polyol product are less than the level specified in § 63.1428(c), only the records in paragraphs (b)(1)(i) and (b)(1)(ii) of this section are required.

(2)*Process vents from continuous unit operations.* Each owner or operator of an affected source that uses organic HAP to make or modify a polyether polyol product in continuous unit operations shall keep records regarding the measurements and calculations performed to determine the TRE index value of the combined process vent stream. Owners or operators of combined streams that are in compliance with the Group 1 requirements of § 63.1425(c)(3) are not required to keep these records.

(f) *Records for Group 2 process vents that are associated with the use of organic HAP to make or modify a polyether polyol product.* The following records shall be maintained for PMPUs where the combination of all process vents that are associated with the use of organic HAP to make or modify a polyether polyol product are classified as Group 2. Paragraph (f)(1) of this section contains requirements for process vents from batch unit operations, and paragraph (f)(2) of this section contains requirements for process vents from continuous unit operations.

(1) *Process vents from batch unit operations.* Owners or operators shall maintain records of the combined total annual organic HAP emissions from process vents associated with the use of organic HAP to make or modify a polyether polyol product for each PMPU where the combination of these process vents is classified as Group 2.

(2) *Process vents from continuous unit operations.* 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 subpart G shall keep the following records readily accessible:

(i) Continuous records of the equipment operating parameters specified to be monitored under § 63.114(b) of subpart G and listed in table 5 of this subpart or specified by the Administrator in accordance with § 63.114(c) and § 63.117(e) of subpart G; and

(ii) 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) of subpart G. If carbon adsorber regeneration stream flow and carbon bed regeneration temperature are monitored, the records specified in table 5 of this subpart shall be kept instead of the daily averages.

(3) Each owner or operator subject to the provisions of this subpart and who elects to demonstrate compliance with the TRE index value greater than 4.0 under § 63.113(e) or greater than 1.0 under § 63.113(a)(3) or § 63.113(d) of subpart G shall keep readily accessible records of:

(i) Any process changes as defined in § 63.115(e) of subpart G; and

(ii) Any recalculation of the TRE index value pursuant to § 63.115(e) of subpart G.

(4) Each owner or operator who elects to comply by maintaining a flow rate less than 0.005 standard cubic meter per minute under § 63.113(f) of subpart G, shall keep readily accessible records of:

(i) Any process changes as defined in § 63.115(e) of subpart G that increase the process vent stream flow rate,

(ii) Any recalculation or measurement of the flow rate pursuant to § 63.115(e) of subpart G, and

(iii) If the flow rate increases to 0.005 standard cubic meter per minute or greater as a result of the process change, the TRE determination performed according to the procedures of § 63.115(d) of subpart G.

(5) Each owner or operator who elects to comply by maintaining an organic HAP concentration less than 50 parts per million by volume organic HAP concentration under § 63.113(g) of subpart G shall keep up-to-date, readily accessible records of:

(i) Any process changes as defined in § 63.115(e) of subpart G that increase the organic HAP concentration of the process vent stream,

(ii) Any recalculation or measurement of the concentration pursuant to § 63.115(e) of subpart G, and

(iii) If the organic HAP concentration increases to 50 parts per million by volume or greater as a result of the process change, the TRE determination performed according to the procedures of § 63.115(d) of subpart G.

(g) *Reporting requirements.* The owner or operator of an affected source shall submit the information specified in paragraphs (g)(1) through (g)(3) of this section, as appropriate, as part of the Notification of Compliance Status specified in § 63.1439(e)(5).

(1) For each owner or operator complying with § 63.1425(b), (c)(1), or (c)(3), the information specified in paragraph (b) of this section related to the compliance demonstration, and the information specified in paragraph (c) of this section related to the establishment of parameter monitoring levels,

(2) For each PMPU where the combination of process vents from batch unit operations that are associated with the use of organic HAP to make or modify the product is Group 2, the information related to the group determination specified in paragraph (e)(1) of this section.

(3) For each PMPU where the combination of process vents from continuous unit operations that are associated with the use of organic HAP to make or modify a polyether polyol product is Group 2, the information related to the group determination specified in paragraph (e)(2) of this section.

(h) The owner or operator of an affected source shall submit Periodic Reports of the recorded information specified in paragraphs (h)(1) through (h)(6) of this section, as appropriate,

according to the schedule in § 63.1439(e)(6).

(1) Reports of daily average values of monitored parameters for all operating days when the daily average values recorded under paragraph (d)(2) of this section were above the maximum, or below the minimum, level established in the Notification of Compliance Status or operating permit.

(2) Reports of the duration of periods when monitoring data is not collected for each excursion caused by insufficient monitoring data as defined in § 63.1438(f)(4).

(3) Reports of the times and durations of all periods recorded under paragraph (d)(3) of this section when the process vent stream is diverted from the combustion, recovery, or recapture device through a bypass line.

(4) Reports of all periods recorded under paragraph (d)(4) of this section in which the seal mechanism is broken, the bypass line valve position has changed, or the key to unlock the bypass line valve was checked out.

(5) Reports of the times and durations of all periods recorded under paragraph (d)(1)(i) of this section in which all pilot flames of a flare were absent.

(6) Reports of all carbon bed regeneration cycles during which the parameters recorded under paragraph (d)(1)(ii) of this section were above the maximum, or below the minimum, levels established in the Notification of Compliance Status or operating permit.

(i) Whenever a process change, as defined in § 63.1420(g)(4), is made that causes a Group 2 combination of process vents from batch unit operations at a PMPU that are associated with the use of organic HAP to make or modify a polyether polyol product to become Group 1, the owner or operator shall submit a report within 180 days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report or in a separate submittal to the Administrator, as specified in § 63.1439(e)(6)(iii)(D)(*1*). The following information shall be submitted:

(1) A description of the process change; and

(2) A schedule for compliance with the provisions of § 63.1425(c)(1), as appropriate, as required under § 63.1439(e)(6)(iii)(D)(*1*)(*i*).

(j) Whenever a process change, as defined in § 63.1420(g)(4), is made that causes a Group 2 combination of process vents from batch unit operations at a PMPU that are associated with the use of nonepoxide organic HAP to make or modify a polyether polyol product with a TRE greater than 4.0 to become Group 2 with a TRE less than 4.0, the owner or operator shall submit a report within 180 calendar days after the process change. The report may be submitted as part of the next periodic report. The report shall include:

(1) A description of the process change;

(2) The results of the recalculation of the TRE index value required under § 63.1428(h)(2) of this subpart, and recorded under paragraph (f)(3) of this section; and

(3) A statement that the owner or operator will comply with the requirements specified in § 63.1429 of this subpart.

(k) If an owner or operator uses a combustion, recovery, or recapture device other than those specified in § 63.1429(a) and listed in Table 5 of this subpart or requests approval to monitor a parameter other than those specified in § 63.1429(a) (1) through (7) and listed in Table 5 of this subpart, the owner or operator shall submit a description of planned reporting and recordkeeping procedures, as specified in § 63.1439(f)(3), as part of the Precompliance Report as required under § 63.1439(e)(6), or to the Administrator as a separate submittal. The Administrator will specify appropriate reporting and recordkeeping requirements as part of the review of the Precompliance Report.

**§ 63.1431 Emission factor plan requirements.**

(a) An owner or operator electing to comply with an annual epoxide emission factor limitation in § 63.1425 (b)(1)(iii) or (b)(2)(iii) shall develop and implement an epoxides emission factor plan in accordance with the provisions of this section. Paragraph (b) of this section describes the requirements for the plan. Paragraphs (c) and (d) of this section describe the procedures to verify and monitor that the plan is being followed, respectively, and paragraph (e) of this section provides recordkeeping and reporting requirements associated with the plan. Paragraph (f) of this section describes the requirements for facilities complying with an emission factor limitation without ECO or add-on control.

(b) *Emission factor plan requirements.* The owner or operator shall develop an epoxides emission factor plan.

(1) If epoxide emissions are maintained below the epoxide emission factor limitation through the use of a combustion, recovery, or recapture device, the owner or operator shall develop and implement the plan in accordance with paragraph (c) of this section.

(2) If epoxide emissions are maintained below the epoxide emission factor limitation through the use of extended cookout, the owner or operator shall develop and implement the plan in accordance with paragraph (d) of this section.

(3) If epoxide emissions are maintained below the epoxide emission factor limitation through the use of extended cookout in conjunction with a combustion, recovery, or recapture device, the owner or operator shall develop and implement the plan in accordance with paragraph (e) of this section.

(c) *Compliance with epoxide emission factor limitation using a combustion, recovery, or recapture device.* (1) The owner or operator shall notify the Agency of the intent to use a combustion, recovery, or recapture device to comply with the epoxide emission factor limitation in § 63.1425 (b)(1)(iii) or (b)(2)(iii). The owner or operator shall prepare an estimate of the annual epoxide emissions and the actual production rate in accordance with paragraphs (c)(1) (i) through (iv) of this section. This notification and emission estimate shall be submitted in the precompliance report as specified in § 63.1439(e)(4), or the permit application.

(i) Annual uncontrolled epoxide emissions. These emission estimates shall be determined in accordance with the procedures in § 63.488(b) of subpart U and shall be based on anticipated production.

(ii) A description of the combustion, recovery, or recapture device, along with the expected percent efficiency.

(iii) Annual emissions after the combustion, recovery, or recapture device. The expected annual emissions after control shall be determined using equation 13.

$$AE_{control} = (AE_{uncontrolled} \times (100\% - R)$$

[Equation 13]

Where:

$AE_{control}$ = Annual epoxide emissions after control, KG/yr

$AE_{uncontrolled}$ = Annual uncontrolled epoxide emissions, determined in accordance with paragraph (c)(1)(i) of this section, kg/yr

R = Expected control efficiency of the combustion, recovery, or recapture device, percent

(iv) Actual annual production rate. The actual annual production rate means the annual mass of polyether polyol product produced from the applicable PMPU. This production rate

shall be for the same annual time period as the annual emission estimate as calculated in accordance with paragraph (c)(1)(iii) of this section.

(2) The owner or operator shall conduct a performance test in accordance with § 63.1426 to determine the epoxide control efficiency of the combustion, recovery, or recapture device. The owner or operator shall then recalculate the annual epoxide emissions after control using Equation 13, except that the control efficiency, R, shall be the measured control efficiency. This information shall be submitted as part of the Notification of Compliance status report, as provided in § 63.1439(e)(5) of this subpart.

(3) The owner or operator shall comply with the monitoring provisions in § 63.1429 of this subpart.

(4) The owner or operator shall comply with the recordkeeping requirements in paragraphs § 63.1430 (b) through (d), and the reporting requirements in § 63.1430 (g)(1) and (h).

(d) *Compliance with epoxide emission factor limitation using extended cookout.* (1) The owner or operator shall notify the Agency of the intent to use extended cookout to comply with the epoxide emission factor limitation in § 63.1425 (b)(1)(iii) or (b)(2)(iii). The owner or operator shall prepare an estimate of the annual epoxide emissions after the extended cookout. This notification and emission estimate shall be submitted in the precompliance report as specified in § 63.1439(e)(4), or the permit application.

(2) The owner or operator shall determine the annual epoxide emissions in accordance with § 63.1427(d) of this subpart, based on anticipated production. This information shall be submitted as part of the Notification of Compliance status report, as provided in § 63.1439(e)(5) of this subpart.

(3) The owner or operator shall comply with the monitoring provisions in § 63.1427(h) of this subpart.

(4) The owner or operator shall comply with the recordkeeping and reporting requirements in § 63.1430 of this subpart.

(e) *Compliance with epoxide emission factor limitation through the use of extended cookout in conjunction with a combustion, recovery, or recapture device.* (1) The owner or operator shall notify the Agency of the intent to use extended cookout in conjunction with a combustion, recovery, or recapture device to comply with the annual epoxide emission limitation in § 63.1425 (b)(1)(iii) or (b)(2)(iii). The owner or operator shall prepare an estimate of the annual epoxide emissions after control. This notification and emission estimate shall be submitted in the precompliance report as specified in § 63.1425(f)(4), or the permit application.

(2) The owner or operator shall determine the annual epoxide emissions after control. This information shall be submitted as part of the Notification of Compliance status report, as provided in § 63.1425(e)(5) of this subpart.

(3) The owner or operator shall comply with the monitoring provisions in § 63.1427(h).

(4) The owner or operator shall comply with the recordkeeping and reporting requirements in § 63.1427 (i) and (j) of this subpart.

(f) *Compliance with epoxide emission factor limitation without using extended cookout or a combustion, recovery, or recapture device.* (1) The owner or operator shall notify the Agency of the intent to comply with the epoxide emission factor limitation in § 63.1425 (b)(1)(iii) or (b)(2)(iii) without the use extended cookout or a combustion, recovery, or recapture device. The owner or operator shall prepare an estimate of the annual epoxide emissions control. This notification and emission estimate shall be submitted in the precompliance report as specified in § 63.1439(e)(4), or the permit application.

(g) Each year after the compliance date, the owner or operator shall calculate the epoxides emission factor for the previous year. This information shall be submitted in the second Periodic Report submitted each year, as specified in § 63.1439(e)(6).

**§ 63.1432 Storage vessel provisions.**

(a) For each storage vessel located at an affected source, the owner or operator shall comply with the requirements of §§ 63.119 through 63.123 and § 63.148 of subpart G, with the differences noted in paragraphs (b) through (p) of this section, for the purposes of this subpart.

(b) When the term ''storage vessel'' is used in §§ 63.119 through 63.123 of subpart G, the definition of this term in § 63.1423 shall apply for the purposes of this subpart.

(c) When the term ''Group 1 storage vessel'' is used in §§ 63.119 through 63.123 of subpart G, the definition of this term in § 63.1423 shall apply for the purposes of this subpart.

(d) When the term ''Group 2 storage vessel'' is used in §§ 63.119 through 63.123 of subpart G, the definition of this term in § 63.1423 shall apply for the purposes of this subpart.

(e) When December 31, 1992 (i.e., the proposal date for subpart G of this part) is referred to in § 63.119 of subpart G, it shall be replaced with September 4, 1997 (i.e., the proposal date for this subpart) for the purposes of this subpart.

(f) When April 22, 1994 (i.e., the publication date for subpart G of this part) is referred to in § 63.119 of subpart G, it shall be replaced with [date of publication of final rule] (i.e., the promulgation date for this subpart) for the purposes of this subpart.

(g) Each owner or operator shall comply with this paragraph instead of § 63.120(d)(1)(ii) of subpart G for the purposes of this subpart. If the combustion, recovery, or recapture device used to comply with § 63.119(e) is also used to comply with §§ 63.1425 through § 63.1433, the performance test required for §§ 63.1425 through § 63.1433 is acceptable for demonstrating compliance with § 63.119(e) of subpart G, for the purposes of this subpart. The owner or operator will not be required to prepare a design evaluation for the combustion, recovery, or recapture device as described in § 63.120(d)(1)(i) of subpart G, if the performance test meets the criteria specified in paragraphs (g)(1) and (g)(2) of this section.

(1) The performance test demonstrates that the combustion, recovery, or recapture device achieves greater than or equal to the required control efficiency specified in § 63.119(e)(1) or § 63.119(e)(2) of subpart G, as applicable; and

(2) The performance test is submitted as part of the Notification of Compliance Status required by § 63.1439(e)(5).

(h) When the term ''operating range'' is used in § 63.120(d)(3)(i) of subpart G, it shall be replaced with the term ''level,'' for the purposes of this subpart.

(i) For purposes of this subpart, the monitoring plan required by § 63.120(d)(2) shall specify for which combustion, recovery, or recapture devices the owner or operator has selected to follow the procedures for continuous monitoring specified in § 63.1438. For those combustion, recovery, or recapture devices for which the owner or operator has selected not to follow the procedures for continuous monitoring specified in § 63.1438, the monitoring plan shall include a description of the parameter or parameters to be monitored to ensure that the combustion, recovery, or recapture device is being properly operated and maintained, an explanation of the criteria used for selection of that parameter (or parameters), and the frequency with which monitoring will be performed (e.g., when the liquid level in the storage vessel is being raised), as specified in § 63.120(d)(2)(i).

(j) For purposes of this subpart, the monitoring plan required by § 63.122(b) shall be included in the Notification of Compliance Status required by § 63.1439(e)(5).

(k) When the Notification of Compliance Status requirements contained in § 63.152(b) of subpart G are referred to in §§ 63.120, 63.122, and 63.123 of subpart G, the Notification of Compliance Status requirements contained in § 63.1439(e)(5) shall apply for the purposes of this subpart.

(l) When the Periodic Report requirements contained in § 63.152(c) of subpart G are referred to in §§ 63.120, 63.122, and 63.123 of subpart G, the Periodic Report requirements contained in § 63.1439(e)(6) shall apply for the purposes of this subpart.

(m) When other reports as required in § 63.152(d) of subpart G are referred to in § 63.122 of subpart G, the reporting requirements contained in § 63.1439(e)(7) shall apply for the purposes of this subpart.

(n) When the Initial Notification requirements contained in § 63.151(b) of subpart G are referred to in § 63.119 through § 63.123 of subpart G, the owner or operator shall comply with the Initial Notification requirements contained in § 63.1439(e)(3), for the purposes of this subpart.

(o) When the determination of equivalence criteria in § 63.102(b) of subpart F are referred to in § 63.121(a) of subpart G, the provisions in § 63.6(g) of subpart A shall apply for the purposes of this subpart.

(p) The compliance date for storage vessels at affected sources subject to the provisions of this section is specified in § 63.1422.

**§ 63.1433 Wastewater provisions.**

(a) For each process wastewater stream originating at an affected source, the owner or operator shall comply with the requirements of §§ 63.132 through 63.149 of subpart G, with the differences noted in paragraphs (a)(1) through (a)(19) and (b) and (c) of this section, for the purposes of this subpart.

(1) Owners and operators of affected sources are not required to comply with the requirements in § 63.132(b)(1) and § 63.132(d) of subpart G, for the purposes of this subpart. All new affected sources, as defined in this subpart, shall comply with the requirements for existing sources in §§ 63.132 through 63.149 of subpart G.

(2) When §§ 63.132 through 63.149 of subpart G refer to table 9 or table 36 of subpart G, the owner or operator shall only consider organic HAP listed in table 9 or table 36 of subpart G that are also listed on table 5 of this subpart, for the purposes of this subpart. Owners and operators are exempt from all requirements in §§ 63.132 through 63.149 of subpart G that pertain solely and exclusively to organic HAP listed on table 8 of subpart G. In addition, when §§ 63.132 through 63.149 of subpart G refer to List 1, List 2, and/or List 3, as listed in table 36 of subpart G, the owner or operator shall only consider organic HAP contained in those lists that are also listed on table 5 of this subpart, for the purposes of this subpart.

(3) When the determination of equivalence criteria in § 63.102(b) of subpart F is referred to in §§ 63.132, 63.133, and 63.137 of subpart G, the provisions in § 63.6(g) of subpart A shall apply for the purposes of this subpart.

(4) When the storage tank requirements contained in §§ 63.119 through 63.123 of subpart G are referred to in §§ 63.132 through 63.148 of subpart G, §§ 63.119 through 63.123 of subpart G are applicable, with the exception of the differences referred to in § 63.1432, for the purposes of this subpart.

(5) When § 63.146(a) of subpart G requires the submission of a request for approval to monitor alternative parameters according to the procedures specified in § 63.151(g) or § 63.152(e), owners or operators requesting to monitor alternative parameters shall follow the procedures specified in § 63.1439(f), for the purposes of this subpart.

(6) When § 63.147(d) of subpart G requires owners or operators to keep records of the daily average value of each continuously monitored parameter for each operating day as specified in § 63.152(f) of subpart G, owners and operators shall instead keep records of the daily average value of each continuously monitored parameter as specified in § 63.1439(d), for the purposes of this subpart.

(7) When §§ 63.132 through 63.149 of subpart G refer to an ''existing source,'' the term ''existing affected source,'' as defined in § 63.1420(a)(3) shall apply, for the purposes of this subpart.

(8) When §§ 63.132 through 63.149 of subpart G refer to a ''new source,'' the term ''new affected source,'' as defined in § 63.1420(a)(4) shall apply, for the purposes of this subpart.

(9) When § 63.132 (a) and (b) of subpart G refer to the ''applicable dates specified in § 63.100 of subpart F of this part,'' the compliance dates specified in § 63.1422 shall apply, for the purposes of this subpart.

(10) Whenever §§ 63.132 through 63.149 of subpart G refer to a Group 1 wastewater stream or a Group 2 wastewater stream, the definitions of these terms contained in § 63.1423 shall apply, for the purposes of this subpart.

(11) When § 63.149(d) of subpart G refers to ''§ 63.100(f) of subpart F'', the owner or operator shall substitute the phrase ''§ 63.1420(c)'', for the purposes of this subpart. In addition, where § 63.149(d) states ''and the item of equipment is not otherwise exempt from controls by the provisions of subparts A, F, G, or H of this part'', the owner or operator of the affected source shall substitute ''and the item of equipment is not otherwise exempt from controls by the provisions of subparts A, F, G, H, or PPP of this part,'' for the purposes of this subpart.

(12) When § 63.149 (e)(1) and (e)(2) refer to ''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 owner or operator of an affected source shall substitute ''a new affected source as described in § 63.1420(a)(4),'' for the purposes of this subpart.

(13) When the Notification of Compliance Status requirements contained in § 63.152(b) of subpart G are referred to in §§ 63.138 and 63.146 of subpart G, the Notification of Compliance Status requirements contained in § 63.1439(e)(5) shall apply for the purposes of this subpart. In addition, when §§ 63.138 and 63.146 of subpart G require that information be reported according to § 63.152(b) of subpart G in the Notification of Compliance Status, owners or operators of affected sources shall report the specified information in the Notification of Compliance Status required by § 63.1439(e)(5), for the purposes of this subpart.

(14) When the Periodic Report requirements contained in § 63.152(c) of subpart G are referred to in § 63.146 of subpart G, the Periodic Report requirements contained in § 63.1439(e)(6) shall apply for the purposes of this subpart. In addition, when § 63.146 of subpart G requires that information be reported in the Periodic Reports required in § 63.152(c) of subpart G, owners or operators of affected sources shall report the specified information in the Periodic Reports required in § 63.1439(e)(6), for the purposes of this subpart.

(15) When the term ''range'' is used in §§ 63.132 through 63.149 of subpart G, the term ''level'' shall be used instead, for the purposes of this subpart. This level shall be determined using the procedures specified in § 63.1438.

(16) When § 63.143(f) of subpart G specifies that owners or operators shall establish the range that indicates proper

operation of the treatment process or control technique, the owner or operator shall instead comply with the requirements of § 63.1438 (b)(1), (c), or (d) for establishing parameter level maximums/minimums, for the purposes of this subpart.

(17) When § 63.146(b)(7) and § 63.146(b)(8) require that ''the information on parameter ranges specified in § 63.152(b)(2)'' be reported in the Notification of Compliance Status, owners and operators of affected sources are instead required to report the information on parameter levels in the Notification of Compliance status as specified in § 63.1439(e)(5)(ii), for the purposes of this subpart.

(18) For the purposes of this subpart, owners or operators are not required to comply with the provisions of § 63.138(g) of subpart G.

(19) When the provisions of § 63.139(c)(1)(ii), § 63.145(d)(4), or § 63.145(i)(2) of subpart G specify that Method 18, 40 CFR part 60, appendix A shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A may be used for the purposes of this subpart. The use of Method 25A, 40 CFR part 60, appendix A shall comply with paragraphs (a)(19)(i) and (a)(19)(ii) of this section.

(i) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A shall be the single organic HAP representing the largest percent by volume of the emissions.

(ii) The use of Method 25A, 40 CFR part 60, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(b) The owner or operator of each affected source shall comply with the requirements for maintenance wastewater in § 63.105 of subpart F, except that when § 63.105(a) refers to ''organic HAPs,'' the definition of organic HAP in § 63.1423 shall apply for the purposes of this subpart.

(c) The compliance date for the affected source subject to the provisions of this section is specified in § 63.1422.

### § 63.1434 Equipment leak provisions.

(a) The owner or operator of each affected source shall comply with the requirements of subpart H of this part for all equipment in organic HAP service, except as specified in paragraphs (b) through (g) of this section.

(b) The compliance date for the equipment leak provisions in this section is provided in § 63.1422(d).

(c) Affected sources subject to subpart I of this part shall continue to comply with subpart I until the compliance date specified in § 63.1422. After the compliance date for this section, the source shall be subject to this subpart and shall no longer be subject to subpart I.

(d) When the Initial Notification requirements contained in § 63.182(a)(1) and § 63.182(b) of subpart H are referred to in subpart H, the owner or operator shall comply with the Initial Notification requirements contained in § 63.1439(e)(3), for the purposes of this subpart.

(e) The Notification of Compliance Status required by § 63.182(a)(2) and § 63.182(c) of subpart H shall be submitted within 150 days (rather than 90 days) of the applicable compliance date specified in § 63.1422 for the equipment leak provisions. The notification can be submitted as part of the Notification of Compliance Status required by § 63.1439(e)(5).

(f) The Periodic Reports required by § 63.182(a)(3) and § 63.182(d) of subpart H shall be submitted as part of the Periodic Reports required by § 63.1439(e)(6).

(g) 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 PMPU within the affected source for all purposes under subpart H, providing there is no delay in achieving the applicable compliance date.

### § 63.1435 Heat exchanger provisions.

(a) The owner or operator of each affected source shall comply with the requirements of § 63.104 of subpart F for heat exchange systems, with the exceptions noted in paragraphs (b) through (d) of this section.

(b) When the term ''chemical manufacturing process unit'' is used in § 63.104 of subpart F, the term ''polyether polyols manufacturing process unit'' shall apply for the purposes of this subpart. Further, when the phrase ''a chemical manufacturing process unit meeting the conditions of § 63.100 (b)(1) through (b)(3) of this subpart, except for chemical manufacturing units meeting the condition specified in § 63.100(c) of this subpart'' is used in § 63.104(a) of subpart F, the term ''polyether polyols manufacturing process unit'' shall apply for the purposes of this subpart.

(c) When § 63.104(c)(3) and § 63.104(f)(1) specify that the monitoring plan and records required by § 63.104 (f)(1)(i) through (f)(1)(iv) shall be kept as specified in § 63.103(c), the provisions of § 63.1439(a) and the applicable provisions of subpart A of this part, as specified in Table 1 of this subpart, shall apply for the purposes of this subpart.

(d) When § 63.104(f)(2) of subpart F requires information to be reported in the Periodic Reports required by § 63.152(c) of subpart G, the owner or operator should instead report the information specified in § 63.104(f)(2) of subpart F in the Periodic Reports required by § 63.1439(e)(6), for the purposes of this subpart.

### § 63.1436 Reserved

### § 63.1437 Additional test methods and procedures.

(a) Performance testing shall be conducted in accordance with § 63.7 (a)(1), (a)(3), (d), (e)(1), (e)(2), (e)(4), (g), and (h) of subpart A, with the exceptions specified in paragraphs (a)(1) through (a)(4) of this section and the additions specified in paragraph (b) of this section. Sections 63.1432 through 63.1433 also contain specific testing requirements.

(1) Performance tests shall be conducted according to the provisions of § 63.7(e) of subpart A, except that performance tests shall be conducted during worst case operating conditions for the process.

(2) References in § 63.7(g) of subpart A to the Notification of Compliance Status requirements in § 63.9(h) shall refer to the requirements in § 63.1439(e)(5), for the purposes of this subpart.

(3) Because the site-specific test plans in § 63.7(c)(3) of subpart A are not required, § 63.7(h)(4)(ii) is not applicable.

(4) The owner or operator shall notify the Administrator of the intent to conduct a performance test at least 30 days before the performance test is scheduled, to allow the Administrator the opportunity to have an observer present during the test.

(b) Data shall be reduced in accordance with the EPA approved methods specified in the applicable subpart or, if other test methods are used, the data and methods shall be validated according to the protocol in Method 301, 40 CFR part 63, appendix A.

### § 63.1438 Parameter monitoring levels and excursions.

(a) *Establishment of parameter monitoring levels.* The owner or operator of a control or recovery device that has one or more parameter monitoring level requirements specified under this subpart shall establish a

maximum or minimum level for each measured parameter. If a performance test is required by this subpart for a control, recovery, or recapture device, the owner or operator shall use the procedures in either paragraph (b) or (c) of this section to establish the parameter monitoring level(s). If a performance test is not required by this subpart for a control, recovery, or recapture device, the owner or operator may use the procedures in paragraph (b), (c), or (d) of this section to establish the parameter monitoring levels. When using the procedures specified in paragraph (c) or (d) of this section, the owner or operator shall submit the information specified in § 63.506(e)(3)(vii) for review and approval, as part of the Precompliance Report.

(1) The owner or operator shall operate control and recovery devices such that the daily average value of monitored parameters remain above the minimum established level or below the maximum established level.

(2) As specified in § 63.1439(e)(6), all established levels, along with their supporting documentation and the definition of an operating day, shall be submitted as part of the Notification of Compliance Status. Once approved, this information shall be incorporated into the affected source's Notification of Compliance Status or operating permit.

(3) Nothing in this section shall be construed to allow a monitoring parameter excursion caused by an activity that violates other applicable provisions of subparts A, F, G, or H of this part.

(b) *Establishment of parameter monitoring levels based on performance tests.* The procedures specified in paragraphs (b)(1) through (b)(3) of this section shall be used, as applicable, in establishing parameter monitoring levels. Level(s) established under this paragraph shall be based on the parameter values measured during the performance test.

(1) *Storage tanks and wastewater.* The maximum and/or minimum monitoring levels shall be based on the parameter values measured during the performance test, supplemented, if desired, by engineering assessments and/or manufacturer's recommendations.

(2) *Process vents from continuous unit operations.* During initial compliance testing, the appropriate parameter shall be continuously monitored during the required 1-hour runs for process vents from continuous unit operations. The monitoring level(s) shall then be established as the average of the maximum (or minimum) point values from the three one-hour test runs. The average of the maximum values shall be used when establishing a maximum level, and the average of the minimum values shall be used when establishing a minimum level.

(3) *Process vents from batch unit operations.* For process vents from batch unit operations, during initial compliance testing, the appropriate parameter shall be monitored continuously during the entire test period. The monitoring level(s) are those established during the compliance test.

(c) *Establishment of parameter monitoring levels based on performance tests, engineering assessments, and/or manufacturer's recommendations.* Parameter monitoring levels established under this paragraph shall be based on the parameter values measured during the performance test supplemented by engineering assessments and manufacturer's recommendations. Performance testing is not required to be conducted over the entire range of expected parameter values. The information specified in paragraphs (c)(1) and (c)(2) of this section shall be provided in the Notification of Compliance Status.

(1) The specific level of the monitored parameter(s) for each emission point.

(2) The rationale for the specific level for each parameter for each emission point, including any data and calculations used to develop the level and a description of why the level indicates proper operation of the control or recovery device.

(d) *Establishment of parameter monitoring based on engineering assessments and/or manufacturer's recommendations.* If a performance test is not required by this subpart for a control or recovery device, the maximum or minimum level may be based solely on engineering assessments and/or manufacturer's recommendations. As required in paragraph (a)(2) of this section, the determined level and all supporting documentation shall be provided in the Notification of Compliance Status.

(e) *Compliance determinations.* The provisions of this paragraph apply only to emission points and control or recovery devices for which continuous monitoring is required under this subpart.

(1) The parameter monitoring data for storage vessels, process vents, process wastewater streams, and emission points included in emissions averages that are required to perform continuous monitoring shall be used to determine compliance for the monitored control or recovery devices.

(2) Except as provided in paragraph (e)(3) and (g) of this section, for each excursion, as defined in paragraphs (f) of this section, the owner or operator shall be deemed out of compliance with the provisions of this subpart.

(3) If the daily average value of a monitored parameter is above the maximum level or below the minimum level established, or if monitoring data cannot be collected during monitoring device calibration check or monitoring device malfunction, or if monitoring data are not collected during periods of non-operation of the affected source or portion thereof (resulting in cessation of the emissions to which the monitoring applies), but the affected source is operated during the periods of start-up, shutdown, or malfunction in accordance with the affected source's Start-up, Shutdown, and Malfunction Plan, then the event shall not be considered a monitoring parameter excursion.

(f) *Parameter monitoring excursion definitions.* For storage vessels and process vents using control or recovery devices for purposes of compliance, and for wastewater streams, an excursion means any of the three cases listed in paragraphs (f)(1) through (f)(3) of this section. For a control or recovery device where multiple parameters are monitored, if one or more of the parameters meets the excursion criteria in paragraphs (f)(1) through (f)(3) of this section, this is considered a single excursion for the control or recovery device.

(1) The daily average value of one or more monitored parameters is above the maximum level or below the minimum level established for the given parameters.

(2) The period of control or recovery device operation is 4 hours or greater in an operating day and monitoring data are insufficient, as defined in paragraph (f)(4) of this section, to constitute a valid hour of data for at least 75 percent of the operating hours.

(3) The period of control or recovery device operation is less than 4 hours in an operating day and more than two of the hours during the period of operation do not constitute a valid hour of data due to insufficient monitoring data, as defined in paragraph (f)(4) of this section.

(4) Monitoring data are insufficient to constitute a valid hour of data, as used in paragraphs (f)(2) and (f)(3) of this section, if measured values are unavailable for any of the 15-minute periods within the hour. For data compression systems approved under § 63.1439(g)(3), monitoring data are insufficient to calculate a valid hour of

data if there are less than four data measurements made during the hour.

(g) *Excused excursions.* A number of excused excursions shall be allowed for each control or recovery device for each semiannual period. The number of excused excursions for each semiannual period is specified in paragraphs (g)(1) through (g)(6) of this section. This paragraph applies to affected sources required to submit Periodic Reports semiannually or quarterly. The first semiannual period is the 6-month period starting the date the Notification of Compliance Status is due.

(1) For the first semiannual period—six excused excursions.

(2) For the second semiannual period—five excused excursions.

(3) For the third semiannual period—four excused excursions.

(4) For the fourth semiannual period—three excused excursions.

(5) For the fifth semiannual period—two excused excursions.

(6) For the sixth and all subsequent semiannual periods—one excused excursion.

**§ 63.1439 General recordkeeping and reporting provisions.**

(a) *Data retention.* Unless otherwise specified in this subpart, each owner or operator of an affected source shall keep copies of all applicable records and reports required by this subpart for at least 5 years. 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 provide access within 2 hours after a request. The remaining 4 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 microfilm, computer, floppy disk, magnetic tape, or microfiche. 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.

(b) *Subpart A requirements.* The owner or operator of an affected source shall comply with the applicable recordkeeping and reporting requirements in 40 CFR part 63, subpart A as specified in Table 1 of this subpart. These requirements include, but are not limited to, the requirements specified in paragraphs (b)(1) and (b)(2) of this section.

(1) *Start-up, shutdown, and malfunction plan.* The owner or operator of an affected source shall develop and implement a written start-up, shutdown, and malfunction plan as specified in § 63.6(e)(3) of subpart A. This plan shall describe, in detail, procedures for operating and maintaining the affected source during periods of start-up, shutdown, and malfunction and a program for corrective action for malfunctioning process and air pollution control equipment used to comply with this subpart. The affected source shall keep this plan onsite. The owner or operator shall keep the written start-up, shutdown, and malfunction plan on record after it is developed, to be made available for inspection, upon request, by the Administrator for the life of the affected source or until five years from the date the affected units were last subject to the provisions of this subpart for those affected sources that are no longer subject. Records associated with the plan shall be kept as specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(D) of this section. Reports related to the plan shall be submitted as specified in paragraph (b)(1)(ii) of this section.

(i) *Records of start-up, shutdown, and malfunction.* The owner or operator shall keep the records specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(D) of this section.

(A) Records of the occurrence and duration of each start-up, shutdown, and malfunction of operation of process equipment or combustion, recovery, or recapture devices or continuous monitoring systems used to comply with this subpart during which excess emissions (as defined in § 63.1420(h)(3)) occur.

(B) For each start-up, shutdown, or malfunction during which excess emissions (as defined in § 63.1420(h)(3)) occur, records that the procedures specified in the affected 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 combustion, recovery, or recapture device to a backup combustion, recovery, or recapture device, 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.

(C) For continuous monitoring systems used to comply with this subpart, records documenting the completion of calibration checks and maintenance of continuous monitoring systems that are specified in the manufacturer's instructions or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

(ii) *Reports of start-up, shutdown, and malfunction.* For the purposes of this subpart, the semiannual start-up, shutdown, and malfunction reports shall be submitted on the same schedule as the Periodic Reports required under paragraph (e)(6) of this section instead of the schedule specified in § 63.10(d)(5)(i) of subpart A. The reports shall include the information specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(C) of this section and shall contain the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy.

(2) *Application for approval of construction or reconstruction.* For new affected sources, each owner or operator shall comply with the provisions in § 63.5 of subpart A regarding construction and reconstruction, excluding the provisions specified in § 63.5 (d)(1)(ii)(H), (d)(1)(iii), (d)(2), and (d)(3)(ii) of subpart A.

(c) *Subpart H requirements.* Owners or operators of affected sources shall comply with the reporting and recordkeeping requirements in subpart H, except as specified in § 63.1434(b) through § 63.1434(g).

(d) *Recordkeeping and documentation.* Owners or operators required to comply with § 63.1438 and, therefore, required to keep continuous records shall keep records as specified in paragraphs (d)(1) through (d)(9) of this section, unless an alternative recordkeeping system has been requested and approved as specified in paragraph (g) or (h) of this section. If a monitoring plan for storage vessels pursuant to § 63.1432(i) requires continuous records, the monitoring plan shall specify which provisions, if any, of paragraphs (d)(1) through (d)(9) of this section apply. As described in § 63.1432(i), certain storage vessels are not required to comply with § 63.1438 and, therefore, are not required to keep continuous records as specified in this paragraph. Owners and operators of such storage vessels shall keep records as specified in the monitoring plan required by § 63.1432(i).

(1) The monitoring system shall measure data values at least once during approximately equal 15 minute intervals.

(2) The owner or operator shall record either measured data value, or block average values for 1 hour or shorter periods calculated from all measured data values during each period. If values are measured more frequently than once per minute, a single value for each minute may be used to calculate the hourly (or shorter period) block average instead of all measured values. Owners or operators of process vents from batch unit operations must be record each measured data value.

(3) Daily average values of each continuously monitored parameter shall be calculated for each operating day as specified in paragraphs (d)(3)(i) through (d)(3)(ii) of this section, except as specified in paragraphs (d)(6) and (d)(7) of this section.

(i) The daily average value shall be calculated as the average of all parameter values recorded during the operating day. The calculated average shall cover a 24-hour period if operation is continuous, or the number of hours of operation per operating day if operation is not continuous.

(ii) The operating day shall be the 24-hour period that the owner or operator specifies in the operating permit or the Notification of Compliance Status. It may be from midnight to midnight or another 24-hour period.

(4) *Records required for excursions.* If the daily average value of a monitored parameter for a given operating day is below the minimum level or above the maximum level established in the Notification of Compliance Status or operating permit, the owner or operator shall retain the data recorded that operating day under paragraph (d)(2) of this section.

(5) *Records required when the daily average value is within the established limit.* If the daily average value of a monitored parameter for a given operating day is above the minimum level or below the maximum level established in the Notification of Compliance Status or operating permit, the owner or operator shall retain the data recorded that operating day under paragraph (d)(2) of this section.

(6) *Records required when all recorded values are within the established limits.* If all recorded values for a monitored parameter during an operating day are above the minimum level or below the maximum level established in the Notification of Compliance Status or operating permit, the owner or operator may record that all values were above the minimum level or below the maximum level rather than calculating and recording a daily average for that operating day. For these operating days, the records required in paragraph (d)(5) of this section are required.

(7) Monitoring data recorded during periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments shall not be included in any average computed under this subpart. Records shall be kept of the times and durations of all such periods and any other periods during process or combustion, recovery, or recapture device operation when monitors are not operating.

(8) For each flexible operation unit in which the primary product is determined to be something other than a polyether polyol product, the owner or operator shall maintain the documentation specified in § 63.1420(e)(7).

(9) The owner or operator of an affected source granted a waiver under § 63.10(f) shall maintain the information demonstrating whether an affected source is meeting the requirements for a waiver of recordkeeping or reporting requirements.

(e) *Reporting and notification.* (1) In addition to the reports and notifications required by subparts A and H of this part, as specified in this subpart, the owner or operator of an affected source shall prepare and submit the reports listed in paragraphs (e)(3) through (e)(9) of this section, as applicable.

(2) All reports required under this subpart shall be sent to the Administrator at the applicable address listed in § 63.13 of subpart A of this part. If acceptable to both the Administrator and the owner or operator of a source, reports may be submitted on electronic media.

(3) *Initial Notification.* Each owner or operator of an existing or new affected source shall submit a written Initial Notification to the Administrator, containing the information described in paragraph (e)(3)(i) of this section, according to the schedule in paragraph (e)(3)(ii) of this section. The Initial Notification provisions in § 63.9(b)(2), (b)(3), and (b)(6) of subpart A shall not apply, for the purposes of this subpart.

(i) The Initial Notification shall include the following information:

(A) The name and address of the owner or operator;

(B) The address (physical location) of the affected source;

(C) An identification of the kinds of emission points within the affected source;

(D) An identification of the affected source; and

(E) A statement of whether the source can achieve compliance by the relevant compliance date specified in § 63.1422.

(ii) The Initial Notification shall be submitted according to the schedule in paragraph (e)(3)(ii)(A), (e)(3)(ii)(B), or (e)(3)(ii)(C) of this section, as applicable.

(A) For an existing source, the Initial Notification shall be submitted within 120 calendar days after the date of promulgation.

(B) For a new source that has an initial start-up 90 calendar days after the date of promulgation of this subpart or later, the application for approval of construction or reconstruction required by § 63.5(d) of subpart A shall be submitted in lieu of the Initial Notification. The application shall be submitted as soon as practical before construction or reconstruction is planned to commence (but it need not be sooner than 90 calendar days after the date of publication of this subpart).

(C) For a new source that has an initial start-up prior to 90 calendar days after the date of promulgation, the Initial Notification shall be submitted within 90 calendar days after the date of promulgation of this subpart. The application for approval of construction or reconstruction described in § 63.5(d) of subpart A is not required for these sources.

(4) *Precompliance Report.* Affected sources requesting an extension for compliance, or requesting approval to use alternative monitoring parameters, alternative continuous monitoring and recordkeeping, or alternative controls, shall submit a Precompliance Report according to the schedule described in paragraph (e)(4)(i) of this section. The Precompliance Report shall contain the information specified in paragraphs (e)(4)(ii) through (e)(4)(vi) of this section, as appropriate.

(i) *Submittal dates.* The Precompliance Report shall be submitted to the Administrator no later than 12 months prior to the compliance date. For new sources, the Precompliance Report shall be submitted to the Administrator with the application for approval of construction or reconstruction required in paragraph (b)(2) of this section.

(ii) A request for an extension for compliance may be submitted in the Precompliance Report, in a separate submittal to the Administrator, or in the Operating Permit application, as specified in § 63.1422(e).

(iii) The alternative monitoring parameter information required in paragraph (f) of this section shall be submitted if, for any emission point, the owner or operator of an affected source seeks to comply through the use of a control technique other than those for which monitoring parameters are specified in this subpart or in subpart G

of this part, or seeks to comply by monitoring a different parameter than those specified in this subpart or in subpart G of this part.

(iv) If the affected source seeks to comply using alternative continuous monitoring and recordkeeping as specified in paragraph (g) of this section, the information requested in paragraph (e)(4)(iv)(A) or (e)(4)(iv)(B) of this section must be submitted in the Precompliance Report.

(A) The owner or operator must submit notification of the intent to use the provisions specified in paragraph (h) of this section; or

(B) The owner or operator must submit a request for approval to use alternative continuous monitoring and recordkeeping provisions as specified in paragraph (g) of this section.

(v) The owner or operator shall report the intent to use alternative controls to comply with the provisions of this subpart. Alternative controls must be deemed by the Administrator to be equivalent to the controls required by the standard, under the procedures outlined in § 63.6(g) of subpart A.

(5) *Notification of Compliance Status.* For existing and new affected sources, a Notification of Compliance Status shall be submitted within 150 days after the compliance dates specified in § 63.1422. For equipment leaks subject to § 63.1434, the owner or operator must submit the information required in § 63.182(c) of subpart H in the Notification of Compliance Status. For all other emission points, including heat exchange systems, the Notification of Compliance Status shall contain the information listed in paragraphs (e)(5)(i) through (e)(5)(vii) of this section.

(i) The results of any emission point group determinations, process section applicability determinations, performance tests, inspections, continuous monitoring system performance evaluations, any other information used to demonstrate compliance, values of monitored parameters established during performance tests, and any other information required to be included in the Notification of Compliance Status under § 63.1422(j), § 63.122 of subpart G, and § 63.1432 for storage vessels, and § 63.146 of subpart G for process wastewater. In addition, each owner or operator shall comply with paragraphs (e)(5)(i)(A) and (e)(5)(i)(B) of this section.

(A) For performance tests, group determinations, or determination that controls are needed, the Notification of Compliance Status shall include one complete test report, as described in paragraph (e)(5)(i)(B) of this section, for each test method used for a particular kind of emission point. For additional tests performed for the same kind of emission point using the same method, the results and any other required information shall be submitted, but a complete test report is not required.

(B) A complete test report shall include a brief process description, sampling site description, description of sampling and analysis procedures and any modifications to standard procedures, quality assurance procedures, record of operating conditions during the test, record of preparation of standards, record of calibrations, raw data sheets for field sampling, raw data sheets for field and laboratory analyses, documentation of calculations, and any other information required by the test method.

(ii) For each monitored parameter for which a maximum or minimum level is required to be established under § 63.114(e) of subpart G and § 63.1429(d) for process vents, § 63.143(f) of subpart G for process wastewater, paragraph (e)(8) of this section, or paragraph (f) of this section, the information specified in paragraphs (e)(5)(ii)(A) through (e)(5)(ii)(C) of this section shall be submitted. Further, as described in § 63.1432(k), for those storage vessels for which the monitoring plan required by § 63.120(d)(3) specifies compliance with the provisions of § 63.1438, the owner or operator shall provide the information specified in paragraphs (e)(5)(ii)(A) through (e)(5)(ii)(C) of this section for each monitoring parameter. For those storage vessels for which the monitoring plan required by § 63.120(d)(2) does not require compliance with the provisions of § 63.1438, the owner or operator shall provide the information specified in § 63.120(d)(3) as part of the Notification of Compliance Status.

(A) The required information shall include the specific maximum or minimum level of the monitored parameter(s) for each emission point.

(B) The required information shall include the rationale for the specific maximum or minimum level for each parameter for each emission point, including any data and calculations used to develop the level and a description of why the level indicates that the combustion, recovery, or recapture device is operated in a manner to ensure compliance with the provisions of this subpart.

(C) The required information shall include a definition of the affected source's operating day, as specified in paragraph (d)(3)(ii) of this section, for purposes of determining daily average values of monitored parameters.

(D) The required information shall include a definition of the affected source's operating month for the purposes of determining monthly average values of residual organic HAP.

(iii) The determination of applicability for flexible operation units as specified in § 63.1420(e)(6).

(iv) The parameter monitoring levels for flexible operation units, and the basis on which these levels were selected, or a demonstration that these levels are appropriate at all times, as specified in § 63.1420(e)(7).

(v) The results for each predominant use determination for storage vessels belonging to an affected source subject to this subpart that is made under § 63.1420(f)(6).

(vi) If any emission point is subject to this subpart and to other standards as specified in § 63.1422(j), and if the provisions of § 63.1422(j) allow the owner or operator to choose which testing, monitoring, reporting, and recordkeeping provisions will be followed, then the Notification of Compliance Status shall indicate which rule's requirements will be followed for testing, monitoring, reporting, and recordkeeping.

(vii) 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.

(6) *Periodic Reports.* For existing and new affected sources, each owner or operator shall submit Periodic Reports as specified in paragraphs (e)(6)(i) through (e)(6)(x) of this section. In addition, for equipment leaks subject to § 63.1434, the owner or operator must submit the information specified in § 63.182(d) of subpart H, and for heat exchange systems subject to § 63.1434, the owner or operator must submit the information specified in § 63.104(f)(2) of subpart F.

(i) Except as specified in paragraphs (e)(6)(viii) of this section, a report containing the information in paragraph (e)(6)(ii) of this section or paragraphs (e)(6)(iii) through (e)(6)(vii) of this section, as appropriate, shall be submitted semiannually no later than 60 days after the end of each 180 day period. The first report shall be submitted no later than 240 days after the date the Notification of Compliance Status is due and shall cover the 6-month period beginning on the date the Notification of Compliance Status is

due. Subsequent reports shall cover each preceding 6-month period.

(ii) If none of the compliance exceptions in paragraphs (e)(6)(iii) through (e)(6)(vii) of this section occurred during the 6-month period, the Periodic Report required by paragraph (e)(6)(i) of this section shall be a statement that the affected source was in compliance for the preceding 6-month period and that none of the activities specified in paragraphs (e)(6)(iii) through (e)(6)(vii) of this section occurred.

(iii) For an owner or operator of an affected source complying with the provisions of §§ 63.1432 through 63.1433 for any emission point, Periodic Reports shall include:

(A) All information specified in § 63.122(a)(4) of subpart G for storage vessels, § 63.1430 (h) or (i) for process vents, § 63.104(b)(4) of subpart F for heat exchange systems, and § 63.146(c) through § 63.146(f) of subpart G for process wastewater.

(B) The daily average values of monitored parameters for all excursions, as defined in § 63.1438(f).

(C) The periods when monitoring data were not collected shall be specified; and

(D) The information in paragraphs (e)(6)(iii)(D)(1) through (e)(6)(iii)(D)(4) of this section, as applicable:

(*1*) Notification if a process change is made such that the group status of any emission point changes. The information submitted shall include a compliance schedule, as specified in paragraphs (e)(6)(iii)(D)(*2*)(*i*) and (e)(6)(iii)(D)(*2*)(*ii*) of this section, for emission points that change from Group 2 to Group 1 as specified in § 63.1420(g)(3); or for process vents under the conditions listed in § 63.1429(g)(3)(i). This information may be submitted in a separate report, as specified in § 63.1430(i).

(*i*) The owner of operator shall submit to the Administrator for approval a compliance schedule and a justification for the schedule.

(*ii*) The Administrator shall approve the compliance schedule or request changes within 120 days of receipt of the compliance schedule and justification.

(*2*) Notification if one or more emission points or one or more PMPU is added to an affected source. The owner or operator shall submit the information contained in paragraphs (e)(6)(iii)(D)(*3*)(*i*) through (e)(6)(iii)(D)(*3*)(*iii*) of this section.

(*i*) A description of the addition to the affected source;

(*ii*) Notification of the group status or control requirement for the additional emission point or all emission points in the PMPU;

(*iii*) A compliance schedule, as required under paragraph (e)(6)(iii)(D)(*2*) of this section.

(*3*) For process wastewater streams sent for treatment pursuant to § 63.132(g), reports of changes in the identity of the treatment facility or transferee.

(E) The information in paragraph (b)(1)(ii) of this section for reports of start-up, shutdown, and malfunction.

(iv) If any performance tests are reported in a Periodic Report, the following information shall be included:

(A) One complete test report shall be submitted for each test method used for a particular kind of emission point tested. A complete test report shall contain the information specified in paragraph (e)(5)(i)(B) of this section.

(B) For additional tests performed for the same kind of emission point using the same method, results and any other information required shall be submitted, but a complete test report is not required.

(v) The results for each change made to a primary product determination for a polyether polyol product made under § 63.1420(e)(6).

(vi) The results for each change made to a predominant use determination for a storage vessel belonging to an affected source subject to this subpart that is made under § 63.1420(f)(6).

(vii) The Periodic Report required by § 63.1434(f) shall be submitted as part of the Periodic Report required by paragraph (e)(6) of this section.

(viii) The owner or operator of an affected source shall submit quarterly reports for a period of 1 year for an emission point or process section if the emission point or process section has more excursions, as defined in § 63.1438(f), than the number of excused excursions allowed under § 63.1438(g) for a semiannual reporting period and the Administrator requests the owner or operator to submit quarterly reports for that emission point or process section.

(7) *Other reports.* The notifications of inspections required by § 63.1432 shall be submitted, as specified in § 63.122 (h)(1) and (h)(2) of subpart G.

(8) *Operating permit application.* An owner or operator who submits an operating permit application instead Precompliance Report shall submit the information specified in paragraph (e)(4) of this section, Precompliance Report, as applicable, with the operating permit application.

(f) *Alternative monitoring parameters.* The owner or operator who has been directed by any section of this subpart or any section of another subpart referenced by this subpart to set unique monitoring parameters, or who requests approval to monitor a different parameter than those listed in § 63.1432 for storage vessels, § 63.1426 for ECO, § 63.1429 for process vents, or § 63.143 of subpart G for process wastewater shall submit the information specified in paragraphs (f)(1) through (f)(3) of this section in the Precompliance Report, as required by paragraph (e)(4) of this section. The owner or operator shall retain for a period of 5 years each record required by paragraphs (f)(1) through (f)(3) of this section.

(1) The required information shall include a description of the parameter(s) to be monitored to ensure the combustion, recovery or control technique, or pollution prevention measure is operated in conformance with its design and achieves the specified emission limit, percent reduction, or nominal efficiency, and an explanation of the criteria used to select the parameter(s).

(2) The required information shall include a description of the methods and procedures that will be used to demonstrate that the parameter indicates proper operation, the schedule for this demonstration, and a statement that the owner or operator will establish a level for the monitored parameter as part of the Notification of Compliance Status report required in paragraph (e)(5) of this section, unless this information has already been included in the operating permit application.

(3) The required information shall include a description of the proposed monitoring, recordkeeping, and recording system, to include the frequency and content of monitoring, recordkeeping, and reporting. Further, the rationale for the proposed monitoring, recordkeeping, and reporting system shall be included if either condition in paragraph (f)(3)(i) or (f)(3)(ii) of this section is met:

(i) If monitoring and recordkeeping is not continuous, or

(ii) If reports of daily average values will not be included in Periodic Reports when the monitored parameter value is above the maximum level or below the minimum level as established in the operating permit or the Notification of Compliance Status.

(g) *Alternative continuous monitoring and recordkeeping.* An owner or operator choosing not to implement the continuous parameter operating and recordkeeping provisions listed in § 63.1429 for process vents, and § 63.1433 for wastewater, may instead request approval to use alternative continuous monitoring and recordkeeping provisions according to

the procedures specified in paragraphs (g)(1) through (g)(4) of this section. Requests shall be submitted in the Precompliance Report as specified in paragraph (e)(4)(iv) of this section, and shall contain the information specified in paragraphs (g)(2)(ii) and (g)(3)(ii) of this section, as applicable.

(1) The provisions in § 63.8(f)(5)(i) of subpart A shall govern the review and approval of requests.

(2) An owner or operator of an affected source that does not have an automated monitoring and recording system capable of measuring parameter values at least once during approximately equal 15 minute intervals and that does not generate continuous records may request approval to use a nonautomated system with less frequent monitoring, in accordance with paragraphs (g)(2)(i) and (g)(2)(ii) of this section.

(i) The requested system shall include manual reading and recording of the value of the relevant operating parameter no less frequently than once per hour. Daily averages shall be calculated from these hourly values and recorded.

(ii) The request shall contain:

(A) A description of the planned monitoring and recordkeeping system;

(B) Documentation that the affected source does not have an automated monitoring and recording system;

(C) Justification for requesting an alternative monitoring and recordkeeping system; and

(D) Demonstration that the proposed monitoring frequency is sufficient to represent combustion, recovery, or recapture device operating conditions, considering typical variability of the specific process and combustion, recovery, or recapture device operating parameter being monitored.

(3) An owner or operator may request approval to use an automated data compression recording system that does not record monitored operating parameter values at a set frequency (for example, once at approximately equal intervals of about 15 minutes), but that records all values that meet set criteria for variation from previously recorded values, in accordance with paragraphs (g)(3)(i) and (g)(3)(ii) of this section.

(i) The requested system shall be designed to:

(A) Measure the operating parameter value at least once during approximately equal 15 minute intervals;

(B) Record at least four values each hour during periods of operation;

(C) Record the date and time when monitors are turned off or on;

(D) Recognize unchanging data that may indicate the monitor is not functioning properly, alert the operator, and record the incident;

(E) Calculate daily average values of the monitored operating parameter based on all measured data; and

(F) If the daily average is not an excursion, as defined in § 63.1438(f), the data for that operating day may be converted to hourly average values and the four or more individual records for each hour in the operating day may be discarded.

(ii) The request shall contain:

(A) A description of the monitoring system and data compression recording system, including the criteria used to determine which monitored values are recorded and retained;

(B) The method for calculating daily averages; and

(C) A demonstration that the system meets all criteria in paragraph (g)(3)(i) of this section.

(4) An owner or operator may request approval to use other alternative monitoring systems according to the procedures specified in § 63.8(f)(4) of subpart A.

(h) *Reduced recordkeeping program*. For any parameter with respect to any item of equipment, the owner or operator may implement the recordkeeping requirements in paragraph (h)(1) or (h)(2) of this section as alternatives to the continuous operating parameter monitoring and recordkeeping provisions listed in § 63.1432 for storage vessels, § 63.1429 for process vents, and § 63.1433 for wastewater. The owner or operator shall retain for a period of 5 years each record required by paragraph (h)(1) or (h)(2) of this section.

(1) The owner or operator may retain only the daily average value, and is not required to retain more frequent monitored operating parameter values, for a monitored parameter with respect to an item of equipment, if the requirements of paragraphs (h)(1)(i) through (h)(1)(iv) of this section are met. An owner or operator electing to comply with the requirements of paragraph (h)(1) of this section shall notify the Administrator in the Notification of Compliance Status or, if the Notification of Compliance Status has already been submitted, in the Periodic Report immediately preceding implementation of the requirements of paragraph (h)(1) of this section.

(i) The monitoring system is capable of detecting unrealistic or impossible data during periods of operation other than start-ups, shutdowns or malfunctions (e.g., a temperature reading of −200 °C on a boiler), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

(ii) The monitoring system generates, updated at least hourly throughout each operating day, a running average of the monitoring values that have been obtained during that operating day, and the capability to observe this running average is readily available to the Administrator on-site during the operating day. The owner or operator shall record the occurrence of any period meeting the criteria in paragraphs (h)(1)(ii)(A) through (h)(1)(ii)(C) of this section. All instances in an operating day constitute a single occurrence.

(A) The running average is above the maximum or below the minimum established limits;

(B) The running average is based on at least six one-hour average values; and

(C) The running average reflects a period of operation other than a start-up, shutdown, or malfunction.

(iii) The monitoring system is capable of detecting unchanging data during periods of operation other than start-ups, shutdowns or malfunctions, except in circumstances where the presence of unchanging data is the expected operating condition based on past experience (e.g., pH in some scrubbers), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

(iv) The monitoring system will alert the owner or operator by an alarm, if the running average parameter value calculated under paragraph (h)(1)(ii) of this section reaches a set point that is appropriately related to the established limit for the parameter that is being monitored.

(v) The owner or operator shall verify the proper functioning of the monitoring system, including its ability to comply with the requirements of paragraph (h)(1) of this section, at the times specified in paragraphs (h)(1)(v)(A) through (h)(1)(v)(C) 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

(h)(1)(vi)(A) through (h)(1)(vi)(D) of this section.

(A) Identification of each parameter, for each item of equipment, for which the owner or operator has elected to comply with the requirements of paragraph (h) of this section.

(B) A description of the applicable monitoring system(s), and how compliance will be achieved with each requirement of paragraphs (h)(1)(i) through (h)(1)(v) of this section. The description shall identify the location and format (e.g., on-line storage, log entries) for each required record. If the description changes, the owner or operator shall retain both the current and the most recent superseded description, as specified in paragraph (h)(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 (h)(1) of this section.

(D) Owners and operators subject to paragraph (h)(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 it was last employed. 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 it was last employed.

(2) If an owner or operator has elected to implement the requirements of paragraph (h)(1) of this section for a monitored parameter with respect to an item of equipment and a period of 6 consecutive months has passed without an excursion as defined in paragraph (h)(2)(iv) of this section, the owner or operator is no longer required to record the daily average value, for any operating day when the daily average is less than the maximum, or greater than the minimum established limit. With approval by the Administrator, monitoring data generated prior to the compliance date of this subpart shall be credited toward the period of 6 consecutive months, if the parameter limit and the monitoring accomplished during the period prior to the compliance date was required and/or approved by the Administrator.

(i) If the owner or operator elects not to retain the daily average values, the owner or operator shall notify the Administrator in the next Periodic Report. The notification shall identify the parameter and unit of equipment.

(ii) If, on any operating day after the owner or operator has ceased recording daily average values as provided in paragraph (h)(2) of this section, there is an excursion as defined in paragraph (h)(2)(iv) of this section, the owner or operator shall immediately resume retaining the daily average value for each operating day and shall notify the Administrator in the next Periodic Report. The owner or operator shall continue to retain each daily average value until another period of 6 consecutive months has passed without an excursion as defined in paragraph (h)(2)(iv) of this section.

(iii) The owner or operator shall retain the records specified in paragraph (h)(1) of this section, for the duration specified in paragraph (h) of this section. For any calendar week, if compliance with paragraphs (h)(1)(i) through (h)(1)(iv) of this section does not result in retention of a record of at least one occurrence or measured parameter value, the owner or operator shall record and retain at least one parameter value during a period of operation other than a start-up, shutdown, or malfunction.

(iv) For the purposes of paragraph (h) of this section, an excursion means that the daily average of monitoring data for a parameter is greater than the maximum, or less than the minimum established value, except as provided in paragraphs (h)(2)(iv)(A) and (h)(2)(iv)(B) of this section.

(A) The daily average value during any start-up, shutdown, or malfunction shall not be considered an excursion for purposes of paragraph (h)(2) of this section, if the owner or operator follows the applicable provisions of the start-up, shutdown, and malfunction plan required by § 63.6(e)(3) of subpart A.

(B) An excused excursion, as described in § 63.1438(g), shall not be considered an excursion for the purposes of paragraph (h)(2) of this section.

TABLE 1.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPP AFFECTED SOURCES

| Reference | Applies to subpart PPP | Comment |
|---|---|---|
| 63.1(a)(1) | Yes | § 63.1423 of subpart PPP specifies definitions in addition to or that supersede definitions in § 63.2. |
| 63.1(a)(2) | Yes. | |
| 63.1(a)(3) | Yes | § 63.1422(f) through (j) of this subpart and § 63.160(b) of subpart H identify those standards which overlap with the requirements of subparts U and H and specify how compliance shall be achieved. |
| 63.1(a)(4) | Yes | Subpart PPP (this table) specifies the applicability of each paragraph in subpart A to subpart PPP. |
| 63.1(a)(5) | No | Reserved. |
| 63.1(a)(6)–63.1(a)(8) | Yes. | |
| 63.1(a)(9) | No | Reserved. |
| 63.1(a)(10) | Yes. | |
| 63.1(a)(11) | Yes. | |
| 63.1(a)(12)–63.1(a)(14) | Yes. | |
| 63.1(b)(1) | No | § 63.1420(a) contains specific applicability criteria. |
| 63.1(b)(2) | Yes. | |
| 63.1(b)(3) | Yes. | |
| 63.1(c)(1) | Yes | Subpart PPP (this table) specifies the applicability of each paragraph in subpart A to subpart PPP. |
| 63.1(c)(2) | No | Area sources are not subject to subpart PPP. |
| 63.1(c)(3) | No | Reserved. |
| 63.1(c)(4) | Yes. | |
| 63.1(c)(5) | Yes | Except that affected sources are not required to submit notifications overridden by this table. |
| 63.1(d) | No | Reserved. |

TABLE 1.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPP AFFECTED SOURCES—Continued

| Reference | Applies to subpart PPP | Comment |
|---|---|---|
| 63.1(e) | Yes. | |
| 63.2 | Yes | § 63.1423 of subpart PPP specifies those subpart A definitions that apply to subpart PPP. |
| 63.3 | Yes. | |
| 63.4(a)(1)–63.4(a)(3) | Yes. | |
| 63.4(a)(4) | No | Reserved. |
| 63.4(a)(5) | Yes. | |
| 63.4(b) | Yes. | |
| 63.4(c) | Yes. | |
| 63.5(a)(1) | Yes | Except the terms ''source'' and ''stationary source'' should be interpreted as having the same meaning as ''affected source''. |
| 63.5(a)(2) | Yes. | |
| 63.5(b)(1) | Yes | Except § 63.1420(h) defines when construction or reconstruction is subject to new source standards. |
| 63.5(b)(2) | No | Reserved. |
| 63.5(b)(3) | Yes. | |
| 63.5(b)(4) | Yes | Except that the Initial Notification and § 63.9(b) requirements do not apply. |
| 63.5(b)(5) | Yes. | |
| 63.5(b)(6) | Yes | Except that § 63.1420(h) defines when construction or reconstruction is subject to the new source standards. |
| 63.5(c) | No | Reserved. |
| 63.5(d)(1)(i) | Yes. | |
| 63.5(d)(1)(ii) | Yes | Except that § 63.5(d)(1)(ii)(H) does not apply. |
| 63.5(d)(1)(iii) | No | § 63.1439(e)(6) and § 63.1434(f) of subpart PPP specify Notification of Compliance Status requirements. |
| 63.5(d)(2) | No. | |
| 63.5(d)(3) | Yes | Except § 63.5(d)(3)(ii) does not apply, and equipment leaks subject to § 63.1434 are exempt. |
| 63.5(d)(4) | Yes. | |
| 63.5(e) | Yes. | |
| 63.5(f)(1) | Yes. | |
| 63.5(f)(2) | Yes | Except that where § 63.9(b)(2) is referred to, the owner or operator need not comply. |
| 63.6(a) | Yes. | |
| 63.6(b)(1) | Yes. | |
| 63.6(b)(2) | Yes. | |
| 63.6(b)(3) | Yes. | |
| 63.6(b)(4) | Yes. | |
| 63.6(b)(5) | Yes. | |
| 63.6(b)(6) | No | Reserved. |
| 63.6(b)(7) | No. | |
| 63.6(c)(1) | Yes | § 63.1422 of subpart PPP specifies the compliance date. |
| 63.6(c)(2) | No. | |
| 63.6(c)(3) | No | Reserved. |
| 63.6(c)(4) | No | Reserved. |
| 63.6(c)(5) | Yes. | |
| 63.6(d) | No | Reserved. |
| 63.6(e) | Yes | Except as otherwise specified for individual paragraphs (below), and § 63.6(e) does not apply to Group 2 emission points. |
| 63.6(e)(1)(i) | No | This is addressed by § 63.1420(i)(4). |
| 63.6(e)(1)(ii) | Yes. | |
| 63.6(e)(1)(iii) | Yes. | |
| 63.6(e)(2) | Yes. | |
| 63.6(e)(3)(i) | Yes | For equipment leaks (subject to § 63.1434), the start-up, shutdown, and malfunction plan requirement of § 63.6(e)(3)(i) is limited to combustion, recovery, or recapture devices and is optional for other equipment. The start-up, shutdown, and malfunction plan may include written procedures that identify conditions that justify a delay of repair. |
| 63.6(e)(3)(i)(A) | Yes | This is also addressed by § 63.1420(i)(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 § 63.1439(b)(1). |
| 63.6(e)(3)(iv) | No | Recordkeeping and reporting are specified in § 63.1439(b)(1). |
| 63.6(e)(3)(v) | No. | |
| 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 § 63.1420(i)(4). |
| 63.6(e)(3)(vii)(C) | Yes. | |
| 63.6(e)(3)(viii) | Yes. | |

TABLE 1.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPP AFFECTED SOURCES—Continued

| Reference | Applies to subpart PPP | Comment |
|---|---|---|
| 63.6(f)(1) | Yes. | |
| 63.6(f)(2) | Yes | Except 63.7(c), as referred to in § 63.6(f)(2)(iii)(D) does not apply, and except that § 63.6(f)(2)(ii) does not apply to equipment leaks subject to § 63.1434. |
| 63.6(f)(3) | Yes. | |
| 63.6(g) | Yes. | |
| 63.6(h) | No | Subpart PPP does not require opacity and visible emission standards. |
| 63.6(i)(1) | Yes. | |
| 63.6(i)(2) | Yes. | |
| 63.6(i)(3) | Yes. | |
| 63.6(i)(4)(i)(A) | Yes. | |
| 63.6(i)(4)(i)(B) | No | Dates are specified in § 63.1422(e) and § 63.1439(e)(5)(i) for all emission points except equipment leaks, which are covered under § 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 | Reserved. |
| 63.6(i)(16) | Yes. | |
| 63.6(j) | Yes. | |
| 63.7(a)(1) | Yes. | |
| 63.7(a)(2) | No | § 63.1439(e)(6) of subpart PPP specifies the submittal dates of performance test results for all emission points except equipment leaks; for equipment leaks, compliance demonstration test results are reported in the Periodic Reports. |
| 63.7(a)(3) | Yes. | |
| 63.7(b) | No | § 63.1437(a)(4) of subpart PPP specifies notification requirements. |
| 63.7(c) | No | Except if the owner or operator chooses to submit an alternative nonopacity emission standard for approval under § 63.6(g). |
| 63.7(d) | Yes. | |
| 63.7(e)(1) | Yes | Except that all performance tests must be conducted at maximum representative operating conditions. |
| 63.7(e)(2) | Yes. | |
| 63.7(e)(3) | No | Subpart PPP specifies requirements |
| 63.7(e)(4) | Yes. | |
| 63.7(f) | Yes | Since a site specific test plan is not required, the Notification deadline in § 63.7(f)(2)(i) shall be 60 days prior to the performance test, and in § 63.7(f)(3) approval or disapproval of the alternative test method shall not be tied to the site specific test plan. |
| 63.7(g) | Yes | Except that references to the Notification of Compliance Status report in 63.9(h) of subpart A are replaced with the requirements in § 63.1439(e)(6) of subpart PPP. In addition, emission points subject to § 63.1434 are not required to conduct performance tests. |
| 63.7(h) | Yes | Except § 63.7(h)(4)(ii) is not applicable, since the site-specific test plans in § 63.7(c)(3) are not required. |
| 63.8(a)(1) | Yes. | |
| 63.8(a)(2) | No. | |
| 63.8(a)(3) | No | Reserved. |
| 63.8(a)(4) | Yes. | |
| 63.8(b)(1) | Yes. | |
| 63.8(b)(2) | No | Subpart PPP specifies locations to conduct monitoring. |
| 63.8(b)(3) | Yes. | |
| 63.8(c)(1) | Yes. | |
| 63.8(c)(1)(i) | Yes. | |
| 63.8(c)(1)(ii) | No | For all emission points except equipment leaks, comply with § 63.1439(b)(1)(i)(B); for equipment leaks, comply with § 63.181(g)(2)(ii) of subpart H. |
| 63.8(c)(1)(iii) | Yes. | |
| 63.8(c)(2) | Yes. | |
| 63.8(c)(3) | Yes. | |
| 63.8(c)(4) | No | § 63.1438 of subpart PPP specifies monitoring frequency; not applicable to equipment leaks, because § 63.1434 does not require continuous monitoring systems. |
| 63.8(c)(5)–63.8(c)(8) | No. | |
| 63.8(d) | No. | |
| 63.8(e) | No. | |
| 63.8(f)(1)–63.8(f)(3) | Yes. | |
| 63.8(f)(4)(i) | No | Timeframe for submitting request is specified in § 63.1439 (f) or (g) of subpart PPP; not applicable to equipment leaks, because § 63.1434 (through subpart H) specifies acceptable alternative methods. |
| 63.8(f)(4)(ii) | No | Contents of request are specified in § 63.1439 (f) or (g). |
| 63.8(f)(4)(iii) | No. | |
| 63.8(f)(5)(i) | Yes. | |
| 63.8(f)(5)(ii) | No. | |
| 63.8(f)(5)(iii) | Yes. | |
| 63.8(f)(6) | No | Subpart PPP does not require CEM's. |

TABLE 1.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPP AFFECTED SOURCES—Continued

| Reference | Applies to subpart PPP | Comment |
|---|---|---|
| 63.8(g) | No | Data reduction procedures specified in § 63.1439 (d) and (h) of subpart PPP; not applicable to equipment leaks. |
| 63.9(a) | Yes. | |
| 63.9(b) | No | Subpart PPP does not require an initial notification. |
| 63.9(c) | Yes. | |
| 63.9(d) | Yes. | |
| 63.9(e) | No | § 63.1437(a)(4) specifies notification deadline. |
| 63.9(f) | No | Subpart PPP does not require opacity and visible emission standards. |
| 63.9(g) | No. | |
| 63.9(h) | No | § 63.1439(e)(6) of subpart PPP specifies Notification of Compliance Status requirements. |
| 63.9(i) | Yes. | |
| 63.9(j) | No. | |
| 63.10(a) | Yes. | |
| 63.10(b)(1) | No | § 63.1439(a) specifies record retention requirements. |
| 63.10(b)(2) | No | Subpart PPP specifies recordkeeping requirements. |
| 63.10(b)(3) | Yes. | |
| 63.10(c) | No | § 63.1439 of subpart PPP specifies recordkeeping requirements. |
| 63.10(d)(1) | Yes. | |
| 63.10(d)(2) | No | § 63.1439(e)(6) specifies performance test reporting; not applicable to equipment leaks. |
| 63.10(d)(3) | No | Subpart PPP does not require opacity and visible emission standards. |
| 63.10(d)(4) | Yes. | |
| 63.10(d)(5) | Yes | Except that reports required by § 63.10(d)(5)(i) shall be submitted at the same time as Periodic Reports specified in § 63.1439(e)(7) of subpart PPP. The start-up, shutdown, and malfunction plan, and any records or reports of startup, shutdown, and malfunction do not apply to Group 2 emission points. |
| 63.10(e) | No | § 63.1439 specifies reporting requirements. |
| 63.10(f) | Yes. | |
| 63.11 | Yes. | |
| 63.12 | Yes | Except that the authority of § 63.177 of subpart H (for equipment leaks) will not be delegated to States. |
| 63.13–63.15 | Yes. | |

[a] The plan, and any records or reports of start-up, shutdown, and malfunction do not apply to Group 2 emission points.

TABLE 2. APPLICABILITY OF SUBPARTS F, G, AND H TO SUBPART PPP AFFECTED SOURCES

| Reference | Applies to subpart PPP | Comment | Applicable section of subpart PPP |
|---|---|---|---|
| **Subpart F** | | | |
| 63.100 | No. | | |
| 63.101 | Yes | Several definitions from 63.101 are incorporated by reference into 63.1424. | 63.1423. |
| 63.102–63.109 | No. | | |
| **Subpart G** | | | |
| 63.110 | No. | | |
| 63.111 | Yes | Several definitions from 63.111 are incorporated by reference into 63.1423. | 63.1423. |
| 63.112 | No. | | |
| 63.113–63.118 | Yes | With the differences noted in 63.1425(f)(1) through (f)(10), for THF facilities. For epoxide facilities, 63.115(d) is used for TRE determinations. | |
| 63.119–63.123 | Yes | With the differences noted in 63.1432(c) through 63.1432(q) | .63.1432. |
| 63.124–63.125 | No. | Reserved | |
| 63.126–63.130 | No | | |
| 63.131–63.147 | Yes | With the differences noted in 63.1433(a)(1) through 63.1433(a)(19). | 63.1433. |
| 63.148–63.149 | Yes | With the differences noted in 63.1432(c) through 63.1432(q) and 63.1433(a)(1) through 63.1433(a)(19). | 63.1432 and 63.1433. |
| 63.150(a) through 63.150(f) | No. | | |
| 63.150(g)(1) and 63.150(g)(2) | No. | | |
| 63.150(g)(3) | No. | | |
| 63.150(g)(4) | No. | | |
| 63.150(g)(5) | No. | | |
| 63.150(h)(1) and 63.150(h)(2) | No. | | |
| 63.150(h)(3) | No. | | |
| 63.150(h)(4) | No. | | |
| 63.150(h)(5) | No. | | |

TABLE 2. APPLICABILITY OF SUBPARTS F, G, AND H TO SUBPART PPP AFFECTED SOURCES—Continued

| Reference | Applies to subpart PPP | Comment | Applicable section of subpart PPP |
|---|---|---|---|
| 63.150(i) through 63.150(o) | No. | | |
| 63.151–63.152 | No. | | |
| **Subpart H** | | | |
| 63.160–63.193 | Yes | Subpart PPP affected sources must comply with all requirements of subpart H. | 63.1434. |

TABLE 3.—GROUP 1 STORAGE VESSELS AT EXISTING AND NEW AFFECTED SOURCES

| Vessel capacity (cubic meters) | Vapor pressure [a] (kilopascals) |
|---|---|
| 75 ≤ capacity < 151 | ≥13.1 |
| 151 ≤ capacity | ≥5.2 |

[a] Maximum true vapor pressure of total organic HAP at storage temperature.

TABLE 4.—KNOWN ORGANIC HAP FROM POLYETHER POLYOL PRODUCTS

| Organic HAP/chemical name (CAS No.) |
|---|
| 1,3 Butadiene (106990). |
| Ethylene Oxide (75218). |
| Hexane (100543). |
| Methanol (67561). |
| Propylene Oxide (75569). |
| Toluene (108883). |

CAS No. = Chemical Abstract Service Number.

TABLE 5.—GROUP 1 PROCESS VENTS STREAMS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS

| Control/recovery device | Parameter to be monitored | Recordkeeping and reporting requirements for monitored parameters |
|---|---|---|
| Thermal Incinerator | Firebox temperature [a] | 1. Continuous records as specified in § 63.1429b.<br>2. Record and report the average firebox temperature measured during the performance test—NCS [c].<br>3. Record the batch cycle daily average firebox temperature as specified in § 63.1429.<br>4. Report all batch cycle daily average temperatures that are below the minimum operating temperature established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d, e]. |
| Catalytic Incinerator | Temperature upstream and downstream of the catalyst bed. | 1. Continuous records as specified in § 63.1429.[b]<br>2. Record and report the average upstream and downstream temperatures and the average temperature difference across the catalyst bed measured during the performance test—NCS.[c]<br>3. Record the batch cycle daily average upstream temperature and temperature difference across catalyst bed as specified in § 63.1429.<br>4. Report all batch cycle daily average upstream temperatures that are below the minimum upstream temperature established in the NCS or operating permit—PR.[d, e]<br>5. Report all batch cycle daily average temperature differences across the catalyst bed that are below the minimum difference established in the NCS or operating permit—PR.[d, e]<br>6. Report all instances when monitoring data are not collected.[e] |
| Boiler or Process Heater with a design heat input capacity less than 44 megawatts and where the process vents are *not* introduced with or used as the primary fuel. | Firebox temperature [a] | 1. Continuous records as specified in § 63.1429.[b]<br>2. Record and report the average firebox temperature measured during the performance test—NCS.[c]<br>3. Record the batch cycle daily average firebox temperature as specified in § 63.1429.[d] |

TABLE 5.—GROUP 1 PROCESS VENTS STREAMS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS—Continued

| Control/recovery device | Parameter to be monitored | Recordkeeping and reporting requirements for monitored parameters |
|---|---|---|
| | | 4. Report all batch cycle daily average temperatures that are below the minimum operating temperature established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d, e] |
| Flare | Presence of a flame at the pilot light. | 1. Hourly records of whether the monitor was continuously operating during batch emission episodes selected for control and whether a flame was continuously present at the pilot light during each hour.<br>2. Record and report the presence of a flame at the pilot light over the full period of the compliance determination—NCS.[c]<br>3. Record the times and durations of all periods during batch emission episodes when all flames at the pilot light of a flare are absent or the monitor is not operating.<br>4. Report the times and durations of all periods during batch emission episodes selected for control when all flames at the pilot light of a flare are absent—PR.[d] |
| Absorber[f] | Exit temperature of the absorbing liquid, and | 1. Continuous records as specified in § 63.1429.[b]<br>2. Record and report the average exit temperature of the absorbing liquid measured during the performance test—NCS.[c]<br>3. Record the batch cycle daily average exit temperature of the absorbing liquid as specified in § 63.1429 for each batch cycle.<br>4. Report all the batch cycle daily average exit temperatures of the absorbing liquid that are below the minimum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d, e] |
| | Exit specific gravity for the absorbing liquid. | 1. Continuous records as specified in § 63.1429.[b]<br>2. Record and report the average exit specific gravity measured during the performance test—NCS.<br>3. Record the batch cycle daily average exit specific gravity as specified in § 63.1429.<br>4. Report all batch cycle daily average exit specific gravity values that are below the minimum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d, e] |
| Condenser[f] | Exit (product side) temperature | 1. Continuous records as specified in § 63.1429.[b]<br>2. Record and report the average exit temperature measured during the performance test—NCS.<br>3. Record the batch cycle daily average exit temperature as specified in § 63.1429.<br>4. Report all batch cycle daily average exit temperatures that are above the maximum operating temperature established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d, e] |
| Carbon Adsorber[f] | Total regeneration stream mass or volumetric flow during carbon bed regeneration cycle(s), and | 1. Record of total regeneration stream mass or volumetric flow for each carbon bed regeneration cycle.<br>2. Record and report the total regeneration stream mass or volumetric flow during each carbon bed regeneration cycle during the performance test—NCS.[c]<br>3. Report all carbon bed regeneration cycles when the total regeneration stream or volumetric mass flow is above the maximum flow rate established in the NCS or operating permit—PR.[d, e] |
| | Temperature of the carbon bed after regeneration and within 15 minutes of completing any cooling cycle(s). | 1. Record the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycle(s).<br>2. Record and report the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycle(s) measured during the performance test—NCS.[c]<br>3. Report all carbon bed regeneration cycles when the temperature of the carbon bed after regeneration, or within 15 minutes of completing any cooling cycle(s), is above the maximum temperature established in the NCS or operating permit—PR.[d, e] |
| All Combustion, recovery, or recapture devices. | Diversion to the atmosphere from the combustion, recovery, or recapture device *or* | 1. Hourly records of whether the flow indicator was operating during batch emission episodes selected for control and whether a diversion was detected at any time during the hour, as specified in § 63.1429.<br>2. Record and report the times of all periods during batch emission episodes selected for control when emissions are diverted through a bypass line, or the flow indicator is not operating—PR.[d] |
| | Monthly inspections of sealed valves. | 1. Records that monthly inspections were performed as specified in § 63.1429. |

TABLE 5.—GROUP 1 PROCESS VENTS STREAMS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS—Continued

| Control/recovery device | Parameter to be monitored | Recordkeeping and reporting requirements for monitored parameters |
|---|---|---|
| | | 2. Record and report all monthly inspections that show that valves are in the diverting position or that a seal has been broken—PR.[d] |
| Absorber, Condenser, and Carbon Adsorber (as an alternative to the above). | Concentration level or reading indicated by an organic monitoring device at the outlet of the recovery device. | 1. Continuous records as specified in § 63.1429.[b]<br>2. Record and report the average concentration level or reading measured during the performance test—NCS.<br>3. Record the batch cycle daily average concentration level or reading as specified in § 63.1429.<br>4. Report all batch cycle daily average concentration levels or readings that are above the maximum concentration or reading established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d, e] |

[a] Monitor may be installed in the firebox or in the ductwork immediately downstream of the firebox before any substantial heat exchange is encountered.
[b] "Continuous records" is defined in § 63.111 of subpart G.
[c] NCS = Notification of Compliance Status described in § 63.1429.
[d] PR = Periodic Reports described in § 63.1429 of this subpart.
[e] The periodic reports shall include the duration of periods when monitoring data are not collected as specified in § 63.1439 of this subpart.
[f] Alternatively, these devices may comply with the organic monitoring device provisions listed at the end of this table.

TABLE 6.—OPERATING PARAMETERS FOR WHICH MONITORING LEVELS ARE REQUIRED TO BE ESTABLISHED FOR PROCESS VENTS STREAMS

| Control/recovery option | Parameters to be monitored | Established operating parameter(s) |
|---|---|---|
| Thermal incinerator | Firebox temperature | Minimum temperature. |
| Catalytic incinerator | Temperature upstream and downstream of the catalyst bed | Minimum upstream temperature; and minimum temperature difference across the catalyst bed. |
| Boiler or process heater | Firebox temperature | Minimum temperature. |
| Scrubber for halogenated process vents. | pH of scrubber effluent; and scrubber liquid and gas flow rates | Minimum pH; and minimum liquid/gas ratio. |
| Absorber | Exit temperature of the absorbing liquid; and exit specific gravity of the absorbing liquid. | Minimum temperature; and minimum specific gravity. |
| Condenser | Exit temperature | Maximum temperature. |
| Carbon adsorber | Total regeneration stream mass or volumetric flow during carbon bed regeneration cycle; and temperature of the carbon bed after regeneration (and within 15 minutes of completing any cooling cycle(s)). | Maximum mass or volumetric flow; and maximum temperature. |
| Other devices (or as an alternate to the above)[a]. | HAP concentration level or reading at outlet of device | Maximum HAP concentration or reading. |

[a] Concentration is measured instead of an operating parameter.

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federal register

Thursday
September 4, 1997

# Part III

# Department of the Treasury

## Fiscal Service

## 31 CFR Part 357

## Regulations Governing Book-Entry Treasury Bonds, Notes, and Bills; Final Rule

**DEPARTMENT OF THE TREASURY**

**Fiscal Service**

**31 CFR Part 357**

## Regulations Governing Book-Entry Treasury Bonds, Notes and Bills

**AGENCY:** Bureau of the Public Debt, Fiscal Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury (Department or Treasury) is issuing in final form an amendment to its regulations governing book-entry Treasury Bonds, Notes and Bills which will offer investors holding marketable securities within the TREASURY DIRECT system the option of having Treasury, through a designated Federal Reserve Bank, acting as fiscal agent of the United States, sell such securities in the secondary market. Previously, if investors needed or wanted to sell their Treasury securities, they were required to first transfer their securities from their TREASURY DIRECT accounts to accounts with financial institutions or broker-dealers within TRADES, the commercial book-entry system. Investors who did not already have broker-dealer accounts established were required to first establish such accounts for the transaction. The new service will benefit such investors by providing them with the option of having the designated Federal Reserve Bank sell the securities and transmit the settlement amounts to the investors.

**EFFECTIVE DATE:** September 4, 1997.

**FOR FURTHER INFORMATION CONTACT:** Richard Koch, Director, Division of Customer Service, Bureau of the Public Debt (304) 480–6748; Susan Klimas, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt (304) 480–5192; Edward C. Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt (304) 480–5192.

**SUPPLEMENTARY INFORMATION:** This final rule amends the general regulations governing book-entry Treasury Bonds, Notes and Bills to offer TREASURY DIRECT investors the service of selling their unmatured marketable securities in the secondary market. At the request of the investor, the securities will be transferred to the designated Federal Reserve Bank, acting as fiscal agent of the United States, to be sold on behalf of the investor. This will enhance customer service to TREASURY DIRECT investors who do not already have an account established with a financial institution or broker-dealer and who wish to liquidate some or all of their securities. In addition, legal representatives and heirs of a decedent with securities held in TREASURY DIRECT who may wish to sell the securities would not have the added burden of establishing a broker-dealer account.

Investors wishing to use the new service will authorize Treasury to transfer their securities to the designated Federal Reserve Bank to be sold on their behalf. Once all evidence which may be required to support such a transfer is received and approved, the securities will be transferred to the Federal Reserve Bank. Generally, on the same day that the Federal Reserve Bank receives the securities, the Federal Reserve Bank will make a reasonable effort to obtain three price quotes from dealers and will enter into an agreement to sell the securities to the dealer with the highest price quote for next day settlement. The day that the agreement to sell the securities is entered into is referred to as the trade date. If the Federal Reserve Bank is unable to obtain at least one price quote for the security, the security will be returned to the TREASURY DIRECT account of the investor on the next full business day following the receipt of the securities by the Federal Reserve Bank, and the investor will be notified. On the next full business day after the trade date, the settlement amount will be released electronically by the Federal Reserve Bank to the account at the financial institution which the investor has previously designated to receive TREASURY DIRECT payments. The electronic payments will be by the Automated Clearing House method, as provided in this part. A confirmation will be sent to the investor by the Federal Reserve Bank upon the completion of the transaction. Because the Federal Reserve Bank enters into an agreement to sell the securities on the same day that it receives the securities, the authorization of the investor for the transfer and sale of the securities becomes irrevocable when the transfer from the TREASURY DIRECT account of the owner to the Federal Reserve Bank is made.

The customer agrees to accept the price received by the Federal Reserve Bank from the dealer selected as having the highest price quote. The Department and the Federal Reserve Bank are not liable for changes in market conditions which may affect the price received by the investor, or any loss which the investor may incur as a result of the transaction or the failure of the Federal Reserve Bank to complete the transaction. The settlement amount, also referred to as the net amount on the confirmation, may be less than the par amount of the security. Such settlement amount is derived by taking the par amount of the security (that is, the stated value of the security at original issuance), multiplying that amount by the price, adding any interest which may have accrued, and subtracting the transaction fee. For inflation indexed securities, the settlement amount will also include any applicable inflation adjustment, as provided in 31 CFR part 356.

A transaction fee will be charged for each security sold on behalf of the investor. For purposes of computing the transaction fee, a security is considered as any amount within a TREASURY DIRECT account which is identified by a separate CUSIP number. Thus, if an investor has several holdings within a TREASURY DIRECT account of varying amounts, but all are identified by the same CUSIP number, and all are transferred in one transaction, only one transaction fee will be charged, since the holdings are considered as one security. If the investor has several holdings within a TREASURY DIRECT account, each with a different CUSIP number, then a separate transaction fee will be charged for each holding, as each holding with a separate CUSIP number is considered a separate security. If an investor has two TREASURY DIRECT accounts, and each account has a security with a CUSIP identical to the security in the other account, then two transaction fees will be charged, since each security within each account is considered a separate security. If the Federal Reserve Bank is unable to complete the sale of the security, no transaction fee will be charged. The transaction fee will be deducted prior to the Federal Reserve Bank initiating the payment of the settlement amount to the investor's account at the financial institution designated to receive TREASURY DIRECT payments. The amount of the transaction fee will be published by notice in the **Federal Register**.

The Department has reserved the right to terminate the service at any time at its discretion without prior notice.

The TREASURY DIRECT rules found in subpart C of this part apply to the transaction, rather than the TRADES rules found in subpart B.

Several definitions have been added to the part to further clarify the process.

### Procedural Requirements

It has been determined that this final rule does not meet the criteria for a ''significant regulatory action,'' as defined in Executive Order 12866. Therefore, the regulatory review

procedures contained therein do not apply.

This final rule relates to matters of public contract and procedures for U.S. securities. Accordingly, pursuant to 5 U.S.C. 553(a)(2), the notice, public comment and delayed effective date provisions of the Administrative Procedure Act do not apply. As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

There are no new collections of information contained in this final rule, therefore, the Paperwork Reduction Act (44 U.S.C. 3507) does not apply.

**List of Subjects in 31 CFR Part 357**

Banks, Banking, Bonds, Federal Reserve System, Government securities.

Dated: August 20, 1997.

**Gerald Murphy,**

*Fiscal Assistant Secretary.*

For the reasons set out in the preamble, 31 CFR part 357 is amended as follows:

## PART 357—GENERAL REGULATIONS GOVERNING BOOK-ENTRY TREASURY BONDS, NOTES AND BILLS

1. The authority citation for part 357 continues to read as follows:

**Authority:** 31 U.S.C. Chapter 31, 5 U.S.C. 301 and 12 U.S.C. 391.

2. Section 357.22 is amended by redesignating paragraphs (b) through (e) as (c) through (f), respectively, and adding a new paragraph (b), as follows:

### § 357.22 Transfers.

* * * * *

(b) *Transfer to Federal Reserve Bank for sale of securities in the secondary market.*

(1) Upon authorization by the investor, an unmatured security may be transferred to a Federal Reserve Bank acting as the designated fiscal agent of the United States, to be sold on behalf of the investor.

(2) *Definitions.* In this section, unless the context indicates otherwise:

*Dealer* means an entity that is registered or has given notice of its status as a government securities broker or government securities dealer, pursuant to Section 15C(a)(1) of the Securities Exchange Act of 1934.

*Par amount* means the stated value of a security at original issuance.

*Price* means the dollar amount to be paid for a security expressed as a percent of its current par amount.

*Security* means any amount held in a TREASURY DIRECT account which is represented by a separate CUSIP number.

*Settlement amount*, also referred to as net amount, is the amount deposited by the Federal Reserve Bank to the account of the investor at the financial institution designated by the investor to receive TREASURY DIRECT payments. This amount is equal to the par amount of the securities multiplied by the price, plus any accrued interest, and less the transaction fee. For inflation indexed securities, the settlement amount also includes any applicable inflation adjustment, as provided in 31 CFR Part 356. The settlement amount may be less than the par amount of the security.

*Settlement date* is the date the settlement amount is released to the account at the financial institution designated by the investor for receipt of TREASURY DIRECT payments.

*Trade date* means the date on which the Federal Reserve Bank enters into an agreement with a dealer for the sale of the security.

*Yield*, also referred to as yield to maturity, means the annualized rate of return to maturity on a fixed principal security expressed as a percentage. For an inflation-indexed security, yield means real yield, as defined in 31 CFR part 356.

(3) *Procedure.* On an approved Treasury form, the owner must authorize a transfer of the security from the investor's TREASURY DIRECT account to the designated Federal Reserve Bank, and authorize the Federal Reserve Bank to sell the security. Rules in subpart C of this part governing the transfer of securities will apply to the transfer of the security to the Federal Reserve Bank. Generally, on the day that the security is transferred to the Federal Reserve Bank, the Federal Reserve Bank will make reasonable efforts to obtain a price quote from at least three dealers, and will enter into an agreement to sell the security to the dealer with the highest price quote for next day settlement. What constitutes reasonable effort shall be determined solely by the Federal Reserve Bank. On the next full business day after the trade date, the settlement amount shall be released by direct deposit (electronic funds transfer), as provided in § 357.26 of this part, to the account at the financial institution designated by the investor to accept TREASURY DIRECT payments, except when the Department determines that extraordinary circumstances exist that require payment by other means. In the event that the Federal Reserve Bank is unable to obtain at least one price quote for the security, the security will be returned to the TREASURY DIRECT account of the investor on the next full business day following the receipt of the securities by the Federal Reserve Bank, and the Federal Reserve Bank will notify the investor.

(4) *Confirmation.* The Federal Reserve Bank will send a confirmation of the sale to the investor upon completion of the transaction. Such confirmation will include such information as price, trade date, settlement date, settlement amount, also referred to as net amount, transaction fee, and yield to maturity.

(5) *Price.* By authorizing the transfer and sale of the securities, the investor agrees to accept the price received by the Federal Reserve Bank from the dealer selected as having the highest price quote.

(6) *Transaction Fee.* A transaction fee shall be charged for each security sold on behalf of the investor. If the Federal Reserve Bank is unable to complete the sale of the security, no fee will be charged. By authorizing the sale of the security, the investor authorizes the Federal Reserve Bank to withhold the transaction fee prior to the Federal Reserve Bank initiating the payment of the settlement amount to the account at the financial institution designated by the investor to receive TREASURY DIRECT payments. The amount of the transaction fee will be published by notice in the **Federal Register**.

(7) *Termination.* This service may be terminated at anytime without prior notice at the discretion of the Department.

(8) *Rights.* The provisions applicable to TREASURY DIRECT transactions in subpart C shall apply to this section. The provisions applicable to transactions in TRADES in subpart B shall not apply to this section.

(9) *Irrevocability.* The authorization of the investor for the transfer and sale of the securities shall be irrevocable when the transfer from the TREASURY DIRECT account of the investor to the account at the Federal Reserve Bank is effected.

(10) *Liability.* The Department and the designated Federal Reserve Bank shall not be liable for changes in market conditions affecting the price received for the security, or for any loss which the investor may incur as a result of the transaction or the inability of the Federal Reserve Bank to complete the transaction.

* * * * *

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September 4, 1997

# Part IV

# Department of Transportation

## Federal Aviation Administration

**14 CFR Part 11, et al.**

**Organizational Changes and Delegations of Authority; Final Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 11, 13, 15, and 185**

**[Docket No. 29010; Amdt Nos. 11–42, 13–29, 15–4, 185–3]**

**RIN 2120–AG41**

## Organizational Changes and Delegations of Authority

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts changes to office titles as a result of changes in the names of various offices and the establishment of a new position within the Office of the Chief Counsel. These changes are necessary to make the regulations and delegations of authority consistent with the current structure of the Office of the Chief Counsel.

**EFFECTIVE DATE:** September 4, 1997.

**FOR FURTHER INFORMATION CONTACT:** Christopher Poreda, Senior Attorney, Office of the Assistant Chief Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7942, fax (617) 238–7055.

**SUPPLEMENTARY INFORMATION:**

### Discussion

On July 1, 1988, the Federal Aviation Administration (FAA) underwent far-reaching organizational changes that affected both headquarters and regional offices. The most significant of those changes placed certain regional offices in the direct reporting line to their headquarters counterparts, when before those offices had reported to the Regional Administrator. The legal office in each geographic region, as well as in the Mike Monroney Aeronautical Center, in Oklahoma City, Oklahoma, and the William Hughes Technical Center, in Atlantic City, New Jersey, were among the offices affected by that change. Prior to July 1988, those offices were known in each region as the Regional Counsel, and at the Centers as Center Counsel. After the organizational changes those offices reported directly to the Office of the Chief Counsel, and each name changed to Office of the Assistant Chief Counsel for the region or center served. Although the duties of each office did not significantly change, the name change caused confusion both within the FAA and outside of the agency. Therefore, the Office of the Chief Counsel has determined that the name of the legal office in each region should be changed back to Regional Counsel for that region, the legal office at the Mike Monroney Aeronautical Center back to Aeronautical Center Counsel, and at the William Hughes Technical Center, Technical Center Counsel. This name change will not affect the reporting lines or delegations of authority made within the Office of the Chief Counsel, Regional Counsel and Center Counsel offices will still report directly to the Office of the Chief Counsel.

In November 1992, the Office of the Chief Counsel underwent organizational changes. One of the organizational changes made was to separate the duties of the Assistant Chief Counsel for Regulations and Enforcement, thus creating an office for the Assistant Chief Counsel for Regulations and an office for the Assistant Chief Counsel for Enforcement. These name changes are reflected in parts 11 and 13 of this document.

In addition, the FAA has recently established the position of Assistant Chief Counsel, Europe, Africa, and Middle East Area Office. The objective of establishing this new position is to establish within this region a senior level of legal support for U.S. civil aviation safety and security initiatives.

Within parts 11, 13, 15, and 185 of the Federal Aviation Regulations (FAR's), various regulations refer to legal offices at each region and at the centers, as well as FAA Headquarters. Title 14 of the Code of Federal Regulations must therefore be amended to reflect this name change of certain offices within the Office of Chief Counsel.

### Good Cause Justification for Immediate Adoption of These Amendments

These amendments are needed to eliminate and avoid confusion over the internal structure of the FAA's Office of Chief Counsel. Since these amendments are editorial in nature, impose no additional burden on the public, and constitute only agency rules of organization, I find that notice and opportunity for prior public comment before adopting these amendments is unnecessary, and that good cause exists for making them effective immediately. In addition, the FAA has considered the Regulatory Policies and Procedures of the Office of the Secretary of Transportation and finds that notice and the opportunity for comment could not reasonably be anticipated to result in the receipt of useful information.

### Paperwork Reduction Act

These amendments are completely editorial in nature. There will be no increase or decrease in the paperwork requirements of the sections amended, which requirements have already been approved.

### Federalism Implications

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.

### Conclusion

The FAA has determined that these amendments do not impose any additional burden on the public, and, accordingly, that this action is not a ''significant regulatory action'' under Executive Order 12866; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and, because of its editorial nature, no economic impact is expected to result, and, therefore, no regulatory evaluation is required. In addition, the FAA certifies that these amendments will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects

*14 CFR Part 11*

Administrative practice and procedure, Reporting and recordkeeping requirements.

*14 CFR Part 13*

Investigations, Law enforcement, Penalties.

*14 CFR Part 15*

Administrative claims, Air transportation, Aircraft, Airplanes, Airports, Federal Tort Claims Act, Helicopters, Heliports, Rotorcraft.

*14 CFR Part 185*

Administrative practice and procedure, Authority delegations (Government agencies), Government employees.

### The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Parts 11, 13, 15 and 185 as follows:

## PART 11—GENERAL RULEMAKING PROCEDURES

1. The authority citation for part 11 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701–44702, 44711, 46102.

### § 11.11 [Amended]

2. Section 11.11 is amended by removing the words ''office of the Assistant Chief Counsel'' and adding, in their place, the words ''Regional Counsel's office'' wherever they appear.

### § 11.41 [Amended]

3. Section 11.41 is amended in paragraph (c)(2)(ii) by removing the words ''An Assistant Chief Counsel'' and adding, in their place, the words ''A Regional Counsel or the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office''.

4. Section 11.41 is amended in paragraph (c)(2)(iii) by removing the words ''and Enforcement''.

### § 11.61 [Amended]

5. Section 11.61 is amended in paragraph (d) by removing the words ''an Assistant Chief Counsel for a region'' and adding, in their place, the words ''a Regional Counsel, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office''; and by removing the words ''and Enforcement''; and by removing the words ''Chief Counsel or Assistant Chief Counsel'' and adding, in their place, ''Chief Counsel, Assistant Chief Counsel, or Regional Counsel''; and by removing the word ''his''.

### § 11.81 [Amended]

6. Section 11.81 is amended in paragraph (d) by removing the words ''an Assistant Chief Counsel for a region or directorate'' and adding, in their place, ''a Regional Counsel or a Directorate Counsel, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office''; and by removing the words ''and Enforcement''; and by removing the words ''Chief Counsel or Assistant Chief Counsel for a region'' and adding, in the place, ''Chief Counsel, Assistant Chief Counsel, Regional Counsel, or Directorate Counsel''; and by removing the word ''his''.

## PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

7. The authority citation for part 13 continues to read as follow:

**Authority:** 18 U.S.C. 6002, 49 U.S.C. 106(g), 5121–5124, 40113–40114, 44103–44106, 44702–44703, 44709–44710, 44713, 46101–46110, 46301–46316, 46501–46502, 46504–46507, 47106, 47111, 47122, 47306, 47531–47532.

### § 13.3 [Amended]

8. Section 13.3 is amended in paragraph (b) by removing the words ''and each Assistant Chief Counsel'' and adding, in their place, the words ''each Assistant Chief Counsel, each Regional Counsel, the Aeronautical Center Counsel, and the Technical Center Counsel''.

9. Section 13.3 is amended in paragraph (c) by removing the words ''and each Assistant Chief Counsel'' and adding, in their place, the words ''each Assistant Chief Counsel, each Regional Counsel, the Aeronautical Center Counsel, and the Technical Center Counsel.''

### § 13.15 [Amended]

10. Section 13.15 is amended in paragraphs (b) and (c)(1) by removing the words ''the Assistant Chief Counsel for Regulations and Enforcement, and the Assistant Chief Counsel for a region or center'' and adding, in their place, the words ''the Assistant Chief Counsel, Enforcement, the Assistant Chief Counsel, Regulations, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office, the Regional Counsel, the Aeronautical Center Counsel, and the Technical Center Counsel'', wherever they appear.

11. Section 13.15 is amended in paragraph (c)(3) by removing the words ''Assistant Chief Counsel for Regulations and Enforcement, or the Assistant Chief Counsel for a region or center'' and adding, in their place, the words ''Assistant Chief Counsel, Enforcement, the Assistant Chief Counsel, Regulations, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office, the Regional Counsel, the Aeronautical Center Counsel, or the Technical Center Counsel''.

### § 13.16 [Amended]

12. Section 13.16 is amended in paragraph (c) by removing the words ''Assistant Chief Counsel for Regulations and Enforcement, and the Assistant Chief Counsel for a region or center'' and adding, in their place, the words ''Assistant Chief Counsel, Enforcement, the Assistant Chief Counsel, Regulations, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office, each Regional Counsel, the Aeronautical Center Counsel, and the Technical Center Counsel'' wherever they appear.

### § 13.17 [Amended]

13. Section 13.17 is amended in paragraph (d) by removing the words ''Assistant Chief Counsel of the region, in which'' and adding, in their place, the words ''the Regional Counsel or Assistant Chief Counsel for the region or area in which''; by removing the comma immediately after the word ''region'', and by inserting commas immediately after the words ''Chief Counsel'' and immediately after the words ''under this section''.

14. Section 13.17 is amended in paragraph (e)(3) by removing the word ''or'' after ''the Chief Counsel'' and adding, in their place, the words '', the Regional Counsel, or''.

### § 13.19 [Amended]

15. Section 13.19 is amended in paragraph (b) by removing the words ''Assistant Chief Counsel for Regulations and Enforcement, and the Assistant Chief Counsel for the region or the Aeronautical Center'' and adding, in their place, the words ''Assistant Chief Counsel, Enforcement, the Assistant Chief Counsel, Regulations, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office, each Regional Counsel, and the Aeronautical Center Counsel''; and by removing the words ''Assistant Chief Counsel for the Aeronautical Center or for the region'' and adding in their place, the words ''each Regional Counsel, the Aeronautical Center Counsel, and the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office''.

16. Section 13.19 is amended in paragraph (c) by removing the words ''Assistant Chief Counsel for Regulations and Enforcement, the Assistant Chief Counsel for the region or the Assistant Chief Counsel for the Aeronautical Center'' and adding, in their place, the words ''Assistant Chief Counsel, Enforcement, the Assistant Chief Counsel, Regulations, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office, each Regional Counsel, or the Aeronautical Center Counsel''.

### § 13.20 [Amended]

17. Section 13.20 is amended in paragraph (l) by removing the words ''and the Assistant Chief Counsel for the region or the Aeronautical Center (as to matters under Title V of the Federal Aviation Act of 1958)'' and adding, in their place, the words '', each Regional Counsel, and the Aeronautical Center Counsel (as to matters under Title V of the Federal Aviation Act of 1958)''.

**§ 13.21 [Amended]**

18. Section 13.21 is amended by removing the words ''Assistant Chief Counsel for Regulations and Enforcement, or the Assistant Chief Counsel for the region or the Aeronautical Center concerned'' and adding, in their place, the words ''Assistant Chief Counsel, Enforcement, the Assistant Chief Counsel, Regulations, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office, each Regional Counsel, and the Aeronautical Center Counsel''.

**§ 13.23 [Amended]**

19. Section 13.23 is amended in paragraph (b) by removing the words ''or the Assistant Chief Counsel for the region concerned'' and adding, in their place, the words ''or the Regional Counsel or Assistant Chief Counsel for the region or area concerned''.

**§ 13.25 [Amended]**

20. Section 13.25 is amended in paragraph (a) by removing the words ''Assistant Chief Counsel for Regulations and Enforcement the Assistant Chief Counsel for the region concerned, or the Assistant Chief Counsel for the Aeronautical Center'' and adding, in their place, the words ''Assistant Chief Counsel, Enforcement, the Assistant Chief Counsel, Regulations, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office, each Regional Counsel, and the Aeronautical Center Counsel''.

21. Section 13.25 is amended in paragraph (b) by removing the words ''Assistant Chief Counsel for Regulations and Enforcement the Assistant Chief Counsel for the region concerned'' and adding, in their place, the words ''Assistant Chief Counsel, Enforcement, the Assistant Chief Counsel, Regulations, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office, each Regional Counsel, and the Aeronautical Center Counsel''.

**§ 13.71 [Amended]**

22. Section 13.71 is amended by removing the words ''Assistant Chief Counsel for Regulations and Enforcement, or the Assistant Chief Counsel for the region concerned'' and adding, in their place, the words ''Assistant Chief Counsel, Enforcement, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office, or a Regional Counsel''.

**§ 13.73 [Amended]**

23. Section 13.73 is amended by removing the words ''Assistant Chief Counsel for Regulations and Enforcement, or the Assistant Chief Counsel for the region concerned'' and adding, in their place, the words ''Assistant Chief Counsel, Enforcement, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office, or a Regional Counsel''.

**§ 13.81 [Amended]**

24. Section 13.81 is amended in paragraph (a) introductory text by removing the words ''Assistant Chief Counsel for Regulations and Enforcement, or the Assistant Chief Counsel for the region concerned'' and adding, in their place, the words ''Assistant Chief Counsel, Enforcement, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office, or a Regional Counsel''.

**§ 13.202 [Amended]**

25. Section 13.202 is amended in the definition of ''Agency attorney'' by removing the words ''the Assistant Chief Counsel for Regulations and Enforcement, the Assistant Chief Counsel for a region or center, or an attorney on the staff of the Assistant Chief Counsel for Regulations and Enforcement, the Assistant Chief Counsel for a region or center'' and adding, in their place, the words ''the Assistant Chief Counsel, Enforcement, the Assistant Chief Counsel, Regulations, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office, each Regional Counsel, the Aeronautical Center Counsel, or the Technical Center Counsel, or an attorney on the staff of the Assistant Chief Counsel, Enforcement, the Assistant Chief Counsel, Regulations, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office, each Regional Counsel, the Aeronautical Center Counsel, or the Technical Center Counsel.''

## PART 15—ADMINISTRATIVE CLAIMS UNDER FEDERAL TORT CLAIMS ACT

26. The authority citation for part 15 continues to read as follows:

**Authority:** 5 U.S.C. 301; 28 U.S.C. 2672, 2675; 49 U.S.C. 106(g), 40113, 44721.

27. Section 15.3 is amended by revising paragraph (b) to read as follows:

**§ 15.3 Administrative claim, when presented; appropriate office.**

* * * * *

(b) Claims shall be delivered or mailed to the Assistant Chief Counsel, Litigation Division, AGC–400, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, or alternatively, may be mailed or delivered to the Regional Counsel in any of the FAA Regional Offices or the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office.

* * * * *

## PART 185—TESTIMONY BY EMPLOYEES AND PRODUCTION OF RECORDS IN LEGAL PROCEEDINGS, AND SERVICE OF LEGAL PROCESS AND PLEADINGS

28. The authority citation for part 185 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113–40114, 46104; 49 CFR part 9.

**§ 185.5 [Amended]**

29. Section 185.5 is amended by removing the words ''each Assistant Chief Counsel'' and adding, in their place, the words ''each Assistant Chief Counsel, each Regional Counsel''; and by removing the words ''Assistant Chief Counsel for the Aeronautical Center'' and adding, in their place, the words, ''Aeronautical Center Counsel''; and by removing the words ''Assistant Chief Counsel for the Technical Center'' and adding, in their place, the words ''Technical Center Counsel''; and by removing the words ''his respective jurisdiction'' and adding, in their place, the words ''their respective jurisdictions''.

Issued in Washington, DC on August 25, 1997.

**Jane F. Garvey,**

*Administrator.*

[FR Doc. 97–23376 Filed 9–3–97; 8:45 am]

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Administrative regulations:
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  - Eligibility determination procedures for program participation; published 8-5-97

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Fishery conservation and management:
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  - South Atlantic shrimp; correction; published 9-4-97

**CONSUMER PRODUCT SAFETY COMMISSION**

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  - Correction; published 9-4-97

**ENERGY DEPARTMENT**

Acquisition regualtions:
- Non-statutorily imposed contractor and offeror certification requirements; elimination; published 8-5-97

**FEDERAL MARITIME COMMISSION**

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  - United States/Japan trade; port restrictions and requirements; published 4-16-97

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

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  - Tetracycline hydrochloride soluble powder; published 9-4-97
- New drug applications—
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**Coast Guard**

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**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

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- McDonnell Douglas; published 8-20-97

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**Fiscal Service**

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Plant-related quarantine, domestic:
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**AGRICULTURE DEPARTMENT**

**Federal Crop Insurance Corporation**

Crop insurance regulations:
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**National Oceanic and Atmospheric Administration**

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