11–10–97
Vol. 62 No. 217
Pages 60451–60636

federal register

Monday
November 10, 1997

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

Now Available Online

Code of Federal Regulations

via

GPO Access

(Selected Volumes)

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

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

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

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

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

★ Phone: toll-free: 1-888-293-6498

★ Email: gpoaccess@gpo.gov

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

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

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

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

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

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

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

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**512–1800**
Assistance with public single copies	**512–1803**
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	**523–5243**
Assistance with Federal agency subscriptions	**523–5243**

FEDERAL REGISTER WORKSHOP

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

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

WHO: Sponsored by the Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: November 18, 1997 at 9:00 am.

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

RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register

Vol. 62, No.217

Monday, November 10, 1997

Agriculture Department
See Natural Resources Conservation Service
RULES
Federal claims collection:
Administrative offset, 60451

Air Force Department
NOTICES
Environmental statements; availability, etc.:
Colorado Airspace Initiative, 60487–60488

Alcohol, Tobacco and Firearms Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 60559–60561

Antitrust Division
NOTICES
National cooperative research notifications:
Digital Imaging Group, Inc., 60530
Gas Utilization Research Forum, 60530
Message Oriented Middleware Association, 60531
National Storage Industry Consortium, 60531
Network Management Forum, 60531
OBI Consortium Inc., 60531–60532
Petroleum Environmental Research Forum, 60532
Salutation Consortium, Inc., 60532
Silicon Integration Initiative, Inc., 60532–60533

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 60469

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Indonesia, 60485–60486
Macedonia, 60486–60487
Slovak Republic, 60487

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 60487

Defense Department
See Air Force Department

Education Department
NOTICES
Meetings:
National Assessment Governing Board, 60488–60489

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission
NOTICES
Electricity export and import authorizations, permits, etc.:
PP&L, Inc., et al., 60489–60490

Energy Information Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 60490

Environmental Protection Agency
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Pesticide active ingredient production, 60566–60602
Hazardous waste:
Land disposal restrictions—
Metal wastes and mineral processing wastes treatment standards, etc. (Phase IV); data availability, 60465–60467
NOTICES
Water pollution; discharge of pollutants (NPDES):
North Slope of Brooks Range, AK; oil and gas extraction; general permit, 60505–60509

Federal Aviation Administration
RULES
Airworthiness directives:
de Havilland, 60451–60454
Class E airspace, 60455
Colored Federal airways, 60455–60456
Restricted areas, 60456–60457
PROPOSED RULES
Class E airspace, 60460–60463
Restricted areas, 60463–60464
Gulf of Mexico high offshore airspace area; correction
[**Editorial Note:** The listing for this document, published at 62 FR 60315 in the **Federal Register** of November 7, 1997, was omitted from that issue's Table of Contents.]
NOTICES
Airport noise compatibility program:
Noise exposure map—
Akron-Canton Regional Airport, OH, 60548–60549
Sarasota-Bradenton International Airport, FL, 60549–60551
Exemption petitions; summary and disposition, 60551–60552
Passenger facility charges; applications, etc.:
Boston Logan International Airport, MA, 60552–60553
Jackson Hole Airport, WY, 60553–60554
La Crosse Municipal Airport, WI, 60554
Tupelo Municipal Airport, MS, 60554–60555

Federal Communications Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 60509–60510

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 60510

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Detroit Edison Co. et al., 60500–60503
Meetings; Sunshine Act, 60503–60505

Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 60490–60491
Algonquin LNG, Inc., 60491
Eastern Energy Marketing, Inc., 60491
El Paso Natural Gas Co., 60491
Florida Gas Transmission Co., 60491–60492
Gas Transport, Inc., 60492
Granite State Gas Transmission, Inc., 60492–60493
Iroquois Gas Transmission System, L.P., 60493
National Fuel Gas Supply Corp., 60493–60494
Natural Gas Pipeline Co. of America, 60494–60495
Niagara Mohawk Power Corp., 60495
Northern Natural Gas Co., 60495
Panhandle Eastern Pipe Line Co., A60495–60496
PECO Energy Power Team, 60496
Questar Pipeline Co., 60496
SEMCO Energy Services, Inc., 60496–60497
Starghill Energy Corp., 60497
Texas Eastern Transmission Corp., 60497–60498
Texas Gas Transmission Corp., 60498
Transcontinental Gas Pipe Line Corp., 60498
Trunkline Gas Co., 60498–60499
WestGas InterState, Inc., 60499
West Texas Gas, Inc., 60499
Williston Basin Interstate Pipeline Co., 60499

Federal Housing Finance Board
NOTICES
Meetings; Sunshine Act, 60510

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
Burlington Northern Santa Fe Railway, 60555
Southeastern Pennsylvania Transportation Authority et al., 60555–60556

Federal Reserve System
NOTICES
Agency information collection activities:
Proposed collection; comment request, 60510–60511
Banks and bank holding companies:
Change in bank control, 60511–60512
Formations, acquisitions, and mergers, 60512–60513
Formations, acquisitions, and mergers; correction, 60512
Permissible nonbanking activities, 60513
Federal Reserve bank services:
Fees for priced services and electronic connections; private sector adjustment factor, etc., 60513–60525

Federal Transit Administration
NOTICES
Environmental statements; notice of intent:
Buffalo, NY; Inner Harbor Development Project, 60634

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
Mendocino County, CA; northern spotted owl, etc., 60526–60527

Food and Drug Administration
RULES
Medical devices:
Mammography quality standards
Correction, 60614–60632
NOTICES
Human subjects, protection:
Expedited review list; inclusion of additional research procedures or categories; comment request, 60604–60607
Meetings:
Microbial safety of produce, 60525–60526

Health and Human Services Department
See Food and Drug Administration
See National Institutes of Health

Immigration and Naturalization Service
NOTICES
Temporary protected status program designations:
Burundi; correction, 60564
Sudan; correction, 60564

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
RULES
Natural resource damage assessments; correction, 60457–60459

Internal Revenue Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 60561–60563

International Trade Administration
NOTICES
Antidumping:
Brass sheet and strip from—
Germany, 60469–60470
Corrosion-resistant carbon steel flat products from—
Japan, 60470–60471
Mechanical transfer presses from—
Japan, 60471
Porcelain-on-steel cooking ware from—
Mexico, 60471–60472
Roller chain, other than bicycle, from—
Japan, 60472–60481
Stainless steel bar from—
India, 60482–60484
Applications, hearings, determinations, etc.:
Research Foundation of City University of New York, 60484
University of—
Utah, 60484

International Trade Commission
NOTICES
Meetings; Sunshine Act, 60529

Justice Department
See Antitrust Division
See Immigration and Naturalization Service
NOTICES
Pollution control; consent judgments:
Keystone Sanitation Co. et al., 60529–60530

Land Management Bureau
PROPOSED RULES
Range management:
Wild horse and burro adoptions; power of attorney use disallowed, 60467–60468

NOTICES
Realty actions; sales, leases, etc.:
Oregon, 60527–60529

Minerals Management Service
NOTICES
Outer Continental Shelf operations:
Western Gulf of Mexico—
Lease sales, 60529

National Aeronautics and Space Administration
NOTICES
Environmental statements; availability, etc.:
Wallops Flight Facility, Goddard Space Flight Center, VA; launch range operations expansion, 60533–60534

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 60556–60558
Importation eligibility; determinations; correction, 60558–60559

National Institutes of Health
NOTICES
Protection of human subjects:
Institutional Review Board expedited review list, 60607–60611

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
Food and Agriculture Organization consultation; sharks workshops, 60484–60485
Permits:
Marine mammals, 60485

Natural Resources Conservation Service
NOTICES
Field office technical guides: changes:
Kentucky, 60469

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Fansteel, Inc., 60534–60535

Personnel Management Office
NOTICES
Combined Federal Campaign; recognition of national federations; limitation, 60535–60536
Meetings:
National Partnership Council, 60536

Public Health Service
See Food and Drug Administration
See National Institutes of Health

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 60541
Securities:
Suspension of trading—
Trinity Gas Corp., 60541
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 60542
National Association of Securities Dealers, Inc., 60542–60547
Applications, hearings, determinations, etc.:
Evergreen Trust et al., 60536–60538
Travelers Group Inc. et al., 60538–60541

State Department
NOTICES
Meetings:
Private International Law Advisory Committee, 60547–60548

Surface Transportation Board
NOTICES
Motor carriers:
Revenue pooling agreements—
Peter Pan Bus Lines, Inc., et al., 60559

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Trade and Development Agency
NOTICES
Senior Executive Service:
Performance Review Board; membership, 60548

Transportation Department
See Federal Aviation Administration
See Federal Transit Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Internal Revenue Service

Veterans Affairs Department
PROPOSED RULES
Vocational rehabilitation and education:
Veterans education—
Service Members Occupational Conversion and Training Act; certification deadlines, 60464–60465

Separate Parts In This Issue

Part II
Environmental Protection Agency, 60566–60602

Part III
Department of Health and Human Services, Food and Drug Administration, 60604–60607, 60607–60611

Part V
Department of Transportation, Federal Transit Administration, 60634–60635

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

Electronic Bulletin Board

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

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
3.....60451

14 CFR
39.....60451
71 (2 documents) 60455
73.....60456

Proposed Rules:
71 (3 documents) 60460, 60461, 60462
73.....60463

21 CFR
16.....60614
900.....60614

38 CFR

Proposed Rules:
21.....60464

40 CFR

Proposed Rules:
63.....60566
268.....60465

43 CFR
11.....60457

Proposed Rules:
4700.....60467

Rules and Regulations

Federal Register
Vol. 62, No. 217
Monday, November 10, 1997

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

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 3

Debt Collection

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document amends 7 CFR Part 3 to: permit specifically service of a Notice of Intent to Collect by Administrative Offset upon USDA debtors by first class mail, in addition to currently-authorized service by personal delivery and certified mail; and include specifically as subject to the provisions of the Part debts arising out of programs administered by Food and Consumer Service.

EFFECTIVE DATE: This rule is effective November 10, 1997.

FOR FURTHER INFORMATION CONTACT: Reynaldo Gonzalez, (202) 720–1168.

SUPPLEMENTARY INFORMATION:

I. Background

The Debt Collection Act of 1982 (DCA) is implemented, on a government-wide basis pursuant to the Federal Claims Collection Standards (Standards), set forth at 4 CFR Part 101, *et seq.* The Standards are implemented at USDA pursuant to 7 CFR Part 3.

II. Section 3.10

Food and Consumer Service (FCS) participates in the Tax Refund Offset Program (TROP), operated by the Treasury Department, pursuant to 26 U.S.C. 6402, as implemented by 31 U.S.C. 3720A and Treasury Department regulations. Under the Debt Collection Improvement Act of 1996, the TROP has been incorporated into the Treasury Administrative Offset Program (TAOP). In order for FCS to continue its participation in the TROP, debt management and collection under its programs must be subject to 7 CFR Part 3. Section 3.10 sets forth USDA programs and authorities subject to the provisions of 7 CFR Part 3. The revision specifically includes FCS programs as those subject to 7 CFR Part 3.

III. Section 3.25(b)

Currently, 7 CFR 3.25(b) requires that service of a Notice of Intent to Collect by Administrative Offset upon USDA debtors be made by either personal delivery or certified mail. This requirement is more restrictive than service requirements contained in 4 CFR 102.2(b), which contemplate either personal service or mailing. Further, under 7 CFR 3.21(b), if the head of an agency of the Department adopts regulations separate from 7 CFR Part 3, Subpart B (Administrative Offset), those regulations are to be followed. 7 CFR Part 200 sets forth specific administrative offset procedures for food stamp-related debts that permit service of notice by first class mail. Since the current provisions of 7 CFR 3.25(b) are more restrictive than the Standards and because use of first class mail is permitted under a regulation having precedence over 7 CFR Part 3, Section 3.25(b) is revised to bring it into conformity with both authorities.

IV. Final Rule

We have determined, under 5 U.S.C. 553(b)(3)(B), that prior notice and public comment are unnecessary and contrary to the public interest. Specifically, the departmental final rule promulgates a process which is mandated by law in the Debt Collection Improvement Act of 1996. Therefore, good cause is found that notice and public comment are unnecessary and contrary to the public interest and good cause exists for making this regulation effective upon publication in the **Federal Register**.

V. Matters of Regulatory Procedure

E.O. 12291, Federal Regulation

As Secretary of Agriculture, I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291.

Paperwork Reduction Act

As Secretary of Agriculture, I have determined that the Paperwork Reduction Act (44 U.S.C. Chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget thereunder.

List of Subjects in 7 CFR Part 3

Agriculture, Claims, Government employees, Income taxes, Loan programs-agriculture.

Accordingly, for the reasons set forth in the preamble, the Secretary of Agriculture is revising Title 7, part 3 of the Code of Federal Regulations as follows:

PART 3—DEBT MANAGEMENT

Subpart A—Settlement of Small or Old Debts

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

Authority: Section 1, 58 Stat. 836, 12 U.S.C. 1150.

§ 3.10 [Amended]

2. Section 3.10 is amended by adding ''51. Any indebtedness of food stamp recipients. Food Stamp Act.''

Subpart B—Debt Collection

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

Authority: 31 U.S.C. 3701, 3711, 3716–19, 3728; 4 CFR part 102; 4 CFR 105.4.

§ 3.25 [Amended]

2. Section 3.25(b) introductory text is amended by inserting a comma after ''delivery'', and adding ''first class mail,'' before ''or''.

Dan Glickman,
Secretary of Agriculture.

[FR Doc. 97–29415 Filed 11–7–97; 8:45 am]
BILLING CODE 3410–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–CE–45–AD; Amendment 39–10197; AD 97–23–09]

RIN 2120–AA64

Airworthiness Directives; de Havilland DHC–6 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 78–26–02, which currently requires repetitively inspecting the fuselage side frame flanges at Fuselage Station (FS) 218.125 and FS 219.525 for cracks on certain de Havilland DHC–6 series airplanes, and repairing or replacing any cracked part. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate or, in certain instances, reduce the number of certain repetitive short-interval inspections when improved parts or modifications are available. This AD requires modifying the fuselage side frames at the referenced FS areas as terminating action for the repetitive inspections that are currently required by AD 78–26–02. The actions specified in this AD are intended to prevent failure of the fuselage because of cracks in the fuselage side frames, which, if not detected and corrected, could result in loss of control of the airplane.

DATES: Effective December 22, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 22, 1997.

ADDRESSES: Service information that applies to this AD may be obtained from de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario, Canada, M3K 1Y5. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 91–CE–45–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, FAA, New York Aircraft Certification Office, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581; telephone (516) 256–7523; facsimile (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain de Havilland DHC–6 series airplanes without Modification Nos. 6/1461 and 6/1462 incorporated was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 11, 1995 (60 FR 41030). The NPRM proposed to supersede AD 78–26–02 with a new AD that would (1) retain the current requirement of repetitively inspecting the fuselage side frame flanges at Fuselage Station (FS) 218.125 and FS 219.525, as applicable, and repairing or replacing any cracked part; and (2) require modifying the fuselage side frame flanges in the referenced FS areas (Modification Nos. 6/1461 and 6/1462), as terminating action for the repetitive inspections. Accomplishment of the proposed actions as specified in the NPRM would be in accordance with de Havilland Service Bulletin (SB) No. 6/371, dated June 2, 1978.

Modification No. 6/1461 introduces fuselage side frames manufactured from material having improved stress corrosion properties at FS 218.125, and Modification No. 6/1462 introduces fuselage side frames of this material at FS 219.525.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

As written, the original NPRM (as does AD 78–26–02) allows continued flight if cracks are found in the fuselage side frames that do not exceed certain limits. Extensive analysis of the consequences of flying with known cracks in primary structure prompted the FAA to establish a policy that disallows airplane operation when known cracks exist in primary structure, unless the ability to sustain ultimate load with these cracks is proven. The fuselage structure is considered primary structure, and the FAA has not received any analysis to prove that ultimate load can be sustained with cracks in this area.

For this reason, the FAA determined that the crack limits contained in the original NPRM and AD 78–26–02 should be eliminated, and that the NPRM should be revised to propose immediate replacement of any cracked fuselage flanges. Since revising the proposed AD to require immediate replacement of any cracked fuselage flanges went beyond the scope of what was presented in the original NPRM, the FAA published a supplemental NPRM in the **Federal Register** on March 31, 1997 (62 FR 15129).

Interested persons were again afforded an opportunity to participate in the making of this amendment. No comments were received regarding the substance of the supplemental NPRM or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the AD as proposed in the supplemental NPRM, except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA's Aging Commuter-Class Aircraft Policy

The actions specified in this AD are part of the FAA's aging commuter class aircraft policy, which briefly states that, when a modification exists that could eliminate or reduce the number of required critical inspections, the modification should be incorporated. This policy is based on the FAA's determination that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences of the airplane if the known problem is not detected by the inspection; (2) the reliability of the inspection such as the probability of not detecting the known problem; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

The alternative to modifying the fuselage side frames at FS 218.125 and FS 219.525 would be to rely on the repetitive inspections required by AD 78–26–02 to detect cracks in these areas.

Cost Impact

The FAA estimates that 94 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 300 workhours per airplane to accomplish the required modification, and that the average labor rate is approximately $60 an hour. Parts cost approximately $16,200 (average) per airplane. Based on these figures, the total cost impact of the required modification on U.S. operators is estimated to be $3,214,800 or $34,200 per airplane. This cost figure is based upon the presumption that no affected airplane owner/operator has incorporated Modification Nos. 6/1461 and 6/1462.

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. Of the approximately 94 airplanes in the U.S. registry that would be affected by this AD, the FAA has

determined that approximately 45 percent are operated in scheduled passenger service. A significant number of the remaining 55 percent are operated in other forms of air transportation such as air cargo and air taxi.

This AD allows 4,800 hours time-in-service (TIS) after the effective date of the AD before mandatory accomplishment of the design modification. The average utilization of the fleet for those airplanes in commercial commuter service is approximately 25 to 50 hours TIS per week. Based on these figures, operators of commuter-class airplanes involved in commercial operation have to accomplish the required modification within 24 to 48 calendar months after this AD becomes effective. For private owners, who typically operate between 100 to 200 hours TIS per year, this allows 24 to 48 years before the required modification is required.

The following paragraphs present cost scenarios for airplanes where no cracks are found and where cracks are found during the inspections, and where the remaining airplane life is 15 years with an average annual utilization rate of 1,600 hours TIS. A copy of the full Cost Analysis and Regulatory Flexibility Determination for this action may be examined at the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 91–CE–45–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

—No Cracks Scenario: Under the provisions of AD 78–26–02, an owner/operator of an affected de Havilland DHC–6 series airplane in scheduled service who operates an average of 1,600 hours TIS annually will inspect every 400 hours TIS. This would amount to a remaining airplane life (estimated 15 years) cost of $18,420; this figure is based on the presumption that no cracks are found during the inspections. This AD requires the same inspections except at 600-hour TIS intervals until 4,800 hours TIS after the effective date of the AD when the operator has to replace the fuselage side frame flanges (eliminating the need for further repetitive inspections), which results in a present value cost of $31,433. The incremental cost of this AD for such an airplane is $13,013 or $4,959 annualized over the 3 years it will take to accumulate 4,800 hours TIS. An owner of a general aviation airplane who operates 800 hours TIS annually without finding any cracks during the 600-hour TIS inspections will incur a present value incremental cost of $7,598. This amounts to a per year amount of $1,594 over the 6 years it takes to accumulate 4,800 hours TIS.

—Excessive cracking scenario: AD 78–26–02 requires repairing or replacing the fuselage side frames if excessive cracking is found (as defined by SB No. 6/371), as will this AD. The difference is that AD 78–26–02 requires immediate crack repair and then replacement within 360 days after finding the crack, and this AD requires immediate repair and mandatory replacement of the fuselage side frames within 4,800 hours TIS after the effective date of the AD. This results in a present value total cost of $34,709 per airplane in scheduled service, which makes immediate replacement more economical ($32,400) than repetitively inspecting. With this scenario, this AD averages a present value cost savings over that required in AD 78–26–02 of $2,083 ($794 annualized over 3 years) for each airplane operated in scheduled service, and $6,607 ($1,386 annualized over 6 years) for each airplane operated in general aviation service.

Regulatory Flexibility Determination and Analysis

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionally burdened by government regulations. The RFA requires government agencies to determine whether rules could have a ''significant economic impact on a substantial number of small entities,'' and, in cases where they could, conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses and small not-for-profit organizations that are independently owned and operated or airports operated by small governmental jurisdictions. A ''substantial number'' is defined as a number that is not less than 11 and that is more than one-third of the small entities subject to a required rule, or any number of small entities judged to be substantial by the rulemaking official. A ''significant economic impact'' is defined by an annualized net compliance cost, adjusted for inflation, which is greater than a threshold cost level for defined entity types. FAA Order 2100.14A sets the size threshold for small entities operating aircraft for hire at nine aircraft owned and the annualized cost thresholds, adjusted to 1994 dollars, at $69,000 for scheduled operators and $5,000 for unscheduled operators.

Of the 94 U.S.-registered airplanes affected by this AD, the federal government owns 4 airplanes. Of the other 90, one business owns 26 airplanes, two businesses own 7 airplanes each, one business owns 3 airplanes, seven businesses own 2 airplanes each, and thirty-three businesses own 1 airplane each.

Because the FAA has no readily available means of obtaining data on sizes of these entities, the economic analysis for this AD utilizes the worst case scenario using the lower annualized cost threshold of $5,000 for operators in unscheduled service instead of $69,000 for operators in scheduled service. With this in mind and based on the above ownership distribution, the 33 entities owning two or fewer airplanes will not experience a ''significant economic impact'' as defined by FAA Order 2100.14A. Since the remaining 11 entities do not constitute a ''substantial number'' as defined in the Order, this AD will not have a ''significant economic impact on a substantial number of small entities.''

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 78–26–02, Amendment 39–3370, and adding the following new AD to read as follows:

97–23–09 De Havilland: Amendment 39–10197; Docket No. 91–CE–45–AD. Supersedes 78–26–02, Amendment 39–3370. Applicability: Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes (serial numbers 1 through 411), certificated in any category, that do not have Modification Nos. 6/1461 and 6/1462 incorporated.

Note 1: Modification No. 6/1461 introduces fuselage side frames manufactured from material having improved stress corrosion properties at Fuselage Station (FS) 218.125, and Modification No. 6/1462 introduces fuselage side frames of this material at FS 219.525.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already accomplished.

To prevent failure of the fuselage because of cracks in the fuselage side frames, which, if not detected and corrected, could result in loss of control of the airplane, accomplish the following:

(a) Within the next 200 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished (compliance with AD 78–26–02), and thereafter as indicated below, inspect the fuselage side frames for cracks at FS 218.125 and FS 219.525, as applicable (see chart below) in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland Service Bulletin (SB) No. 6/371, which incorporates the following pages:

Pages	Revision level	Date
1, 2, 5, through 10, 13, 14, 19, 20, and 23.	Original Issue	June 2, 1978.
3, 4, 11, 12, 15, 16, 17, 18, 21, and 22.	Revision A ...	May 18, 1979.

Utilize the following chart to determine which fuselage stations are affected:

Serial No.	Modification 6/1553 incorporated	Fuselage stations affected (both sides)
1 through 395	No	218.125 and 219.525.
1 through 395	Yes	219.525 only.
396 through 411.	N/A	219.525 only.

Note 3: Modification 6/1553 incorporates fuselage side frames of improved stress corrosion resistant material at FS 218.125.

(1) If any crack is found during any inspection required by this AD, prior to further flight, accomplish one of the following:

(i) Repair the cracks in accordance with the ACCOMPLISHMENT INSTRUCTIONS: REPAIR: section of de Havilland SB No. 6/371. Reinspect thereafter at intervals not to exceed 600 hours TIS until the modification specified in paragraph (b) of this AD is incorporated; or

(ii) Replace the cracked fuselage side frame in accordance with the ACCOMPLISHMENT INSTRUCTIONS: *REPLACEMENT:* section of de Havilland SB No. 6/371. Reinspect any fuselage side frame not replaced at intervals not to exceed 600 hours TIS until the modification specified in paragraph (b) of this AD is incorporated.

(2) If no cracks are found, reinspect thereafter at intervals not to exceed 600 hours TIS until the modification specified in paragraph (b) of this AD is incorporated, provided no cracks are found during an inspection. If cracks are found, prior to further flight, repair or replace and reinspect as specified in paragraph (a)(1) of this AD.

(b) Within the next 4,800 hours TIS after the effective date of this AD, incorporate Modification Nos. 6/1461 and 6/1462 in accordance with the ACCOMPLISHMENT INSTRUCTIONS: *REPLACEMENT:* section of de Havilland SB No. 6/371. This consists of replacing all fuselage side frames required as specified in the following chart:

Serial Nos.	Modification 6/1553 incorporated	Fuselage stations affected (both sides)
1 through 395	No	218.125 and 219.525.
1 through 395	Yes	219.525 only.
396 through 411.	N/A	219.525 only.

(c) Incorporating Modification Nos. 6/1461 and 6/1462 as specified in paragraph (b) of this AD is considered terminating action for the inspection requirement of this AD. The modifications may be incorporated at any time prior to the next 4,800 hours TIS after the effective date of this AD, at which time they must be incorporated.

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

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, New York Aircraft Certification Office (ACO), FAA, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft ACO.

(2) Alternative methods of compliance approved in accordance with AD 78–26–02 are not considered approved as alternative methods of compliance with this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(f) The inspections and modifications required by this AD shall be done in accordance with de Havilland Service Bulletin (SB) No. 6/371, which incorporates the following pages:

Pages	Revision level	Date
1, 2, 5, through 10, 13, 14, 19, 20, and 23.	Original Issue	June 2, 1978.
3, 4, 11, 12, 15, 16, 17, 18, 21, and 22.	Revision A ...	May 18, 1979.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5 Canada. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(g) This amendment (39–10197) supersedes AD 78–26–02, Amendment 39–3370.

(h) This amendment (39–10197) becomes effective on December 22, 1997.

Issued in Kansas City, Missouri, on October 31, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–29534 Filed 11–7–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWP–18]

Revision of Class E Airspace; Crescent City, Imperial County and Red Bluff, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace areas at Crescent City, Imperial County and Red Bluff, CA, by removing the reference to part-time status of the surface areas. A review of airspace classification has made this action necessary. The intended effect of this action is to correct the legal description to reflect the actual operations (e.g. continuous or part-time).

EFFECTIVE DATE: 0901 UTC January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6531.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1997, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) by revising the Class E Airspace; Crescent City, Imperial County and Red Bluff, CA, (62 FR 19527). This action revises Class E airspace areas at Crescent City, Imperial County and Red Bluff, CA, by removing the reference to part-time status of the surface areas. A review of airspace classification has made this action necessary. The intended effect of this action is to correct the legal description to reflect the actual operations (e.g. continuous or part-time).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposals to the FAA. No comments to the proposal were received. Class E airspace designations are published in paragraph 6002 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997 which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be revised subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revises Class E airspace areas at Crescent City, Imperial County and Red Bluff, CA, by removing the reference to part-time status of the surface areas. Continuous weather reporting services now exist at the aforementioned airports.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES, AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 4, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 Class E airspace designated as a surface area for an airport.

* * * * *

AWP CA E2 Crescent City, CA [Revised]

Crescent City, Jack McNamara Field, CA
(lat. 41°46′48″N, long. 124°14′11″W)
Crescent City VORTAC
(lat. 41°46′46″N, long. 124°14′27″W)

Within a 4.3=mile radius of Jack McNamara Field and within 1.8 miles each side of the Crescent City VORTAC 324° radial, extending from the 4.3-mile radius to 7 miles northwest of the VORTAC and within 1.8 miles each side of the Crescent City VORTAC 179° radial, extending from the 4.3-mile radius 4.8 miles south of the VORTAC.

* * * * *

AWP CA E2 Imperial County, CA [Revised]

Imperial County Airport, CA
(lat. 32°50′03″N, long. 115°34′43″W)

Within a 4-mile radius of the Imperial County Airport.

* * * * *

AWP CA E2 Red Bluff, CA [Revised]

Red Bluff Municipal Airport, CA
(lat. 40°09′04″N, long. 122°15′08″W)

Within a 6.5-mile radius of the Red Bluff Municipal Airport and within 2.6 miles either side of the 161° bearing from the airport extending from the 6.5-mile radius to 10 miles south of the airport.

* * * * *

Issued in Los Angeles, California, on October 17, 1997.

George D. Williams,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 97–29581 Filed 11–7–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AAL–14]

RIN 2120–AA66

Modification of Colored Federal Airway Amber 15 (A–15); Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Colored Federal Airway Amber 15 (A–15) due to the decommissioning and subsequent removal of the Oliktok, AK, Nondirectional Beacon (NDB) from the National Airspace System (NAS).

EFFECTIVE DATE: 0901 UTC, January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Bil Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On March 3, 1997, the FAA proposed to amend 14 CFR part 71 (part 71) by redefining that portion of Colored Federal Airway A–15 beyond the Put River, AK, NDB (62 FR 9400). The FAA proposed this action in response to a July 10, 1996, United States Air Force (USAF) decommissioning and subsequent removal of the Oliktok, AK, NDB.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice.

Colored Federal airways are published in paragraph 6009 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Colored Federal airway listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 modifies Colored Federal Airway A–15 due to the decommissioning and subsequent removal of the Oliktok, AK, NDB from the NAS by the USAF. The FAA is taking this action to redefine the designation of A–15 by removing that portion of the route beyond the Put River, AK, NDB.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6009(c)—Amber Federal Airways

* * * * *

A–15 [Revised]

From Ethelda, BC, Canada, NDB via Nichols, AK, NDB; Sumner Strait, AK, NDB; Coghlan Island, AK, RBN; Haines, AK, RBN; Burwash, YT, Canada, RBN; Nabesna, AK, NDB; to Delta Junction, AK, NDB. From Chena, AK, NDB; via Chandalar Lake, AK, NDB; Put River, AK, NDB. The airspace within Canada is excluded (joins Canadian Jet Route J–502).

* * * * *

Issued in Washington, DC, on October 27, 1997.

John S. Walker,

Program Director for Air Traffic Airspace Management.

[FR Doc. 97–29575 Filed 11–7–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 97–ASW–15]

RIN 2120–AA66

Change Using Agency for Restricted Areas R–5107B and J, White Sands Missile Range, NM, and R–5111D, Elephant Butte, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the using agency for Restricted Areas 5107B (R–5107B) and R–5107J, White Sands Missile Range, NM, and R–5111D, Elephant Butte, NM, from ''Deputy for Air Force, White Sands Missile Range, NM 88002'' to ''Commanding General, White Sands Missile Range, NM.'' This is an administrative change that was initiated by the U.S. Army to reflect the current organization at White Sands. There are no changes to the boundaries, designated altitudes, times of designation, or activities conducted within the affected restricted areas.

EFFECTIVE DATE: 0901 UTC, January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Steve Brown, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

The Rule

This action amends 14 CFR part 73 by changing the using agency for R–5107B and R–5107J, White Sands Missile Range, NM, and R–5111D, Elephant Butte, NM, from ''Deputy for Air Force, White Sands Missile Range, NM 88002'' to ''Commanding General, White Sands Missile Range, NM.'' This is an administrative change that was initiated by the U.S. Army to reflect the current organization at White Sands.

This administrative change will not alter the existing boundaries, altitudes, times of designation, or the activities conducted within the affected restricted areas. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested.

Section 73.51 of part 73 was republished in FAA Order 7400.8D, dated July 11, 1996.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action changes the using agency of the restricted areas. There are no changes to the existing boundaries, altitudes, times of designation, or the activities conducted within the affected restricted areas. Accordingly, the FAA has determined that this action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1D, ''Policies and Procedures for Considering Environmental Impacts,'' and the National Environmental Policy Act.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.51 [Amended]

2. § 73.51 is amended as follows:

* * * * *

R–5107B White Sands Missile Range, NM [Amended]

By removing the current ''Using agency. Deputy for Air Force, White Sands Missile Range, NM 88002,'' and substituting ''Using agency. Commanding General, White Sands Missile Range, NM.''

* * * * *

R–5107J White Sands Missile Range, NM [Amended]

By removing the current ''Using agency. Deputy for Air Force, White Sands Missile Range, NM 88002,'' and substituting ''Using agency. Commanding General, White Sands Missile Range, NM.''

* * * * *

R–5111D Elephant Butte, NM [Amended]

By removing the current ''Using agency. Deputy for United States Air Force, White Sands Missile Range, NM 88002,'' and substituting ''Using agency. Commanding General, White Sands Missile Range, NM.''

* * * * *

Issued in Washington, DC, on October 29, 1997.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–29574 Filed 11–7–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

RIN 1090–AA21 & 1090–AA23

Natural Resource Damage Assessments—Type A Procedures

AGENCY: Department of the Interior.

ACTION: Final rule: correcting amendments.

SUMMARY: On May 7, 1996, the Department of the Interior published a final rule establishing two simplified, or ''type A,'' procedures for assessing natural resource damages under the Comprehensive Environmental Response, Compensation, and Liability Act. 61 FR 20559. Those procedures incorporated two computer models. This rule makes several technical corrections to those models.

DATES: This final rule is effective November 10, 1997. The incorporation by reference listed in this rule was approved by the Director of the Federal Register and is effective November 10, 1997.

FOR FURTHER INFORMATION CONTACT: David Rosenberger at (202) 208–3301. Interested parties may obtain copies of the computer models and supporting documentation free of charge from the Department through February 27, 1998, and thereafter for a fee from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, ph: (703) 487–4650. The models are also on the Internet at http://www.doi.gov/oepc/oepcbb.html.

SUPPLEMENTARY INFORMATION:

Background

The Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 *et seq.*) (CERCLA) provides that certain categories of persons, known as potentially responsible parties (PRPs), are liable for natural resource damages resulting from a release of a hazardous substance. CERCLA sec. 107(a). Natural resource damages are monetary compensation for injury to, destruction of, or loss of natural resources. CERCLA sec. 107(a)(4)(C). Only those Federal, State, and Indian tribe officials designated as natural resource trustees may recover natural resource damages. CERCLA requires the President to promulgate regulations for the assessment of natural resource damages resulting from hazardous substance releases. CERCLA sec. 301(c). The President delegated the responsibility for promulgating these regulations to the Department. E.O. 12316, as amended by E.O. 12580. CERCLA requires that the natural resource damage assessment regulations include two types of assessment procedures. ''Type A'' procedures are ''standard procedures for simplified assessments requiring minimal field observation.'' CERCLA sec. 301(c)(2)(A). ''Type B'' procedures are ''alternative protocols for conducting assessments in individual cases.'' CERCLA sec. 301(c)(2)(B). Both types of procedures are codified at 43 CFR part 11.

On May 7, 1996, the Department published a final rule that revised an existing type A procedure for assessing natural resource damages from minor releases in coastal areas and established an additional type A procedure for minor releases in the Great Lakes. Trustees obtain a rebuttable presumption in litigation for damages, up to $100,000, calculated in accordance with those procedures. Both procedures incorporate computer models. The type A procedure for coastal areas incorporates the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME) and the type A procedure for Great Lakes incorporates the Natural Resource Damage Assessment Model for Great Lakes Environments (NRDAM/GLE). The regulations identify the conditions under which trustees may use the models. 43 CFR 11.34.

Trustees must supply a number of data inputs to operate the NRDAM/CME and the NRDAM/GLE. After trustees supply the data inputs, the models themselves perform the remaining calculations necessary to establish if there has been an injury, quantify the extent of injury, estimate the cost of restoration actions, and value economic losses.

Programming Errors

The May 7, 1996, rule incorporated Version 2.4 of the NRDAM/CME and Version 1.4 of the NRDAM/GLE. Since the publication of that rule, the Department has identified six programming errors in those versions of the models.

First, the models were designed to include in the damage figure the cost of

restoring lost assimilative capacity, under certain circumstances. As stated in the preamble to the May 7, 1996, rule, the Department intended that the models would compute assimilative capacity restoration costs only when there are releases that generate economic damages related to mortality or loss of production. 61 FR at 20599. The Department has identified a programming error that, in some cases, allowed such costs to be incorporated into the tabulation of damages even when no economic damages were generated by the models. Currently, the models do not provide recovery for compensable value when the amount calculated is less than one dollar, but they still include restoration costs for lost assimilative capacity when the amount calculated is greater than zero but less than one dollar. The Department intended that compensable value must actually be generated and included in the tabulated damages (i.e., equal or exceed $1) before restoration costs for lost assimilative capacity would be included. The models' source codes have been corrected to conform with that intent.

Second, as stated in the preamble to the May 7, 1996, rule, the Department decided to delete all pure metals from the models' databases (61 FR 20591). Nevertheless, the models as issued still erroneously contained copper, mercury, and zinc in their databases. The models' databases have been corrected to conform with that decision.

Third, the Department has discovered an error in the NRDAM/CME's source code for indexing the sediment grid array, which causes the model to stop when it attempts to reference grid cell ''100/100.'' The model's source code has been revised to correct this programming ''bug.''

Fourth, the Department has discovered an error in the source code of the NRDAM/CME for larval current transport in the longitudinal direction, resulting in an erroneous calculation of the location of larvae within the habitat grid. The model's source code has been revised to correct this programming ''bug.''

Fifth, the Department has discovered an error in the habitat grid editor for the NRDAM/CME. While this error is not in the model's source code for computation of damages, it could permit the NRDAM/CME's default habitats to accidentally be corrupted or lost by a user's attempt to output the data to an ''ASCII'' computer code file. This error has been corrected.

Sixth, although not a programming error, the Department has discovered that a reference cited in Volume I, Section 4, of the NRDAM/CME Technical Document was omitted from the reference list at the end of the section, and has made the appropriate correction.

Finally, the Department has discovered an error in Volume IV, Part 2, Table IV.5.37 of the NRDAM/CME Technical Document. The table was erroneously printed twice at pages IV.5–46 through IV.5–47 and then again at pages IV.5–48 through IV.5–49. This typographical error has been corrected by removing pages IV.5–46 and IV.5–47 and inserting blank pages. Also, the wildlife abundances for willet, knots, sanderling, turnstones, plovers (both general and piping) were incorrectly listed twice in the April 1996, table. The second listing of abundances for these species appearing on page IV.5–49 of the April 1996, table were those contained in the public review draft of the NRDAM/CME. 59 FR 63300. The Department erroneously failed to delete those public review draft values when revised abundance values were added to the database as a result of public comments. 61 FR 20588. This resulted in an overestimate of abundance for willet, knots, sanderling, turnstones, plovers (both general and piping); and an underestimate of their wildlife nonconsumptive use value contained in Volume V, Table V.1.8 (wildlife category 28—Sandpipers, plovers) (See Volume I—Part 2, Section 8.4 of the NRDAM/CME Technical Document for an explination of the derrivation). The NRDAM/CME's database has been revised to correct this error.

Windows® Operating System

For the convenience of users of the NRDAM/CME and NRDAM/GLE models, the Department has also changed the software installation requirements to allow the models to run under the Windows 95® and Windows NT® operating systems, as well as the current DOS operating system. This is a non-substantive change, which does not require a change to the source codes and has no effect on the computations performed by the models.

Modifications to the Models

The Department has developed new versions of the models, which correct the programming and data base errors described above and make the additional change to allow use of the models under the Windows 95® and Windows NT® operating systems. This rule replaces the old versions with the new versions: NRDAM/CME Version 2.4 is being replaced with NRDAM/CME Version 2.5, and NRDAM/GLE Version 1.4 is being replaced with NRDAM/GLE Version 1.5. In order to obtain the rebuttable presumption, trustees must now use the new versions of the models.

The Department has also made conforming changes in the NRDAM/CME and NRDAM/GLE Technical Documentation as follows:

NRDAM/CME Technical Documents. (1) The model version number has been changed in all places it appears; (2) The pure metals copper, mercury, and zinc have been deleted from Volume III, Table II.2.1; (3) The case example contained in Volume II, Appendix D, has been replaced to reflect the revised version number and source code corrections; (4) A reference cited in Volume I, Section 4, has been added to the reference list at the end of the section; (5) Volume VI, containing the source code, has been revised to make the necessary corrections; and (6) Volume IV, Part 2 has been revised to correct the wildlife abundances; and Volume V, Table V.1.8 revised to correct the population number and wildlife nonconsumptive use value for wildlife category 28—Sandpipers, plovers.

NRDAM/GLE Technical Documents. (1) The model version number has been changed in all places it appears; (2) The pure metals copper, mercury, and zinc have been deleted from Volume III, Table II.2.1; (3) The case example contained in Volume II, Appendix A, has been replaced to reflect the revised version number and source code corrections; (4) A reference cited in Volume I, Section 4, has been added to the reference list at the end of the section; and (5) Volume VI, containing the source code, has been revised to make the necessary corrections.

Issuance of a Final Rule

This rule does not modify any substantive decisions the Department made in the May 7, 1996 rulemaking. The technical corrections described in this notice are necessary to ensure that NRDAM/CME and NRDAM/GLE conform to the descriptions and decisions stated in the May 7, 1996, preamble and in the supporting technical documentation for the models. The additional changes are also non-substantive in nature. Therefore, the Department finds that there is good cause under section 553(b)(3)(b) of the Administrative Procedure Act (5 U.S.C. 551 et seq.) to make these corrections and changes without first issuing a notice of proposed rulemaking. For the same reasons, the Department finds that there is good cause under section 553(d)(3) of the Administrative Procedure Act to make this final rule effective immediately.

List of Subjects in 43 CFR Part 11

Coastal zone, Environmental protection, Fish, Hazardous substances, Incorporation by reference, Indian lands, Marine resources, National forests, National parks, Natural resources, Public lands, Recreation areas, Seashores, Wildlife, Wildlife refuges.

For the reasons set out in the preamble, Title 43, Subtitle A of the Code of Federal Regulations is amended as follows:

PART 11—NATURAL RESOURCE DAMAGE ASSESSMENTS

1. The authority citation for Part 11 continues to read as follows:

Authority: 42 U.S.C. 9651(c), as amended.

Subpart A—Introduction

2. Section 11.18 is amended by revising paragraphs (a)(4) and (a)(5) to read as follows:

§ 11.18 Incorporation by reference.

(a) * * *

(4) The CERCLA Type A Natural Resource Damage Assessment Model for Coastal and Marine Environments, Technical Documentation, Volumes I–VI, dated April 1996, including Revision I dated October 1997, prepared for the U.S. Department of the Interior by Applied Science Associates, Inc., A.T. Kearney, Inc., and Hagler Bailly Consulting, Inc. (NRDAM/CME technical document). Interested parties may obtain a copy of this document from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; PB96–501788; ph: (703) 487–4650. Sections 11.34(a), (b), and (e), 11.35(a), 11.36(b), 11.40(a), and 11.42(a), and Appendix II refer to this document.

(5) The CERCLA Type A Natural Resource Damage Assessment Model for Great Lakes Environments, Technical Documentation, Volumes I–IV, dated April 1996, including Revision I dated October 1997, prepared for the U.S. Department of the Interior by Applied Science Associates, Inc., and Hagler Bailly Consulting, Inc. (NRDAM/GLE technical document). Interested parties may obtain a copy of this document from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; PB96–501770; ph: (703) 487–4650. Sections 11.34 (a), (b), and (e), 11.35(a), 11.36(b), 11.40(a), and 11.42(a), and Appendix III refer to this document.

* * * * *

Subpart C—Assessment Plan Phase

3. Section 11.33(a) is amended by revising the third sentence to read as follows:

§ 11.33 What types of assessment procedures are available?

* * * * *

(a) * * * There are two type A procedures: a procedure for coastal or marine environments, which incorporates the Natural Resource Damage Assessment Model for Coastal and Marine Environments, Version 2.5 (NRDAM/CME); and a procedure for Great Lakes environments, which incorporates the Natural Resource Damage Assessment Model for Great Lakes Environments, Version 1.5 (NRDAM/GLE).

* * * * *

Subpart D—Type A Procedures

4. Section 11.40(a) is amended by revising the third and fifth sentences to read as follows:

§ 11.40 What are type A procedures?

(a) * * * The type A procedure for coastal and marine environments incorporates a computer model called the Natural Resource Damage Assessment Model for Coastal and Marine Environments Version 2.5 (NRDAM/CME). * * * The type A procedure for Great Lakes environments incorporates a computer model called the Natural Resource Damage Assessment Model for Great Lakes Environments Version 1.5 (NRDAM/GLE). * * *

* * * * *

Dated: October 31, 1997.

Brooks B. Yeager,

Acting Assistant Secretary—Policy, Management, and Budget.

[FR Doc. 97–29386 Filed 11–7–97; 8:45 am]

BILLING CODE 4310–RG–P

Proposed Rules

Federal Register
Vol. 62, No. 217
Monday, November 10, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–60]

Proposed modification of Class E Airspace; Cumberland, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Cumberland, WI. A Global Positioning system (GPS) Standard Instrument Approach Procedure (SIAP) to Runway 27 has been developed for Cumberland Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to add an extension to the east for the existing controlled airspace.

DATES: Comments must be received on or before December 22, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 97–AGL–60, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AGL–60.'' the postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Cumberland, WI, to accommodate aircraft executing the proposed GPS Runway 27 SIAP at Cumberland Municipal Airport by adding an eastward extension to the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated, September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Cumberland, WI [Revised]
Cumberland Municipal Airport, WI
(lat. 45°30′21″ N, long. 91°58′52″ W)
Cumberland NDB
(lat. 45°30′33″ N, long. 91°58′36″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Cumberland Municipal Airport; and within 2.7 miles each side of the 262° bearing from the Cumberland NDB extending from the 6.4-mile radius to 7.4 miles west of the airport; and within 2 miles each side of the 090° bearing from the Cumberland Municipal Airport extending from the 6.4-mile radius to 8.8 miles east of the airport.

* * * * *

Issued in Des Plaines, Illinois on October 21, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–29569 Filed 11–7–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–57]

Proposed Establishment of Class E Airspace; St. Paul, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at St. Paul, MN. An airspace review for St. Paul, Downtown Holman Field, MN, indicates the need for surface area controlled airspace during periods when the control tower is closed. The surface area would provide a safer operating environment for business/corporate turbo jet and turbo prop aircraft which operate into and out of the airport when the control tower is closed. The airport meets the minimum communications and weather observation and reporting requirements. Controlled airspace extending upward from the surface is needed to contain aircraft executing instrument approach procedures.

DATES: Comments must be received on or before December 22, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 97–AGL–57, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AGL–57.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at St. Paul, MN, to accommodate aircraft executing the published instrument approach procedures at St. Paul, Downtown Holman Field, during periods when the control tower is closed. The airport meets the minimum communications and weather observation and reporting requirements for a surface area. Controlled airspace extending upward from the surface is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas designated as a surface area for an airport are published in paragraph 6002 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL MN E2 St. Paul, MN [New]

St. Paul, Downtown Holman Field, MN
(Lat. 44°56′04″ N, long. 93°03′36″ W)
South St. Paul Municipal Richard E. Fleming Field, MN
(Lat. 44°51′26″ N, long. 93°01′59″ W)

Within a 4.1-mile radius of the St. Paul, Downtown Holman Field, excluding that airspace within a 1-mile radius of South St. Paul Municipal, Richard E. Fleming Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on October 21, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–29570 Filed 11–7–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–58]

Proposed Modification of Class E Airspace; Escanaba, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Escanaba, MI. A VHF Omnidirectional Range (VOR) Standard Instrument Approach Procedure (SIAP) to Runway 36 has been developed for Delta County Airport. Controlled airspace extending upward from the surface is needed to contain aircraft executing the approach. This proposal would enlarge the radius and add a southern extension to the surface area, and enlarge the radius and add a southern extension to the 700 feet controlled airspace.

DATES: Comments must be received on or before December 22, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 97–AGL–58, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AGL–58.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Escanaba, MI, to accommodate aircraft executing the VOR Runway 36 SIAP at Delta County Airport, by enlarging the radius and adding a southern extension of the existing surface area and 700 feet controlled airspace. Controlled airspace extending upward from the surface is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for surface areas for an airport are published in paragraph 6002, and Class E airspace designations for airspace areas extending upward from 700 feet or more

above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL MI E2 Escanaba, MI [Revised]

Escanaba, Delta County Airport, MI
(lat. 45°43′22″ N, long. 87°05′37″ W)
Escanaba VORTAC
(lat. 45°43′22″ N, long. 87°05′23″ W)

Within a 4.3-mile radius of the Escanaba VORTAC; and within 2.6 miles each side of the Escanaba VORTAC 007° radial, extending from the 4.3-mile radius to 7.4 miles north of the VORTAC; and within 2.6 miles each side of the Escanaba VORTAC 101° radial, extending from the 4.3-mile radius to 7.4 miles east of the VORTAC; and within 2.6 miles each side of the Escanaba VORTAC 266° radial, extending from the 4.3-mile radius to 7.0 miles west of the VORTAC; and within 3.2-miles each side of the Escanaba VORTAC 171° radial, extending from the 4.3-mile radius to 7.0 miles south of the VORTAC. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously be published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Escanaba, MI [Revised]

Escanaba, Delta County Airport, MI
(lat. 45°43′22″ N, long. 87°05′37″ W)
Escanaba VORTAC
(lat. 45°43′22″ N, long. 87°05′23″ W)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Esacanaba VORTAC; and within 2.6 miles each side of the Escanaba VORTAC 007° radial, extending from the 6.8-mile radius to 7.4 miles north of the VORTAC; and within 2.6 miles each side of the Escanaba VORTAC 101° radial, extending from the 6.8-mile radius to 7.8 miles east of the VORTAC; and within 2.6 miles north and 3.5 miles south of the Escanaba VORTAC 270° radial, extending from the 6.8-mile radius to 11.7 miles west of the VORTAC; and within 3.2 miles each side of the Escanaba VORTAC 171° radial, extending from the 6.8-mile radius to 7.0 miles south of the VORTAC.

* * * * *

Issued in Des Plaines, Illinois on October 21, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–29571 Filed 11–7–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 96–ASW–40]

RIN 2120–AA66

Proposed Amendments to Restricted Areas 5601D and 5601E; Fort Sill, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to raise the upper limit of Restricted Area 5601D (R–5601D) from the current 16,500 feet mean sea level (MSL) to flight level (FL) 400. Additionally, this notice proposes to amend the times of designation for R–5601D and R–5601E by expanding the time frame during which these areas may be activated without a prior issuance of a Notice to Airmen (NOTAM). The FAA is proposing these changes to accomodate high altitude/high angle bomb delivery training and to support weekday and night flying requirements.

DATES: Comments must be received on or before December 26, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW–500, Docket No. 96–ASW–40, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX 76193–0500.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the Office of the Regional Air Traffic Division, 2601 Meacham Boulevard, Fort Worth, TX 76193–0500.

FOR FURTHER INFORMATION CONTACT: Steve Brown, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–ASW–40.'' The postcard will be date/time stamped and returned to the commenter. Send comments on environmental and land use aspects to: Commander, USAFACFS, ATTN:

ATZR–B (Mr. Barnett), Fort Sill, OK 73503–5100, Telephone (405) 442–2715.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–200; 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to 14 CFR part 73 to raise the upper limit of R–5601D from the current 16,500 feet MSL to FL 400. The horizontal boundaries of the restricted area would not be changed by this proposal. The United States Air Force (USAF) requested this change to R–5601D in order to contain high-altitude jet aircraft bombing patterns into the Falcon Range target area located in R–5601C.

Although R–5601C airspace extends to FL 400, there is not enough maneuvering airspace to allow jet aircraft to climb to the required delivery altitudes before final approach into the target area. Raising the upper limit of R–5601D to FL 400 would alleviate this airspace problem and allow for quality high altitude/high angle bomb delivery training, a USAF pilot requirement for ''mission ready'' status.

Additionally, this notice proposes to expand the times of designation for R–5601D and R–5601E from the current ''Sunrise to sunset, Tuesday through Saturday; other times by NOTAM'' to ''Sunrise to 2200, Monday–Friday; other times by NOTAM.'' This proposed expansion in the times of designation is necessary to accommodate a change in flying requirements by both the 301st Fighter Wing, Carswell Field, TX, and the 88th Training Wing at Sheppard AFB, TX. Although there will still be occasional weekend flying, most activity will occur during weekdays. The extension of flying times beyond sunset is necessary due to a new USAF training requirement to fly sorties at night.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subjected to an environmental analysis by the proponent and the FAA prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.56 [Amended]

2. § 73.56 is amended as follows:

* * * * *

R–5601D Fort Sill, OK [Amended]

By removing the current ''Designated altitudes. 500 feet AGL to 16,500 feet MSL'' and substituting ''Designated altitudes. 500 feet AGL to FL 400'' and also by removing ''Time of designation. Sunrise to sunset, Tuesday through Saturday; other times by NOTAM'' and substituting ''Time of designation. Sunrise to 2200, Monday through Friday; other times by NOTAM.''

R–5601E Fort Sill, OK [Amended]

By removing the current ''Time of designation. Sunrise to sunset, Tuesday through Saturday; other times by NOTAM'' and substituting ''Time of designation. Sunrise to 2200, Monday through Friday; other times by NOTAM.''

* * * * *

Issued in Washington, DC, on October 29, 1997.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–29579 Filed 11–7–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AI85

Veterans' Training: Time Limit for Submitting Certifications Under the Service Members Occupational Conversion and Training Act

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the training assistance and training benefit regulations of the Department of Veterans Affairs (VA). It proposes to place deadlines for submitting the certifications needed for both periodic payments and lump-sum deferred-incentive payments under the Service Members Occupational Conversion and Training Act (SMOCTA). Since the Act has a sunset provision, all work for which payments are due has been completed. This proposal would allow VA to close the administration of SMOCTA.

DATES: Comments must be received on or before January 9, 1998.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AI85''. All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration,

Education Service, Veterans Benefits Administration, 202–273–7187.

SUPPLEMENTARY INFORMATION: This document proposes to amend 38 CFR Part 21, Subpart F–3. It proposes to place two-year deadlines for submitting the certifications required for both periodic payments and lump-sum deferred-incentive payments under the Service Members Occupational Conversion and Training Act (SMOCTA), 10 U.S.C. 1143, note.

Under SMOCTA, VA has made periodic payments to employers while they trained veterans who were forced or induced to leave military service by reason of the drawdown of the Armed Forces. SMOCTA provides that the maximum period of training for which assistance may be provided on behalf of a veteran is 18 months. Under SMOCTA VA also provides for lump-sum deferred-incentive payments to employers if the veterans remained employed in the occupation for which they were trained for at least four continuous months after they completed training. Although the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160) extended the date by which a veteran could enter a SMOCTA training program to March 31, 1997, Pub. L. 103–335 only extended the availability of SMOCTA funds for obligation until September 30, 1995. The effect of these provisions is that the last period of training for which VA may provide assistance will end on September 30, 1997, and the last period of continuous employment for which lump-sum deferred-incentive payments are due will end on January 31, 1998.

VA has provided by regulation (38 CFR 21.4832(a)(3)) that periodic payments will be made only after the employer certifies that the veteran's progress during the period was satisfactory and further certifies the number of hours the veteran worked during the period. VA also has provided by regulation (38 CFR 21.4832(b)(1)) that lump-sum deferred-incentive payments will be made only after the employer and the veteran certify that the veteran has been employed in the occupation for which the veteran trained for at least four continuous months after the last date of training.

This document proposes to amend the regulations to state that the periodic payments will be made only if the employer certifies training on or before September 30, 1999. This document also proposes to amend the regulations to state that the lump-sum deferred-incentive payments will be made only if the employee's certification (there are provisions for waiver of the employee's certification; 38 CFR 21.4382) and the employer's certification required for that payment are submitted on or before January 31, 2000. These provisions appear to be warranted. They provide more than a reasonable amount of time for submission of claims after the programs have ended and also will eliminate the need for the VA to provide administrative personnel available to service such claims.

The Secretary of Veterans Affairs hereby certifies that this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The adoption of the proposed rule would affect some small entities. However, the effect of the proposed rule, requiring employers to submit certifications within two years of the end of SMOCTA training, would not impose any additional costs on the employer. Pursuant to 5 U.S.C. 605(b), this proposed rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

No Catalog of Federal Domestic Assistance number has been assigned to the program affected by this proposed rule.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Educational institutions, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: October 27, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 21 (subpart F–3) is proposed to be amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Assistance Programs

1. The authority for part 21, subpart F–3 continues to read as follows:

Authority: 10 U.S.C. 1143 note; sec. 4481–4487, Pub. L. 102–484, 106 Stat. 2757–2769; sec. 610, Pub. L. 103–446, 108 Stat. 4673–4674, unless otherwise noted.

2. In § 21.4832, paragraphs (e)(3) and (e)(4) are added to read as follows:

§ 21.4832 Payments to employers.

* * * * *

(e) *Restrictions on payments.* * * *

(3) VA will not release any periodic payments for training provided by an employer if VA receives the employer's certification for that training after September 30, 1999.

(4) VA will not release any lump sum deferred incentive payment if VA receives either the veteran's or employer's certification required for that payment after January 31, 2000.

(Authority: 106 Stat. 2762, Pub. L. 102–484, sec. 4487(b); 10 U.S.C. 1143, note)

[FR Doc. 97–29633 Filed 11–7–97; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL–5919–9]

RIN 2050 AEO5

Land Disposal Restrictions Phase IV: Second Supplemental Proposal on Treatment Standards for Metal Wastes and Mineral Processing Wastes, Mineral Processing and Bevill Exclusion Issues, and the Use of Hazardous Waste as Fill; Notice of Data Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Data Availability.

SUMMARY: Since publication of the Land Disposal Restrictions (LDR) Phase IV Second Supplemental Proposal (62 FR 26041; May 12, 1997), EPA has received additional capacity information which will be considered in determining the need for national capacity variances for the final Phase IV rule. National capacity variances extend the effective date of the LDR treatment standards for a period of time not to exceed two years for hazardous wastes for which there are insufficient treatment capacity on a nationwide basis. The Agency is making available to the public this new data concerning a two-year national capacity variance for three wastes generated by FMC Corporation at its facility located in Pocatello, Idaho. Comments are requested on the data and the public has 15 days from publication of this notice to comment on the additional information.

Readers should note that only comments about the new information discussed in this notice will be considered during the comment period. Issues related to the Phase IV proposed rule (60 FR 43654; August 22, 1995), the Phase IV Supplemental Proposal on mineral processing wastes (61 FR 2337; January 25, 1996), the first Phase IV Notice of Data Availability (61 FR 26041; May 10, 1996), the Phase IV final rule (the ''Minirule;'' 62 FR 25998; May 12, 1997), and the Phase IV Second Supplemental Proposed Rule (62 FR 26041; May 12, 1997), that are not discussed in this Notice of Data Availability, are not open for further comment.

DATES: Comments are due by November 25, 1997.

ADDRESSES: To submit comments, the public must send an original and two copies to Docket Number F–97–2P4A–FFFFF, RCRA Information Center (RIC), U.S. Environmental Protection Agency (5305W), 401 M Street, SW, Washington, DC 20460. The RIC is located at 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. Comments may also be submitted electronically by sending electronic mail through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–97–2P4A–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RIC. The RIC is open for public inspection and copying of supporting information for RCRA rules from 9:00 am to 4:00 pm Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $0.15 per page. For information on accessing paper and/or electronic copies of the document, see the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: For general information or to order paper copies of this **Federal Register** document, call the RCRA Hotline. Callers within the Washington, Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). Long-distance callers may call 1–800–424–9346 or TDD 1–800–553–7672. The RCRA Hotline is open Monday-Friday, 9:00 a.m. to 6:00 p.m., Eastern Standard Time. For other information on this notice, contact Bill Kline (5302W), Office of Solid Waste, 401 M Street, SW, Washington, DC 20460, phone 703–308–8440.

SUPPLEMENTARY INFORMATION:

The data is also available in electronic format on the Internet. Follow the instructions below to access the data. Files are located in /pub/epaoswer.

WWW: http://www.epa.gov/epaoswer/hazwaste/ldr
FTP: ftp.epa.gov
Login: anonymous
Password: your Internet address

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register** or in a response to comments document placed in the official record for this rulemaking. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

Notice of Data Availability

EPA proposed the Phase IV rule in three parts (the original Proposed Rule, 60 FR 43654, August 22, 1995; the First Supplemental Proposed Rule, 61 FR 2338, January 25, 1996; and the Second Supplemental Proposed Rule, 62 FR 26041, May 12, 1997), and issued a Notice of Data Availability (61 FR 21418, May 10, 1996).

In the May 10, 1996 Notice of Data Availability, EPA discussed the possibility of a two-year national capacity variance for three large volume toxicity characteristic (TC) hazardous metal wastewater streams (Medusa Scrubber Blowdown, Anderson Filter Media Rinsate, and Furnace Building Washdown) generated by FMC Corporation at its Pocatello, Idaho facility. At the time of the notice, FMC argued that these three wastewaters pose unique treatability problems because of elemental phosphorous contamination and naturally occurring radioactive material (NORM). FMC maintained that no treatment, storage, or disposal facility (TSDF) could handle the waste streams. FMC requested a two-year national capacity variance to develop and construct on-site treatment capacity for these three wastewater streams to comply with Phase IV when it is promulgated.

In response to the Second Supplemental Proposed Rule (62 FR 26041, May 12, 1997), FMC submitted another comment to EPA, with new information identifying three other waste streams (NOSAP Slurry, Precipitator Slurry, and Phossy Water) at its Pocatello, Idaho facility that FMC believes would be subject to Phase IV LDR requirements should the Phase IV rule be promulgated as proposed. FMC requested that a two-year national capacity variance also be granted for these three additional waste streams as well. Like the original waste streams, the three streams mentioned in the comment are generated in the elemental phosphorous production process and contain varying amounts of both NORM and elemental phosphorous. According to the first FMC comment, there is no current treatment capacity for this composition of materials. However, the three additional waste streams are different than the original waste streams in that they are defined as nonwastewaters under the LDR program (see 40 CFR 268.2(f)).

According to the FMC comment, the three new waste streams are currently managed as D001 and D003 hazardous wastes. In addition, the new waste streams could exhibit the TC in the event of process upsets, due to the presence of heavy metals. FMC argues that based on its survey of off-site treatment facilities for the original three waste streams, it likewise will not be able to identify sufficient treatment capacity to handle the three additional waste streams. As such, FMC believes it will need a two-year national capacity variance to develop and construct on-site treatment capacity for these three new waste streams to comply with Phase IV.

EPA is considering the appropriateness of a capacity variance for the three additional wastes, i.e., NOSAP Slurry, Precipitator Slurry, and Phossy Water, generated at FMC's facility in Pocatello, Idaho. EPA specifically requests comment on whether other facilities generate these wastes as described by FMC Corporation in their comment, and whether or not adequate treatment, recovery, or disposal capacity exists for these wastes.

FMC's documentation, supporting its request for a capacity variance, is available to the public and located in the RCRA Information Center under Docket Number F–97–2P4P–FFFFF.

List of Subjects in 40 CFR Part 268

Environmental Protection, Hazardous waste, Reporting and recordkeeping requirements.

Dated: November 4, 1997.

David Bussard,

Acting Director, Office of Solid Waste.

[FR Doc. 97–29621 Filed 11–7–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4700

[NV 960–1060–00–24–1A]

RIN 1004–AD28

Wild Horse and Burro Adoptions; Power of Attorney

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to amend its regulations to disallow the use of a power of attorney for the adoption of wild horses and burros. BLM is amending the regulations because it is possible that some adopters have misused the power of attorney to obtain large numbers of horses and burros, selling them for profit after receiving the appropriate titles.

DATES:

Comments:

Send your comments to BLM at the address below on or before January 9, 1998. BLM will not necessarily consider any comments received after the above date during its decision on the proposed rule.

ADDRESSES:

Comments:

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C Street, NW, Washington, D.C. 20240. You may also comment via the Internet to WOComment@wo.blm.gov. Please submit comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''attn: AD28'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 452–5030.

Finally, you may hand-deliver comments to BLM at 1620 L Street, N.W., Room 401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Bud Cribley, Telephone (202) 452–5073; or Lili Thomas, Telephone (702) 785–6457 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the commenter is addressing. BLM may not necessarily consider or include in the Administrative Record for the final rule comments which BLM receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

Comments, including names and street addresses of respondents, will be available for public review at this address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality, which BLM will consider on a case-by-case basis. If you wish to request that BLM consider withholding your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

II. Background

BLM's current regulations allow for adoptions of wild horses and burros by the use of a power of attorney. A power of attorney is a written document that authorizes an agent to do something on behalf of another. One agent could get powers of attorney from several people, and adopt more horses and burros than any one single person is allowed.

Several investigations have focused on the misuse of powers of attorney to adopt wild horses. It was alleged that certain people abused BLM's Adopt-A-Horse and Burro program by obtaining large numbers of horses in order to sell them for profit after receiving the appropriate titles. Because of these investigations, several Assistant U.S. Attorneys have suggested that BLM eliminate this practice. The elimination of power of attorney adoptions would also decrease the time and money BLM spends on inspections to ensure that the adopters are in compliance with the regulations.

It is rare that someone who wants to adopt a wild horse or burro is unable to select the animal and sign the Private Maintenance and Care Agreement (BLM estimates that this practice occurred only 12 times in 1997). For this reason, BLM feels that the benefits of preventing abuses of the program outweigh any inconvenience to persons that may want to adopt an animal with a power of attorney.

III. Discussion of Proposed Rule

In order to remove the provisions for power of attorney adoptions, BLM proposes to replace current sections 4750.3–3(b) and (c) with a short statement that reads:

''The Bureau of Land Management will not allow the use of a power of attorney for the adoption of wild horses and burros.''

IV. Procedural Matters

National Environmental Policy Act

BLM has determined that this proposed rule would make a procedural change related to the regulations on adopting wild horse and burros. This rule, which would disallow adoptions by power of attorney, would make only a minor change in existing practices. The rule would not affect decisions that BLM makes about numbers of horses on the range or range conditions. It is unlikely that environmental impacts will occur as a result of the elimination of the use of the power of attorney. Therefore, this action is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10. In addition, the proposed rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40

CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term ''categorical exclusions'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act

This rule contains no collections of information that require approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

Congress enacted The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, (RFA) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. As discussed in the preamble above, BLM is making a technical change to the wild horse and burro adoption regulations to disallow adoptions by powers of attorney. The rule may prevent some unmeasurable number of people from adopting horses or burros, if they are unable to select the animals themselves and sign the Private Maintenance and Care Agreement. The power of attorney adoption was only used 12 times in 1997. Therefore, BLM certifies under the RFA that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Revision of 43 CFR part 4700 will not result in any unfunded mandate to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

Executive Order 12612

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

Executive Order 12630

The proposed rule does not represent a government action capable of interfering with constitutionally protected property rights. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 12866

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the proposed rule is not a significant regulatory action. As such, the proposed rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

Executive Order 12988

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

Author

The authors of this rule are Lili Thomas, National Wild Horse and Burro Program, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520, Telephone: 702–785–6459; and Erica Petacchi, Regulatory Management Group, Bureau of Land Management, Room 401LS, 1849 C Street, NW., Washington, DC 20240; Telephone: 202–452–5084 (Commercial or FTS).

List of Subjects in 43 CFR Part 4700

Animal welfare, Horses, Penalties, Public lands, Range management, Reporting and recordkeeping requirements, Wildlife.

Accordingly, BLM proposes to amend part 4700, in group 4100, in subchapter D, in chapter II, subtitle B of title 43 of the Code of Federal Regulations as follows:

1. The authority citation for part 4700 continues to read as follows:

Authority: 16 U.S.C. 1331–1340; 18 U.S.C. 47; 43 U.S.C 315 and 1740.

2. Section 4750.3–3 is amended by removing paragraph (c) and by revising paragraph (b) to read as follows:

§ 4750.3–3 Supporting information and certification for private maintenance of more than 4 wild horses or burros.

* * * * *

(b) The Bureau of Land Management will not allow the use of a power of attorney for the adoption of wild horses and burros.

Dated: November 4, 1997.

Sylvia V. Baca,

Deputy Assistant Secretary, Land and Minerals Management.

[FR Doc. 97–29612 Filed 11–7–97; 8:45 am]

BILLING CODE 4310–84–P

Notices

Federal Register
Vol. 62, No. 217
Monday, November 10, 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

National Resources Conservation Service in Kentucky; Notice of Proposed Change to Section IV of the Field Office Technical Guide (FOTG) of the National Resources Conservation Service in Kentucky

AGENCY: Natural Resources Conservation Service (NRCS) in Kentucky, U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Kentucky for review and comment.

SUMMARY: It is the intention of the NRCS in Kentucky to issue revised conservation practice standards: Conservation Cover (Code 327), Conservation Crop Rotation (Code 328), Contour Buffer Strips (Code 332), Contour Farming (Code 330), Critical Area Planting (Code 342), Field Border (Code 386), Forage Harvest Management (Code 511), Forest Site Preparation (Code 490), Forest Stand Improvement (Code 666), Grassed Waterway (Code 412), Heavy Use Area Protection (Code 561), Obstruction Removal (Code 500), Pasture & Hayland Planting (Code 512), Prescribed Grazing (Code 528A), Riparian Forest Buffer (Code 391), Residue Management No-Till & Strip Till (Code 329A), and Windbreak/Shelterbelt Establishment (Code 380).

DATES: Comments, will be received on or before December 10, 1997.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to David G. Sawyer, State Conservationist, Natural Resources Conservation Service (NRCS), 771 Corporate Drive, Suite 110, Lexington, KY 40503–5479. Copies of the practice standards are made available upon written request.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State Technical Guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS in Kentucky will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS in Kentucky regarding deposition of those comments and a final determination of change will be made.

David G. Sawyer,

State Conservationist, National Resources Conservation Service, Lexington, KY.

[FR Doc. 97–28980 Filed 11–7–97; 8:45 am]

BILLING CODE 3410–16–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: Bureau of Export Administration (BXA).

Title: License Exception TMP: Special Requirements.

Agency Form Number: None.

OMB Approval Number: 0694–0029.

Type of Request: Extension of a currently approved collection of information.

Burden: 1 hour.

Average Time Per Response: 20 minutes.

Number of Respondents: 3 respondents.

Needs and Uses: When sophisticated commodities shipped under License Exception TMP are for news-gathering purposes, the exporter must send BXA a copy of the packing list. Also, a TMP exporter must send BXA an explanatory letter if commodities shipped must be detained abroad beyond the 12 month limit. The information is used to determine whether or not an extension should be granted.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Victoria Baecher-Wassemer (202) 395–5871.

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, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Victoria Baecher-Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20230.

Dated: November 3, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–29597 Filed 11–7–97; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–602]

Brass Sheet and Strip From Germany; Extension of Time Limit for Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limit for antidumping duty administrative review of brass sheet and strip from Germany.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the preliminary results of the tenth antidumping duty administrative review of the antidumping order on brass sheet and strip from Germany. This review covers Wieland-Werke AG, a manufacturer and exporter of the subject merchandise, and the period of review March 1, 1996 through February 28, 1997.

EFFECTIVE DATE: November 10, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam, Alain Letort, or John R. Kugelman, AD/CVD Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230, telephone (202)

482–2704, 482–4243, or 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

The Department initiated this administrative review on April 24, 1997 (62 FR 19988). Because it is not practicable to complete this review within the time limit mandated by section 751(a)(3)(A) of the Tariff Act of 1930 (''the Act''), as amended by the Uruguay Round Agreements Act of 1994, the Department is extending the time limit for the preliminary results of the aforementioned review to March 31, 1998. *See* memorandum from Joseph A. Spetrini to Robert S. LaRussa, which is on file in Room B–099 at the Department's headquarters.

This extension of time limit is in accordance with section 751(a)(3)(A) of the Act.

Dated: November 4, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 97–29625 Filed 11–7–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Initiation of Changed Circumstances Administrative Review of the Antidumping Duty Order, Preliminary Results of Changed Circumstances Review, and Intent To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty administrative review, and intent to revoke order in part.

SUMMARY: In response to a request, in accordance with section 351.216(b) of our regulations, from Sudo Corporation (Sudo), an interested party in these proceedings, the Department of Commerce (the Department) is initiating a changed circumstances administrative review and issuing a notice of intent to revoke in part the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 10, 1997.

FOR FURTHER INFORMATION CONTACT: Gideon Katz or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5255, (202) 482–3020, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Rounds Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR part 351, 62 FR 27295 (May 19, 1997).

SUPPLEMENTARY INFORMATION:

Background

On September 19, 1997, Sudo requested that the Department revoke in part the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. Specifically, Sudo requested that the Department revoke the order with respect to imports of this product with widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches) and thicknesses ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches). Sudo, a domestic manufacturer of a small, thin, circular shield that is used as a seal on the casings of wheels containing ball bearings, is an importer of this product. On October 28, 1997, AK Steel Corporation (AK), Bethlehem Steel Corporation (Bethlehem), Inland Steel Industries, Inc. (Inland), LTV Steel Company (LTV), National Steel Corporation (National), and U.S. Steel Group, A Unit of USX Corporation (U.S. Steel), domestic interested parties in this case, submitted a letter indicating they have no objection to the initiation of this changed circumstances review and no interest in maintaining the antidumping duty order on corrosion-resistant carbon steel flat products from Japan with respect to the product with the dimensions indicated above. Based on the fact that this portion of this order is no longer of interest to domestic parties, we intend to partially revoke this order.

Initiation of Changed Circumstances Antidumping Duty Administrative Review, and Intent To Revoke Order in Part

Pursuant to section 751(d)(1) and 782(h)(2) of the Act, the Department may partially revoke an antidumping or countervailing duty order based on a review under section 751(b) of the Act (i.e., a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances administrative review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances administrative review under 19 CFR 351.216, and may revoke an order in whole or in part if it determines that producers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) pertains have expressed a lack of interest in the order, in whole or in part. In addition, in the event that the Department concludes that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

Therefore, in accordance with sections 751(d)(1) and 782(h)(2) of the Act, and 19 CFR 351.216 and 351.222(g), based on affirmative statements of no interest by AK, Bethlehem, Inland, LTV, National, and U.S. Steel in continuing the order with respect to corrosion-resistant carbon steel flat products with widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches) and thicknesses ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches), we are initiating this changed circumstances administrative review. Furthermore, we determine that expedited action is warranted, and we preliminarily determine that continued coverage of corrosion-resistant carbon steel flat products within the width and thickness range mentioned above is no longer of interest to domestic interested parties. Because we have concluded that expedited action is warranted, we are combining these notices of initiation and preliminary results. Therefore, we are hereby notifying the public of our intent to revoke in part the antidumping duty order with respect to imports of corrosion-resistant carbon steel flat products of the above-mentioned width and thickness range from Japan.

If final revocation in part occurs, we intend to instruct the U.S. Customs Service (Customs) to liquidate without regard to antidumping duties, and to refund any estimated antidumping duties collected for all entries of corrosion-resistant carbon steel flat products, with the dimensions indicated above, made on or after the date of publication in the **Federal Register** of the final results of these reviews in

accordance with 19 CFR 351.222. We will also instruct Customs to pay interest on such refunds in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties on corrosion-resistant carbon steel flat products, with the dimensions indicated above, will continue unless and until we publish a final determination to revoke in part.

Public Comment

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Parties to the proceedings may request disclosure within 5 days of the date of publication of this notice and any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held no later than 28 days after the date of publication of this notice, or the first workday thereafter. Case briefs may be submitted by interested parties not later than 14 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in those comments, may be filed not later than 21 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303 and shall be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303. Persons interested in attending the hearing should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments. This notice is in accordance with sections 751(b)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: November 3, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–29631 Filed 11–7–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–810]

Mechanical Transfer Presses From Japan: Extension of Time Limits for Preliminary Results of Antidumping Administrative Review, and Partial Recission of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for preliminary results of antidumping administrative review and partial recission of administrative review.

EFFECTIVE DATE: November 10, 1997.

FOR FURTHER INFORMATION CONTACT: Elisabeth Urfer or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0780 or (202) 482–3020, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act.

Recission

The Department of Commerce received a request from petitioners to conduct an administrative review of the antidumping duty order on mechanical transfer presses from Japan. On March 18, 1997 (62 FR 12793), the Department initiated this administrative review covering the period March 1, 1996 through February 28, 1997.

On June 16, 1997, the petitioners withdrew their request for an administrative review with respect to Ishikawajima-Harima Heavy Industries, Ltd. (IHI). Petitioners' request was made within ninety days of publication of the notice of initiation, in accordance with Section 353.22(a)(5) of the Department's regulations. IHI also requested that the Department terminate the administrative review on June 23, 1997. Because petitioner made a timely request, and because we have not devoted considerable time and resources to IHI, rescinding this review with respect to IHI would not prejudice any party in this proceeding. In accordance with Section 353.22(a)(5) of the Department's regulations, we rescind this review with respect to IHI. (*See Memorandum To Edward Yang From Maureen Flannery* dated August 11, 1997, ''Request for Termination of Review, in Part, in the 1996–1997 Administrative Review of the Antidumping Duty Order on Mechanical Transfer Presses from Japan.'')

Extension of Time Limits for Preliminary Results

Because of the complexity of certain issues in this case, it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act. *See* Memorandum from Joseph A. Spetrini to Robert S. LaRussa, Extension of Time Limit for the Administrative Review of Mechanical Transfer Presses from Japan, dated October 23, 1997. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limits for the preliminary results to February 28, 1998.

Dated: October 31, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary for AD/CVD Enforcement III.

[FR Doc. 97–29632 Filed 11–7–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–504]

Porcelain-on-Steel Cooking Ware From Mexico; Notice of Court Decision

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of court decision.

SUMMARY: On September 16, 1997, the United States Court of International Trade affirmed the Department of Commerce's redetermination on remand regarding its determination to rely on the transfer price of enamel frit submitted by Cinsa, S.A. de C.V. for purposes of constructed value for the administrative review covering the period December 1, 1989 through November 30, 1990. This notice is published because this Court determination was not in harmony with the Department of Commerce's original determination in this review.

EFFECTIVE DATE: November 10, 1997.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Kelly Parkhill, Office of CVD/AD Enforcement VI, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 16, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 43,327) the final results of its fourth administrative review of the antidumping duty order on porcelain-on-steel cooking ware from Mexico. That review covered the period December 1, 1989 through November 30, 1990. Cinsa, the respondent in this review, subsequently appealed the Department's determination before the United States Court of International Trade (CIT) on four issues. The CIT issued a remand with respect to one issue only and directed the Department to determine whether the transfer price for enamel frit provided to the Department in that review constituted an arm's-length transaction as prescribed by the statue and previous practice. *Cinsa, S.A. de C.V.* v. *United States (Cinsa I)* Slip. Op. 97–41 (April 4, 1997). Although the Court agreed with the Department that the burden was on the respondent to ''establish that the transfer price for the purchase of raw material from the related party reflects an arm's-length price,'' it found that Cinsa fulfilled its burden by supplying the Department with the requested explanation of how it determined the transfer price to be representative of a fair market price and of how it determined that transfer prices were above the cost of production. *Id.,* at 12. The Court found that Cinsa effectively shifted the burden to the Department by providing the requested explanations for the discount in the transfer price. *Id.,* at 13.

The Department filed its redetermination on July 2, 1997. Although the Department respectfully disagreed with the Court's conclusion that Cinsa fulfilled its burden of proving the arm's-length nature of the related party transfer price, the Department determined that, for purposes of the remand, it should use Cinsa's reported transfer price for enamel frit from its related supplier to calculate constructed value because, in that review, the Department did not request that Cinsa provide any documentation in support of its claim that the extent of differences between the transfer prices for frit and the prices at which frit was sold to unrelated firms were fully accounted for. Thus, the Department agreed that Cinsa had done all that was asked of it in that review. The CIT affirmed the redetermination on September 16, 1997. *Cinsa, S.A. de C.V.* v. *United States (Cinsa II),* Slip Op. 97–131 (CIT September 16, 1997).

In its decision in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) *(Timken),* the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e) the Department must publish a notice of a court decision which is not ''in harmony'' with a Department determination, and must suspend liquidation of entries pending a ''conclusive'' decision. The CIT's opinion in *Cinsa II,* constitutes a decision not in harmony with the Department's final results of antidumping duty administrative review. Publication of this notice fulfills the *Timken* requirement. Accordingly, the Department will continue to suspend liquidation pending the expiration of the period of appeal, or, if appealed, until there is a ''conclusive'' court decision.

Dated: November 3, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–29626 Filed 11–7–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–028]

Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 8, 1997, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on roller chain, other than bicycle, from Japan. This review covers six manufacturers/exporters of roller chain in Japan during the period April 1, 1995, through March 31, 1996: Daido Kogyo Co., Ltd., Enuma Chain Mfg. Co., Ltd., Izumi Chain Manufacturing Co., Hitachi Metals Techno Ltd., Pulton Chain Co., Ltd., and R.K. Excel Co., Ltd.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have changed our results from those presented in our preliminary results, as described below in the ''Interested Party Comments'' section of this notice. The final results are listed below in the section ''Final Results of Review.''

EFFECTIVE DATE: November 10, 1997.

FOR FURTHER INFORMATION CONTACT: Ron Trentham or Jack Dulberger, AD/CVD Enforcement Group II, Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4793 and (202) 482–5505, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 353 (April 1, 1997).

Background

On May 8, 1997, the Department published its preliminary results of review, Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Roller Chain, Other than Bicycle, from Japan, 62 FR 25165 (*Preliminary Results*), of the antidumping duty order on roller chain, other than bicycle, from Japan (38 FR 9926, April 12, 1973). Pursuant to the Department's request in its notice of preliminary results, we received comments on the product matching characteristics used in the preliminary results from (1) Daido Kogyo Co., Ltd. (Daido Kogyo); (2) Enuma Chain Mfg. Co., Ltd. (Enuma); (3) Izumi Chain Manufacturing Co., Ltd. (Izumi); (4) Hitachi Metals Techno Ltd. (Hitachi); (5) Pulton Chain Co., Ltd. (Pulton); and (6) R.K. Excel Co., Ltd. (RK) (collectively, the respondents), and the petitioner on May 22, 1997, and rebuttals to these comments on May 29, 1997. As a result of the preliminary results and pursuant to the Department's request, Enuma submitted a revised section C questionnaire response on June 12, 1997. The Department requested additional information related to this response on June 30, 1997 and on July 10, 1997, Enuma submitted a response that addressed our additional questions. On July 14, 1997, and July 21, 1997, we received case and rebuttal briefs from the respondents and the petitioner. At the request of both petitioner and respondents, we held a hearing on August 1, 1997. The Department has now completed this administrative review in accordance with section 751(a) of the Act.

Verification

In accordance with section 782(i) of the Act, we verified the further manufacturing costs for merchandise produced by Enuma in March 1997. The results of this verification are outlined in the public version of the verification report on file in room B–099 of the main Commerce building. (See April 2, 1997 Memorandum to the File from Jack K. Dulberger and Justin Jee.)

Rescission

In our preliminary results, we determined that during the period of review (POR), Hitachi did not export the subject merchandise to the United States. Therefore, as we confirmed with the United States Customs Service that Hitachi had no shipments of subject merchandise, we rescinded this review with respect to Hitachi in accordance with section 351.213 of the regulations. See *Preliminary Results* at 25165.

Scope of Review

The merchandise subject to this review is roller chain, other than bicycle, from Japan. The term ''roller chain, other than bicycle,'' as used in this review, includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmissions and/or conveyance. This chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside from the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain. This review also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. This review further covers chain model numbers 25 and 35. Roller chain is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 7315.11.00 through 7619.90.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description remains dispositive.

Changes Since the Preliminary Results

We have made the following changes in these final results:

1. We have returned to the model match methodology of constructing a concordance based on the model code numbering reported by respondents, which we have used in prior segments of this proceeding. See Comment 1 below.

2. We have calculated a dumping margin using Enuma's original HM sales questionnaire response and its June 12, 1997, U.S. sales questionnaire response. See Comment 2 below.

3. With regard to Enuma's and Daido Koyo's unmatched U.S. sales, we have selected an adverse FA of 43.29 percent. See Comment 2 below.

4. We have removed the commission offset adjustment from Daido Koyo's margin calculation program for these final results. See Comment 4 below.

5. With regard to those U.S. sales for which Izumi did not report constructed value (CV) information, we have selected a non-adverse FA rate as described in Comment 2 below.

Interested Party Comment

Comment 1: Model Matching

The petitioner maintains that the Department should consider the extensive model match comments submitted on May 22 and 29, 1997, and articulate objective model matching criteria that will apply to all respondents in this and future roller chain proceedings. The petitioner argues that the respondents should no longer be permitted to provide company-specific codes in lieu of the model match data requested by the Department. Furthermore, the petitioner argues that individual respondents are not allowed to add company-specific model matching criteria absent full opportunity for comment from all other parties. According to the petitioner, any subsequent changes to product matching criteria should be applicable to all respondents.

The petitioner argues that should the Department adopt different model matching criteria than those used in the preliminary results, programming errors, which did not appear in the preliminary results, may occur for the first time. As a result, the petitioner contends that the Department should allow for a ''pre-final'' disclosure for all parties in order to review the revised computer programs and printouts. The petitioner maintains that, in order to do so, the Department could delay publication of the final results, pending analysis by the parties, or the Department could publish a tentative final results which would become final unless modified by a certain date.

The petitioner maintains that it would be appropriate to supplement the three-factor product matching test used in the preliminary results with the following nine factors: Pitch length, roller width, roller diameter, pin diameter, pin length, link height/length, link plate thickness, average strength, and average weight. The petitioner also states that additional computer fields should be added to address attachment chain. However, the petitioner asserts that none of the respondents have met their burden of persuasion with respect to the expansion of the Department's three-part ''most similar'' merchandise test. Therefore, the petitioner contends that we should continue using the three-factor model match test for the final results.

Izumi contends that the Department, in order to identify identical matches, should use actual product model numbers instead of the methodology adopted in the preliminary results. Izumi further argues that in matching non-identical merchandise, the Department should use multiple physical characteristics. Izumi contends that characteristics in addition to the three-factor model match used in the preliminary results, as well as application of the 20 percent difference-in-merchandise (DIFMER) test is required in order to reasonably and accurately identify product matches. Izumi additionally argues that, were the Department to use price-to-price comparisons for purposes of the final results, then the Department's revised product matching methodology would result in erroneously matched merchandise.

Daido Kogyo argues that the Department's revised product matching methodology employed in the preliminary results significantly distorts the dumping margin calculations for Daido Kogyo. Daido Kogyo points out, for example, that this methodology groups physically diverse chain together as a unique product.

Daido Kogyo argues that the Department, in revising the product matching methodology, violated the antidumping statute and the Department's past practice. First, Daido Kogyo argues that the Department changed its longstanding product matching methodology at a point in the current proceeding where Daido Kogyo had no opportunity to comment on, or comply with, this policy change. Second, Daido Kogyo asserts that the Department made this matching methodology change without providing Daido Kogyo an opportunity to remedy or explain its deficiency, in violation of 19 U.S.C. 1677m (d). Third, Daido

Kogyo argues that the Department's matching methodology change constituted a new policy, rule, or practice requiring notice and hearing in order to provide all respondents with an opportunity to comment early on in the proceeding, under the Administrative Procedure Act (APA)(5 U.S.C. 533(b)).

RK states that the model match methodology adopted by the Department in its preliminary results is a radical departure from the longstanding and consistent method that the Department has used for nearly a decade in this proceeding. RK argues that this new method for defining identical merchandise is a fatally imprecise means of comparing motorcycle chains. According to RK, the Department's new model match methodology fails to consider the uniqueness of each motorcycle chain sold by RK, and it ignores many product characteristics that are essential for defining identical merchandise. Moreover, RK contends that applying the new methodology to comparisons of similar merchandise also radically departs from the Department's ''traditional method'' of defining the most similar product, as exemplified by the method followed in the 1989–1990 POR, which took into account numerous criteria beyond the three used in the preliminary results. See, e.g., Antidumping Questionnaire, POR April 1, 1989 through March 31, 1990, Appendix I; Appendix V, (July 27, 1990) (*Questionnaire 1989–1990*). RK maintains that under the Department's proposed method, essentially there can be no ''similar'' motorcycle chains; they are virtually all one identical match.

In short, RK asserts that the Department's proposed model match methodology changes are not reasonable. According to RK, these proposed changes penalize RK and other respondents by creating margins where none exist. RK submits that the Department must abandon its newly proposed model matching methodology and, for this review, continue to use the previously unquestioned, longstanding model matching methodology for defining identical and similar merchandise that it has always used in prior segments of this proceeding.

DOC Position

We agree in part with all parties regarding the issue of additional model match criteria. For purposes of calculating normal value (NV), section 771(16) of the Act defines ''foreign like product'' as merchandise which is either (1) identical or (2) similar to the merchandise sold in the United States. See section 771(16); see also 19 CFR 351.411(a). In cases where we do not find that the identical products were sold in the home or other foreign market, we will then identify, using a product matching methodology, the product sold in the foreign market that is most similar to the product sold in the United States. See section 773 (a)(6)(C)(ii) of the Act.

In identifying which physical characteristics should be given the most weight in our determination of appropriate product comparisons, we consider comments from all parties. We then develop a product matching methodology based on the physical characteristics of the merchandise. This process is designed to give the parties a predictable and accurate basis for determining possible product matches in current as well as future administrative reviews. (See, e.g., Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Japan, (52 FR 30700, 30703, August 17, 1987) (Tapered Roller Bearings)). Further, for those non-identical or most similar products which are identified based on the Department's product matching criteria, we make a DIFMER adjustment to the home market (HM) sales price to account for the actual physical differences between the products sold in the United States and the home market. *See id.*

As background to our position in the present review, we note that prior to the 1992–1993 POR, the Department used a model match methodology based on multiple matching criteria. (*See, e.g., Questionnaire 1989–1990*) (using thirteen-factor model match). Commencing in the 1992–1993 POR, we shifted to a different methodology based on only three characteristics, allowing each respondent to provide its own product concordance (*See, e.g., Notice of Final Results of Antidumping Administrative Review, and Determination not to Revoke in Part: Roller Chain, other than Bicycle, from Japan* 62 FR 64322, (December 4, 1996) (*Final Results 1994–1995*) (using three-factor model match).

The respondents have, in their comments in the present review, characterized our post-1992–1993 approach as a ''traditional method.'' We disagree and note that there have been two model match methodologies used in previous segments of this proceeding.

Regarding the present review, as we explained in our preliminary results, where we found no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product, based on the three product characteristics stated in the antidumping questionnaire, listed in order of importance: (1) type of roller chain (*e.g.*, industrial, leaf, or motorcycle); (2) number of strands (*e.g.*, single, etc.); and (3) finish (*e.g.*, carbon steel, etc.), (*i.e.*, the three-factor model match test). *See Antidumping Questionnaire, POR April 1, 1995 through March 31, 1996, Sections B and C* (June 20, 1996) (*Questionnaire 1995–1996*).

Our questionnaire instructed the respondents to provide data regarding the three product characteristics specified above for all reported U.S. and HM sales, and informed the respondents that they could report additional product characteristics which they believed the Department should consider in performing product comparisons. The questionnaire further instructed any respondent that chose to report additional product characteristics to describe why it believed the Department should consider the additional characteristics in defining identical and similar merchandise. (*See Questionnaire 1995–1996* at B–6 and C–6).

As we explained in our preliminary results, it was apparent to us from the model match databases submitted by all respondents that they had considered product characteristics beyond the three in the Department's questionnaire. However, based on their questionnaire responses, no additional product characteristics were specifically identified by Daido Kogyo, Enuma, or Izumi. *See Preliminary Results* at 25167. Thus, we were unable to determine what additional characteristics these respondents relied upon in identifying unique products. Although RK identified additional product characteristics in its questionnaire response, it did not explain why it believed the Department should consider these additional characteristics in identifying identical and similar merchandise in this review. *See id.*

Consequently, we rejected the parties' model match databases based on our determination that it was appropriate to make the analysis in this proceeding consistent with the Department's current practice of defining identical and similar merchandise based only on the product characteristics outlined in the antidumping questionnaire. *Id.*

In our preliminary results, we also requested interested parties to comment on the matching criteria enumerated in the questionnaire and to provide comments on whether we should consider additional criteria beyond the three used in the preliminary results. We further requested that the comments include explanations as to why a

proposed characteristic is essential in defining identical and similar merchandise, how the product characteristics relate to both the cost of manufacturing and the selling price of the merchandise, and how the product characteristic has been captured in the respondent's reported product control numbers. *See Preliminary Results* at 25167–68.

Based on the written comments submitted, the hearing, and previous segments of this proceeding, we believe that additional product characteristics should be considered beyond the three-factor model match test in order to properly identify identical and similar merchandise. To continue to rely on the three-factor model match methodology used in our preliminary results would in some cases yield absurd results in terms of product matching, as it would group physically diverse chain together as identical or similar merchandise.

For these reasons, for these final results, we return to the model match methodology of constructing a concordance based on the model code numbering originally reported by respondents, which we have used in prior segments of this proceeding. This is consistent with the model match methodology used in the last three reviews. *See, e.g., Final Results 1994–1995 at 64327.*

With respect to Izumi's comment that the Department's possible use of price-to-price comparisons for these final results would cause erroneous results, we note that our decision to use constructed value (CV) as the basis for NV for Izumi in these final results renders Izumi's comment moot. *See* ''DOC Position'' to ''Comment 2: Izumi,'' below.

Further, with respect to the petitioner's request that we provide a ''pre-final'' disclosure for all parties in this review in order to review the computer programs and printouts, we note that it is our practice after issuing the final results to afford disclosure to any party to the proceeding who files such a request within five business days of the date of publication of the relevant final results. *See* 19 CFR §§ 353.22 (c)(9) and 353.28. Parties receiving disclosure are required to submit comments concerning ministerial errors within five business days of either the date of release of disclosure documents or the date of any disclosure meeting, whichever is earlier. *See id.* However, since we are reverting to the model-match methodology that we used in the three prior reviews, we are using programming language that has already been reviewed for accuracy by all parties. Therefore, we are not persuaded that we should depart from our normal practice.

Finally, we intend to use the model match comments we have received in this proceeding as a starting point for determining the appropriate model match methodology to be employed in future reviews. In particular, we intend to carefully revisit the three-factor model match with a view toward supplementing it with additional relevant factors in order to arrive at a proper methodology for use in future reviews.

Comment 2: Facts Available

Izumi

The petitioner disagrees with the Department's characterization that Izumi acted to the best of its ability to comply with the Department's information requests regarding its downstream HM sales. The petitioner argues that the Department should have applied adverse facts available (FA) to Izumi because Izumi's affiliated home market reseller's refusal to supply relevant data must be treated as a refusal by Izumi itself, given that this reseller is affiliated with Izumi. Moreover, the petitioner argues that accepting Izumi as cooperative could allow foreign manufacturers to ''screen out'' high-priced HM sales from the calculation of NV simply by telling affiliated resellers not to respond, as there would be no penalty to the respondent. Therefore, the petitioner maintains that the Department erred in using CV to calculate Izumi's margin given that Izumi had sought to have its margin based on CV comparisons.

Further, the petitioner argues that if the roller chain sold to the affiliated reseller was ultimately resold to U.S. customers, those sales must be reported and used in the calculation of Izumi's margin. The petitioner maintains that the Department should require the affiliated reseller to certify whether or not it resold Izumi chain to the United States. If there were such sales, they must be reported. If the affiliated reseller refuses to provide the information, petitioner states that this should be taken into account when determining whether it is appropriate to assign adverse FA to Izumi. In this case, given the nature of the affiliation between Izumi and the reseller and the significance of the data to the overall calculation of Izumi's margin, the petitioner argues that an adverse inference is fully warranted. Specifically, as adverse FA, the petitioner contends that the Department should assign Izumi a margin of 43.29 percent, the highest rate ever calculated for a party subject to the roller chain finding.

In addition, the petitioner expresses its concern that a portion of the Izumi chain sold to the affiliated reseller has been resold to the United States. Therefore, the petitioner requests the Department to seek confirmation from the affiliated reseller that it did not resell Izumi roller chain to the United States during the POR. The petitioner contends that a non-response from the affiliated reseller should be taken into account when determining whether to assign an adverse FA margin to Izumi. In addition, the petitioner advocates that the Department apply the highest possible margin, 43.29 percent, as adverse FA in these final results.

Izumi contends that the Department's decision to use FA was neither reasonable nor necessary since Izumi neither possessed the data nor could compel the affiliated customer to provide it to the Department. Izumi contends that it lacks control over this customer whose actions cannot be legally attributed to Izumi. Izumi asserts that this refusal to provide the sales data cannot be interpreted as a refusal by Izumi itself. Further, Izumi argues that since the petitioner's request for review for the period of review 1996–1997 expressly designated this affiliated customer as a reseller, this precludes the Department from considering Izumi to be the actual seller.

If the Department persists in using FA for Izumi's sales, Izumi contends that it cooperated to the best of its ability and that no adverse inference is warranted. Izumi points to the Department's final determination in the 1994–1995 POR, where the Department found, in light of similar facts, that Izumi had acted to the best of its ability with respect in its attempts to obtain this sales data. (*See Final Results 1994–1995* at 64324).

Assuming that the Department continues to use non-adverse FA, Izumi contends that the Department should continue to use CV or to select an alternative rate based on sales to its unaffiliated customers.

Izumi argues that the petitioner's claim that Izumi sold merchandise to the affiliated customer destined for the United States, or with knowledge that it was so destined, has no basis in the current record and amounts to speculation. Izumi asserts that no record evidence exists that it had knowledge of the ultimate destination of any of its HM sales. Izumi points to the Department's previous final determinations where, based on similar facts, we found the same allegations by petitioner to be unsupported. (*See Notice of Final Results of Antidumping Duty*

Administrative Review: Roller Chain, other than Bicycle, from Japan 58 FR 52264, October 7, 1993; and *Final Results 1994–1995*). Izumi further argues that its sales of merchandise to the affiliated customer, contrary to the petitioner's contention, do not constitute constructed export price (CEP) or export price (EP) sales based on the current record.

Izumi argues that the petitioner's request that Izumi's affiliated customer certify that it did not sell merchandise purchased from Izumi to the United States is, contrary to the petitioner's contention, neither legally supported nor required by the Department's previous practice.

DOC Position

We disagree with both the petitioner and Izumi. Although in the preliminary results we characterized our use of CV as FA, it is more appropriate to characterize the use of CV as merely a sequential step in the choice of the appropriate basis for NV. Section 773(a)(5) of the Act authorizes the Department to determine NV by using the prices at which foreign like products are sold by an affiliated party to unaffiliated customers (*i.e.*, the prices of downstream sales). As we explained in the preliminary results, the total quantity of Izumi's sales to unaffiliated parties during the POR was extremely small, a significant portion of Izumi's total HM sales was to an affiliated reseller, and certain models were sold only to this affiliated customer, resulting in an insufficient number of unaffiliated party sales to provide a meaningful comparison to affiliated party sales. *See Preliminary Results* at 25170. In other words, we concluded that the small number of Izumi's remaining HM sales to unaffiliated customers did not provide a sufficient basis on which to test whether sales to the affiliated reseller were made at arm's-length prices. As explained below, we next attempted to obtain downstream sales. Only after concluding that Izumi was unable to compel its affiliated customer to provide this information, we excluded all HM sales from the calculation of NV and calculated NV based on CV in accordance with section 773(a)(4) of the Act. *See id*.

Section 776(b) of the Act requires that if an interested party fails to cooperate by not acting to the best of its ability to comply with the Department's request for information, the Department may use an adverse inference in selecting from the facts otherwise available. Here, however, upon examining the circumstances surrounding Izumi's failure to provide HM downstream sales information, we disagree with the petitioner's characterization of Izumi as non-cooperative. In the preliminary results, we noted that Izumi did make attempts to obtain this sales information from its affiliated customer and otherwise complied with all of the Department's information requests. *Id*. In our view, the record supports Izumi's claim that, despite its efforts, it was not in a position to compel the affiliated customer to produce the information requested by the Department. *See* the April 30, 1997 Memorandum from Holly A. Kuga to Jeffrey P. Bialos, regarding the application of FA. As a result, for these final results we are satisfied that Izumi acted to the best of its ability to comply with the Department's requests for information.

Finally, there is no evidence on the record to indicate that merchandise Izumi sold to its affiliated customer was subsequently resold to the United States, or that Izumi had knowledge that such merchandise was destined for export to the United States. However, we are putting Izumi on notice that we intend to review this issue, as well as Izumi's affiliations, more closely in the next administrative review, if additional information comes to light.

In conducting our margin calculations for Izumi for these final results, we discovered a number of sales to the United States for which there was no matching CV model information. Since Izumi did not provide this CV information, we are unable to calculate a margin for Izumi's unmatched U.S. sales and must use the facts available, in accordance with section 776(a) of the Act. We received no comments from interested parties on this issue. We did not alert Izumi to the deficiency in its response pursuant to section 782(d) and we therefore have not applied an adverse inference as FA. As FA for the unmatched U.S. sales at issue, we have applied the weighted-average margin calculated for Izumi's U.S. sales for which CV data was reported (*i.e.*, 2.66 percent).

Pulton

The petitioner argues that due to Pulton's continued refusal to provide requested DIFMER information and because Pulton's own model match test was deficient, the Department was fully justified in concluding that Pulton's response was so incomplete that it could not serve as a reliable basis for the Pulton margin determination. Therefore, the petitioner argues that the Department should continue to assign Pulton a margin of 43.29 percent. In addition, regarding corroboration of this margin, the petitioner states that the Department need only satisfy itself that the margin has probative value. The petitioner contends that Pulton's assertion that the 43.29 percent margin is not a final properly calculated rate is a reiteration of arguments raised and rejected in the 1993–1994 administrative review.

Pulton states that the Department should use the information submitted in its questionnaire response to perform margin calculations. According to Pulton, if the five factors listed in Section 782(e) of the Act are satisfied, the Department may not decline to consider the information submitted by a respondent which is in some way deficient. Pulton submits that as these conditions were met in this case, the Department was not justified in disregarding its questionnaire response.

Further, Pulton maintains that if the Department does not use the information contained in its questionnaire response, then it should not use an adverse inference in selecting FA. According to Pulton, Section 776(b) of the Act permits the Department to use an adverse inference in applying FA only if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Pulton asserts that the facts of this review demonstrate that it did cooperate to the best of its ability and that the Department's use of adverse inference in applying FA is not warranted.

Moreover, Pulton contends that if the Department does use an adverse inference it should not use the 43.29 percent rate because the rate has no probative value. Pulton states that the Department's decision memorandum, dated April 15, 1997, explains that in corroborating secondary information the Department examines the reliability and the relevance of the information used. Pulton argues that the 43.29 percent rate is neither reliable nor relevant. It states that it is not reliable because the rate was not a final properly calculated rate and that it is not relevant because the rate is not indicative of commercial practices in the roller chain industry.

DOC Position

We disagree with Pulton that it has satisfied the five factors listed in Section 782(e) of the Act. Section 782(e) states *inter alia* that the Department shall not decline to use information in reaching a determination if ''the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination'' and if the ''interested party has demonstrated that it acted to the best of its ability in providing the

information and meeting the requirements established by the Department with respect to the information.'' Section 782(d) requires that before the Department declines to consider information that the Department notify the person submitting the information of the nature of the deficiency and, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency.

In this case, the information provided by Pulton is so incomplete that it cannot serve as a reliable basis for our determination. Pulton did not report its sales of all HM models. On several occasions, we notified Pulton of the deficiencies in its response, requested the DIFMER for the unreported HM sales, and provided Pulton with the opportunity to provide the information. On each occasion Pulton failed to provide the requested data, declined to provide an explanation for the deficient nature of its responses, and failed to provide the Department with any suggested alternatives for the requested data. *See Preliminary Results* at 25166. In accordance with Section 782(e) of the Act, Pulton's failure to report the DIFMER data requested by the Department, despite several warnings by the Department regarding the consequences of such an action and despite the Department granting Pulton several opportunities to remedy the deficiencies, authorizes the Department to decline to use Pulton's response.

Pulton's failure to provide the requested DIFMER data has left the Department without information which is essential to our determination. We do not have complete information on sales of identical merchandise and are unable to determine whether any of Pulton's unreported HM models passed the Department's 20 percent DIFMER test. Pulton also did not provide CV information. All of this information, which Pulton was in control of, is vital to our dumping calculations because it is required in order to calculate NV. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et. al.* 62 FR 2081, 2088 (January 15, 1997) (*AFBs VI*). For these reasons, we are compelled to apply FA to Pulton as the Department cannot be left with trying to make its determinations based only on the information that the respondent chooses to provide. *See Olympic Adhesives Inc.* v. *United States,* 899 F.2d 1565, 1571–72 (Fed. Cir. 1990).

We also disagree with Pulton's argument that the Department should not use an adverse inference in selecting FA. Section 776(b) of the Act provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. As discussed, Pulton has failed to cooperate to the best of its ability in this review. Although Pulton requested that it be allowed to disregard Section B of the questionnaire asking for HM sales, the Department informed Pulton that it should respond to this portion of the questionnaire and that failure to do so would be at its own risk. (*See* Memorandum to the File from Ron Trentham, July 26, 1996). Additionally, the questionnaire asked Pulton to provide DIFMER data for its home sales. As established above, this is an integral element of the questionnaire because this information is necessary for the Department to confirm which U.S. and HM sales match. Further, this is a standard element of the questionnaire and requests information which Pulton should have expected it would be asked to provide, given its participation in numerous roller chain reviews. *See AFBs VI,* at 2088. Nevertheless, as Pulton asked the Department if it could simplify its reporting requirements because it might be overburdened in meeting its full reporting requirements, the Department did offer Pulton an alternative. Specifically, the Department submitted to Pulton a list of specific model numbers and advised Pulton that, at a minimum, it should report the DIFMER data for these models. *See* Department Letter to Pulton, February 5, 1997. The number of models the Department submitted was substantially less than the number of models Pulton sold in the home market, significantly reducing Pulton's reporting burden. Pulton, however, failed to provide even this information. Its failure to cooperate with even this minimal request cannot be characterized as acting to the best of its ability.

Moreover, we disagree with Pulton's contention that the Department should not use the 43.29 percent rate as adverse FA because it has no probative value. Because the FA information which we are using in this review constitutes secondary information, we are required under section 776(c) of the Act to corroborate, to the extent practicable, the facts available from independent sources reasonably at our disposal. The Statement of Administrative Action (SAA) provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. (*See* SAA at 870). To corroborate the secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for calculated margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances and facts indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. *See Fresh Cut Flowers From Mexico; Final Results of Antidumping Administrative Review,* 61 FR 6812 (June 18, 1996).

In the instant case, the Department is satisfied that the 43.29 percent adverse FA rate is relevant to the current period. It is a final calculated rate affirmed by the Court of International Trade. *See Roller Chain, Other Than Bicycle, From Japan; Preliminary Results of Administrative Review of Antidumping Finding,* 46 FR 17068, 17070 (March 17, 1981); *Roller Chain, Other Than Bicycle, From Japan; Final Results of Administrative Review of Antidumping Finding,* 46 FR 44488 (September 4, 1981); *Roller Chain, Other Than Bicycle, from Japan; Final Results of Antidumping Administrative Review,* 52 FR 18004 (May 13, 1987); *Roller Chain, Other Than Bicycle, from Japan; Final Results of Antidumping Duty Administrative Review,* 57 FR 43697 (September 22, 1992); *Sugiyama Chain Co., Ltd.,* v. *United States,* 852 F. Supp. 1103, 1114 (CIT 1994). The 43.29 percent inarguably relates to past practices in the industry as it is an actual margin of dumping found to have existed in the roller chain industry. Pulton has provided the Department with no evidence that would call into question the relevance of this rate. Absent such evidence, the 43.29 percent rate represents an appropriate adverse inference regarding the level of dumping during the current period. Furthermore, in employing adverse inferences, the SAA authorizes the Department to consider the extent to which a party may benefit from its own lack of cooperation. SAA at 870. The

Department concludes that assigning a 43.29% rate to Pulton will prevent it from benefitting from its failure to respond to the Department's requests for information. In sum, the Department is satisfied that it has met the corroboration requirement of section 776(c) and can apply this rate to Pulton as adverse FA in this review.

Enuma

Enuma argues that the Department should not use a FA dumping margin in its final determination. Rather, the Department should calculate a dumping margin for Enuma using either the November 15, 1996, Daido Tsusho and Daido Corporation U.S. sales questionnaire response or the June 12, 1997, Enuma U.S. sales questionnaire response. According to Enuma, the Department now has the information on the record to calculate dumping margins regardless of whether the Department determines that Enuma and Daido Tsusho are affiliated or unaffiliated. Enuma contends that the condition which the Department relied on to use FA in the preliminary determination, *i.e.*, necessary information is not available on the record, no longer exists.

Further, Enuma points out that in the notice of preliminary results, the Department expressed concern over the possible integrity of Enuma's post-preliminary results submission. According to Enuma there are three reasons why the integrity of this submission should be no more in doubt than the integrity of any other documents submitted by Enuma or any other respondent prior to the preliminary determination. First, Enuma has provided the corporate and attorney certification as to the accuracy of its June 12, 1997, response. Second, the June 12, 1997, submission is potentially subject to verification. Third, all adjustment data submitted with the June 12, 1997, submission has been previously included in one of the earlier questionnaire responses and was potentially subject to verification as part of the earlier questionnaire responses, as well as part of the June 12, 1997, submission.

Based on Enuma's response to issues raised in the petitioner's case brief, the petitioner now concurs that the Department should calculate an actual margin for Enuma rather than applying FA.

DOC Position

We agree with Enuma and have calculated a dumping margin for this final determination using Enuma's original HM sales questionnaire response and its June 12, 1997, U.S. sales questionnaire response. In our preliminary determination, we found that Enuma is not affiliated with either Daido Tsusho or Daido Corporation and stated that we believed that the appropriate U.S. transactions to be reviewed were those between Enuma and Daido Tsusho. Section 776(a) of the Act authorizes the Department, subject to section 782(d), to use FA when necessary information is not available on the record. Given that Enuma had not reported its sales to Daido Tsusho in the U.S. sales listing, we could not calculate United States price with respect to Enuma. Therefore, we were compelled to use FA. However, because we did not specifically request that Enuma provide this data in its supplemental questionnaires, we applied non-adverse FA.

Subsequently, we requested that Enuma report all U.S. sales made to Daido Tsusho, and provide additional explanations and/or clarifications regarding the nature of the affiliation and any forms of control between these companies. Based on our analysis of Enuma's submissions of June 12, 1997 and July 10, 1997, we have determined for purposes of the final results that the appropriate U.S. transactions to be reviewed are those between Enuma and Daido Tsusho.

We used EP in accordance with subsections 772(a) of the Act because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted based on the facts of the record. We calculated EP based on packed prices to the first unaffiliated customer in the United States. In accordance with section 772(c)(2)(A) of the Act, we made a deduction for inland freight plant/warehouse to customer.

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared respondent's volume of HM sales of the foreign like product to the volume of U.S. sales of the subject merchandise in accordance with section 773(a)(1) (B) and (C) of the Act. Since respondent's aggregate volume of HM sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we based NV on HM sales.

We made deductions, where appropriate, from the starting price for inland freight. In addition, we made a circumstance-of-sale adjustment for credit in accordance with section 773(a)(6)(C)(iii) of the Act. We deducted HM packing costs and added U.S. packing cost in accordance with sections 773(a)(6) (A) and (B) of the Act.

Sales to an affiliated customer in the home market which were determined not to be at arm's-length were excluded from our analysis. To test whether these sales were made at arm's-length, we compared the starting prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct and indirect selling expenses, discount, and packing. Pursuant to 19 CFR 353.45(a) and in accordance with our practice, where the price to the affiliated party was less than 99.5 percent or more of the price to the unaffiliated party, we determined that the sales made to the affiliated party were not at arm's-length. *See Final Results 1994–1995* at 64322, 64327.

In our initial questionnaire, we stated that if for each product Enuma sold during the POR to the United States it sold the identical product in the comparison market, it was not necessary to supply information regarding the DIFMER. However, we also stated that if Enuma elected not to supply this information and we later determined for any reason that a United States sale should be compared to a sale of a similar product in the comparison market, we might have to resort to FA. In response, Enuma stated that it believed that a matching HM model existed for every U.S. model. In a supplemental questionnaire dated February 13, 1997, we again informed Enuma that if we determined that there was not a contemporaneous sale in the home market of an identical model for every model of chain sold in the United States, or that these sales could not be used as a basis for NV for any reason, and Enuma failed to report its HM sales of the most similar merchandise, we may apply FA in making our determinations. Enuma provided no response except to state that no answer was required. Further, we noted that Enuma had not reported CV for any of the models sold in the United States during the POR and we subsequently informed Enuma that if it chose not to report CV and we were unable to make price-to-price comparisons for any reason, we might apply FA in making our determinations. Enuma responded again that no answer was required. Moreover, in its revised section C response submitted to the Department on July 10, 1997, Enuma failed to provide DIFMER claiming that it had made sales in Japan of roller chain identical to that which it sold in the United States during the POR. However, contrary to Enuma's claims, in conducting our margin calculations for Enuma we discovered a number of sales

to the United States for which there were no contemporaneous sales of identical merchandise in the home market.

Since Enuma failed to provide DIFMER information and did not provide CV information, we are unable to calculate a margin for Enuma's unmatched U.S. sales. Therefore, we are compelled to use FA with regard to these sales for purposes of the final results.

Enuma's failure to report DIFMER data, information which it controlled, despite our request for that information and our warnings regarding the consequences of such an action, demonstrates that Enuma failed to cooperate to the best of its ability in this review. Thus, in accordance with 776(b), in selecting among the FA for Enuma, an adverse inference is warranted. As FA we have selected 43.29 percent, which we established above in the FA section regarding Pulton. This rate represents the highest calculated rate for any respondent from any prior segment of this proceeding and, for the reasons stated above in the FA section regarding Pulton, meets the corroboration requirements of section 776(c) of the Act.

Daido Kogyo

The initial questionnaire and supplemental questionnaire which we sent to Daido Kogyo were identical to those sent to Enuma as described above. In response to our initial questionnaire, Daido Kogyo stated that it believed that a matching HM model existed for every U.S. model. In response to our supplemental questionnaire dated February 13, 1997 requesting DIFMER data, Daido Kogyo responded that no answer was required. Finally, in response to our May 19, 1997 letter requesting DIFMER data, Daido Kogyo declined to provide this data, stating that it believed that there would be few, if any, unmatched U.S. sales. Similar to our notice to Enuma, we notified Daido Kogyo that we may have to apply FA in making our determinations if its claims later proved inaccurate. Contrary to Daido Kogyo's claims, in conducting our margin calculations for Daido Kogyo, we discovered a number of sales to the United States for which there were no contemporaneous sales of identical merchandise in the home market. Since Daido Kogyo failed to provide DIFMER information and did not provide CV information, we are unable to calculate a margin for Daido Kogyo's unmatched U.S. sales. Just as in the situation of Enuma, described above, Daido Kogyo's failure to report this information, despite our information requests and our warnings regarding the consequences of such an action, demonstrates that Daido Kogyo failed to cooperate to the best of its ability in this review. Therefore, as required by section 776(a) of the Act, we are compelled to apply adverse FA to these sales for the same reasons and in the same manner as we determined above for Enuma.

Comment 3: Level of Trade/CEP Offset

Daido Kogyo argues that in finding that no difference in the level of trade (LOT) existed and in denying it a CEP offset, the Department misinterpreted the facts and the law, producing a result unfair to Daido Kogyo. Daido Kogyo contends that because a difference in LOT exists, even if no LOT adjustment can be made, it is still entitled to a CEP offset.

Daido Kogyo asserts that because the Department incorrectly defined the CEP sale, this error led to the mistaken conclusion that there is no difference in LOT between CEP and HM sales. Daido Kogyo further argues that we further misinterpreted the CEP offset provision, section 773(a)(7)(B) of the Act, by misidentifying the relevant CEP sales transaction.

According to Daido Kogyo, the relevant CEP sales transaction to be examined for LOT analysis is the point at the company's factory door. Daido Kogyo bases this assertion on its interpretation that the statute requires all costs to be deducted back to the factory door. Daido Kogyo asserts that not only is our preliminary determination in error, but that the Department's regulations are as well. Daido Kogyo further asserts that the Department erroneously collapsed Daido Kogyo, Daido Tsusho, and Daido Corporation into one company for purposes of LOT analysis.

Daido Kogyo also contends that the Department omitted, overlooked, or misunderstood certain facts on the record regarding Daido Kogyo's selling functions, in particular its HM sales practices. Specifically, Daido Kogyo asserts that the Department missed major differences between the selling functions Daido Kogyo performed for HM customers and those it performed for CEP sales.

The petitioner maintains that, consistent with the Department's preliminary results, Daido Kogyo is not entitled to a LOT adjustment or a CEP offset. Specifically, the petitioner states that Daido Kogyo sold roller chain to the United States through Daido Tsusho. Accordingly, once U.S. selling expenses and U.S. profit are deducted, the merchandise is not at the factory door, but rather at the same LOT as Daido Tsusho's EP sales. For example, the petitioner maintains that the Department did not make a deduction for the profit earned by Daido Tsusho on the CEP transactions. Furthermore, the petitioner argues that Daido Kogyo's argument concerning the appropriate starting point for comparing CEP and home market transactions was previously considered and rejected by the Department in formulating the new antidumping regulations.

Moreover, the petitioner argues that in case the Department were to revisit its preliminary results position on this issue, it should include a determination as to whether Daido Kogyo has cooperated to the best of its ability in providing data to the Department that would permit it to make a traditional LOT adjustment. Specifically, the petitioner objects to Daido Kogyo's assertion that there is only one LOT in the home market even though the company sells roller chain to OEMs, trading companies, and local distributors.

DOC Position

We agree with the petitioner that Daido Kogyo has not demonstrated eligibility for a CEP offset. Daido Kogyo's position is at odds with the Department's determination in several significant respects: (1) how the Department defined the starting price of the CEP sale and determined whether U.S. and HM sales were made at different points in the channels of distribution; (2) whether the selling functions performed for Daido Kogyo's CEP sales were sufficiently different from those performed for HM sales; (3) whether HM and CEP sales were at different stages of marketing, and (4) whether the Department created an artificial distinction between HM and CEP sales.

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the EP or CEP. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the U.S. LOT is the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and

the unaffiliated customer. If the comparison-market sales are at a different LOT, and that difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Certain Welded Carbon Steel Standard Pipes and Tubes From India: Preliminary Results of New Shipper Antidumping Duty Administrative Review,* 62 FR 23760, 23761 (May 1, 1997); *see also Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et. al.* 62 FR 54043, 54056 (October 17, 1997) (*AFBs VII*).

First, as to Daido Kogyo's argument that the Department erroneously defined the CEP sale, we agree with petitioner that the relevant transaction is at the point after U.S. selling expenses and U.S. profit are deducted, and not at the factory door. With respect to section 773(a)(7)(B) of the Act, Daido Kogyo argues that the ''only realistic interpretation of the statute is that the LOT for CEP sales is at the factory door.'' *See* Daido Kogyo Brief at 24 (Brief). Yet, Daido Kogyo itself acknowledged that the statute lends itself to ''two possible interpretations of the phrase 'level of trade of the constructed export price,' '' the ex-factory price or the price from the affiliated importer to an unaffiliated U.S. customer. *See id.* (emphasis added).

However, the crux of Daido Kogyo's argument is that it disagrees with the Department's regulations under the statute, apart from our preliminary determination. Specifically, Daido Kogyo asserts that the regulations fail to distinguish between a HM price which includes those expenses which are deducted under section 772(d) and a CEP price lacking such expenses. *See* Brief at 19. While Daido Kogyo's disagreement with the Department's regulations on this issue is outside our present purview, we disagree with Daido Kogyo's interpretation as to how CEP is defined. Pursuant to section 773(a)(7)(A) of the Act, the Department's practice has been to examine the relevant selling functions included in the CEP *after* making deductions under section 772(d) of the Act. *See SAA* at 823; *see also Gray Portland Cement and Clinker from Mexico, Final Results of Antidumping Administrative Review,* 62 FR 17148, 17156, (April 9, 1997) (*Mexican Cement*).

Daido Kogyo additionally argues that the selling functions it performed for CEP sales were different from those performed for HM sales. Our practice, as reflected in the new regulations, is that differences in selling activities are a necessary but not, in themselves, a sufficient condition for finding a difference in marketing stages. *See* 19 CFR 351.412 (c)(2); *see also Mexican Cement* at 17157. We analyzed all of the selling functions (or activities) included in the CEP after making deductions under section 772(d) of the Act, and compared them to the ones performed for HM sales. We considered all selling activities of all affiliated parties for CEP sales (*i.e.*, Daido Kogyo and Daido Tsusho), after disregarding selling activities associated with the selling expenses deducted under section 772(d) of the Act. We noted that Daido Kogyo itself stated that Daido Tsusho was a selling organization for CEP sales (*see* Brief at 33) and found that Daido Kogyo and/or Daido Tsusho performed selling functions for CEP sales, in addition to those selling functions performed by Daido Corporation, which included the following: preparing chain for export shipment, arranging its transportation from plant to a Japanese port, carrying or maintaining inventory in Japan, and export sales administration and billing. We note that Daido Kogyo's selling functions performed with respect to sales to HM customers are not significantly different from those performed with respect to CEP sales.

Further, we note that the facts as to Daido Kogyo's distribution process are virtually the same as in a prior segment of this proceeding, the 1994–1995 POR, where we determined on these facts that there were no significant differences between selling activities performed for HM sales and those performed for CEP sales and thus determined that there was no difference in LOT (*see Final Results 1994–1995* at 64326–27).

In addition, based on our analysis of Daido Kogyo's responses, we identified a single marketing stage in the home market, that of distributor. In the CEP market, we also identified a single stage of marketing to a distributor, from Daido Tsusho to Daido Corp. Therefore, we concluded that Daido Kogyo's home market and CEP sales were therefore at the same marketing stage.

Finally, we turn to Daido Kogyo's argument that the Department, erroneously and contrary to Congressional intent, created an artificial distinction between companies which export directly to the United States and those which export through an affiliated trading company. We find, on the contrary, that to ignore the selling functions performed by Daido Tsusho as a selling organization for CEP sales would result in the very sort of distorted results which Daido Kogyo seeks to avoid. No new facts have been introduced since our preliminary results that would warrant a reversal of our preliminary results.

Based on the above, we do not consider Daido Kogyo's sales in the home market and in the U.S. market to be at a different LOT. Consequently, we determined that Daido Kogyo is not entitled to a LOT adjustment. Thus, no CEP offset has been granted for the final results.

Comment 4: Commission Offset

Daido Kogyo claims that the Department, in calculating NV, erroneously denied it a commission offset adjustment. Daido Kogyo argues that this offset should have included its total indirect selling expenses, including HM sales commissions not separately claimed. Daido Kogyo urges the Department to deduct, in the manner of a commission offset, its total indirect selling expenses in the home market as Daido Kogyo had originally reported, which included HM commissions as part of this amount and not as a separate deduction.

The petitioner disagrees that Daido Kogyo is entitled to this commission offset. The petitioner notes that Daido Kogyo states that it paid commissions to unaffiliated sales representatives in the United States but did not claim these commissions as a deduction to U.S. price. Further, the petitioner also notes that Daido Kogyo actually made commission payments in the home market, which it reported as part of HM indirect selling expenses, rather than transaction-specific amounts for each HM sale where applicable. Moreover, the petitioner argues that there is no basis for assuming that had commissions been reported for each of these HM transactions, they would have been compared to U.S. sales where commissions were paid. Therefore, the petitioner contends that Daido Kogyo should not benefit from its failure to follow the Department's instructions.

DOC Position

We agree with the petitioner that sales commissions were in fact paid by Daido Kogyo in both the home market and in the United States. When a respondent has incurred commission costs in both

the U.S. and home markets, it is standard Departmental practice to simply deduct the commission amounts from the reported HM and U.S. prices to calculate NV and CEP. (*See Antidumping Manual,* Import Administration, International Trade Administration, Department of Commerce (*Antidumping Manual*), Chapter 8, p. 30). However, in this instance, Daido Kogyo has failed to report its HM commission expenses in an appropriate manner for us to make this deduction. Despite our request for transaction-specific HM commission expenses, Daido Kogyo stated that because the commission amounts paid in the home market were very small, it ''has elected not to claim a direct expense deduction for'' this item. *See* Daido Kogyo's Supplemental Questionnaire Response, March 10, 1997 at 28. The only commission information which Daido Kogyo reported was in aggregate form for the POR and lacked any explanation of how the figure related to sales of subject merchandise.

In addition, we agree with the petitioner that a respondent should not benefit from its failure to follow the Department's instructions. Accordingly, because we are unable to determine what portion of Daido Kogyo's commission expense is related to the sale of subject merchandise, we have not made any deduction from HM price for commission in the margin calculation program for Daido Kogyo in these final results.

Further, we disagree with Daido Kogyo's argument that, in lieu of a direct HM commission deduction, we should use indirect selling expenses as a basis for granting a commission offset adjustment. Such an offset adjustment is only made when commission expenses are incurred in one market and not in the other. (*See Antidumping Manual,* Chapter 8, p. 31). Since this is not the case here, we have removed the commission offset adjustment from the margin calculation program for Daido Kogyo, (at line numbers 547–558), for these final results.

Final Results of Review

As a result of our analysis of the comments received, we determine that the following margins exist for the period April 1, 1995 through March 31, 1996:

Manufacturer/exporter	Weighted-average margin percentage
Daido Kogyo	6.84
Enuma	1.57
Izumi	2.66
Pulton	43.29 (adverse FA)
R.K. Excel	0.17

Intent Not To Revoke

As we noted in our preliminary results, Daido Kogyo and Enuma submitted a request in accordance with 19 CFR 353.25 (b) to revoke the order with respect to its sales of roller chain in the United States. (*See Preliminary Results* at 25171). In these final results and those of our most recently completed administrative review of this order, the margins calculated for Daido and Enuma were greater than *de minimis. See Final Results 1994–1995* at 64327. Therefore, we determine that Daido Kogyo and Enuma do not qualify for revocation at this time.

Cash Deposit Requirements

The following deposit requirements shall be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise from Japan that are entered or withdrawn from warehouse, for consumption on of after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed companies will be the rates listed above, except that for RK Excel whose weighted-average margin is less than 0.5 percent and therefore de minimis, the Department shall require a zero deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacture of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 15.92 percent, the all others rate based on the first review conducted by the Department in which a ''new shipper'' rate was established in the final results of antidumping finding administrative review (48 FR 51801, November 14, 1983).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, we have calculated exporter/importer-specific assessment rates for roller chain.

Where entered value or entered quantity data is not available, we have divided for both EP and CEP sales, where applicable, the total dumping margins (calculated as the difference between NV and EP (or CEP)) for each importer by the total number of units sold to the importer. We will direct Customs to assess the resulting unit dollar amount against each unit of subject merchandise entered by the importer during the POR.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. Sec. 1675(a)(1)) and 19 CFR 353.22.

Dated: October 31, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–29630 Filed 11–7–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India: Preliminary Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review: Stainless Steel Bar from India.

SUMMARY: In response to requests from Mukand Limited (''Mukand'') and Ferro Alloys Corporation Limited (''Facor''), the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on stainless steel bar from India. This review covers Mukand's sales of the subject merchandise to the United States during the period February 1, 1996 through January 31, 1997.

Although we included Facor in our initiation notice for this review, we subsequently initiated a new shipper review, covering the same review period, for that company. Consequently, we are terminating this review with respect to Facor.

We have preliminarily determined that Mukand's sales have been made below normal value (''NV''). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties equal to the difference between the export price (EP) and the normal value (NV).

Interested parties are invited to comment on these preliminary results. Parties who submit argument are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: November 10, 1997.

FOR FURTHER INFORMATION CONTACT: Jennifer Yeske or Craig Matney, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–0189 or (202) 482–0588, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act.

SUPPLEMENTARY INFORMATION:

Background

On February 24, 1997, the Department received a request from respondents to conduct an administrative review of the antidumping duty order on stainless steel bar from India produced by Mukand. The Department published in the **Federal Register**, on March 18, 1997, a notice of initiation of an administrative review of Mukand covering the period February 1, 1996 through January 31, 1997 (62 FR 12793).

Scope of Review

Imports covered by this review are shipments of stainless steel bar (''SSB''). SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to these orders is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Period of Review

This review covers one manufacturer/exporter, Mukand, and the period February 1, 1996 through January 31, 1997.

Partial Termination of Review

Facor was included in our notice of initiation of this review because we received a request for an administrative review of that company. However, Facor also submitted a timely request for a new shipper review covering the same period. On March 28, 1997, we published a notice of initiation of a new shipper administrative review covering Facor for the same review period (*see* 62 FR 14886). Therefore, we are terminating this review with respect to Ferro Alloys Corporation Limited.

Verification

As provided in section 782(i) of the Act, we verified information provided by the respondent by using standard verification procedures, including on-site inspection of the respondent's facilities, the examination of appropriate sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification report.

United States Price

In calculating price to the United States, we used export price (''EP''), in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation into the United States and constructed export price was not otherwise indicated.

We calculated EP based on the price from Mukand to an unaffiliated customer prior to importation into the United States. In accordance with section 772(c)(2) of the Act, we made deductions for foreign inland freight and international freight.

Mukand claimed an upward adjustment to EP for a ''duty drawback'' scheme. In the preliminary determination of the first administrative review of this order (*see* 62 FR 10540 at 10541, March 7, 1997), we analyzed the functioning of this duty drawback scheme and found that it did not meet the Department's standards for an upward adjustment to EP. We maintained our position in the final determination (*see* 62 FR 37030, July 10, 1997). We have reexamined the scheme in regard to Mukand, and have found no basis on which to deviate from the Department's previous decision. Therefore, we have not made an adjustment to EP. However, for those sales for which CV is the basis for NV, we have offset the per unit direct materials cost to account for the credits (*see Normal Value* section).

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a) of the Act. Because the aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the prices at which the foreign like product was first sold to unaffiliated customers for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade. Respondent claimed that there is no difference in the level of trade between the U.S. and the home markets. We examined the data submitted regarding the channels of distribution and selling expenses in the two markets. While there are different channels of distribution, many of the selling expenses are consistent across all channels. While there may be some additional expenses in the home market for the Del Credre and consignment sales, respondent did not claim an adjustment or provide information supporting such an adjustment.

Based on a cost allegation presented by petitioners, the Department found reasonable grounds to believe or suspect that sales by the respondent in the home market were made at the prices below their respective costs of production (''COPs''). As a result, the Department initiated an investigation to determine whether the respondent made home market sales during the POR at prices below its COP, within the meaning of section 773(b) of the Act.

We calculated COP as the sum of the respondent's cost of materials, labor and overhead for the foreign like product, plus amounts for G&A and packing costs, in accordance with section 773(b)(3) of the Act. We compared COP to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below COP. On a product-specific basis, we compared COP to the home market prices, less any applicable movement charges, discounts, commissions, selling expenses and packing expenses.

In determining whether to disregard home market sales made at prices below the COP, we examined whether: (1) Within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted recovery of all costs within a reasonable period of time in the normal course of trade. Where 20 percent or more of a respondent's sales of a given product during the POR were at prices below COP, we found that below cost sales of that model were made in ''substantial quantities'' within an extended period of time, in accordance with section 773(b)(2) (B) and (C). To determine whether prices provided for recovery of costs within a reasonable period of time, we tested whether the prices that were below the per unit cost of production at the time of the sale were above the weighted average per unit cost of production for the POR, in accordance with section 773(b)(2)(D). Where we found that a substantial quantity of sales during the POR were below cost and not at prices that provided for recovery of costs within a reasonable period of time, we disregarded the below cost sales.

Where NV was calculated using prices to unaffiliated customers, we made appropriate adjustments to those prices. First, we deducted home market inland freight and home market packing costs. Where there were differences in the merchandise to be compared, we made adjustments in accordance with section 773(a)(6)(C)(ii) of the Act to account for those differences. We also added U.S. packing costs in accordance with section 773(a)(6)(A) of the Act. We also made circumstance-of-sale adjustments for differences in credit costs and bank charges between the two markets in accordance with section 773(a)(6)(C)(iii) of the Act. Finally, we adjusted for commissions paid in the home market by deducting the commissions from the NV and offsetting the commissions with indirect selling expenses incurred on sales to the United States, up to the amount of the home market commission.

Where there was no above cost home market sale for comparison, NV was based on CV. In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of respondent's cost of materials (net of import duty credits earned on its U.S. sale), labor, overhead, SG&A, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Preliminary Results of the Review

As a result of our comparison of EP and NV, we preliminarily determine the following weighted-average dumping margin:

Manufacturer/ exporter	Period	Margin (per-cent)
Mukand	2/1/96–1/31/97	8.38

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

Upon completion of this administrative review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between EP and NV may vary from the percentages stated above. We have calculated an importer-specific duty assessment rate based on the ratio of the total amount of AD duties calculated for the examined sales made during the POR to the total value of subject merchandise entered during the POR. In order to estimate the entered value, we subtracted international movement expenses (*e.g.*, international freight) from the gross sales value. This rate will be assessed uniformly on all entries made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

The following deposit requirement will be effective upon publication of the final results of this antidumping duty administrative review for all shipments of stainless steel bar from India entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this review; (2) if the exporter is not a firm covered in this review, but was

covered in a previous review or the original less-than-fair-value (''LTFV'') investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers and/or exporters of this merchandise, shall be 12.45 percent, the ''all others'' rate established in the LTFV investigation (59 FR 66915, December 28, 1994).

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c).

Dated: October 31, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–29627 Filed 11–7–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Research Foundation of the City University of New York; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–073. Applicant: Research Foundation of The City University of New York, New York, NY 10003. Instrument: Electron Paramagnetic Resonance Spectrometer, EMX Series. Manufacturer: Bruker Instruments, Germany. Intended Use: See notice at 62 FR 47645, September 10, 1997.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides measurement of electron spin resonance for characterization of paramagnetic centers in various materials, identification of photo- and redox-active sites and elucidation of reaction mechanisms. The National Institutes of Health advises in its memorandum dated June 26, 1997 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use (comparable case).

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–29628 Filed 11–7–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Utah; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–075. Applicant: University of Utah, Salt Lake City, UT 84112. Instrument: Mass Spectrometer, Model 215–50. Manufacturer: Mass Analyser Products, Ltd., United Kingdom. Intended Use: See notice at 62 FR 48811, September 17, 1997.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides: (1) A magnetic sector mass analyzer, (2) sensitivity for He of 2.0×10^{-4} A/Torr at 200 μA trap current and (3) background to 5.0×10^{-4} cc STP at M/e 36 and to 1.0×10^{-15} cc STP at M/e 132. These capabilities are pertinent to the applicant's intended purposes and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–29629 Filed 11–7–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102797A]

Food and Agriculture Organization (FAO) Consultation; Public Meeting; and Workshops on Sharks

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

ACTION: Notice of public meeting and workshops.

SUMMARY: NMFS publishes information regarding the FAO initiatives on the conservation and management of sharks, reduction of incidental catch of seabirds in longline fisheries, and the management of fishing capacity. An FAO Consultation, planned for late October 1998, will consider draft plans of action in these three areas. NMFS will hold a meeting to brief the public on the status of preparations for the FAO Consultation. In conjunction with the National Fish and Wildlife Foundation, NMFS is sponsoring two workshops in order to gather the information necessary to contribute to national, regional, and high seas strategies (by ocean area) for sharks in North America. The workshop proceedings will be compiled into proposed conservation and management strategies. The workshops will be coordinated by the World Wildlife Fund and are open to interested observers.

DATES: The meeting dates are:

1. Status of preparations for the FAO Consultation: December 16, 11:00 a.m.

2. Shark regional workshops: December 4 and 5, 1997,

8:30 a.m. - 5:30 p.m., Sarasota, FL, and December 8 and 9, 1997, 8:30 a.m. - 5:30 p.m., Monterey, CA.

ADDRESSES: The meeting locations are—

1. Status of preparations for the FAO Consultation: Room 5215, Herbert Clark Hoover Building (Department of Commerce), 14th and Constitution Avenue, NW., Washington, DC 20230.

2. Shark regional workshops: Sarasota—Mote Marine Laboratory, 1600 Ken Thompson Parkway, Sarasota, FL 34236, and Monterey—Monterey Bay Aquarium, 886 Cannery Row, Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: Dean Swanson at (301) 713-2276; to attend shark workshops as an observer, contact Kathy Kessler at (202) 861–8346. Information on the FAO initiatives is available online at http://kingfish.ssp.nmfs.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAO, with input from the United States and other governments, is preparing for an FAO Consultation in late 1998 to consider action plans on the conservation and management of sharks, reduction of incidental catch of seabirds in longline fisheries, and the management of fishing capacity. All FAO member countries as well as observers will be invited to the FAO Consultation. Preparations include meetings of expert Technical Working Groups (TWGs) to consider draft guidelines and plans of actions well in advance of the FAO Consultation.

On August 8, 1997, NMFS published a notice of U.S. involvement in the planning and preparations for the FAO Consultation (62 FR 42766). Additional background information is presented in that **Federal Register** notice and is not repeated here. NMFS will host a meeting to brief the public on the status of preparations for the FAO Consultation at the time and place provided above.

Shark Regional Workshops

To assist development of background documents for the Shark TWG, the United States will sponsor two shark regional workshops. The goal for the upcoming shark regional workshops and the subsequent TWG and FAO Consultation is to contribute to developing a global strategy (action plan) and guidelines for sustainable international and regional management of elasmobranch species by national, regional and highly migratory management groups. The workshop proceedings will be compiled into proposed strategies and used to contribute to the TWG, which will provide background documents for the FAO Consultation.

The shark regional workshops will review—

1. Shark fisheries in the region, including directed fisheries and fisheries in which sharks are a bycatch and

2. Current data collection and management in the region.

Regional workshop participants will also be asked to develop recommendations on action areas, priority issues and time targets for the following categories:

1. Research, data collection, and monitoring;

2. Conservation and management for sustainable shark populations;

3. Building capacity for conservation, research, and management;

4. Regional and international cooperation; and

5. Funding for shark conservation and management.

Regional workshop participants will include fisheries scientists, shark experts, and regional fishery management organization representatives. The workshops are open to interested observers. Anyone planning to attend as an observer should contact Kathy Kessler (see **FOR FURTHER INFORMATION CONTACT**).

Special Accommodations

The meeting on the status of preparations for the FAO Consultation will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dean Swanson at least 5 days prior to the meeting date.

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

Dated: November 4, 1997.

Gary C. Matlock,

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

[FR Doc. 97–29584 Filed 11–7–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110397A]

Marine Mammals; Permit No. 1024 (P77–2#69)

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

ACTION: Issuance of scientific research permit amendment.

SUMMARY: Notice is hereby given that a request for amendment of scientific research permit no. 1024 submitted by the Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, CA 92038 [Co- Investigator: Dr. Rennie S. Holt) has been granted to increase the number of Antarctic fur seals to be taken annually.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4001).

SUPPLEMENTARY INFORMATION: On September 29, 1997, notice was published in the **Federal Register** (62 FR 50907) that an amendment of permit no. 1024, issued December 30, 1996 (62 FR 1875), had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Dated: November 3, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–29583 Filed 11–7–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

November 4, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: November 12, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the

quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 64505, published on December 5, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 4, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on November 12, 1997, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
200	786,654 kilograms.
300/301	3,894,448 kilograms.
331/631	2,128,878 dozen pairs.
336/636	630,648 dozen.
340/640	1,616,682 dozen.
341	1,025,902 dozen.
342/642	386,921 dozen.
350/650	136,526 dozen.
369–S [2]	930,324 kilograms.
447	19,392 dozen.
Group II	
201, 218, 220, 222–224, 226, 227, 229, 237, 239, 330, 332, 333, 349, 352–354, 359–O [3], 362, 363, 369–O [4], 400, 410, 414, 431, 432, 434, 435, 436, 438, 439, 440, 442, 444, 459, 464, 465, 469, 603, 604–O [5], 606, 607, 621, 622, 624, 630, 632, 633, 649, 652–654, 659–O [6], 665, 666, 669–O [7], 670–O [8], 831–836, 838, 839, 840, 842–846, 850–852, 858 and 859, as a group.	98,670,420 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020 (Category 359–S).

[4] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

[5] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[6] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[7] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000 (Category 669–P).

[8] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–29619 Filed 11–7–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in the Former Yugoslav Republic of Macedonia

November 4, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: November 10, 1997.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 434 is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 48889, published on September 17, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral, but are designed to assist only in the

implementation of certain of its provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 4, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 11, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the period which began on October 1, 1996 and extends through December 31, 1997.

Effective on November 10, 1997, you are directed to increase the limit for Category 434 to 13,875 dozen [1], as provided for in the agreement between the Governments of the United States and the Former Yugoslav Republic of Macedonia dated August 6, 1996.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–29617 Filed 11–7–97; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after September 30, 1996.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Slovak Republic

November 4, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 12, 1997.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for Categories 433 and 443 are being increased for swing, reducing the limit for Category 410 to account for the increases.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 55975, published on October 30, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 4, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 25, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in the Slovak Republic and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on November 12, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
410	359,767 square meters.
433	12,223 dozen.
443	95,508 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–29618 Filed 11–7–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Tuesday, November 25, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Objectives.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–29752 Filed 11–6–97; 12:29 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Availability of Record of Decision (ROD) for the Colorado Airspace Initiative (CAI)

On October, 28, 1997, the Air Force signed the ROD for the Colorado Airspace Initiative (CAI). The decision included in the ROD were made in consideration of, but not limited to, the information contained in the Final Environmental Impact Statement (FEIS) filed with the Environmental Protection Agency on August 22, 1997.

The decision rendered by the US Air Force is that the US Air Force will proceed with modifying existing and creating new military training airspace. The actions will take place primarily in Colorado, and will be used primarily by the Colorado Air National Guard, although other military service flying units will also use the airspace. The CAI serves to support the National Guard Bureau's request for modification to the National Airspace System administered by the Federal Aviation Administration (FAA). Another purpose is to respond to changes in commercial aircraft arrival and departure corridors dictated by the FAA for the operation of the new Denver International Airport.

The implementation of the CAI will proceed with minimal adverse impact to

the environment. This action conforms with applicable Federal, State and local statutes and regulation, and all reasonable and practicable efforts have been or will be made to minimize any related impact to the local public and the environment.

Any questions regarding this matter should be directed to Mr. Harry Knudsen, (301) 836–8143. Correspondence should be sent to: ANG/CEVP, 3500 Fetchet Avenue, Andrews Air Force Base, MD 20762–5157.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 97–29521 Filed 11–7–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of closed and partially closed meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: November 20–22, 1997.

TIME: November 20—Joint Meeting of Subject Area Committees #1 and #2, 2:00–3:00 p.m., (open); Design and Methodology Committee, 2:00–5:00 p.m., (closed), Subject Area Committee #2, 3:00–5:00 p.m., (open); and Executive Committee, 5:00–6:00 p.m., (open), 6:00–7:00 p.m., (closed). November 21—Full Board, 8:30–10:00 a.m., (open; Subject Area Committees #1, 10:15 a.m.–12:00 Noon, (open); Achievement Levels Committee 10:00 a.m.–12:00 Noon, (open); Reporting and Dissemination Committee, 10:00 a.m.–12:00 Noon, (open); Full Board, 12:00 noon–5:00 p.m., (open). November 22—Nominations Committee, 8:00–9:00 a.m. (open); Full Board, 9:00 a.m. until adjournment, approximately 12:00 Noon, (open).

LOCATION: Ritz Carlton Hotel, Pentagon City, 1250 South Hayes Street, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994) (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On Thursday, November 20, 1997, there will be meeting of four committees of the Governing Board. Subject Area Committees #1 and #2 will meet in joint session from 2:00 to 3:00 p.m. to receive an update on the 1998 assessments in reading, writing, and civics.

The Design and Methodology Committee will meet in closed session from 2:00–5:00 p.m. to review the unreleased NAEP procurement documents which contain contract specifications and government cost estimates for the purpose of determining the appropriateness of their alignment with the NAGB redesign policy. This meeting must be conducted in closed session because the information presented for review would be likely to significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption (9)B of section 552b(c) of Title 5 U.S.C.

The Subject Area Committee #2 will meet in open session from 3:00–5:00 p.m. The Committee will be briefed on the North Carolina/NAEP Math Content Analysis project, and discuss issues related to NAEP redesign.

The Executive Committee will meet on November 20 from 5:00 to 6:00 p.m. in open session. In the open session from 5:00–6:00 p.m., the Executive Committee will be briefed by staff on the following items: NAEP and the Voluntary National Tests initiative, the status of the grant program for secondary analysis of the NAEP data, and NAEP redesign issues.

Then the Executive Committee will meet in closed session from 6:00 to 7:00 p.m. and the Committee will discuss the development of cost estimates for NAEP and future contract initiatives. This portion of the meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program. The discussion of this information would be likely to significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of Section 552b(c) of Title 5 U.S.C.

Also, during the same closed session, the Committee will discuss the qualifications of individuals to serve as Vice-Chair of the Governing Board. The Committee will formulate a recommendation for action by the full Board. The discussion would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of Section 552b(c) of Title 5 U.S.C.

On November 21, the full Board will convene in open session beginning at 8:30 a.m. The agenda for this session of the full Board meeting includes approval of the agenda, introduction of new members, and election of the NAGB Vice-Chair. Also, the morning agenda will include a report from the Executive Director, administration of the oath of office to new members and remarks by the Secretary of Education. This session will conclude with an update on the NAEP project.

Between 10:15 a.m. and 12:00 noon, there will be open meetings of the following subcommittees: Achievement Levels, Reporting and Dissemination, and Subject Area Committee #1. The Achievement Levels Committee will discuss the calendar for the upcoming levels setting process and consider policy issues for 1998.

Agenda items for the Reporting and Dissemination Committee include plans for release and schedule of future NAEP reports; plans for the development of a NAEP Resource Kit; and plans for reporting district-level results from existing state samples.

There will be two discussion items on the Subject Area Committee #1 agenda: (1) issues related to the preparation of an RFP for a foreign language assessment, and (2) issues related to the NAEP redesign.

The full Board will reconvene at 12:00 noon. The agenda items during this period include: a briefing on the 1996 Science Achievement Levels Report, a presentation on Redesign Issues, and a presentation on NAEP activities from framework development to reporting of the assessment results. The Board recess is scheduled for 5:00 p.m.

On Saturday, November 22, the Nominations Committee will meet in open session from 8:00–9:00 a.m. to

review procedures to be used for the solicitation of the names of individuals to succeed Board members whose terms expire September 30, 1998. The expiring terms are in the following categories: general public, elementary school principal, secondary school principal, fourth-grade classroom teacher, state legislator (Democrat) Chief State School Officer, Governor (Democrat), Governor (Republican), and eighth grade classroom teacher.

The full Board will meet in open session from 9:00 a.m. until adjournment, approximately 12:00 noon. The agenda for this session is the presentation of reports from the various Board committee meetings.

A summary of the activities of the closed and partially closed sessions and other related matters which are informative to the public and consistent with the policy of the section 5 U.S.C. 552b(c), will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW, Washington, D.C., from 8:30 a.m. to 5:00 p.m.

Dated: November 4, 1997.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 97–29520 Filed 11–7–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[Docket Nos. EA–162, EA–163 and EA–97–B]

Applications to Export Electric Energy; PP&L, Inc., Duke Energy Trading and Marketing and Portland General Electric Company

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Applications.

SUMMARY: PP&L and Portland General Electric Company, both FERC regulated public utility companies, and Duke Energy Trading and Marketing, L.L.C., a power marketer, have submitted applications to export electric energy to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before December 10, 1997.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. § 824a(e)).

The Office of Fossil Energy (FE) of the Department of Energy (DOE) has received applications from the following companies for authorization to export electric energy to Canada, pursuant to section 202(e) of the FPA:

Applicant	Application Date	Docket No.
PP&L	10/21/97	EA–162
Duke Energy Trading And Marketing, L.L.C. (Duke).	10/31/97	EA–163
Portland General Electric Company (PGE).	10/30/97	EA–97–B

In Docket EA–162, PP&L, formerly Pennsylvania Power & Light Company, proposes to transmit to Canada electric energy that is excess to its system or purchased from electric utilities or other suppliers within the U.S.

In Docket EA–163, Duke, a power marketer that does not own, operate or control any electric power generation, transmission or distribution facilities, proposes to transmit to Canada electric energy that is surplus to the needs of the entity selling the power.

PP&L and Duke would arrange for the exported energy to be transmitted to Canada over the international facilities owned by Basin Electric, Bonneville Power Administration, Citizens Utilities, Detroit Edison Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Maine Electric Power Company, Maine Public Service Company, Minnesota Power and Light Company, Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. Each of the transmission facilities, as more fully described in the applications, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

PGE (Docket EA–97–B) currently holds an electricity export authorization in Order EA–97–A which will expire on April 29, 1998. PGE has requested that their export authorization to transmit electric energy to BC Hydro, a Crown Corporation in the Canadian Province of British Columbia, be renewed for a five-year period. PGE proposes to transmit economy or firm energy to BC Hydro through the facilities of the Bonneville Power Administration.

Procedural Matters: Any persons desiring to become a party to these proceedings or to be heard by filing comments or protests to these applications should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above.

Comments on PP&L's request to export to Canada should be clearly marked with Docket EA–162. Additional copies are to be filed directly with Jesse A. Dillon, Senior Counsel, PP&L, Inc., Two North Ninth Street, Allentown, PA 18101 *AND* Douglas H. Rosenberg, Preston Gates & Ellis, LLP, 5000 Columbia Center, 701 Fifth Avenue, Seattle, WA 98104–7078.

Comments on Duke's request to export to Canada should be clearly marked with Docket EA–163. Additional copies are to be filed with Kris Errickson, Legal/Regulatory Coordinator, Duke Energy Trading and Marketing, L.L.C., One Westchase Center, 10777 Westheimer Street, Suite 650, Houston, TX 77042; Christine M. Pallenik, Managing Counsel, Duke Energy Trading and Marketing, 4 Triad Center, Suite 1000, Salt Lake City, UT 84180, *AND* Gordon J. Smith, Esq., John & Hengerer, 1200 17th Street, NW, Suite 600, Washington, DC 20036.

Comments on PGE's request to renew its authorization to export to Canada should be clearly marked with Docket EA–97–B. Additional copies are to be filed directly with Michele L. Farrell, FERC Project Manager, Portland General Electric Company, 1WTC0702, 121 SW Salmon Street, Portland, OR 97204 *AND* Mary C. Hain, Assistant General Counsel, Portland General Electric Company, 1WTC13, 121 SW Salmon Street, Portland, OR 97204.

A final decision will be made on these applications after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed actions will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of these applications will be made available, upon request, for public

inspection and copying at the address provided above.

Issued in Washington, DC on November 4, 1997.

Barbara N. McKee,

Director, Office of Coal and Power Import and Export, Office of Fossil Energy.

[FR Doc. 97–29610 Filed 11–7–97; 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 on or before December 10, 1997. 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 N.W., 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 Herbert Miller, Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Mr. Miller may be telephoned at (202) 426–1103, FAX (202) 426–1081, or e-mail at hmiller@eia.doe.gov.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. FE–781R, ''Annual Report of International Electrical Export/Import Data''
2. Fossil Energy, Office of Coal and Electricity; OMB No. 1901–0296; Extension; Mandatory
3. FE–781R collects electrical import/export data from entities authorized to export electric energy to construct, connect, operate, or maintain facilities for the transmission of electric energy at an international boundary as required by 10 CFR 205.308 and 205.325. The data are also used by EIA for publications.
4. Business or other for-profit
5. 370 hours (1 hr. × 1 response per year × 370 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., October 31, 1997.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 97–29609 Filed 11–7–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–2–20–000]

Algonquin Gas Transmission Company; Notice of Proposed Changes In FERC Gas Tariff

November 4, 1997.

Take notice that on October 31, 1997, Algonquin Gas Transmission Company (Algonquin), tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Eighth Revised Sheet No. 40, to become effective on December 1, 1997.

Algonquin states that pursuant to Section 32 of the General Terms and Conditions of its FERC Gas Tariff, it is filing to revise the Fuel Reimbursement Percentages (FRPs) for the four calendar periods beginning December 1, 1997. Algonquin states that the use of actual data for the latest available 12-month period yields increased FRPs which, compared to the last FRQ annual filing, consist of a 0.09% increase in the FRP for the Winter season and seasonal increases for the Spring, Summer and Fall seasons ranging from 0.21% to 0.50%. Algonquin proposes to levelize the three non-winter periods in response to requests from customers for rate stability. Algonquin requests any waivers necessary to permit the percentage calculated from the actuals for the entire 8-month period, combining Spring, Summer and Fall, to be applied during each of the three seasonal periods so that for the entire 8-month period the FRP will not change from one season to the next.

Algonquin also states that it is submitting the calculation of the fuel reimbursement quantity (FRQ) deferral allocation, pursuant to Section 32.5(c) which provides that Algonquin will calculate surcharges or refunds designed to amortize the net monetary value of the balance in the FRQ Deferred Account at the end of the previous accumulation period. Algonquin states that for the period August 1, 1996 through July 31, 1997, the FRQ Deferred Account resulted in a net debit balance that will be surcharged to Algonquin's customers, based on the allocation of the account balance over the actual throughput during the accumulation period, exclusive of backhauls.

Algonquin states that copies of this filing were served on firm customers of Algonquin, interested state commissions and all current interruptible customers.

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. 97–29562 Filed 11–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–2–000]

Algonquin LNG, Inc.; Notice of Proposed Changes In FERC Gas Tariff

November 4, 1997.

Take notice that on October 31, 1997, Algonquin LNG, Inc. (ALNG), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Seventh Revised Sheet No. 200. The proposed effective date of this tariff sheet is December 1, 1997.

ALNG states that the purpose of this filing is to update and correct its Index of customers as of December 1, 1997.

ALNG states that copies of its filing have been served on all firm customers of Algonquin LNG and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29541 Filed 11–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4381–000]

Eastern Energy Marketing, Inc.; Notice of Filing

November 4, 1997.

Take notice that on October 15, 1997, Eastern Energy, marketing, Inc., 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 November 14, 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. 97–29540 Filed 11–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–008]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 4, 1997.

Take notice that on October 30, 1997, El Paso Natural Gas Company (El Paso) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheet to become effective November 1, 1997:

Ninth Revised Sheet No. 30

El Paso states that the above tariff sheet is being filed to implement negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29550 Filed 11–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–29–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 4, 1997.

Take notice that on October 31, 1997, Florida Gas Transmission Company (FGT), tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective December 1, 1997:

Eighth Revised Sheet No. 1
Sixth Revised Sheet No. 2
Original Sheet No. 8A.03
Second Revised Sheet No. 35
Fourth Revised Sheet No. 36
Fourth Revised Sheet No. 37
Second Revised Sheet No. 38
Fourth Revised Sheet No. 39
Fourth Revised Sheet No. 40
Original Sheet No. 40A
Seventh Revised Sheet No. 120
Fourth Revised Sheet No. 121
Fifth Revised Sheet No. 143
Fourth Revised Sheet No. 144
Third Revised Sheet No. 191
Second Revised Sheet No. 481
Second Revised Sheet No. 482
Third Revised Sheet No. 483
Second Revised Sheet No. 484
Third Revised Sheet No. 485
Fourth Revised Sheet No. 486

FGT states that the instant filing is made in accordance with Section 154.202 of the Commission's Regulations. FGT is proposing to offer a new interruptible Park 'N Ride (PNR) service under Rate Schedule PNR. FGT states that PNR service will enable it to

accommodate the needs of its customers in a manner not currently available under its existing Tariff by providing shippers greater flexibility in managing their daily gas supply needs through the use of FGT's pipeline system.

FGT states that PNR service will allow customers to park gas on FGT's system or ''ride'' (borrow) gas from FGT at agreed-upon points. FGT proposes that PNR service shall be for a minimum of one day and shall have a maximum term as mutually agreed to by FGT and the shipper.

FGT states that PNR service is an optional, interruptible service. FGT states that the provision of PNR service shall depend upon FGT having the necessary operational flexibility to park and/or ride gas quantities. FGT states that PNR service shall have the lowest priority in the scheduling process and PNR service will be curtailed, if necessary, prior to the curtailment of any other service. Thus, FGT asserts, PNR service will not adversely impact the provision of other services on FGT's system.

FGT proposes to require shippers to remove parked quantities or return borrowed quantities of gas on a minimum of one day's notice if dictated by operating conditions on its system. In the event of a one-day notice period, FGT states that it will provide affected parties with actual notice by both telephone and electronic means. For notice periods extending beyond one day, FGT states that it shall provide notice to affected parties either by telephone, facsimile, or electronic means.

FGT states that the proposed rates for PNR service under Rate Schedule PNR are set forth on Original Sheet No. 8A.03. FGT states that the maximum rate which FGT proposes to charge for PNR service is equal to its effective maximum rate for interruptible transportation service under Rate Schedule ITS–1. FGT states that the minimum rate FGT proposes to charge for PNR service is calculated using the estimated incremental costs for rendering this service.

FGT states that it anticipates offering discounts appropriate to market conditions.

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 in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29558 Filed 11–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–55–000]

Gas Transport, Inc.; Notice of Request Under Blanket Authorization

November 4, 1997.

Take notice that on October 30, 1997, Gas Transport, Inc. (GTI), Post Office Box 430, Lancaster, OH 43130–0430, filed in Docket No. CP98–55–000, a request pursuant to Section 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate three new delivery points under GTI's blanket certificate issued in Docket No. CP86–291–000, pursuant to 18 CFR Part 157, Subpart F of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

GTI proposes to construct and operate three new connections for the delivery of gas to Hope Gas, Inc. (Hope), a local distribution company and an existing customer. It is stated that these three connections are all located in Wood County, West Virginia and designated as Hope Station #5, GTI Line #1, #326+80; Hope Station #6, GTI Line #1, #146+04; and Hope Station #7, GTI Line #1, #41+30. GTI further states that the proposed facilities would deliver a maximum of 3,000 Dth of natural gas per year for each delivery point. GTI states that estimated cost of construction of these three delivery points is $2,500 each and that Hope would finance the measurement and regulation stations. GTI further states that these delivery points would provide service to Hope pursuant to GTI's IT Rate Schedule.

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) motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29536 Filed 11–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–8–006]

Granite State Gas Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 4, 1997.

Take notice that on October 29, 1997, Granite State Gas Transmission, Inc. (Granite State), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective November 1, 1997:

Ninth Revised Sheet No. 21
Tenth Revised Sheet No. 22
Ninth Revised Sheet No. 23

According to Granite State the above revised tariff sheets state changes in its Base Tariff rates for firm and interruptible transportation services agreed to in an uncontested settlement in Docket No. RP97–8–000 approved by the Commission in a Letter Order issued October 20, 1997.

Granite State further states that copies of its filing have been served on its firm and interruptible customers, on the regulatory agencies of the states of Maine, Massachusetts and New Hampshire and the intervenors in the proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29547 Filed 11–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–161–011, and RP97–329–006]

Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

November 4, 1997.

Take notice that on October 30, 1997, Iroquois Gas Transmission System, L.P. (Iroquois), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 57A, with an effective date of December 1, 1997.

Iroquois states that the filing is being filed in compliance with the Commission's October 17, 1997, Letter Order in the above referenced docket.

In its Order, the Commission directed Iroquois to file, within 15 days of its order, a revised sheet No. 57A to be effective December 1, 1997, which reflects a single time line nomination requirement consistent with that on First Revised Sheet No. 57A and incorporates the changes required by the May 19 and June 25 orders. Iroquois states that it is submitting Third Revised Sheet No. 57A to comply with the Commission's previous orders in this docket.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29548 Filed 11–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–1–011 and RP97–201–008]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

November 4, 1997.

Take notice that on October 30, 1997, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to be effective August 1, 1997.

National Fuel states that the purpose of this filing is to comply with the Commission's Order issued October 21, 1997, in Docket Nos. RP97–1–008, RP97–201–006 and RP97–1–007.

National Fuel states that it is serving copies of this filing with its firm customers, interested state commissions and each party designated on the official service list compiled by the Secretary.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29543 Filed 11–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–1–012]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

November 4, 1997.

Take notice that on October 31, 1997, National Fuel Gas Supply Corporation (National Fuel) tendered for filing a corrected tariff sheet as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, to be effective November 1, 1997.

National Fuel states that it is filing a corrected tariff sheet reserving Sheet Nos. 478 through 674, in compliance with the Letter Order issued by the Federal Energy Regulatory Commission October 27, 1997, in Docket No. RP97–1–010.

National Fuel further states that it is serving copies of this filing upon its firm customers and interested state commissions.

Any person to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests 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. 97–29544 Filed 11–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–3–16–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

November 4, 1997.

Take notice that on October 31, 1997, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Fourth Revised Revised Sheet No. 9, with a proposed effective date of November 1, 1997.

National states that pursuant to Article II, Section 2, of the approved settlement at Docket Nos. RP94–367–000, et al., National is required to recalculate the maximum Interruptible Gathering (IG) rate monthly and to charge that rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The recalculation produced an IG rate of 11 cents per dth.

National further states that, as required by Article II, Section 4, National is filing a revised tariff sheet within 30 days of the effective date for the revised IG rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal

Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed pursuant to Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29563 Filed 11–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–22–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

November 4, 1997.

Take notice that on October 30, 1997, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume NO. 1, proposed tariff sheets to be effective December 1, 1997.

Natural states that the purpose of this filing is to implement changes in rates under Natural's gas supply realignment (GSR) cost recovery mechanism consistent with the Commission's order issued September 26, 1997 in Docket No. RP97–469–000 and the October 27, 1997, compliance filing in Docket No. RP97–469–002.

Natural requested any waivers which may be required to permit the tendered tariff sheets to become effective December 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. 97–29552 Filed 11–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–26–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

November 4, 1997.

Take notice that on October 31, 1997, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Ninth Revised Sheet No. 22, to be effective December 1, 1997.

Natual states that the filing is submitted pursuant to Section 21 of the General Terms and Conditions of Natural's FERC Gas Tariff, Sixth Revised Volume No. 1 (Section 21), as the ninth semiannual limited rate filing under Section 4 of the Natural Gas Act and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) promulgated thereunder. The rate adjustments filed for are designed to recover Account No. 858 stranded costs incurred by Natural under contracts for transportation capacity on other pipelines. Costs for any Account No. 858 contracts specifically excluded under Section 21 are not reflected in this filing.

Natural requested specific waivers of Section 21 and the Commission's Regulations, including the requirements of Section 154.63, to the extent necessary to permit the tariff sheet to become effective December 1, 1997.

Natural states that copies of the filing are being 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. 97–29555 Filed 11–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–32–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes In FERC Gas Tariff

November 4, 1997.

Take notice that on October 31, 1997, Natural Gas Pipeline Company of America (Natural), tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, proposed tariff sheets to be effective December 1, 1997.

Natural states that the purpose of this filing is to provide for two pooling points in the Texok Zone. Two pooling points in the Texok Zone will improve Natural's service to its customers by making it easier for Natural to timely and accurately schedule and confirm volumes that are nominated to be transported to and from the Texok Zone pooling points.

Natural requested any waivers which may be required to permit the tendered tariff sheets to become effective December 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, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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. 97–29561 Filed 11–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–218–000]

Niagara Mohawk Power Corporation; Notice of Filing

November 4, 1997.

Take notice that on December 30, 1996, Niagara Mohawk Power Corporation tendered for filing its revised tariff sheets constituting the portions of Niagara Mohawk's Wholesale Power Sales Tariff, Electric Rate Schedule, Original Volume No. 2, affected by Order No. 888's requirement that certain coordination sales contracts be unbundled.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 14, 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. 97–29542 Filed 11–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–28–000]

Northern Natural Gas Company; Notice of Proposed Changes In FERC Tariff

November 4, 1997.

Take notice that on October 31, 1997, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, Third Revised Sheet No. 226, to become effective on December 1, 1997.

Northern's tariff currently provides that Northern shall have the right to restrict the hourly takes of gas by the Shipper to 6.3% of their firm entitlement. Northern is herein proposing to modify the above provision by prefacing it with the phrase, ''Unless Northern and Shipper mutually agree otherwise.'' This modification will allow Northern and a shipper the opportunity to have facilities designed or realign firm entitlement from one delivery point to another in a more cost efficient manner.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Sections 385.214 of and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the 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 inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29557 Filed 11–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–4–010]

Panhandle Eastern Pipe Line Company; Notice of Compliance Filing

November 4, 1997.

Take notice that on October 31, 1997, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to be effective November 1, 1997:

Sub Third Revised Sheet No. 339

Panhandle asserts that the purpose of this filing is to comply with the Commission's Letter Order issued on October 17, 1997 in Docket No. RP97–4–009 to reflect the proper version number designation for the standards promulgated by the Gas Industry Standards Board which are incorporated by reference in Panhandle's tariff.

Panhandle states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and 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. 97–29545 Filed 11–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–27–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

November 4, 1997.

Take notice that on October 31, 1997, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective December 1, 1997.

Panhandle states that the purpose of this filing is to reinstate the Carryover GSR Settlement Interruptible Rate Component applicable to interruptible transportation service under Rate Schedules IT and EIT. Panhandle has not fully recovered the Interruptible GSR Settlement amount as of July 31, 1997 and accordingly pursuant to Article I, Section 3(f)(ii) of the May 22, 1995, Settlement is proposing to implement a 8.44¢ Carryover GSR Settlement Interruptible Rate Component to be in effect during the twelve month GSR Settlement Carryover Period commencing December 1, 1997.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission,888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protesants 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. 97–29556 Filed 11–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95–19–015]

PECO Energy Power Team; Notice of Filing

November 4, 1997.

Take notice that on October 7, 1997, PECO Energy Power Team tendered for filing a membership signature page for membership in Northwest Regional Transmission Association.

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 November 14, 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. 97–29537 Filed 11–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–24–000]

Questar Pipeline Company; Notice of Tariff Filing

November 4, 1997.

Take notice that on October 30, 1997, Questar Pipeline Company (Questar) tendered for filing of its FERC Gas Tariff, First Revised Volume No. 1, Fifth Revised Sheet No. 71 and Original Sheet No. 71A, to be effective November 1, 1997. The proposed tariff sheets revise Section 9 of Part 1 of the General Terms and Conditions of Questar's tariff.

Questar states that the technical implementation and programming of the business processes applicable to nominations tendered via Electronic Data Interchange (EDI) required Questar to choose one of three GISB model types for nominations—pathed, non-pathed or pathed non-threaded. Questar states further that the pathed non-threaded model appeared to be most closely related to the manner in which its nomination process has been administered in the past. Questar avers that it recently learned form its third-part vendor that implementation of the pathed non-threaded nomination procedure and development of the associated priority-of-service algorithm requires that Questar's priority of service identify more discreet levels of service than the current tariff defines.

Accordingly, Questar is seeking Commission approval to modify Section 9.1, Priority of Service, to more discreetly define and clarify priority-of-service levels that are consistent with the pathed non-threaded model nomination process.

Questar explains that it requests Commission waiver of Section 154.207 of its regulations so that the proposed tariff sheets may become effective November 1, 1997. Questar's newly developed gas-management system, which includes implementation of the pathed non-threaded nomination procedure, as well as the package ID requirements associated with order No. 587–C, will be activated on November 1, 1997. Questar explains further that, although identification of more discreet levels of service was required by development of the priority-of-service algorithm associated with the pathed non-threaded nomination procedure, Questar did not learn of this requirement in sufficient time to provide a filing to the Commission 30 days prior to the proposed effective date. While Questar's customers have been made aware of the new priority-of-service levels and are anticipating implementation of this procedure on November 1, Questar believes it vital that the effective date of tariff sheets implementing the discreet levels of priority of service comport with the implementation date of the administration of that procedure.

Accordingly, Questar has requested that the Commission accept the tendered tariff sheets be to be effective November 1, 1997, as proposed.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Wyoming Public Service Commission.

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 Section 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29553 Filed 11–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4352–000]

SEMCO Energy Service Inc.; Notice of Filing

November 4, 1997.

Take notice that on October 8, 1997, SEMCO Energy Services, Inc., 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 November 14, 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. 97–29538 Filed 11–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4680–000]

Starghill Energy Corp.; Notice of Filing

November 4, 1997.

Take notice that on October 14, 1997, Starghill Energy Corp., 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, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests must be filed on or before November 14, 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. 97–29539 Filed 11–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–30–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 4, 1997.

Take notice that on October 31, 1997, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, revised tariff sheets listed on Appendix A to the filing to become effective December 1, 1997.

Texas Eastern states that the revised tariff sheets are being filed (i) pursuant to Section 15.6, Applicable Shrinkage Adjustment (ASA), contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1, and (ii) pursuant to Texas Eastern's Docket No. RP85–177–119, *et al.*, Stipulation and Agreement (Settlement) filed January 31, 1994, and approved by Commission order issued May 12, 1994.

Texas Eastern states that it is filing concurrently its Annual PCB-Related Cost Filing to reflect the PCB-Related Cost rate components to be effective for the twelve month period December 1, 1997, through November 30, 1998 (PCB Year 8). Texas Eastern states that the combined impact on Texas Eastern's rates at December 1, 1997, of this filing in combination with the PCB Year 8 Filing for typical long haul service under Rate Schedule FT–1 from Access Area Zone East Louisiana to Market Zone 3 (ELA–M3) equates to an overall decrease of 0.15 cents as follows:

	100% LF Impact ($/dth)
PCB Year 7 Filing	0.0015
ASA & Global Settlement:	
ASA Surcharge	(0.0117)
Spot Fuel Component	0.0090
Account 858 Costs	(0.0003)
Grand total	(0.0015)

Texas Eastern states that the changes proposed to become effective beginning December 1, 1997 consist of (1) ASA Percentages designed to retain in-kind the projected quantities of gas required for the operation of Texas Eastern's system, less quantities projected to be purchased from Appendix C contracts under the Settlement, in providing service to its customers, (2) the ASA Surcharge designed to recover the net monetary value recorded in the Applicable Shrinkage Deferred Account as of August 31, 1997, (3) Spot Fuel Components designed to recover the Spot Costs, as defined in the Settlement, projected to be incurred over the twelve month period beginning December 1, 1997, and the balance recorded in the Spot Fuel Deferred Account as of August 31, 1997, (4) A Fuel Reservation Charge Adjustment designed to recover the excess (limited to a maximum rate specified by the Settlement) of the August 31, 1997, balance in the Non-Spot Fuel Deferred Account over the threshold amount of $20 million specified in Appendix E of the Settlement, and (5) an Account No. 858 Costs rate component designed to recover the August 31, 1997, balance recorded in the Account No. 858 Costs Deferred Account which represents the amount necessary to true up the actual costs incurred subsequent to the Effective Date of the Settlement with actual cost recoveries subsequent to the Effective Date of the Settlement, plus applicable carrying costs. Texas Eastern states that this filing also constitutes Texas Eastern's report of the annual reconciliation of the interruptible revenues under Rate Schedules IT–1, PTI and ISS–1 as well as for Rate Schedule LLIT and for Rate Schedule VKIT.

Texas Eastern states that the ASA Percentages proposed herein are decreased compared to those percentages in Texas Eastern's currently effective tariff. Texas Eastern has requested waiver of its tariff or any other waivers the Commission may deem necessary in order to permit Texas Eastern to levelize its ASA percentages for the eight month period covering the Spring, Summer and Fall seasons in the interest of rate stability based upon several requests from its customers.

Texas Eastern states that copies of its filing have been served on all Firm Customers of Texas Eastern and Interested State Commissions, as well as all current interruptible shippers and all parties to the Settlement in Docket No. RP85–177–119, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal 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. 97–29559 Filed 11–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–344–000]

Texas Gas Transmission Corporation; Notice of Informal Settlement Conference

November 4, 1997.

Take notice that an informal settlement conference will be convened in this proceeding on Tuesday, November 18, 1997, at 1:30 p.m. and Wednesday, November 19, 1997, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purposes of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's Regulations (18 CFR 385.214).

For additional information, please contact Kathleen M. Dias at (202) 208–0524 or Michael D. Cotleur at (202) 208–1076.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29551 Filed 11–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–71–000 and RP97–312–000]

Transcontinential Gas Pipe Line Corporation; Notice of Informal Settlement Conference

November 5, 1997.

Take notice that an informal settlement conference will be convened in this proceeding on Monday, November 10, 1997, at 1:00 p.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact David R. Cain at (202) 208–0917, Donald A. Heydt at (202) 208–0740 or Paul B. Mohler at (202) 208–1240.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29608 Filed 11–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–6–000]

Trunkline Gas Company; Notice of Compliance Filing

November 4, 1997.

Take notice that on October 31, 1997, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to be effective November 1, 1997:

Sub Second Revised Sheet No. 242A

Trunkline asserts that the purpose of this filing is to comply with the Commission's Letter Order issued on October 24, 1997 in Docket No. RP97–6–009 to reflect the proper version number designation for the standards promulgated by the Gas Industry Standards Board which are incorporated by reference in Trunkline's tariff.

Trunkline states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed 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. 97–29546 Filed 11–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–3–30–000]

Trunkline Gas Company; Notice of Filing

November 4, 1997.

Take notice that on October 31, 1997, Trunkline Gas Company (Trunkline) tendered for filing its Annual Interruptible Storage Revenue Credit Surcharge Adjustment in accordance with Section 24 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1.

Trunkline states that the purpose of this filing is to comply with Section 24 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1, which requires that at least 30 days prior to the effective date of adjustment, Trunkline shall make a filing with the Commission to reflect the adjustment, if any, required to Trunkline's Base Transportation Rates to reflect the result of the Interruptible Storage Revenue Credit Surcharge Adjustment. Trunkline further states that due to the minimal interruptible storage activity, no adjustment is required to Base Transportation Rates.

Trunkline states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are

available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29564 Filed 11–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–25–000]

West Texas Gas, Inc.; Notice of Proposed Changes In FERC Gas Tariff

November 4, 1997.

Take notice that on October 31, 1997, West Texas Gas, Inc. (WTG), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be effective December 1, 1997:

First Revised Sheet No. 2
Twenty-Sixth Revised Sheet No. 4
First Revised Sheet No. 5
First Revised Sheet No. 7
First Revised Sheet No. 9
Second Revised Sheet No. 23
Second Revised Sheet No. 24
Second Revised Sheet No. 25
Second Revised Sheet No. 26

WTG states that the proposed general rate case changes would increase annual jurisdictional revenues by $187,169 (exclusive of gas costs). As part of the filing, WTG is also proposing (1) to replace its Purchased Gas Adjustment (PGA) mechanism with a pricing mechanism based on a published spot market index; (2) to implement procedures to eliminate any balance in its unrecovered purchased gas cost account once the PGA is eliminated; (3) to recover from its jurisdictional customers the Commission's Annual Charge Adjustment assessed pursuant to Part 382 of the regulations; (4) to revise its tariff to permit it to negotiate rates with its customers; and (5) to correct a typographical error on the Preliminary Statement in its tariff.

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, 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 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 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. 97–29554 Filed 11–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–163–006]

WestGas InterState, Inc., Notice of Compliance Filing

November 4, 1997.

Take notice that on October 31, 1997, WestGas InterState, Inc. (WGI), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Second Substitute First Revised Sheet No. 49B, with a proposed effective date June 1, 1997.

WGI states that this tariff sheet is being filed to comply with the Commission's Letter Order issued October 16, 1997, in Docket No. RP97–163–003. In that Letter Order, the Director had accepted WGI's tariff sheets filed June 13, 1997, to comply with the Commission's May 29, 1997, Order on Compliance Filing and Requests For Waiver, subject to WGI refiling Sheet No. 49B with modifications to incorporate verbatim GISB Standard 3.3.15.

WGI states that copies of this filing have been served on WGI's jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining 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. 97–29549 Filed 11–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–31–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

November 4, 1997.

Take notice that on October 31, 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 revised tariff sheets to become effective December 1, 1997:

First Revised Sheet No. 281
Original Sheet No. 281A
First Revised Sheet No. 282
Second Revised Sheet No. 283
Original Sheet No. 283A
Original Sheet No. 283B
Original Sheet No. 283C

Williston Basin states that the revised tariff sheets reflect a revision to the unauthorized gas section of the General Terms and Conditions of its FERC Gas Tariff.

Williston Basin also states that a shipper has been taking deliveries of unauthorized gas from its system, and previously, other shippers have taken deliveries of unauthorized gas to a lesser degree. Williston Basin has determined that no provision in its FERC Gas Tariff adequately addresses this situation. Therefore, Williston Basin is proposing procedures for the resolution of unauthorized gas deliveries, all as more fully detailed in the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29560 Filed 11–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–193–000, et al.]

The Detroit Edison Company, et al.; Electric Rate and Corporate Regulation Filings

November 4, 1997.

Take notice that the following filings have been made with the Commission:

1. The Detroit Edison Company

[Docket No. ER98–193–000]

Take notice that on October 14, 1997, The Detroit Edison Company (Detroit Edison) filed a revised Service Agreement in the above-referenced docket. Detroit Edison requests that the revised Service Agreement be made effective as of November 1, 1997.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Allegheny Power Service Corp., et al.

[Docket No. ER98–191–000]

Take notice that on October 14, 1997, Allegheny Power Service Corporation, Cleveland Electric Illuminating Company, Toledo Edison Company, Ohio Edison Company, Pennsylvania Power Company, Southern Company Services, Inc., Virginia Electric & Power Company, and Ontario Hydro tendered for filing an amendment to an agreement entitled the GAPP Experiment Participation Agreement under which they propose updated operating procedures.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. PP&L, Inc., formerly known as Pennsylvania Power & Light Company

[Docket No. ER98–192–000]

Take notice that on October 15, 1997, PP&L, Inc., formerly known as Pennsylvania Power & Light Company, filed a Notice of Change in Name to notify the Federal Energy Regulatory Commission that the corporate name of Pennsylvania Power & Light Company has been changed to PP&L, Inc.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. The Detroit Edison Company

[Docket No. ER98–194–000]

Take notice that on October 14, 1997, The Detroit Edison Company (Detroit Edison) filed a revised Service Agreement in the above-referenced docket. Detroit Edison requests that the revised Service Agreement be made effective as of November 1, 1997.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Co.

[Docket No. ER98–195–000]

Take notice that on October 16, 1997, Central Power and Light Company (CPL), West Texas Utilities Company (WTU), Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO) (collectively, the CSW Operating Companies) submitted for filing service agreements under which the CSW Operating Companies will provide transmission service to CPL, Delhi Energy Services (Delhi), Electric Clearinghouse, Inc. (ECI), Entergy Power Marketing Corp. (Entergy), Western Resources Generation Services (Western), Williams Energy Services Company (Williams), Constellation Power Source (Constellation), Virginia Electric and Power Company (VEPCO), and Western Farmers Electric Cooperative (WFEC) in accordance with the CSW Operating Companies' open access transmission service tariff. The CSW Operating Companies also filed notices of cancellation of those service agreements.

The CSW Operating Companies state that a copy of this filing has been served on CPL, Delhi, ECI, Entergy, Western, Williams, Constellation, VEPCO, and WFEC.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Orange and Rockland Utilities, Inc.

[Docket No. ER98–196–000]

Take notice that on October 17, 1997, Orange and Rockland Utilities, Inc.(Orange and Rockland), filed a Service Agreement between Orange and Rockland and Enron Power Marketing L.P., (Customer). This Service Agreement specifies that Customer has agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of October 4, 1997, for the Service Agreement. Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Northeast Utilities Service Company

[Docket No. ER98–197–000]

Take notice that on October 17, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with the Commonwealth Edison Company under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the Commonwealth Edison Company.

NUSCO requests that the Service Agreement become effective September 5, 1997.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Orange and Rockland Utilities, Inc.

[Docket No. ER98–198–000]

Take notice that on October 17, 1997, Orange and Rockland Utilities, Inc. (Orange and Rockland), filed a Service Agreement between Orange and Rockland and New Energy Ventures, L.L.C. (Customer). This Service Agreement specifies that Customer has agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of September 24, 1997, for the Service Agreement. Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. PP&L, Inc.

[Docket No. ER98–199–000]

Take Notice that on October 17, 1997, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company)(PP&L), filed a Service Agreement dated October 13, 1997, with Delmarva Power & Light Company (Delmarva) under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds Delmarva as an eligible customer under the Tariff.

PP&L requests an effective date of October 17, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Delmarva and to the Pennsylvania Public Utility Commission.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Commonwealth Edison Company

[Docket No. ER98–200–000]

Take notice that on October 16, 1997, Commonwealth Edison Company (ComEd) submitted for filing Firm Service Agreements with Wisconsin Power and Light Company (WPL), and Wisconsin Electric Power Company (WEPCO), and Non-Firm Service Agreements with Kansas City Power and Light Company (KCPL), and The Dayton Power and Light Company (DPL), under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests various effective dates for the service agreements, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon WPL, WEPCO, KCPL, DPL, and the Illinois Commerce Commission.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. The Detroit Edison Company

[Docket No. ER98–201–000]

Take notice that on October 16, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing Service Agreements for wholesale power sales transactions (the Service Agreements) under Detroit Edison's Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff), between Detroit Edison and the following Customers:

Customer	Date of service agreement	Date of first transaction
CMS Marketing Services and Trading Co.	6/26/97	6/24/97
Commonwealth Edison Co	8/15/97	6/24/97
Electric Clearinghouse, Inc	7/25/97	7/15/97
Enron Power Marketing, Inc	8/22/97	6/26/97
Federal Energy Sales, Inc	1/13/97	(1)
Koch Energy Trading, Inc	2/10/97	6/24/97
LG&E Power Marketing, Inc	1/21/97	7/25/97
Public Service Electric & Gas Co	8/16/97	7/28/97

[1] None to date.

Detroit Edison requests that all the Service Agreements except the Service Agreement with Federal Energy Sales, Inc., be made effective as of December 15, 1997. Detroit Edison requests that the Service Agreement with Federal Energy Sales, Inc., be made effective as of October 1, 1997.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. The Detroit Edison Company

[Docket No. ER98–202–000]

Take notice that on October 16, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing Service Agreements for wholesale power sales transactions (the Service Agreements) under Detroit Edison's Wholesale Power Sales Tariff (WPS–1), FERC Electric Tariff No. 4 (the WPS–1 Tariff), between Detroit Edison and the following Customers:

Customer	Date of service agreement	Date of first transaction
CMS Marketing Services and Trading Co.	6/26/97	6/24/97
Commonwealth Edison Company	8/15/97	6/24/97
Delhi Energy Services, Inc	8/7/97	7/15/97
Federal Energy Sales, Inc	1/13/97	(1)
Koch Energy Trading, Inc	2/10/97	6/24/97

[1] None to date.

Detroit Edison requests that all the Service Agreements except the Service Agreement with Federal Energy Sales, Inc., be made effective as of December 15, 1997. Detroit Edison requests that the Service Agreement with Federal Energy Sales, Inc., be made effective as of October 1, 1997.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. PP&L, Inc.

[Docket No. ER98–203–000]

Take notice that on October 17, 1997, PP&L, Inc., (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated September 30, 1997, with Atlantic City Electric Company (ACE) under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds ACE as an eligible customer under the Tariff.

PP&L requests an effective date of October 17, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to ACE and to the Pennsylvania Public Utility Commission.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Portland General Electric Company

[Docket No. ER98–204–000]

Take notice that on October 17, 1997, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), executed Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service with Cook Inlet Energy Supply.

Pursuant to 18 CFR Section 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the Service Agreements to become effective October 15, 1997.

A copy of this filing was caused to be served upon Cook Inlet Energy Supply as noted in the filing letter.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. PacifiCorp

[Docket No. ER98–206–000]

Take notice that on October 17, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Service Agreements with the City of Port Angeles Light Department, Clallam County Public Utility District No. 1, Lewis County Public Utility District No. 1, Mason County Public Utility District No. 3, Pacific County Public Utility District No. 2 and Peninsula Light Company under PacifiCorp's FERC Electric Tariff, Original Volume No. 12.

Copies of this filing were supplied to the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Sierra Pacific Power Company

[Docket No. ER98–207–000]

Take notice that on October 17, 1997, Sierra Pacific Power Company (Sierra), tendered for filing Service Agreements (Service Agreements) with the following entities for Point-to-Point Transmission Service under Sierra's Open Access Transmission Tariff (Tariff):

For Non Firm Point-to-Point Transmission Service

1. Delhi Energy Services, Inc.
2. NP Energy Inc.

For Short-Term Firm Point-to-Point Transmission Service

3. Delhi Energy Services, Inc.

Sierra filed the executed Service Agreements with the Commission in compliance with Sections 13.4 and 14.4 of the Tariff and applicable Commission Regulations. Sierra also submitted revised Sheet Nos. 148 and 148A (Attachment E) to the Tariff, which is an updated list of all current subscribers. Sierra requests waiver of the Commission's notice requirements to permit and effective date of October 21, 1997, for Attachment E, and to allow the Service Agreements to become effective according to their terms.

Copies of this filing were served upon the Public Service Commission of Nevada, the Public Utilities Commission of California and all interested parties.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Louisville Gas and Electric Company

[Docket No. ER98–208–000]

Take notice that on October 17, 1997, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Electric Clearinghouse, Inc., under Rate GSS.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Louisville Gas and Electric Company

[Docket No. ER98–209–000]

Take notice that on October 17, 1997, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Electric Clearinghouse, Inc., under Rate GSS.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Multitrade of Pittsylvania County, L.P.

[Docket No. ER98–212–000]

Take notice that on October 17, 1997, Multitrade of Pittsylvania County, L.P. (MPC) Rate Schedule FERC No. 1, tendered for filing a notice of termination of Supplement No. 2 to Rate Schedule FERC No. 1. MPC states that the notice of termination would be effective December 31, 1997. Copies of the filing have seen served upon Virginia Power, the customer under the rate schedule.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Union Electric Company

[Docket No. ER98–213–000]

Take notice that on October 20, 1997, Union Electric Company (UE), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between UE and Entergy Power Marketing Corp.,(EPM). UE asserts that the purpose of the Agreement is to permit UE to provide transmission service to EPM pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Union Electric Company

[Docket No. ER98–214–000]

Take notice that on October 20, 1997, Union Electric Company (UE), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service between UE and Entergy Power Marketing Corp. UE asserts that the purpose of the Agreement is to permit UE to provide transmission service to EPM pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Union Electric Company

[Docket No. ER98–215–000]

Take notice that on October 20, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Market Based Rate Power Sales between UE and Carolina Power & Light Company, Coral Power L.L.C. and Western Resources, Inc. UE asserts that the purpose of the Agreements is to permit UE to make sales of capacity and energy at market based rates to the parties pursuant to UE's Market Based Rate Power Sales Tariff filed in Docket No. ER97–3664–000.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. PP&L, Inc.

[Docket No. ER98–216–000]

Take notice that on October 20, 1997, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company)(PP&L), filed a Service Agreement dated October 13, 1997, with North American Energy Conservation, Inc. (NAEC), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds NAEC as an eligible customer under the Tariff.

PP&L requests an effective date of October 20, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to NAEC and to the Pennsylvania Public Utility Commission.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Duke Energy Corporation

[Docket No. ER98–217–000]

Take notice that on October 20, 1997, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a Transmission Service Agreement between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and PP&L, Inc., (the Transmission Customer), dated as of October 10, 1997. Duke requests that the TSA be made effective as a rate schedule as of October 10, 1997.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. IES Utilities Inc.

[Docket No. ER98–219–000]

Take notice that on October 15, 1997, IES Utilities Inc. tendered for filing revised transmission tariff sheet, Substitute Original Sheet No. 93.

The revised sheet was submitted to correct an error in the hourly delivery price included in paragraph 4. The price was originally filed as $.00625/MWH. The correct price should be $.00625/KWH.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Central Hudson Gas & Electric Corporation

[Docket No. ER98–221–000]

Take notice that on October 20, 1997, Central Hudson Gas & Electric Corporation, tendered for filing a summary of activity conducted by CHG&E under the FERC approved Market Based Rate Tariff. Central Hudson did not engage in any Electrical Power Sales at market based rates during this time period.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Ohio Valley Electric Corporation Indiana-Kentucky Electric Corporation

[Docket No. ER98–222–000]

Take notice that on October 21, 1997, Ohio Valley Electric Corporation

(including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation)(OVEC) tendered for filing a Service Agreement for Non-Firm Point-To-Point Transmission Service, dated October 1, 1997,(the Service Agreement) between Williams Energy Services Company (WESCO) and OVEC. OVEC proposes an effective date of October 1, 1997 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to WESCO.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Open Access Transmission Tariff.

A copy of this filing was served upon WESCO.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Company

[Docket No. ER98–223–000]

Take notice that on October 20, 1997, Central Power and Light Company (CPL), West Texas Utilities Company (WTU), Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO)(collectively, the CSW Operating Companies) submitted for filing a revised Schedule Request Form for ERCOT Ancillary Services for LG&E Power Marketing, Inc.

The CSW Operating Companies state that the filing has been served on LG&E and on the Public Utility Commission of Texas.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Central Vermont Public Service Corporation

[Docket No. ER98–225–000]

Take notice that on October 21, 1997, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Constellation Power Source under its FERC Electric Tariff No. 5. The tariff provides for the sale by Central Vermont of power, energy, and/or resold transmission capacity at or below Central Vermont's fully allocated costs.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on October 21, 1997.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. American Ref-Fuel Company of Essex County

[Docket No. ER98–226–000]

Take notice that on October 21, 1997, American Ref-Fuel Company of Essex County, tendered for filing a Notice of Cancellation stating that effective the 22nd of December, 1997 Rate Schedule FERC No. 2 (Jersey Central Power & Light Company) and Supplement No. 1 to Rate Schedule FERC No. 2 (Jersey Central Power & Light Company), effective no earlier than January 1, 1993, upon conditions precedent, are cancelled.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Duke Power Company

[Docket No. FA95–38–001]

Take notice that on October 24, 1997, Duke Power Company tendered for filing its refund report in the above-referenced docket.

Comment date: November 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29607 Filed 11–7–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice; Sunshine Act Meeting

November 5, 1997.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: 10:00 a.m., November 12, 1997.

PLACE: Room 2C 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro

685th Meeting—November 12, 1997; Regular Meeting (10:00 a.m.)

CAH–1.
- Docket No. HB52–92–3–005, York Haven Power Company

CAH–2.
- Project No. 2113–079, Wisconsin Valley Improvement Company
- Project No. 2339–016, Tomahawk Power and Pulp Company
- Project Nos. 2476–014 and 1999–024, Wisconsin Public Service Corporation
- Project No. 2212–014, Weyerhaeuser Company
- Project Nos. 2590–021 and 2256–023, Consolidated Water Power Company
- Project Nos. 2255–026, 2291–026 and 2292–024, Nekoosa Papers, Inc.

CAH–3.
- Project No. 2409–093, Calaveras County Water District

CAH–4.
- Project No. 11545–002, Allen Ross

CAH–5.
- Project No. 2523–007, N.E.W. Hydro, Inc.
- Project No. 11496–000, City of Oconto Falls, Wisconsin

Consent Agenda—Electric

CAE–1.

Docket No. ER97–4281–000, NRG Power Marketing, Inc.
CAE–2.
Docket No. ER97–4636–000, Nev, L.L.C.
Docket No. ER97–4652–000, Nev East, L.L.C.
Docket No. ER97–4653–000, Nev California, L.L.C.
Docket No. ER97–4654–000, Nev Midwest, L.L.C.
CAE–3.
Docket No. ER97–4745–000, Alpena Power Marketing, L.L.C.
CAE–4.
Docket No. ER97–4724–000, Southern California Edison Company, Montana Power Company, Nevada Power Company, Pacificorp, Pacific Gas and Electric Company and Sierra Pacific Power Company
CAE–5.
Docket No. ER97–4637–000, Florida Power & Light Company
CAE–6.
Docket No. ER97–4466–000, Midamerican Energy Company
CAE–7.
Docket No. ER97–4691–000, Montaup Electric Company
CAE–8.
Docket No. ER97–851–001, H.Q. Energy Services (U.S.) Inc.
CAE–9.
Docket Nos. NJ96–1–002 and 003, South Carolina Public Service Authority
CAE–10.
Docket No. ER96–894–000, Baltimore Gas and Electric Company
CAE–11.
Docket Nos. ER95–1586–000, 001, EL96–17–000 OA96–184–000, Citizens Utilities Company
CAE–12.
Docket No. ER97–905–001, Pacific Gas and Electric Company
CAE–13.
Omitted
CAE–14.
Docket No. ER96–1121–002, Duke/Louis Dreyfus Energy Services (New England) L.L.C.
CAE–15.
Docket No. AC91–110–001, Pacificorp
CAE–16.
Docket No. NJ97–9–000, Colorado Springs Utilities
CAE–17.
Docket No. NJ97–12–000, Southern Minnesota Municipal Power Agency

Consent Agenda—Gas and Oil

CAG–1.
Docket No. RP98–18–000, Iroquois Gas Transmission System, L.P.
CAG–2.
Docket No. RP96–348–003, Panhandle Eastern Pipe Line Company
CAG–3.
Omitted
CAG–4.
Docket No. RP97–373–002, Koch Gateway Pipeline Company
CAG–5.
Docket No. RP95–363–010, EL Paso Natural Gas Company
CAG–6.
Docket Nos. RP97–455–002 and 001, Overthrust Pipeline Company
CAG–7.
Docket No. RP97–445–001, Tennessee Gas Pipeline Company
CAG–8.
Docket No. RP96–200–012, Noram Gas Transmission Company
CAG–9.
Docket No. RP96–320–005, Koch Gateway Pipeline Company
CAG–10.
Docket No. RP97–185–001, Panhandle Eastern Pipe Line Company
CAG–11.
Docket No. RP97–186–001, Trunkline Gas Company
CAG–12.
Docket No. RP97–342–002, Kern River Gas Transmission Company
CAG–13.
Docket Nos. RP97–451–002 and 001, Questar Pipeline Company
CAG–14.
Docket No. RP96–389–002, Columbia Gulf Transmission Company
Docket No. RP96–390–002, Columbia Gas Transmission Corporation
CAG–15.
Omitted
CAG–16.
Docket No. RP97–148–001, Williston Basin Interstate Pipeline Company
CAG–17.
Omitted
CAG–18.
Docket No. RP97–81–002, K N Interstate Gas Transmission Company
CAG–19.
Docket No. RP96–312–004, Tennessee Gas Pipeline Company
CAG–20.
Docket No. RP97–82–000, GPM Gas Corporation V. EL Paso Natural Gas Company
CAG–21.
Docket Nos. CP93–252–003 and CP93–253–003, EL Paso Natural Gas Company
CAG–22.
Docket No. CP94–183–004, EL Paso Natural Gas Company
CAG–23.
Docket No. CP95–194–004, Northern Border Pipeline Company
CAG–24.
Docket No. CP96–201–001, Algonquin Gas Transmission Company
CAG–25.
Docket No. CP96–541–001, Southern Natural Gas Company
CAG–26.
Docket No. CP96–696–001, East Tennessee Natural Gas Company
CAG–27.
Omitted
CAG–28.
Docket No. CP97–294–001, Natural Gas Pipeline Company of America
CAG–29.
Docket No. CP97–738–001, Transok, Inc.
CAG–30.
Docket Nos. CP96–655–000 and 001, Destin Pipeline Company, L.L.C.
Docket Nos. CP97–291–000 and 001, Southern Natural Gas Company and Destin Pipeline Company, L.L.C.
CAG–31.
Omitted
CAG–32.
Docket No. CP97–675–000, U.S. General Services Administration
CAG–33.
Docket No. CP97–706–000, Williams Natural Gas Company
CAG–34.
Docket No. CP97–337–000, Koch Gateway Pipeline Company
CAG–35. Docket Nos. CP97–516–000 and 001, Transwestern Pipeline Company
CAG–36.
Omitted
CAG–37.
Docket No. CP97–672–000, Panhandle Eastern Pipe Line Company
Docket No. CP97–671–000, Panhandle Field Services Company
CAG–38.
Docket No. CP97–533–000, Chevron U.S.A. Inc., Venice Gathering Company, Venice Gathering System, L.L.C. and Venice Energy Services Company
Docket No. CP97–534–000, Chevron U.S.A. Inc., Venice Gathering Company, Venice Gathering System, L.L.C. and Venice Energy Services Company
Docket No. CP97–535–000, Chevron U.S.A. Inc., Venice Gathering Company, Venice Gathering System, L.L.C. and Venice Energy Services Company
CAG–39.
Docket No. IS98–2–000, Amoco Pipeline Company

Hydro Agenda

H–1.
Docket No. EL95–35–000, Kootenai Electric Cooperative, Inc., Clearwater Power Company, Idaho County Light & Power Cooperative Association, Inc. and Northern Lights, Inc. v. Public Utility District

No. 2 of Grant County, Washington, Order on Initial Decision.

Electric Agenda

E–1. Docket Nos. EC96–13–000, 001, ER96–1236–000, 001, ER96–2560–000 and 001, IES Utilities, Inc., Interstate Power Company, Wisconsin Power & Light Company, South Beloit Water, Gas & Electric Company, Heartland Energy Services and Industrial Energy Applications, Inc., Opinion and Order on Proposed Merger.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Docket No. RM96–1–007, Standards for Business Practices of Interstate Natural Gas Pipelines, Notice of Proposed Rulemaking and Policy Statement.

PR–2.
Docket Nos. RP97–391–000 and RP97–149–002, Gas Research Institute
Docket No. RM97–3–000, Research, Development and Demonstration Funding, Opinion and Order on Gas Research Institute's 1998 Budget and on Proposed Settlement.

II. Pipeline Certificate Matters

PC–1.
Reserved

Lois D. Cashell,

Secretary.

[FR Doc. 97–29732 Filed 11–6–97; 11:54 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5918–1]

Proposed Modification of a General NPDES Permit for Facilities Related to Oil and Gas Extraction on the North Slope of the Brooks Range, Alaska (Permit Number AKG–31–0000)

AGENCY: Environmental Protection Agency, (EPA).

ACTION: Notice of proposed modification of a general permit.

SUMMARY: This proposed modification of a general permit is intended to regulate activities related to the extraction of oil and gas on the North Slope of the Brooks Range in the state of Alaska. The proposed modified general permit includes a provision to extend the area of coverage to include facilities off-shore of the North Slope Borough of Alaska. The extension would cover sanitary and/or domestic wastewater discharges, construction dewatering, and hydrostatic test water. The proposed modified general permit also includes a new outfall designation for the discharge of hydrostatic test waters. In addition, several sections of the permit have been changed to provide clarification on issues that have been confusing during the administration of the permit to date. When issued, the proposed modified permit will establish effluent limitations, standards, prohibitions and other conditions on discharges from covered facilities. These conditions are based on existing national effluent guidelines, the state of Alaska's Water Quality Standards and material contained in the administrative record. A description of the basis for the conditions and requirements of the proposed modified general permit is given in the fact sheet.

DATES: Interested persons may submit comments on the draft general permit to EPA, Region 10 at the address below. Comments must be received in the operations Office by December 10, 1997.

ADDRESSES: Comments on the proposed modified general permit should be sent to Cindi Godsey, U.S. EPA, Region 10; Alaska Operations Office, 222 W. 7th Street #19, Anchorage, Alaska, 99513–7588.

FOR FURTHER INFORMATION CONTACT: Copies of the Draft Modified Permit and Fact Sheet are available upon request. Requests may be made to Jeanette Carriveau at (206) 553–1214 or to Cindi Godsey at (907) 271–6561. Requests may also be electronically mailed to:

CARRIVE-AU.JEANETTE@EPAMAIL.EPA.GOV or

GODSEY.CINDI@EPAMAIL.EPA.GOV

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12866 pursuant to Section 6 of that order.

Regulatory Flexibility Act:

After review of the facts presented in the notice printed above, I hereby certify pursuant to the provision of 5 U.S.C. 605(b) that this modified general NPDES permit will not have a significant impact on a substantial number of small entities. Moreover, the permit reduces a significant administrative burden on regulated sources.

Dated: October 30, 1997.

Philip G. Millam,

Director, Office of Water, Region 10

Fact Sheet

United States Environmental Protection Agency, Region 10, Anchorage Operations Office, Room 537, Federal Building 222 W. 7th Avenue, #19 Anchorage, Alaska 99513–7588, (907) 271–6561

Date: November 3, 1997.

General Permit No. AKG–31–0000.

PROPOSED MODIFICATION OF A GENERAL NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT TO DISCHARGE POLLUTANTS PURSUANT TO THE PROVISIONS OF THE CLEAN WATER ACT (the Act) FOR

Facilities Related To Oil and Gas Extraction

This fact sheet includes (a) the tentative determination of the Environmental Protection Agency (EPA) to modify the general permit, (b) information on public comment, public hearing and appeal procedures, (c) a description of the proposed discharges, and (d) a listing of tentative effluent limitations and other conditions.

Persons wishing to comment on the tentative modifications contained in the proposed modified general permit may do so by the expiration date of the Public Notice. All written comments should be submitted to EPA as described in the Public Comments section.

After the expiration date of the Public Notice, the Director, Office of Water, will make final determinations with respect to permit issuance. A General Permit follows rulemaking procedures so EPA's issuance and promulgation activities must be conducted in accordance with the Administrative Procedure Act (APA). The modifications in this general permit will become effective 30 days after publication of the final modified general permit in the **Federal Register** according to section 553(d) of the APA. Anyone wishing to appeal the modifications in this general permit must do so in court according to 40 CFR 124.71. Interested persons may challenge the modifications, within 120 days of issuance, in the Circuit Court of Appeals of the United States under section 509(b)(1) of the Act.

The proposed NPDES modified general permit and other related documents are on file and may be inspected at the above address any time between 8:30 a.m. and 4:00 p.m., Monday through Friday. Copies and other information may be requested by writing to EPA at the above address to

the attention of Cindi Godsey, or by calling (907) 269–6561.

Technical Information

1. Summary of Modifications

This proposed modified general permit includes a provision to extend the area of coverage to include facilities off-shore of the North Slope Borough of Alaska. This coverage area is already in effect for discharges from ice roads constructed of gravel pit water. The extension would cover sanitary and/or domestic wastewater discharges and construction dewatering.

The modified proposed permit also includes a new outfall designation for the discharge of hydrostatic test waters. Hydrostatic testing must be done when pipe segments are newly installed or replaced. Water is used to pressure test the pipe to verify mechanical strength and integrity. This water is discharged when the hydrostatic testing is completed. Waters from hydrostatic testing can contain small quantities of residual materials that are left in the pipe prior to testing such as dust and welding slag. Common treatment and control measures used for hydrostatic testing waters include one or more of the following methods: velocity reduction on splash pads; erosion control; rubble mound infiltration into dry stream channels; settling ponds; pumping to upland areas; and/or pumping to ice and snow. The location and volume of discharges depend upon circumstances or the particular project involved.

Several sections of the permit have been changed to provide clarification on issues that have been confusing during the administration of the permit to date. The monitoring requirements for settleable solids and turbidity have been changed to eliminate measurement of ''natural conditions'' if the effluent levels are low enough. Also, some changes have been made based on the additions, changes in regulation and redundancy of permit requirements. Renumbering of Permit Parts where necessary and the correction of typographical errors has been done without being noted.

The basis for these additions and changes follow.

2. Coastal Guidelines

The New Source Performance Standards in the Oil and Gas Extraction Point Source Category—Subpart D, Coastal Subcategory were promulgated December 16, 1996 (61 FR 66129). These include a provision for no discharge of garbage. This provision was not included in the original general permit, but is being added in this modification.

3. Receiving Waters

The receiving waters for the hydrostatic test water discharges are waters of the United States including tundra wetlands along the Chukchi and Beaufort Sea coasts, which are classified in 18 AAC 70 as Classes (1)(A), (B), and (C) for use in drinking, culinary, and food processing, agriculture, aquaculture, and industrial water supply; contact and secondary recreation; and growth and propagation of fish, shellfish, other aquatic life and wildlife. Since these waterbodies are protected for all uses, the most restrictive water quality standards will be applied in this modified general permit.

The receiving waters for the man camp sanitary and domestic discharges, hydrostatic test water discharges and construction dewatering in this permit modification include marine waters of the Chukchi or Beaufort Seas, which are classified in 18 AAC 70 as Classes (2)(A), (B), (C), and (D) for use in aquaculture, seafood processing, and industrial water supply; contact and secondary recreation; growth and propagation of fish, shellfish, other aquatic life, and wildlife; and harvesting for consumption of raw mollusks or other raw aquatic life.

4. Ocean Discharge Criteria Evaluation

EPA has finalized a document entitled ''Ocean Discharge Criteria Evaluation for Area of Coverage Under the Arctic NPDES General Permit for Oil and Gas Exploration'' (ODCE). Since this document covers the same area and the same or similar pollutants of concern as this modified draft general permit, EPA is proposing to use this document to satisfy the requirements of section 403 of the Act.

The additional discharges contained within this modified draft general permit that may be made to marine waters are sanitary and domestic wastewater from construction and operation camps, construction dewatering and hydrostatic test water discharges.

The ODCE directly addresses the discharge of sanitary and domestic wastewaters. Sanitary discharges in the modified draft general permit are required to meet the state's secondary treatment standards as well as the state's water quality standards for fecal coliform and chlorine. Domestic discharges are not measured analytically, but are not expected to produce substantial pollutant loading. Neither of these discharges are expected to have a detrimental effect on the marine environment.

The ODCE does not specifically address discharges from construction dewatering or hydrostatic test water discharges, but comparisons can be made. The water from both types of discharges must meet effluent limitations included in the permit. If followed, these limitations should assure a low level of sediment and turbidity, the primary pollutants of concern in the discharges. These discharges should be considered less of an environmental impact than the discharge of cement slurries which are addressed in the ODCE. No adverse impacts are expected from cement discharges so it is also expected that no adverse impacts will occur from construction dewatering or hydrostatic testing water discharges if the effluent limitations of the permit are met.

5. Statutory Basis For Permit Conditions

Sections 301(b), 304, 308, 401, 402 and 403 of the Act provide the basis for the permit conditions contained in the modified draft general permit. The general requirements of these sections fall into three categories, which are described below. A discussion of the basis for specific permit conditions follows in part 6.

A. Technology-Based Effluent Limitations

NPDES permits for industrial dischargers must incorporate effluent limitations which are based on the wastewater treatment technology that can be applied to each type of industry. The Act provides for the implementation of technology-based effluent limitations in two stages. First, dischargers were required to achieve effluent limitations which reflect the application of the best practicable control technology currently available (BPT). Second, dischargers were required to achieve effluent limitations which result from best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT). BCT effluent limitations apply only to conventional pollutants (pH, BOD, oil and grease, suspended solids, and fecal coliform). In no case may BCT or BAT be less stringent than BPT. Where EPA has not yet developed guidelines for a particular industry, permit conditions must be established using Best Professional Judgement (BPJ) procedures. BPT will be used in lieu of BCT and BAT where EPA has not established these technology-based limitations.

The effluent guidelines used in this modified general permit are part 435—

Oil and Gas Extraction Point Source Category, Subpart A—Off-shore Category. The New Source Performance Standard (NSPS) limitations are applied to the discharge of sanitary and/or domestic wastewaters [40 CFR 435.15].

B. State of Alaska Water Quality Standards and Limitations

Section 301(b)(1) of the Act requires the establishment of limitations in permits necessary to meet water quality standards by July 1, 1977. All discharges to state waters must comply with state and local coastal management plans as well as with state water quality standards, including the state's antidegradation policy. Discharges to state waters must also comply with limitations imposed by the state as part of its coastal management program consistency determinations, and of its certification of NPDES permits under section 401 of the Act.

The NPDES regulations at 40 CFR 122.44(d)(1) require that permits include water quality-based limits which ''Achieve water quality standards established under section 303 of the CWA, including State narrative criteria for water quality.''

C. Section 308 of the Clean Water Act

Under section 308 of the Act and 40 CFR 122.44(i), the Director must require a discharger to conduct monitoring to determine compliance with effluent limitations and to assist in the development of effluent limitations. EPA has included several monitoring requirements in this permit, as listed below.

6. Specific Permit Conditions

The determination of appropriate conditions for each discharge was accomplished through consideration of technology-based effluent limitations and inclusion of permit terms necessary to ensure compliance with state water quality standards. Discussions of the specific effluent limitations and monitoring requirements appear below.

A. Modular Camp Discharges—Off-shore

(1) Sanitary Wastewater Discharges

The sanitary wastes are made up of human body wastes from the toilets and urinals. The volume and concentration of these wastes vary widely with time, occupancy, and operational status.

(A) Technology-based limitations

(i) NSPS Requirements [40 CFR 435.15]

(a) Floating solids: For sanitary wastes the NSPS level of treatment prohibits floating solids for facilities continuously manned by 9 or fewer persons or intermittently manned by any number of persons.

(b) Chlorine: The requirement of maintaining residual chlorine levels as close as possible to, but no less than 1 mg/L for sanitary discharges for facilities staffed by 10 or more people.

(ii) Secondary Treatment

[18 AAC 72.040 and 18 AAC 72.990(64)]

(a) Biochemical Oxygen Demand (BOD_5): The regulations for secondary treatment require that BOD meet a 7 day average of 45 mg/L, a 30 day average of 30 mg/L and the arithmetic mean of the values for effluent samples collected in a 24-hour period does not exceed 60 mg/L.

(b) Total Suspended Solids (TSS): The regulations for secondary treatment require that SS meet a 7 day average of 45 mg/L, a 30 day average of 30 mg/L and the arithmetic mean of the values for effluent samples collected in a 24-hour period does not exceed 60 mg/L.

(c) pH: pH levels be maintained between 6 and 9 standard units.

(B) State Water Quality Standards [18 AAC 70]

The waterbodies considered to be potential receiving waters under this general permit are protected for all uses. The most protective criteria will be used in the permit. The marine and fresh water criteria result in identical permit limitations that are identical except for fecal coliform.

(i) Fecal Coliform: The most protective criteria for fecal coliform is for the Harvesting for Consumption of Raw Mollusks or Other Raw Aquatic Life. The water quality standards (WQS) state, ''Based on a 5-tube decimal dilution test, the fecal coliform median MPN may not exceed 14 FC/100 ml, and not more than 10% of the samples may exceed a fecal coliform median MPN of 43 FC/100 ml.''

(ii) Chlorine: The most protective criteria for chlorine is for aquaculture. The WQS state, ''May not exceed 2.0 µg/l for salmonid fish or 10.0 µg/l for other organisms.'' The term ''salmonid fish'' is defined in the permit as the family of fish, Salmonidae, which includes salmon, trout, grayling, whitefish, char, ciscoe and inconnu. The permit is structured so that there is some flexibility for those facilities discharging to waterbodies not designated for salmonid fish. The permittee is expected to consult Alaska Department of Fish and Game to determine whether the more restrictive limitation applies to their facility.

(iii) pH: The most protective limitations are for aquaculture and the growth and propagation of fish, shellfish, other aquatic life and wildlife. This level is 6.5 to 8.5 standard units.

A mixing zone for chlorine was incorporated into the original general permit through the § 401 Certification for tundra discharges of sanitary wastewater. It is expected that a similar provision for sanitary wastewater discharges to an off-shore ice environment will be included in the § 401 Certification of this general permit modification. If the State does not include the mixing zone, the water quality standards for chlorine will apply at the end of the pipe. The limitation on fecal coliform will assure that disinfection requirements are met without invoking the technology-based limitation requiring a minimum chlorine level.

(2) Domestic Wastewater Discharges

Domestic wastewater refers to materials discharged from sinks, showers, laundries, safety showers, eyewash stations and galleys.

(A) Technology-based Limitations

NSPS Requirements [40 CFR 435.15]

(i) No discharge of Floating solids.

(ii) No discharge of Foam.

(iii) No discharge of garbage.

(B) Water quality-based Limitations

Oil and Grease. Applicable state standards for oil and grease are limited to ''shall not cause a film, sheen, or discoloration on the surface or floor of the water body or adjoining shorelines.'' The potential source of oil and grease in this discharge would be excess cooking oils. While the ordinary cleaning of utensil and cooking appliances is acceptable, the discharge of excess cooking oil is not. EPA has determined that the state criteria can be met by requiring that no kitchen oils from food preparation be mixed with the wastewater being discharged.

The requirement of low phosphate detergent use shall be included in the BMP Plan required for this type of discharge. The inclusion of this BMP will avoid the need for a phosphate limit yet still control nutrient loading.

(3) Combined Discharges

If sanitary wastewaters are combined with domestic wastewaters, the entire flow is then considered to be sanitary wastewater and the limitations contained in the permit for sanitary wastes apply to the discharge.

B. Hydrostatic Test Water

(1) Technology-Based Limitations

There are no EPA effluent guidelines for discharges from hydrostatic testing. Therefore, the limitations in this permit are based on Best Professional Judgement (BPJ) which has been

established for this type of discharge in the permit for Alyeska Pipeline Service, AK–005056–3. For this discharge, EPA is required to establish limitations that can be achieved through the use of Best Conventional Pollutant Control Technology (BCT).

Sediment. The constituents of the discharge generated by hydrostatic testing are primarily small quantities of inorganic residual materials that are left in the pipe prior to testing, such as dust and welding slag. It has been determined that appropriate technology for these discharges are physical treatment methods, such as filtration, overland treatment, and/or settling ponds that can control settleable solids and turbidity. This technology is therefore established as BCT and BAT for hydrostatic testing discharges. The effluent limit for sediment is 0.2 ml/L.

Water Quality-Based Limitations

(A) Sediment. There is a reasonable potential for violations to occur should pumping be conducted improperly. The sediment criteria calls for ''no measurable increase in concentrations of settleable solids above natural conditions, as measure by the volumetric Imhoff cone.''

(B) Turbidity. Due to the nature of the discharge, a turbidity limitation is being proposed in the general permit for this category of discharge. According to the WQS, the most protective turbidity criteria applies to fresh water sources classified for use as drinking water and contact recreation not exceed 5 nephelometric turbidity units (NTU) above natural conditions when the natural turbidity when is 50 NTU or less; and more than 10% increase in turbidity when the natural conditions is more than 50 NTU, not to exceed a maximum increase of 25 NTU.'' The most protective marine criteria is for aquaculture, contact and secondary recreation and states ''May not exceed 25 nephelometric turbidity units (NTU).''

(C) pH. For fresh waters, the most protective limitations on pH are for aquaculture and contact recreation. This level is 6.5 to 8.5 standard units. For marine waters, the most protective limitations are for aquaculture and the growth and propagation of fish, shellfish, other aquatic life and wildlife. This level is 6.5 to 8.5 standard units.

Oil and Grease/Hydrocarbons. Applicable state standards for oil and grease are limited to ''shall not cause a film, sheen, or discoloration on the surfaces or floor of the water body or adjoining shorelines.'' EPA has determined that the state criteria can be met by a requirement of no discharge of floating solids, visible foam, or oily wastes which produce a sheen on the surface of the receiving water.

7. Best Management Practices (BMP) Plan and Monitoring Requirements

The justification for these requirements in the modified general permit are the same as those used in the original general permit.

8. Notice of Intent (NOI) Language Modification

The language in the original general permit was confusing to many permittees. The intent of the original language was to give exploration facilities the opportunity to notify EPA that there was going to be a discharge without specifying exactly where it would be until the last minute. The confusion came on the part of operators who knew where they would be and when they would be there.

The new language does several things. It requires only one notice if a facility knows where the discharge will be when the notice is filed. The language still gives the opportunity to submit a notice without knowing an exact location and then giving more details at a later date. The language keeps the ability of a mobile camp to designate an area of coverage rather than a single point of discharge. The new language also clarifies the misconception that a permit was not effective until 45 days after the NOI was submitted. This was never the intent of this section. If an NOI was received on September 26 and the discharge was authorized by letter on September 29, the permit has no restrictions making the effective date of the permit 45 days after September 26. There are some permits that specify winter discharges that were issued in the summer. There is an expectation that a time delay applies in those instances.

9. Settleable Solids and Turbidity

The footnote in tables where settleable solids monitoring is required has been changed so that monitoring of natural conditions is not mandatory if the effluent levels of this parameter are at low levels. This change occurs in the sections for gravel pit dewatering and construction dewatering. The water quality standards indicate that the limit on sediment via measuring settleable solids is ''No increase above natural conditions.'' A facility reporting non-detect (less than the detection level of 0.2 ml/L) for the discharge would be in compliance with the water quality standard no matter what the level of sediment was in the receiving water.

The turbidity monitoring requirements have also been changed so that measurement of natural conditions is not required should the effluent measures show low levels. This change occurs in the sections for construction dewatering and appears in the section for hydrostatic testing discharges. The water quality standards indicate that the limit on turbidity is ''5 NTUs above natural conditions.'' A facility reporting 5 NTUs or less for the discharge would be in compliance with the water quality standard no matter what the level of turbidity was in the receiving water.

10. Redundancies, Changes and Additions

A. Redundancies

(1) In Permit Part I.A. there seemed to be a redundancy in the table saying that discharges from these were covered in marine waters and then footnoting it to say that this would be off-shore of the coverage area. The footnote has been eliminated.

(2) In Permit Parts II.A.1.c., II.A.3. and II.B.3. the original general permit required that a discharge be moved every 5 days with the basis of this requirement being avoidance of chlorine burn as well as nutrient and/or sediment loading of the tundra. This level of control is also expressed in the BMP requirements for these sections so the requirement dictating how something might be done has been removed since that the permit already says it must be done. This give facilities more flexibility in how they meet these requirements of the permit.

(3) Permit Parts II.C.2. and II.D.2. have monitoring requirements that are specific to open water discharges when Permit Parts II.C.3.b. and II.D.3.b. say that monitoring to non-open waters does not apply. The footnotes in the tables have been revised to eliminate the mention of discharges to open waters.

B. Changes

(1) In the original general permit, Permit Parts II.C.3.b. and II.D.3.b. said, ''Although effluent limitations will not be measured * * *'' In the development of this modification, it was pointed out that limitations are not measured but parameters are. This change has been incorporated into this modification.

(2) Permit Part IV.B.1. lists the civil and administrative penalties for a violation of the permit as $25,000. A change to $27,500 was noticed in the **Federal Register** (61 FR 69369, December 31, 1996) so this new level is included in the modification of this general permit.

(3) Permit part II.F.1. has been changed due to changes in the

notification requirements to gain coverage under this general permit. Since the second notice is no longer required from all facilities, the BMP Plan is required to be certified at least seven days prior to the initiation of discharges. The time frame is the same as in the original general permit but the link to a second notice has been removed.

C. Additions

In Permit Part VI. (Definitions), the definitions of the terms garbage, off-shore, open waters and victual waste have been added based on other additions and changes to the general permit.

11. Other Legal Requirements

A. Oil Spill Requirements

Section 311 of the Act prohibits the discharge of oil and hazardous materials in harmful quantities. Routine discharges specifically controlled by a permit are excluded from the provisions of section 311. However, this general permit does not preclude the institution of legal action or relieve permittees from any responsibilities, or penalties for other, unauthorized discharges of oil and hazardous materials which are covered by section 311 of the Act.

B. Coastal Zone Management Act

A determination that the activities allowed by this draft modified general permit are consistent with the Alaska Coastal Management Plan must be made in accordance with the Coastal Zone Management Act before a permit will be issued.

C. State Water Quality Standards and State Certification

Whereas state waters are involved in this draft modified general permit, the provisions of section 401 of the Act will apply. Furthermore, in accordance with 40 CFR 124.01(c)(1), public notice of the draft modified permit has been provided to the State of Alaska and Alaska state agencies having jurisdiction over fish, shellfish, and wildlife resources, and over coastal zone management plans.

D. Marine Protection, Research and Sanctuaries Act

No marine sanctuaries as designated by this Act exist in the vicinity of the permit areas.

E. Endangered Species Act

EPA has made a decision that the discharges authorized in this modified general permit are not likely to affect species of concern in the project area. Letters were sent to the U.S. Fish and Wildlife Service (USFW) and to the National Marine Fisheries Service (NMFS) on October 6, 1997, requesting information to the extent of threatened and endangered species on the North Slope of Alaska relating to the modifications in this proposed modified general permit.

References

Eddy, Samuel and James C. Underhill. How to know the freshwater fishes.

Snoeyink, Vernon L. and David Jenkins. 1980. Water Chemistry.

U.S. EPA. 1993. Guidance Manual for Developing Best Management Practices (BMP). October 1993.

U.S. EPA. 1995. Ocean Discharge Criteria Evaluation for Area of Coverage Under the Arctic NPDES General Permit for Oil and Gas Exploration. Prepared with the assistance of Tetra Tech, Inc. March 1995.

National Pollutant Discharge Elimination System (NPDES) permit AK–005056–3 with corresponding fact sheet. Effective July 30, 1993. Expires July 30, 1998.

[FR Doc. 97–29392 Filed 11–7–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested.

November 4, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments January 9, 1997.

ADDRESSES: Direct all comments to Jerry Cowden, Federal Communications Commission, Room 240–B, 2000 M St., N.W., Washington, DC 20554, or via internet to jcowden@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Jerry Cowden at 202–418–0447 or via internet at jcowden@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0314.

Title: 47 CFR 76.209 Fairness doctrine; personal attacks; political attacks.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 1,312.

Estimated Time Per Response: 2–3 hours.

Total Annual Burden: We estimate that there are approximately 525 cablecast personal attacks made on an annual basis which would require cable operators to comply with the notification requirements set forth in 76.209(b). The average burden for cable operators to comply with these notification requirements is estimated to be 2 hours per incident. 525 notifications of cablecast personal attacks×2 hours=1,050 hours. We estimate that there are approximately 787 cablecast political editorials made on an annual basis which would require cable operators to comply with the notification requirements set forth in 76.209(d). The average burden for cable operators to comply with these notification requirements is estimated to be 3 hours per cablecast. 787×3 hours=2,361 hours. Total estimated annual burden to respondents=1,050+2,361=3,411 hours.

Needs and Uses: Section 76.209(b) requires that when, during origination cablecasting, an attack is made upon the honesty, character, integrity, or like personal qualities of an identified person or group, the respective cable television system operator shall, within a reasonable time and in no event later than one week after the attack, transmit to the person or group attacked (1) notification of the date, time and

identification of the cablecast; (2) a script, tape or accurate summary of the attack; and (3) an offer of a reasonable opportunity to respond to the attack over the licensee's facilities. The provisions of paragraph (b) of Section 76.209 do not apply to cablecast material which falls within one or more of the following categories: (1) Personal attacks on foreign groups or foreign public figures; (2) personal attacks occurring during uses by legally qualified candidates; (3) personal attacks made during cablecasts by legally qualified candidates, their authorized spokespersons or those associated with them in the campaign, on other such candidates, their spokespersons or persons associated with the candidates in the campaign; and (4) bona fide newcasts, news interviews, and on-the-spot coverage of bona fide news events, including commentary or analysis contained in the foregoing programs. Additionally, Section 76.209(d) requires that when a cable television system operator in an editorial endorses or opposes a legally qualified candidate, the operator shall, within 24 hours of the editorial, transmit to the other qualified candidate(s) for the same office or the candidate opposed, notification of the date, time and channel of the editorial; a script or tape of the editorial; and an offer of a reasonable opportunity to respond over the system's facilities.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–29512 Filed 11–7–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting; Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Wednesday, November 12, 1997, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum re: Executive Management Report for September 1997.

Memorandum and resolution re: Final Amendment to Part 363—Annual Independent Audits and Reporting Requirements.

Discussion Agenda

Memorandum and resolution re: BIF Assessment Rates.

Memorandum and resolution re: SAIF Assessment Rates.

The meeting will be held in the board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: November 5, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 97–29708 Filed 11–6–97; 10:50 am]

BILLING CODE 6714–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting; Announcing an Open Meeting of the Board

TIME AND DATE: 10:00 a.m., Wednesday, November 12, 1997.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- The Federal Home Loan Bank of Seattle Pilot Project
- Board Procedures for Processing Federal Home Loan Banks Pilot Programs

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

William W. Ginsberg,

Managing Director.

[FR Doc. 97–29713 Filed 11–6–97; 11:11 am]

BILLING CODE 6725–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

ACTION: Notice

Background:

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number. Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the OMB 83-I and supporting statement and the approved collection of information instrument will be placed into OMB's public docket files. The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed revised collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed revised information collection, 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before [insert date 60 days from publication in the Federal Register].

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. McLaughlin, Chief, Financial Reports Section (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following report:

1. Report title: Money Market Mutual Fund Assets Reports
Agency form number: FR 2051a, b, c, and d
OMB control number: 7100-0012
Frequency: weekly and monthly
Reporters: money market mutual funds
Annual reporting hours: 5,580
Estimated average hours per response: 3 minutes (FR 2051a), 12 minutes (FR 2051b)
Number of respondents: 1,550 (FR 2051a), 700 (FR 2051b)
Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C. 353 et seq.) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: These reports provide information on the assets of money market mutual funds which the Federal Reserve System uses in the construction of the monetary aggregates and for current analysis of money market conditions and banking developments.

The Federal Reserve proposes to reduce and simplify this information collection. While the weekly FR 2051a would remain unchanged, the monthly FR 2051b report would be reduced by condensing six items into three. The weekly FR 2051c and d reports would be discontinued. The proposed revisions would reduce annual respondent burden for this family of reports from 6,405 hours to 5,580 hours, or by 13 percent.

Board of Governors of the Federal Reserve System, November 4, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–29519 Filed 11–7–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 24, 1997.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Chase Family No. 2, Ltd., and Thomas G. Chase, Jr. and Helen M. Chase, as General Partners, all of Waco, Texas; to acquire voting shares of CentraBanc Corporation, Waco, Texas, and thereby indirectly acquire Central National Bank, Waco, Texas.

2. Lyndon Lowell Olson, Jr., Waco, Texas; to acquire voting shares of CentraBanc Corporation, Waco, Texas, and thereby indirectly acquire Central National Bank, Waco, Texas.

Board of Governors of the Federal Reserve System, November 4, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–29518 Filed 11–7–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 26, 1997.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. John Thomas Wesley, and Micah Steven Beard, both of Liberty, Kentucky, and Middleburg, Bancorp, Inc., Middleburg, Kentucky; to acquire additional voting shares of Casey County Bancorp, Inc., Liberty, Kentucky, and thereby indirectly acquire Casey County Bank, Liberty, Kentucky.

B. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Angeline R. Mixner, Worthington, New Mexico; to acquire additional voting shares of Madison Agency, Inc., Sioux Falls, South Dakota, and thereby indirectly acquire First Security Bank - Sanborn, Sanborn, New Mexico.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Ricky Dean and Janis Lee McSwain, Morrison, Oklahoma; to acquire voting shares of Citizens State Bancorp., Inc., Morrison, Oklahoma, and thereby

indirectly acquire Citizens State Bank, Morrison, Oklahoma.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Clayton Douglas Murr, Junction, Texas; to acquire additional voting shares of First State Bank, Junction, Texas.

Board of Governors of the Federal Reserve System, November 5, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–29641 Filed 11–7–97; 8:45 am]

BILLING CODE 6210–01–F

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 December 3, 1997.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Narragansett Financial Corp., Fall River, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shates of Citizens-Union Savings Bank, Fall River, Massachusetts.

2. New England Community Bancorp, Inc., Windsor, Connecticut; to acquire 100 percent of the voting shares of Community Savings Bank, Bristol, Connecticut.

B. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. NationsBank Corporation, and NB Holdings Corporation, both of Charlotte, North Carolina; to retain 8.34 percent of the voting shares of Southern Bancshares Corporation, St. Louis, Missouri, and thereby indirectly retain Southern Commercial Bank, St. Louis, Missouri. The shares are held in a fiduciary capacity.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. AmeriGroup, Inc., Hershey, Nebraska; to become a bank holding company by acquiring an additional 70.53 percent, for a total of 80.24 percent, of the voting shares of Hershey State Bank, Hershey, Nebraska.

In connection with this application, Applicant also has applied to engage in the sale of general insurance, pursuant to § 225.28(b)(11)(iii) of the Board's Regulation Y.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Citizens Bankers, Inc., Baytown, Texas, and Citizens Bankers of Delaware, Inc., Wilmington, Delaware; to acquire 67 percent of the voting shares of First National Bank of Bay City, Bay City, Texas, a *de novo* bank.

2. The First National Bank Employee Stock Ownership Plan, Artesia, New Mexico; to acquire 26.33 percent of the voting shares of First Artesia Bancshares, Inc., Artesia, New Mexico.

Board of Governors of the Federal Reserve System, November 4, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–29516 Filed 11–7–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 97-29083) published on page 59707 of the issue for Tuesday, November 4, 1997.

Under the Federal Reserve Bank of Chicago heading, the entry for Wintrust Financial Corporation, Lake Forest, Illinois, is revised to read as follows:

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Wintrust Financial Corporation, Lake Forest, Illinois; to acquire 100 percent of the voting shares of Crystal Lake Bank & Trust Company, National Association, Crystal Lake, Illinois (in organization).

Comments on this application must be received by November 28, 1997.

Board of Governors of the Federal Reserve System, November 5, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–29642 Filed 11–7–97; 8:45 am]

BILLING CODE 6210–01–F

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 December 5, 1997.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior

Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. PSB Bancorp, Inc., Philadelphia, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Pennsylvania Savings Bank, Philadelphia, Pennsylvania.

B. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Eastern Virginia Bankshares, Inc., Tappahannock, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Southside Bank, Tappahannock, Virginia, and Bank of Northumberland, Incorporated, Heathsville, Virginia.

C. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Citizens Bancshares Corporation, Atlanta, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First Southern Bancshares, Inc., Lithonia, Georgia, and thereby indirectly acquire First Southern Bank, Lithonia, Georgia.

D. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. FBOP Corporation, Oak Park, Illinois; to acquire 50 percent of the voting shares of P.N.B. Financial Corporation, Chicago, Illinois, and thereby indirectly acquire Park National Bank and Trust of Chicago, Chicago, Illinois.

2. First of Waverly Corporation, Waverly, Iowa; to acquire 100 percent of the voting shares of Schrage, Ltd., Plainfield, Iowa, and thereby indirectly acquire Farmers State Bank, Plainfield, Iowa.

3. Heartland Bancshares, Inc., Lenox, Iowa; to acquire 50 percent of the voting shares of Union Bank of Arizona, N.A., Gilbert, Arizona (in organization).

E. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Fidelity Bancshares, Inc., Fort Worth, Texas, and thereby indirectly acquire Fidelity Bancorporation, Inc., Dover, Delaware, and Fidelity Bank & Trust, N.A., Fort Worth, Texas.

F. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Cullen/Frost Bankers, Inc., San Antonio, Texas, and New Galveston Company, Wilmington, Delaware; to merge with Harrisburg Bancshares, Inc., Houston, Texas, and thereby indirectly acquire Harrisburg Bancshares, Inc., Reno, Nevada, and Harrisburg Bank, Houston, Texas.

Board of Governors of the Federal Reserve System, November 5, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–29643 Filed 11–7–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 24, 1997.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. National Bank of Canada, Montreal, Quebec, Canada; to acquire NBC Levesque International Ltd., Montreal, Quebec, Canada, and thereby engage in buying and selling in the secondary market all types of securities on the order of a customer as a ''riskless principal'' to the extent of engaging in transactions in which the company, after receiving an order to buy (or sell) a security from a customer, purchases (or sells) the security for its own account to offset a contemporaneous sale to (or purchase from) a customer, subject to the limitations and conditions, pursuant to § 225.28(b)(7)(ii) of the Board's Regulation Y, and acting as agent for the private placement of securities, pursuant to § 225.28(b)(7)(iii) of the Board's Regulation Y.

2. The Bank of Nova Scotia, Toronto, Ontario, Canada; to acquire Iron Mountain Depository Corporation, New York, New York, and thereby engage in buying, selling and storing bars, rounds, bullion, and coins of gold, silver platinum, palladium, copper, and any other metal approved by the Board, for company's own account and the account of others, and providing incidential services such as arranging for storage, safe custody, assaying, and shipment, pursuant to § 225.28(b)(8)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 4, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–29517 Filed 11–7–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

[Docket No. R–0986]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board has approved a Private Sector Adjustment Factor (PSAF) for 1998 of $108.5 million, as well as the fee schedules for Federal Reserve priced services and electronic connections. These actions were taken in accordance with the requirements of the Monetary Control Act of 1980, which requires that, over the long run, fees for Federal Reserve priced services be established on the basis of all direct and indirect costs, including the PSAF.

DATES: The PSAF and the fee schedules become effective on January 2, 1998.

FOR FURTHER INFORMATION CONTACT: For questions regarding the Private Sector Adjustment Factor: Martha Stallard, Senior Accountant, (202/452–3758), Division of Reserve Bank Operations and Payment Systems; For questions regarding the fee schedules: Jeff Yeganeh, Senior Financial Services Analyst, Check Payments, (202/728–5801); Riaz Ahmed, Financial Services Analyst, ACH Payments, (202/452–3959); Stephen Cohen, Financial Services Analyst, Funds Transfer and Book-Entry Securities Services, (202/452–3480); Anne Paulin, Senior Information Technology Analyst

(electronic connections), (202/452–2560); Michael Bermudez, Financial Services Analyst, Noncash Collection Service, (202/452–2216); or Kate Connor, Senior Financial Services Analyst, Special Cash Services, (202/452–3917), Division of Reserve Bank Operations and Payment Systems. For users of Telecommunications Device for the Deaf (TDD) only, *please contact Diane Jenkins* (202/452–3544).

Copies of the 1998 fee schedules for the check, automated clearing house (ACH), funds transfer and net settlement, book-entry securities, noncash collection, and special cash services, as well as electronic connections to Reserve Banks, are available from the Reserve Banks.

SUPPLEMENTARY INFORMATION:

I. Private Sector Adjustment Factor

A. Overview

The Board has approved a 1998 PSAF for Federal Reserve priced services of $108.5 million. This amount represents an increase of $7.0 million, or 6.9 percent, from the PSAF of $101.5 million targeted for 1997.

As required by the Monetary Control Act (MCA) (12 U.S.C. 248a), the Federal Reserve's fee schedule for priced services includes ''taxes that would have been paid and the return on capital that would have been provided had the services been furnished by a private business firm.'' These imputed costs are based on data developed in part from a model comprised of consolidated financial data for the nation's 50 largest (in asset size) bank holding companies (BHCs).

The methodology first entails determining the value of Federal Reserve assets that will be used in producing priced services during the coming year. Short-term assets are assumed to be financed with short-term liabilities; long-term assets are assumed to be financed with a combination of long-term debt and equity derived from the BHC model.

Imputed capital costs are determined by applying related interest rates and rates of return on equity (ROE) from the BHC model. The long-term debt and equity rates are based on BHCs in the model for each of the last five years. Because short-term debt, by definition, matures within one year, only data for the most recent year are used for computing the short-term debt rate.

The PSAF comprises these capital costs, as well as imputed sales taxes, expenses of the Board of Governors related to priced services, and an imputed FDIC insurance assessment on clearing balances held with the Federal Reserve Banks to settle transactions.

B. Asset Base

The total estimated value of Federal Reserve assets to be used in providing priced services in 1998 is reflected in Table A–1. Table A–2 shows that the assets assumed to be financed through debt and equity are projected to total $616.3 million. This represents a net decrease of $7.2 million, or 1.2 percent, from 1997 assets of $623.5 million, as shown in Table A–3. This decrease results from lower priced asset levels of Federal Reserve Automation Services (FRAS), slightly offset by an increase in the Reserve Banks' priced asset base.

C. Cost of Capital, Taxes, and Other Imputed Costs

Table A–3 also shows the financing and tax rates and the other required PSAF recoveries proposed for 1998 and compares the 1998 rates with the rates used for developing the PSAF for 1997. The pre-tax ROE rate increased from 19.1 percent for 1997 to 22.4 percent for 1998. The increase is a result of stronger 1996 BHC financial performance included in the 1998 BHC model, relative to the 1991 BHC financial performance used in the 1997 BHC model.

The increase in the FDIC insurance assessment from $2.0 million in 1997 to $2.6 million in 1998, as shown in Table A–3, is attributable to higher clearing balance levels.

D. Capital Adequacy

As shown in Table A–4, the amount of capital imputed for the proposed 1998 PSAF totals 30.0 percent of risk-weighted assets and 3.1 percent of total assets. The capital to risk-weighted asset ratio well exceeds the 8 percent guideline for adequately capitalized state member banks and BHCs. The capital to total asset ratio exceeds the 3 percent guideline for adequately capitalized institutions that are rated composite 1 under the CAMELS rating system.

II. Priced Services

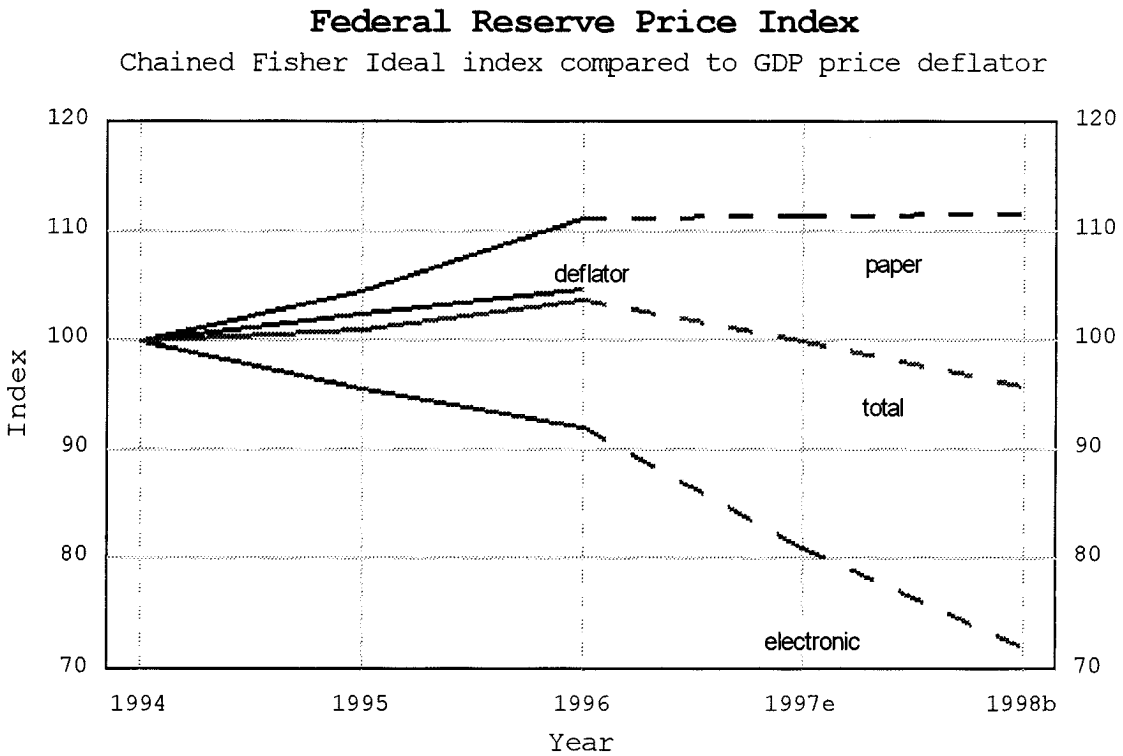
A. Overview

Overall, prices for Reserve Bank services are projected to decline by approximately 4.0 percent in 1998, reflecting slight price increases in paper-based payment services (i.e., check, noncash collection, and special cash services) of 0.2 percent and price decreases in electronic payment services (i.e., payor bank check services, automated clearing house, funds transfer, and book-entry securities services) of 11.4 percent.[1] This compares to an overall price decline of 3.7 percent in 1997, reflecting price increases in paper-based payment services of 0.1 percent and price decreases in electronic payment services of 11.9 percent. Figure 1 provides a graphical comparison of the Federal Reserve's price index for priced services to the gross domestic product price deflator.

BILLING CODE 6210–01–P

[1] These estimates are based on a chained Fisher Ideal price index. This index was not adjusted for quality changes in Federal Reserve priced services. Because the index was not adjusted for quality and due to lack of data in electronic check services, the index may overstate the price effects of paper-based services.

Figure 1



Broken line indicates estimated and budgeted data.

BILLING CODE 6210–01–C

The significant decline in fees for electronic payment services reflects, in large part, the efficiencies associated with the transition to a consolidated automation environment and centralized electronic payment processing applications. Beginning in 1992, the Reserve Banks' automation-processing functions were consolidated into three sites, greatly reducing the cost of providing electronic payment services. When transition to the consolidated environment is completed in early 1998, the priced services will have recovered $129.8 million in transition costs associated with the automation consolidation project (special project costs) and $11.7 million in deferred financing costs, while achieving $41.8 million in savings for depository institutions from lower fees for electronic payment services.[2] In addition to the electronic payment fee reductions, the special project initiative has dramatically improved the Reserve Banks' disaster recovery and information security capabilities, increased the System's responsiveness to change, and enhanced the central bank's management of payment system risk.

The Federal Reserve Banks continue to meet the provisions of the Monetary Control Act, which require the Federal Reserve to recover, over the long run, all direct and indirect costs, including imputed costs and profits, of priced services. Over the period 1987 through 1996, the Reserve Banks recovered 99.9 percent of their total costs of providing priced services, including special project costs that were budgeted for recovery and targeted after-tax profits, that is, return on equity (ROE).[3] [4] Because the revenue from the Reserve Banks' priced services recovers imputed costs that are not actually incurred and imputed profits, the Federal Reserve's provision of priced services has consistently had a positive effect on the level of earnings transferred by the Federal Reserve to the Treasury. Over the past 10 years, priced services revenue has exceeded operating costs by $886 million. Table 1 summarizes the cost and revenue performance for priced services since 1987.

[2] Under an existing Board policy, the Reserve Banks may defer and finance development costs if the development costs would have a material effect on unit costs, provided that a conservative time period is set for full cost recovery and a financing factor is applied to the deferred portion of development costs. The 1997 and 1998 financing rates of 15.1 and 16.9 percent, respectively, are the weighted-average imputed costs of the Federal Reserve's long-term debt and equity. This methodology is similar to the approach a private firm would use in financing such costs. Starting in 1992, the Reserve Banks deferred and financed special project costs for automation consolidation that were associated with employee retention and severance and excess mainframe computer capacity. Each priced service will recover fully its portion of these deferred expenses and accumulated finance charges within five years after the completion of the transition to the consolidated automation environment.

[3] The Monetary Control Act requires that, over the long run, the Federal Reserve set fees for priced services to recover all direct and indirect costs of providing the services plus imputed costs, such as taxes that would have been paid and the return on capital that would have been earned had the services been provided by a private business firm. These imputed costs are based on data developed in part from a model comprised of the nation's 50 largest (in asset size) bank holding companies (BHCs). The targeted ROE is the budgeted after-tax profit that the Federal Reserve would have earned had it been a private business firm. The targeted ROE is derived from the BHC model based on consolidated financial data for each of the last five years.

[4] In setting fees, certain costs or adjustments to costs are treated differently in the pro forma income statement for priced services that is published in the Board's Annual report and the Board's annual

Continued

TABLE 1.[5]—PRO FORMA COST AND REVENUE PERFORMANCE (a)

[In millions of dollars]

Year	1 Revenue (b)	2 Operating costs and imputed expenses (c)	3 Special project costs recovered (d)	4 Total expenses (e) [2+3]	5 Net income (ROE) [1-4]	6 Target ROE (f)	7 Recovery rate after target ROE (percent) [1/(4+6)]	8 Special project costs deferred and financed (g)
1987	649.7	598.2	0.0	598.2	51.5	29.3	103.5	0.0
1988	667.7	641.1	3.2	644.3	23.4	32.7	98.6	0.0
1989	718.6	692.1	4.6	696.7	21.9	32.9	98.5	0.0
1990	746.5	698.1	2.8	700.9	45.6	33.6	101.6	0.0
1991	750.2	710.0	1.6	711.6	38.6	32.5	100.8	0.0
1992	760.8	731.0	11.2	742.2	18.6	26.0	99.0	1.6
1993	774.5	722.4	27.1	749.5	25.0	24.9	100.0	12.5
1994	767.2	748.3	8.8	757.1	10.1	34.6	96.9	33.9
1995	765.2	724.0	19.8	743.8	21.4	31.5	98.7	36.3
1996	815.9	736.4	26.8	763.2	52.7	36.7	102.0	30.1
1997 (Est)	814.7	732.9	27.7	760.7	54.1	45.8	101.0	21.4
1998 (Bud)	816.1	733.8	23.2	757.1	59.0	52.3	100.8	1.6

(a) The revenues and expenses for 1987 through 1993 include the definitive securities safekeeping service, which was discontinued in 1993.
(b) Includes net income on clearing balances.
(c) Imputed expenses include interest on debt, taxes, FDIC insurance, and the cost of float. Credits for prepaid pension costs under SFAS 87 and the charges for post-retirement benefits in accordance with SFAS106 are included beginning in 1993.
(d) Special project costs include research and development expenses for evaluating a different computer processing platform for electronic payments from 1988 through 1990, check image project costs from 1988 through 1993, and automation consolidation costs from 1992 through 1998.
(e) To reconcile total expenses to the pro forma income statement in the Board's Annual Report, sum the operating expenses, imputed costs, and imputed income taxes reflected in the pro forma income statement and subtract the adjustments shown in Note 10 to the pro forma income statement.
(f) Targeted ROE is based on the ROE included in the private sector adjustment factor and has been adjusted for taxes, which are included in column 2. Targeted ROE has not been adjusted to reflect automation consolidation special project costs deferred and financed.
(g) Totals are cumulative and include financing costs.

In 1996, Reserve Bank priced service revenue yielded and after-tax net income of $52.7 million, compared with a targeted return on equity of $36.7 million. The Reserve Banks recovered 102.0 percent of total expenses, including automation consolidation special project costs budgeted for recovery an targeted ROE, compared to a targeted recovery rate of 100.7 percent. The Reserve Banks' better-than-targeted performance was due primarily to higher-than expected volumes in the check, funds transfer, book-entry securities transfer, and noncash collection services, resulting in higher net revenue. In particular, the volume of checks collected by the Reserve Banks in 1996 exceeded 1995 levels, thereby reversing the downward trend of 1994 and 1995 that resulted from the new same-day settlement rule.

In 1997, the Reserve Banks estimate that priced services revenue will yield a net income of $54.1 million, compared with a targeted return on equity of $45.8 million. The 1997 recovery rate is estimated to be 101.0 percent of the costs of providing priced services, including imputed expenses, automation consolidation special project costs budgeted for recovery and targeted ROE, compared with a targeted recovery rate of 100.5 percent.[6] Approximately $27.7 million in automation consolidation special project costs will be recovered in 1997, leaving $21.4 million in accumulated costs to be financed and recovered in future years.

In 1998, the Reserve Banks project to recover 100.8 percent of total expenses, including automation consolidation special project costs budgeted for recovery and targeted ROE. The approved 1998 fees for priced services are projected to yield a net income of $59.0 million, compared with a targeted ROE of $52.3 million. Approximately $23.2 million of automation consolidation special project expenses will be recovered, leaving an accumulated balance of $1.6 million to be recovered in future years.[7]

Table 2 presents an overview of the projected 1997, estimated 1997, and projected 1998 cost recovery performance for individual priced services.

Federal Register notice on priced service fees. In order to compare total expenses in the pro forma income statement with total expenses in Table 1 in this notice, the amortization of the initial retirement plan over funding required by Statement of Financial Accounting Standards No. 87, and the deferred costs of automation consolidation must be deducted from the pro forma expenses. These adjustments are detailed in Note 10 to the pro forma income statement in the Annual Report. Under the procedures used to prepare the pro forma income statement, the Reserve Banks recovered 100.7 percent of priced services expenses, including targeted ROE, from the period 1987 to 1996.

[5] Calculations on this table and subsequent pro forma cost and revenue tables may be affected by rounding.

[6] Through August 1997, the Reserve Banks recovered 101.1 percent of total priced services expenses, including automation consolidation secial project costs and targeted ROE.

[7] New charges for the automation consolidation special project are expected to end in 1998 with the completion of the transition to the centralized application environment. The $1.6 million balance must be recovered by the book-entry securities service.

TABLE 2

Priced service	1997 budget (percent)	1997 estimate (percent)	1998 budget (percent)
All Services	100.5	101.0	100.8
Check	100.2	100.0	100.5
ACH	100.5	105.3	100.5
Funds Transfer	102.7	104.3	103.1
Book-Entry	100.0	100.1	100.0
Noncash	103.8	116.0	125.9
Special Cash	102.3	99.7	102.4

The Reserve Banks have indicated that the most significant risk associated with the approved fee schedules is the uncertainty of 1998 check volume estimates given the current competitive environment and the effects of continuing bank consolidations.

B. Check

Table 3 presents the actual 1996, estimated 1997, and projected 1998 cost recovery performance for the check service.

TABLE 3.—CHECK PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Operating costs and imputed expenses	3 Special project costs recovered	4 Total expense [2+3]	5 Net income (ROE) [1 – 4]	6 Target ROE	7 Recovery rate after target ROE (percent) [1/(4+6)]	8 Special project costs deferred and financed
1996	610.6	578.1	6.5	584.6	26.0	28.0	99.7	10.5
1997 (Est)	620.5	577.7	7.5	585.2	35.3	35.3	100.0	7.5
1998 (Bud)	636.4	584.2	8.4	592.6	43.8	40.9	100.5	0.0

1. 1996 Performance

The check service recovered 99.7 percent of total expense in 1996, including automation consolidation special project costs budgeted for recovery and targeted ROE. The volume of checks collected increased 0.1 percent from 1995 levels, as volume losses associated with bank consolidations and the implementation of the same-day settlement regulation stabilized. Returned check volume increased 6.0 percent in 1996 compared to 1995 levels.

2. 1997 Performance

Through August 1997, the check service recovered 99.6 percent of total expenses, including automation consolidation special project costs budgeted for recovery and targeted ROE. The Reserve Banks estimate that they will recover 100.0 percent of their costs for the full year, compared with the targeted 1997 recovery rate of 100.2 percent.

Also through August 1997, the volume of checks collected has decreased by 0.2 percent while the volume of returned checks processed has increased by 5.1 percent from 1996 levels. The Reserve Banks now estimate that the volume of checks collected during 1997 will decrease by 0.7 percent from 1996 levels, reflecting a 2.1 percent increase in processed volume and a 15.5 percent decrease in fine sort volume. Returned check volume is estimated to increase by 3.9 percent.

3. 1998 Issues

The total number of interbank checks will likely be flat or decline in 1998 as banks merge due to interstate branch banking and as banks continue to consolidate their payment processing operations. In addition, other service providers in the interbank check processing market are expected to compete aggressively for check collection and returned check volume. Despite the challenges posed by this environment, the Reserve Banks project modest volume increases in 1998. Total forward check collection volume is projected to increase by 1.0 percent in 1998, reflecting a projected increase of 3.2 percent in processed volume and a decrease of 12.9 percent in fine sort volume. Returned check volume is projected to increase by 0.3 percent.

The Reserve Banks continue to take steps that are expected to improve the efficiency of their check processing operations in 1998. For example, on October 24, 1997, the Federal Reserve Bank of Boston closed its Regional Check Processing Center in Lewiston, Maine, and consolidated those operations at its head office. In addition, on October 27, 1997, the System's Interdistrict Transportation System (ITS) moved one of its five airport hubs from Cleveland, Ohio to Cincinnati, Ohio. This move allows Reserve Banks to improve deposit deadlines and funds availability for many depositors. The Reserve Banks are also reviewing whether additional changes to the Federal Reserve's infrastructure would improve efficiency and are assessing the business case for a uniform software application to process check adjustment cases.

The Reserve Banks will continue to promote electronic check products that are designed to increase operating efficiency and improve the speed of the check collection system. For example, the Reserve Banks are expanding the number of offices that offer and the number of deposit products that use electronic cash letters (ECLs).[8] Further, in early 1998, the Reserve Banks are planning to begin sending ECLs for all cash letters exchanged among Federal

[8] Electronic cash letters (ECLs) are deposits that are accompanied by an electronic listing of all checks included in the deposits.

Reserve offices. The expanded use of ECLs is expected to improve the efficiency of the Reserve Banks' operations and may ultimately contribute to efficiencies in paying banks' operations by reducing rejects and minimizing adjustments. The Reserve Banks are also investigating the feasibility of offering standard electronic check products Systemwide during 1998 to meet the demand for greater uniformity in Reserve Bank check products.

Further, the Reserve Banks are expanding their image-enhanced check products, which have the potential to increase the use of electronic check presentment and to reduce the risks associated with it. In 1998, an increasing number of Reserve Bank offices will be able to offer image services.

4. 1998 Fees

The Reserve Banks are continuing the steps taken over the last several years to set check fees to reflect more accurately the fixed and variable costs associated with providing check services. The Reserve Banks' fees and product offerings are intended to encourage the use of electronics and to improve the efficiency of the check collection mechanism. Table 4 summarizes key check service fees.

TABLE 4.—SELECTED CHECK FEES

Products	1997 price ranges	1998 price ranges
Items:	(per item)	(per item)
Forward processed:		
City	$0.003 to 0.080	$0.002 to 0.080
RCPC	0.004 to 0.090	0.003 to 0.180
Fine sort:		
City	0.003 to 0.012	0.002 to 0.013
RCPC	0.003 to 0.017	0.003 to 0.018
Qualified returned checks:		
City	0.065 to 1.110	0.065 to 1.110
RCPC	0.068 to 1.560	0.068 to 1.560
Raw returned checks:		
City	0.580 to 4.000	0.900 to 5.000
RCPC	0.650 to 4.000	0.900 to 5.000
Cash letters:	(per cash letter)	(per cash letter)
Forward processed	1.50 to 9.00	1.50 to 9.00
Forward fine-sort package	2.50 to 13.00	3.00 to 14.00
Returned checks: raw and qualified	1.50 to 7.00	1.75 to 12.00
Payor bank services:	Min Per item	Min Per item
MICR information	5–30 0.001–0.0050	5–30 0.001–0.0060
Electronic presentment	3–14 0.001–0.0045	2–14 0.001–0.0045
Truncation	3–25 0.010–0.0170	2–25 0.004–0.0170

Overall, 1998 fees for paper-based check products are expected to increase by about 0.2 percent on a volume-weighted basis, compared with January 1997 prices.[9] Paper-based check products include both forward and return check products and are expected to account for about 80 percent of total check service revenues in 1998.

Fees for payor bank services will decline, on average, by 0.1 percent. These fees include the Reserve Banks' fees for electronic check presentment and payor bank information products, as well as for image products. Payor bank services revenue is expected to increase by 12.9 percent, however, primarily due to more widespread acceptance of electronic check presentment and image-enhanced check products. It is expected that payor bank services will account for about 10 percent of the check service's total revenues in 1998. Other operating and imputed revenues account for the remaining 10 percent of check service revenues.

The Reserve Banks project that the check service will recover 100.5 percent of total costs in 1998, including targeted ROE and all of the remaining $8.4 million in automation consolidation special project costs. Total check service operating costs plus imputed expenses are projected to increase by $6.5 million, or 1.1 percent above estimated 1997 expenses. Total check service revenues are expected to increase by $15.9 million, or 2.6 percent above estimated 1997 revenues.

The Reserve Banks view the effect of interstate branch banking and the growing competition in the interbank check collection market as potential risk factors in their volume projections. Nevertheless, despite this increasingly competitive market environment, the Reserve Banks believe that their projected 1998 volume levels are attainable.

C. Automated Clearing House (ACH)

Table 5 presents the actual 1996, estimated 1997, and projected 1998 cost recovery performance for the commercial ACH service.

[9] This volume-weighted fee increase includes an increase in ITS fees of approximately 10.0 percent on weekday routes. The Reserve Banks are continuing to investigate the possible implementation of an alternative fee structure for the ITS.

TABLE 5.—ACH PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Operating costs and imputed expenses	3 Special project costs recovered	4 Total expense [2+3]	5 Net income (ROE) [1 – 4]	6 Target ROE	7 Recovery rate after target ROE (percent) [1/4+6)]	8 Special project costs deferred and financed
1996	79.8	63.7	9.2	72.9	6.9	3.6	104.3	16.6
1997 (Est)	72.5	53.7	11.1	64.8	7.6	4.0	105.3	10.8
1998 (Bud)	68.5	52.1	12.0	64.1	4.4	4.0	100.5	0.0

1. 1996 Performance

Revenues from the ACH service recovered 104.3 percent of total expenses, including automation consolidation special project costs budgeted for recovery and targeted ROE, during 1996. This over recovery was attributable primarily to lower-than-expected data processing costs resulting from the efficiencies realized with the new Fed ACH application software.

2. 1997 Performance

Through August 1997, the ACH service recovered 106.4 percent of total expenses, including automation consolidation special project costs budgeted for recovery and targeted ROE. For the full year, Reserve Banks estimate that they will recover 105.3 percent of total expenses, compared with the targeted 1997 recovery rate of 100.5 percent. The over recovery is attributed to lower-than-budgeted ACH overhead costs, lower-than-expected data processing costs resulting from efficiency improvements to the Fed ACH application software, and the revised pension credit.

On May 1, 1997, the Reserve Banks implemented a volume-based fee schedule for the ACH service. As a result, the cost to depository institutions to originate ACH transactions declined by an average of 17 percent and the cost to receive ACH transactions declined by 10 percent. In addition, effective October 1, 1997, the Reserve Banks changed to regular billing deposit deadline for ACH items from 8:00 p.m. to 1:00 a.m. Eastern Time. The extension of the deadline reduces fees paid by customers depositing items between 8:00 p.m. and 1:00 a.m. Eastern Time by approximately $0.6 million in 1997.

Through August 1997, commercial ACH volume has increased 12.7 percent over the 1996 level. For the full year, the Reserve Banks expect commercial volume to increase 11.3 percent, compared to the 18.3 percent increase originally projected. The revised projection reflects the effects of consolidation in the banking industry and some increased use of private-sector ACH processors.

3. 1998 Issues

The Fed ACH processing environment continues to allow the Reserve Banks to improve operating efficiencies. In 1998, the Reserve Banks plan to expand their efforts to educate depository institutions and end users about the benefits of the ACH. The Reserve Banks believe that Federal Reserve and industry marketing efforts will spur commercial ACH volume growth. As a result, the projected commercial volume growth rate for 1998 is 15.4 percent.

4. 1998 Fees

The Reserve Banks are reducing several fees effective January 2, 1998. These changes support the System's strategic direction to encourage the migration from a paper-based to an electronic payments system and recognize the technological and operational changes implemented during the past year.

TABLE 6

Fee category	Current fee	Approved 1998 fee
Items Originated in Small Files [10]	$0.009	$0.008
Items Originated in Large Files [13]	0.007	0.006
Items Received	0.009	0.008
Agenda (Originated and Received)	0.003	0.002
Telephone Advice	15.00	([1])

[1] Eliminate.

As Table 6 indicates, the Reserve Banks will reduce origination and receipt item fees by one mill, which will decrease the total fee for each item by as much as 12.5 percent. In addition, the Reserve Banks are reducing the fee for addenda records by one mill or one-third. The reduction in the addenda record fee is intended to promote the use of the ACH for financial electronic data interchange. Finally, the telephone advice fee, which is assessed to customers seeking settlement information about processed files, is being eliminated because depository institutions are using other delivery mechanisms to obtain this information.

All customers, including customers of the private-sector ACH operators, will benefit from the approved 1998 price changes. Based on the 1998 volume projections, these changes will reduce fees to depository institutions by $6.6 million, compared to the Federal Reserve's current ACH fees.

During 1998, the Reserve Banks plan to explore options to reduce fees further and to reduce paper processing. Board staff anticipates that the Director of the Board's Division of Reserve Bank Operations and Payment Systems, under delegated authority, will be requested to

[10] Small files contain less than 2,500 items; large files contain 2,500 items or more.

approve further modifications to the ACH fee schedule during 1998.

The Reserve Banks project that the ACH service will recover 100.5 percent of its 1998 costs, including targeted ROE, and all of the remaining $12.0 million in automation consolidation special project costs.

D. Funds Transfer and Net Settlement

Table 7 presents the actual 1996, estimated 1997, and projected 1998 cost recovery performance for the funds transfer and net settlement service.

TABLE 7.—FUNDS TRANSFER PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Operating costs and imputed expenses	3 Special project costs recovered	4 Total expense [2+3]	5 Net income (ROE) [1 – 4]	6 Target ROE	7 Recovery rate after target ROE (percent) [1/(4+6)]	8 Special project costs deferred and financed
1996	97.6	69.9	9.3	79.2	18.4	3.8	117.6	0.0
1997 (Est)	95.3	78.9	7.4	86.3	9.1	5.1	104.3	(0.5)
1998 (Bud)	88.8	79.7	0.3	79.9	8.9	6.2	103.1	0.0

1. 1996 Performance

For 1996, the funds transfer and net settlement service recovered 117.6 percent of total expenses, including automation consolidation special project costs budgeted for recovery and targeted ROE. Funds transfer origination and receipt volume increased 9.1 percent over the 1995 level, compared to a budgeted increase of 2.1 percent.

2. 1997 Performance

Through August 1997, the funds transfer and net settlement service recovered 106.5 percent of total expenses, including automation consolidation special project costs budgeted for recovery and targeted ROE. For full-year 1997, the Reserve Banks estimate that the funds transfer service will recover 104.3 percent of total expenses, compared to a targeted recovery rate of 102.7 percent. The Reserve Banks now estimate that operating costs will be lower than the original budget estimates due to the efficiencies realized from processing funds transfer in a centralized processing environment, a decrease in allocated overhead costs, and an increase in the estimated 1997 pension credit.

Through August 1997, funds transfer volume has increased 7.7 percent relative to the same period in 1996. For the full year, the Reserve Banks expect volume to increase 4.3 percent, compared to the 4.2 percent increase originally projected. Board staff believes the Reserve Banks, 1997 volume estimate is conservative based on year-to-date experience.

3. 1998 Issues

Funds transfer origination and receipt volume is expected to increase 3.8 percent over 1997 estimated levels, lower than the ten-year average annual growth rate of 4.7 percent. The Reserve Banks consider the strong volume growth of the last two years to be unsustainable due to the effects of interstate branch banking and continuing bank merger activity. Board staff believes the anticipated 1998 volume effects of such merger activity may be overstated.

Total costs are expected to decrease 6.1 percent from the 1997 estimate due in part to lower special project costs allocated to the service as well as to operating efficiencies associated with automation consolidation. The Fedwire funds transfer operating hours will be expanded from a ten-hour to an eighteen-hour day beginning in December 1997. The Reserve Banks expect that this expansion of operating hours will not materially increase the service's costs.

4. 1998 Fees

The projection of lower total expenses combined with continued volume growth will enable the Reserve Banks to reduce the funds transfer fee by 11.1 percent from $0.45 to $0.40 in 1998. Additionally, the Reserve Banks will increase the off-line transaction surcharge from $10.00 to $12.00 to reflect more fully the costs of processing off-line transfers and to encourage higher volume off-line customers to install electronic connections. Based on 1998 volume projections, these fee changes will reduce fees to depository institutions by approximately $9.0 million, compared to the Federal Reserve's current funds transfer fees. All net settlement fees will remain unchanged.

Reserve Banks project that 1998 revenues will recover 103.1 percent of total funds transfer expenses, including targeted ROE and all automation consolidation special project costs.

E. Book-Entry Securities [11]

Table 8 presents the actual 1996, estimated 1997, and projected 1998 cost recovery performance for the book-entry securities service.[12]

[11] Includes purchase and sale activity.

[12] The Reserve Banks provide securities transfer services for securities issued by the U.S. Treasury, federal government agencies, government sponsored enterprises, and certain international institutions. The priced component of this service, reflected in this memorandum, consists of the revenues, expenses, and volumes associated with the transfer of all non-Treasury securities. For Treasury securities, the Reserve Banks act as fiscal agents for the Treasury Department, which assesses fees for those transfer services.

TABLE 8.—BOOK-ENTRY SECURITIES PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Operating costs and imputed expenses	3 Special project costs recovered	4 Total expense [2+3]	5 Net income (ROE) [1 – 4]	6 Target ROE	7 Recovery rate after target ROE (percent) [1/(4+6)]	8 Special project costs deferred and financed
1996	17.1	14.5	1.7	16.2	0.9	0.8	100.9	3.0
1997 (Est)	16.8	14.4	1.5	15.8	1.0	0.9	100.1	3.6
1998 (Bud)	16.3	12.9	2.5	15.3	1.0	1.0	100.0	1.6

1. 1996 Performance

The book-entry securities service recovered 100.9 percent of total expenses in 1996, including automation consolidation special project costs budgeted for recovery and targeted ROE. Origination volume increased 11.8 percent above the 1995 level, compared to a budgeted decrease of 0.4 percent. This substantial volume increase is partially the result of increased securities movements associated with mergers, and higher-than-expected mortgage refinancing activity, which in turn affects activity in the mortgage-backed securities market.

2. 1997 Performance

Through August 1997, the book-entry securities service recovered 102.4 percent of total expenses, including automation consolidation special project costs budgeted for recovery and targeted ROE. For the full-year 1997, the Reserve Banks estimate that revenues will recover 100.1 percent of total costs, compared to a targeted recovery rate of 100.0 percent.

Through August 1997, book-entry securities volume declined 1 percent, compared to the same period in 1996. For the full year, the Reserve Banks estimate that transfer volume will decline 3.3 percent, which is consistent with the budgeted target.

3. 1998 Issues

The Reserve Banks expect book-entry securities transfer origination volume to decline 0.8 percent in 1998 from the 1997 estimated level. This volume projection reflects the potential effect of Participants Trust Company's (PTC) expansion of its mortgage-backed securities business to include Fedwire-eligible securities issued by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association. PTC's service expansion is currently expected to occur by late 1998 and, depending on the timing of the implementation, may not have a material effect on 1998 book-entry securities volume.

Book-entry service revenue is expected to decline 2.4 percent in 1998 from the 1997 estimate as both account maintenance and transaction revenues decrease.[13] Total expenses are projected to decrease 3.1 percent in 1998 versus the 1997 estimate. Centralized and local data processing costs are expected to decrease by almost $1 million compared to the 1997 estimate reflecting the benefits from the transition to the centralized application environment.

4. 1998 Fees

The Reserve Banks are retaining 1997 fees in 1998. The Reserve Banks project that the book-entry securities service will recover 100.0 percent of costs, including targeted ROE and $2.5 million in automation consolidation special project costs.

F. Electronic Connections

The Reserve Banks charge fees for the electronic connections used by depository institutions to access priced services and allocate the cost and revenue associated with electronic access to the various proceed services. The Reserve Banks are retaining the current 1997 electronic access fee schedule in 1998 with the addition of a new connection fee for Link Encrypted Dial connections.

Currently, Link Encrypted Dial connections are assessed the same standard fee as that used for Receive and Send Dial connections. This $75 per month fee does not reflect fully the costs to install, configure, and maintain the unique hardware equipment required by Link Encrypted Dial connections. Accordingly, the Reserve Banks are establishing a new connection fee of $200 per month for Link Encrypted Dial connections. Only twelve of the approximately 12,000 current connections would be affected by this change.

In addition, the Reserve Banks plan to change their policy for ownership of the encryption boards used by depository institutions with dial and multi-drop connections. These encryption boards are currently purchased and owned by the depository institutions. With the replacement of the encryption boards beginning in the second half of 1998 to enhance the security of the Federal Reserve's communications network, the Reserve Banks plan to purchase and assume ownership of these boards. This approach is consistent with Reserve Bank ownership of other equipment at depository institutions that is required for electronic connections to the Federal Reserve, specifically link encryptors and signaling equipment. Reserve Bank ownership should improve management of the security of the network and facilitate the implementation of an all-electronic key distribution system. This change in policy may affect future-year electronic connection fees, as priced services must recover depreciation costs associated with the new encryption boards.

G. Noncash Collection

Table 9 presents the actual 1996, estimated 1997, and projected 1998 cost recovery performance for the noncash collection service.

[13] The decrease in account maintenance revenue is associated with a 1997 decision to waive certain joint custody account maintenance fees during the Reserve Banks conversion to the National Book-Entry System.

TABLE 9.—NONCASH COLLECTION PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Operating costs and imputed expenses	3 Special project costs recovered	4 Total expense [2+3]	5 Net income (ROE) [1 – 4]	6 Target ROE	7 Recovery rate after target ROE (percent) [1/(4+6)]	8 Special project costs deferred and financed
1996	5.4	5.0	0.0	5.0	0.4	0.2	102.4	0.3
1997 (Est)	4.5	3.3	0.3	3.6	0.8	0.2	116.0	0.0
1998 (Bud)	3.4	2.5	0.0	2.5	0.9	0.2	125.9	0.0

1. 1996 Performance

The noncash collection service recovered 102.4 percent of total expenses, including automation consolidation special project costs budgeted for recovery and targeted ROE, compared to a target of 100.0 percent. Volume increased 34.2 percent over 1995 levels, compared to the budgeted increased of 22.5 percent. This volume increase was attributable to the withdrawal of other service providers from this business. Effective cost containment measures enabled the Reserve Banks to recover fully all service costs, including targeted ROE, for the first time since 1990.

2. 1997 Performance

Through August 1997, the noncash collection service recovered 118.5 percent of total expenses including automation consolidation special project costs budgeted for recovery and targeted ROE. For the year, the Reserve Banks now estimate that the noncash collection service will recover 116.0 percent of total costs, including automation consolidation special project costs budgeted for recovery and targeted ROE, compared with the targeted full-year recovery rate of 103.8 percent. The higher recovery rate reflects aggressive cost-containment and recognized efficiency gains from the centralization to one office, the Jacksonville Branch of the Federal Reserve Bank of Atlanta. Noncash collection volume continues its long-term contraction and all of the former national providers, except the Depository Trust Company (DTC) have withdrawn from providing noncash collection services.[14] The Reserve Banks estimate that 1997 volume will decline by 17.6 percent from 1996 levels, slightly less than the 19.6 percent decline originally budgeted; estimated 1997 volume is less than 20 percent of the peak volume processed in 1985.

3. 1998 Issues

The Reserve Banks project that 1998 volume will decline 20 percent from estimated 1997 levels. This decline generally reflects the decline in total noncash collection volume, rather than a shift in volume from the Federal Reserve to other service providers. The centralization of the noncash collection service in one office will enable the Reserve Banks to improve the cost effectiveness of this service in a declining market.

4. 1998 Fees

Centralization of the noncash service in one Reserve Bank office eliminates the need to distinguish between local and out-of-region items; therefore, the Reserve Banks are eliminating the out-of-region fees in 1998 and retaining other fees at their current levels, effectively reducing the price of collecting noncash collection items previously categorized as out-of-region. The Reserve Banks project that 1998 revenue will recover 125.9 percent of total costs, including targeted return on equity. Wile the projected 1998 recovery rate is high, if achieved the service's ten-year recovery rate will be 95.5 percent. Given the focus of the Monetary Control Act and the Board's pricing principles on long-run cost recovery, the Board believes the 1988 fees are reasonable.

H. Special Case Service

Priced special cash services represent a very small portion (approximately 1.0 percent) of overall cash services provided by the Reserve Banks to depository institutions. Special cash services include cash transportation, coin wrapping, and nonstandard packaging of currency orders and deposits.

Table 10 presents the actual 1996, estimated 1997, and projected 1998 cost recover performances for the special cash services.

TABLE 10.—CASH PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Operating costs and imputed expenses	3 Special project costs recovered	4 Total expenses [2+3]	5 Net income (ROE) [1 – 4]	6 Target ROE	7 Recovery rate after target ROE (percent) [1/(4+6)]	8 Special project costs deferred and financed
1996	5.4	5.3	0.0	5.3	0.1	0.2	97.5	0.0
1997 (Est.)	5.1	4.9	0.0	4.0	0.2	0.3	99.7	0.0
1998 (Bud)	2.7	2.5	0.0	2.5	0.1	0.1	102.4	0.0

[14] The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) imposed a tax disadvantage to the holding of bearer securities, which has resulted in the virtual elimation of new issues. Following the enactment of TEFRA, many bearer municipal securities were ''immobilized'' in depositories, such as DTC, further reducing the demand for noncash collection services.

1. 1996 Performance

The special cash services recovered 97.5 percent of total expenses, including targeted ROE, in 1996. Costs were higher than budgeted and priced volumes were lower than budgeted in certain offices.

2. 1997 Performance

Through August 1997, the special cash services recovered 102.6 percent of total expenses, including targeted ROE. For full-year 1997, the Reserve Banks estimate that special cash services will recover 99.7 percent of total expenses, compared to a targeted recovery rate of 102.3 percent. Priced volumes are lower than budgeted in certain offices.

3. 1998 Issues

Projected revenue is expected to decrease by approximately 45 percent due to plans to discontinue special cash services at some Reserve Bank offices in 1998, and the reclassification of cash access as a nonpriced service. Several Reserve Bank offices currently assess fees for access to cash services above the free standard level; this nonstandard access has been treated as a priced service.[15] In light of the upcoming implementation of the uniform cash access policy for all Reserve Banks, Board staff has determined that, due to the governmental nature of this service, the costs and income associated with nonstandard access more appropriately should be treated as a nonpriced service.[16]

4. 1998 Fees

For 1998, the Reserve Banks project that special cash services will recover 102.4 percent of costs, including targeted ROE. The Detroit office is increasing its nonstandard packaging fee from $5.00 to $12.00 per order or deposit to reflect more accurately the cost of providing this service.

III. Competitive Impact Analysis

All operational and legal changes considered by the Board that have a substantial effect on payment system participants are subject to the competitive impact analysis described in the March 1990 policy statement ''The Federal Reserve in the Payments System.'' In this analysis, Board staff assesses whether the proposed change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or constraints or due to a dominant market position of the Federal Reserve deriving from such legal differences.

Assuming the Reserve Banks' volume and cost projections are accurate, the proposed fees are set to provide the Federal Reserve a return on equity at least equal to that earned by large bank holding companies during the past five years. Moreover, the recommended 1998 fee schedules enable the Reserve Banks to continue to recover all actual and imputed costs of providing priced services over the long run (i.e., 1989 through 1998); these proposed fees also provide for projected full cost recovery in 1998. Therefore, the Board believes the recommended 1998 Reserve Bank price and service levels will not adversely affect the ability of other service providers to compete effectively with the Reserve Banks in providing similar services.

TABLE A–1.—COMPARISON OF PRO FORMA BALANCE SHEETS FOR FEDERAL RESERVE PRICED SERVICES

[Millions of dollars—average for year]

	1998	1997
Short-term assets:		
Imputed reserve requirement on clearing balances	$750.4	$545.7
Investment in marketable securities	6,753.5	4,911.3
Receivables [1]	69.0	64.3
Materials and supplies [1]	4.3	11.6
Prepaid expenses [1]	14.1	14.6
Items in process of collection	2,922.8	2,548.2
Total short-term assets	$10,514.1	$8,095.7
Long-term assets:		
Premises [1, 2]	360.4	348.0
Furniture and equipment [1]	145.2	167.0
Leasehold improvements and long-term prepayments [1]	23.3	18.0
Capital leases		0.7
Total long-term assets	528.9	533.7
Total assets	11,043.0	8,629.4
Short-term liabilities:		
Clearing balances and balances arising from early credit of uncollected items	7,503.9	5,457.0
Deferred credit items	2,922.8	2,548.2
Short-term debt [3]	87.4	90.5
Total short-term liabilities	10,514.1	8,095.7
Long-term liabilities:		
Obligations under capital leases		0.7
Long-term debt [3]	185.1	180.5

[15] Priced cash access services are currently offered by the Detroit Branch and all Ninth and Twelfth District offices.

[16] In April 1996, the Board approved a new cash access policy for the Reserve Banks that becomes effective on May 4, 1998. The policy provides for a base level of free currency access to all depository institutions, but restricts the number of offices served and the frequency of access. Depository institutions that meet minimum volume thresholds will be able to obtain more frequent free access. Fees will be charged for additional access beyond the free level.

TABLE A–1.—COMPARISON OF PRO FORMA BALANCE SHEETS FOR FEDERAL RESERVE PRICED SERVICES—Continued

[Millions of dollars—average for year]

	1998		1997	
Total long-term liabilities	185.1		181.2	
Total liabilities		10,699.2		8,276.9
Equity [3]		343.8		352.5
Total liabilities and equity		11,043.0		8,629,4

Note: Details may not add to totals due to rounding.
[1] Financed through PSAF, other assets are self-financing.
[2] Includes allocations of Board of Governors' assets to priced services of $0.5 million for 1998 and 1997.
[3] Imputed figures represent the source of financing for certain priced services assets.

TABLE A–2.—DERIVATION OF THE 1998 PSAF

[Millions of dollars]

A. Assets to be Financed [1]	
Short-term	$87.4
Long-term [2]	528.9
	$616.3
B. Weighted Average Cost:	
1. Capital Structure [3]	
Short-term debt	14.2%
Long-term debt	30.0%
Equity	55.8%
2. Financing Rates/Costs [3]	
Short-term debt	5.1%
Long-term debt	6.8%
Pre-tax equity [4]	22.4%
3. Elements of Capital Costs	
Short-term debt, $87.4×5.18=	$4.5
Long-term debt, $185.1×6.8%=	$12.5
Equity, $343.8×22.4%=	$77.0
	$94.0
C. Other Required PSAF Recoveries:	
Sales taxes	$9.1
Federal Deposit Insurance assessment	$2.6
Board of Governors expenses	$2.8
	$14.5
	108.5
D. Total PSAF Recoveries:	
As a percent of capital	17.6%
As a percent of expenses [5]	18.1%

[1] Priced service asset base is based on the direct determination of assets method.
[2] Consists of total long-term assets, including the priced portion of FRAS assets, less self financing capital leases.
[3] All short-term assets are assumed to be financed with short-term debt. Of the total long-term assets, 35% are assumed to be financed with long-term debt and 65% with equity.
[4] The pre-tax rate of return on equity is based on the average after-tax rate of return on equity, adjusted by the effective tax rate to yield the pre-tax rate of return on equity for each bank holding company for each year. These data are then averaged over five years to yield the pre-tax return on equity for use in the FSAF.
[5] Systemwide 1998 budgeted priced service expenses less shipping are $598.1 million.

TABLE A–3.—COMPARISON BETWEEN 1998 AND 1997 PSAF COMPONENTS

	1998	1997
A. Assets to be Financed (millions of dollars):		
Short-term	$87.4	$90.5
Long-term	$528.9	$533.0

TABLE A–3.—COMPARISON BETWEEN 1998 AND 1997 PSAF COMPONENTS—Continued

	1998	1997
Total	$616.3	$623.5
B. Cost of Capital:		
Short-term Debt Rate	5.1%	5.2%
Long-term Debt Rate	6.8%	7.1%
Pre-tax Return on Equity	22.4%	19.1%
Weighted Average Long-term Cost of Capital	16.9%	15.1%
C. Tax Rate	32.1%	32.1%
D. Capital Structure:		
Short-term Debt	14.2%	14.5%
Long-term Debt	30.0%	29.0%
Equity	55.8%	56.5%
E. Other Required PSAF Recoveries (millions of dollars):		
Sales Taxes	$9.1	$11.6
Federal Deposit Insurance Assessment	$2.6	$2.0
Board of Governors Expenses	$2.8	$2.9
F. Total PSAF:		
Required Recovery	$108.5	$101.5
As Percent of Capital	17.6%	16.3%
As Percent of Expenses	18.1%	16.6%

TABLE A–4.—COMPUTATION OF CAPITAL ADEQUACY FOR FEDERAL RESERVE PRICED SERVICES

[Millions of dollars]

	Assets	Risk Weight	Weighted Assets
Imputed reserve requirement on clearing balances	$750.4	0.0	$0.0
Investment in marketable securities	6,753.5	0.0	0.0
Receivables	69.0	0.2	13.8
Materials and supplies	4.3	1.0	4.3
Prepaid expenses	14.1	1.0	14.1
Items in process of collection	2,922.8	0.2	584.6
Premises	360.4	1.0	360.4
Furniture and equipment	145.2	1.0	145.2
Leases and long-term prepayments	23.3	1.0	23.3
Total	11,043.0		1,145.7
Imputed Equity for 1996		$343.8	
Capital to Risk-Weighted Assets		30.0%	
Capital Total Assets		3.1%	

By order of the Board of Governors of the Federal Reserve System, November 5, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–29634 Filed 11–7–97; 8:45 am]

BILLING CODE 6210–01–P–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0451]

Microbial Safety of Produce; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of a public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to discuss practices to minimize microbial food safety risks for produce as part of the President's initiative to ensure the safety of imported and domestic fruits and vegetables and other foods.

DATES: The public meeting will be held on Monday, November 17, 1997, 8:30 a.m. to 5 p.m. Submit registration for the meeting and requests to make oral presentations by Wednesday, November 12, 1997. If you have written or published materials to be distributed at the public meeting, please bring at least 250 copies to the meeting. Written comments will be accepted until Friday, November 21, 1997.

ADDRESSES: The public meeting will be held at the Key Bridge Marriott, Potomac Ballroom Salons A, B, and C, 1401 Lee Hwy., Arlington, VA. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. 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.

FOR FURTHER INFORMATION CONTACT: Catherine M. DeRoever, Center for Food Safety and Applied Nutrition (HFS–22), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4251, FAX 202–205–4970, or e-mail ''cderoeve@Bangate.fda.gov''. Send registration information (including name, title, firm name, address, telephone, and fax number), one copy of any material that you wish to distribute at the meeting, and requests to make oral presentations to the contact person.

SUPPLEMENTARY INFORMATION: On October 2, 1997, President Clinton announced an initiative to ensure the safety of imported and domestic produce and other foods. This initiative is geared to optimize the microbial safety of domestic and imported fruits and vegetables. As part of this initiative,

the President directed the Secretary of the Department of Health and Human Services (DHHS), in partnership with the Secretary of Agriculture, U.S. Department of Agriculture, and in cooperation with the agricultural community, to issue guidance on good agricultural practices and good manufacturing practices for fruits and vegetables. FDA will coordinate the effort for DHHS. As part of this effort, FDA plans to publish a draft document for public comment early in 1998, and a final document later next year. To assist with these documents, FDA is particularly interested in information on how to minimize microbial contamination through the control of water, manure, worker sanitation and health, field and facility sanitation, and transportation and handling.

Public input is planned through several avenues, including this public meeting. Both oral and written comments from the public are encouraged. A series of grassroots meetings will also be held throughout the country to discuss the initiative. The dates, locations, and times will be published in an upcoming issue of the **Federal Register**.

Transcripts of the public meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. The transcript of the public meeting and all submitted comments will be available for public examination at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 5, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–29798 Filed 11–7–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Public Scoping Meetings for Issuance of an Incidental Take Permit to the Georgia-Pacific Corporation, Mendocino County, CA

AGENCY: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce; California Department of Forestry and Fire Protection.

ACTION: Notice of public scoping meetings.

SUMMARY: The Fish and Wildlife Service and the National Marine Fisheries Service (collectively ''the Services''), and California Department of Forestry and Fire Protection intend to prepare a joint National Environmental Policy Act document/Environmental Impact Report for: (1) Approval of a Habitat Conservation Plan (Plan), and issuance of an incidental take permit to Georgia-Pacific Corporation, pursuant to section 10(a) of the Endangered Species Act of 1973, as amended (Act), and (2) approval of Georgia-Pacific's Sustained Yield Plan by the California Department of Forestry and Fire Protection, including consideration of conservation measures or plans addressing State-listed species. The Plan will cover forest management activities on Georgia-Pacific's properties in Mendocino County, California. Georgia-Pacific intends to request an incidental take permit for the northern spotted owl (*Strix occidentalis caurina*), marbled murrelet (*Brachyramphus marmoratus marmoratus*), American peregrine falcon (*Falco peregrinus anatum*), coho salmon (*Oncorhynchus kisutch*), and possibly other Federally-listed species. It is anticipated that Georgia-Pacific may also seek coverage for approximately 40–50 currently unlisted species of concern under specific provisions of the permit, should these species be listed in the future.

Public Involvement

This notice is being furnished pursuant to the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR sections 1501.7 and 1508.22) to obtain suggestions and information from other agencies and the public on what alternatives should be considered and what environmental impacts issues should be addressed in preparation of the National Environmental Policy Act document. To satisfy both Federal and State environmental policy act requirements, the above Federal and California agencies are conducting a joint scoping process for the preparation of environmental documents.

DATES: In order to expedite the planning process, the above agencies request all scoping comments to this notice be received by December 20, 1997. As an opportunity for interested persons to comment on the scope of the National Environmental Policy Act document, two public scoping meetings have been scheduled for Wednesday, November 19, 1997, from 2 p.m. to 5 p.m. and from 7 p.m. to 9 p.m., at the Town Hall, 363 North Main Street, Fort Bragg, California.

ADDRESSES: Comments regarding the scope of the National Environmental Policy Act document should be addressed to Mr. Bruce Halstead, Project Leader, Coastal California Fish and Wildlife Office, 1125 16th Street, Room 209, Arcata, California 95521–5582. Written comments may also be sent by facsimile to (707) 822–8411. Comments received will be available for public inspection by appointment during normal business hours (Monday through Friday; 8:00 a.m. to 5:00 p.m.) at the above office. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public.

FOR FURTHER INFORMATION: Contact Mr. Ken Hoffman at the above address.

SUPPLEMENTARY INFORMATION: The Georgia-Pacific Corporation, a forest products company, owns and manages approximately 192,952 acres of commercial forest lands in Mendocino County, California, that will be considered for inclusion in the Plan. Georgia-Pacific's multi-species Plan is anticipated to include the northern spotted owl, marbled murrelet, American peregrine falcon, coho salmon, and possibly other threatened/endangered species as part of their application for the incidental take permit. In addition, approximately 40–50 unlisted species of concern (anadromous and resident fish, wildlife, and plants) are being considered for inclusion in the Plan and provisions under the permit. The National Environmental Policy Act document will evaluate various forest management alternatives for the planning area.

Once completed, it is expected that Georgia-Pacific Corporation will submit the Plan as part of their incidental take permit application, as required under section 10(a) of the Act. The Services will evaluate the incidental take permit application, and associated Plan, in accordance with section 10(a) of the Act, and its implementing regulations.

Environmental review of the permit application, including the Plan, will be conducted in accordance with the requirements of the National Environmental Policy Act and its implementing regulations. A No Action/No Project alternative will be considered consistent with the requirements of the National Environmental Policy Act and the California Environmental Quality Act.

Georgia-Pacific will also be preparing a Sustained Yield Plan pursuant to the provisions under Article 6.75 of the

California Forest Practice Rules, including consideration of conservation measures or plans addressing State-listed species under the California Endangered Species Act. It is expected that a section 2090 or 2081 agreement will be issued by the California Department of Fish and Game under state Fish and Game code for selected State-listed species that potentially occur on Georgia-Pacific's California timberlands.

Dated: November 4, 1997.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–29588 Filed 11–7–97; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–020–02–1430–01: GP8–0030]

Realty Action: Sale of Public Land in Harney County, Oregon

AGENCY: Bureau of Land Management (BLM), DOI.

ACTION: Notice of realty action, sale of public land.

SUMMARY: The following described public land in Harney County, Oregon, has been examined and found suitable for sale under Section 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713 and 1719), at not less than the appraised market value. All of the land described is within the Willamette Meridian.

OR–52782—T.25S., R.30E., sec. 28, SE¼NW¼, NE¼SW¼.

The area described aggregates 80 acres, more or less in Harney County, Oregon. The appraised market value and minimum bid for this parcel has been determined to be $4,000.

The sale of this parcel will be by modified competitive procedures. The adjacent landowners Charles C. Jr., and Drenda A. Leathers, Charles C. Leathers Estate and Douglas H. and Delores L. Stills will be given the opportunity to meet or exceed the highest sealed bid received from the general public.

OR–52783—T.25S., R.30E., sec. 32, SE¼NW¼, NE¼SW¼, NW¼SE¼.

The area described aggregates 120 acres, more or less in Harney County, Oregon. The appraised market value and minimum bid for this parcel has been determined to be $8,000.

The sale of this parcel will be by modified competitive procedures. The adjacent landowner Charles C. Leathers Estate will be given the opportunity to meet or exceed the highest sealed bid received from the general public.

OR–52784—T.25S., R.30E., sec. 33, NE¼NE¼.

The area described aggregates 40 acres, more or less in Harney County, Oregon. The apprised market value and minimum bid for this parcel has been determined to be $2,000.

The sale of this parcel will be by competitive procedures. The highest valid sealed bid received from the general public shall be declared the purchaser. Bids shall meet the same requirements and timeframes as specified below for modified competitive bids.

Sale of this parcel would be subject to a road right-of-way in conjunction with the Harney County road system.

OR–52785—T.26S., R.30E., North of Harney Lake, sec. 4, SW¼SW¼.

The area described aggregates 40 acres, more or less in Harney County, Oregon. The appraised market value and minimum bid for this parcel has been determined to be $2,000.

The sale of this parcel will be modified by competitive procedures. The adjacent landowners Charles C. Jr., and Drenda A. Leathers, Pacific Land and Livestock, c/o Charles C. Leathers Estate and Anna Lou Case will be given the opportunity to meet or exceed the highest sealed bid received from the general public.

The sale of this parcel would be subject to a right-of-way for buried telephone cable purposes granted to Telephone Utilities of Eastern Oregon, Inc., dba PTI Communications.

OR–52786—T.26S., R.30E., North of Harney Lake, sec. 5, SE¼NW¼, NE¼SW¼, NW¼SE¼.

The area described aggregates 120 acres, more or less in Harney County, Oregon. The appraised market value and minimum bid for this parcel has been determined to be $8,000.

The sale of this parcel will be by modified competitive procedures. The adjacent landowners Robert A. and Collen M. Rea, Pacific Land and Livestock, c/o Charles C. Leathers Estate and Stoko and Bremer Schaumburg, along with the holder of the BLM grazing permit J.V. Moon and Sons, will be given the opportunity to meet or exceed the highest sealed bid received from the general public.

If any person other than J.V. Moon and Sons is the successful bidder for the land, such person agrees to take the property subject to the current grazing permit until December 31, 1998, when the permit expires.

The sale of this parcel would be subject to a right-of-way for electric power transmission and distribution purposes granted to Harney Electric Cooperative, Inc.

OR–52787—T.26S, R.30E, North of Harney Lake, sec. 9, NE¼NW¼.

The area described aggregates 40 acres, more or less in Harney County, Oregon. The appraised market value and minimum bid for this parcel has been determined to be $2,000.

The sale of this parcel will be by modified competitive procedures. The adjacent landowners Charles C. Jr., and Drenda A. Leathers and Anna Lou Case will be given the opportunity to meet or exceed the highest sealed bid received from the general public.

The sale of this parcel would be subject to a right-of-way for buried telephone cable purposes granted to Telephone Utilities of Eastern Oregon, Inc., dba PTI Communications.

OR–52788—T.26S., R.30E., North of Harney Lake, sec. 10, SW¼NE¼, S½NW ¼, NW¼SW¼.

The area described aggregates 160 acres, more or less in Harney County, Oregon. The appraised market value and minimum bid for this parcel has been determined to be $10,600.

The sale of this parcel will be by modified competitive procedures. The adjacent landowners Charles C. Leathers Estate, Charles C. Jr., and Drenda A. Leathers, Joseph R. and Sharon K. Buermann, Leroy B. Miller and United Land, Carol A. Sack, and Clarence Weitmier, c/o Regina Crutcher will be given the opportunity to meet or exceed the highest sealed bid received from the general public.

The sale of this parcel would be subject to a right-of-way for buried telephone cable purposes granted to Telephone Utilities of Eastern Oregon, Inc., dba PTI Communications and a right-of-way for electric power transmission and distribution purposes granted to Harney Cooperative, Inc.

OR–52789—T.25S., R.31E., sec. 7, NW ¼SE¼.

The area described aggregates 40 acres, more or less in Harney County, Oregon. The appraised market value and minimum bid for this parcel has been determined to be $2,000.

The sale of this parcel will be by modified competitive procedures. The adjacent landowners Terry L. and Donna J. Thomas and Vernon L. Seaman will be given the opportunity to meet or exceed the highest sealed bid received from the general public.

OR–52790—T.25S., R.31E., sec. 7, lots 3 and 4, SE¼SW¼; sec. 8, SW¼SW¼; sec. 17, SW¼ NE¼, E½NW¼, NW¼NW¼; sec. 18 lot 1, N½NE¼, NE¼NW¼.

The area described aggregates 466.52 acres, more or less in Harney County, Oregon. The appraised market value and minimum bid for this parcel has been determined to be $30,800.

The sale of this parcel will be by modified competitive procedures. The adjacent landowners Charles C. Leathers Estate, Terry L. and Donna J. Thomas, Vernon L. Seaman, Elmer H. and Azalea E. Graves, and Floyd and Marion E. Olson will be given the opportunity to meet or exceed the highest sealed bid received from the general public.

OR–52791—T.25S., R.31E., sec. 19, NW¼SE¼.

The area described aggregates 40 acres, more or less in Harney County, Oregon. The appraised market value and minimum bid for this parcel has been determined to be $2,000.

The sale of this parcel will be by modified competitive procedure. The adjacent landowners Joe B. Gates, III and Joan C. Armstead will be given the opportunity to meet or exceed the highest sealed bid received from the general public.

OR–52792—T.25S., R.31E., sec. 20, SW¼NE¼, SE¼NW¼, W½SE¼.

The area described aggregates 160 acres, more or less in Harney County, Oregon. The appraised market value and minimum bid for this parcel has been determined to be $10,600.

The sale of this parcel will be modified competitive procedures. The adjacent landowners Anthony R. Lasich, Vernon L. Seaman, Joe B. Gates, III and Joan C. Armstead, Douglas H. and Delores L. Stills and the State of Oregon will be given the opportunity to meet or exceed the highest sealed bid received from the general public.

OR–53367—T.25S., R.34E., sec. 30, NE¼, NE¼NW¼, N½SE¼, SE¼SE¼.

The area described aggregates 320 acres, more or less in Harney County, Oregon. The appraised market value and minimum bid for this parcel has been determined to be $21,000.

The sale of this parcel will be by modified competitive procedures. The adjacent landowners Bell A. Grazing Cooperative and Paul and Cheryl Ables will be given the opportunity to meet or exceed the highest sealed bid received from the general public.

OR–52578 T.26S.,R.29E., sec. 1, lots 2, 3, SW¼NE¼, SE¼NW¼.

The area described aggregates 159.36 acres, more or less in Harney County, Oregon. The appraised market value and minimum bid for this parcel has been determined to be $9,600.

This parcel went unsold during the 1996 offering. In accordance with the Notice of Realty Action published in the **Federal Register** on June 18, 1996, unsold parcels will be offered competitively until sold. The sale of this parcel will be by the procedures described below for unsold parcels.

If any person other than J.V. Moon and Sons is the successful bidder for the land, such person agrees to take the property subject to the current grazing permit until December 31, 1998, when the permit expires.

OR–52579—T.26S., R.29E., sec. 2, SE¼SE¼.

The area described aggregates 40 acres, more or less in Harney County, Oregon. The appraised market value and minimum bid for this parcel has been determined to be $2,400.

This parcel went unsold during the 1996 offering. In accordance with the Notice of Realty Action published in the **Federal Register** on June 18, 1996, unsold parcels will be offered competitively until sold. The sale of this parcel will be by the procedures described below for unsold parcels.

In any person other than J. V. Moon and Sons is the successful bidder for the land, such person agrees to take the property subject to the current grazing permit until December 31, 1998, when the permit expires.

In addition to the conditions described above, all patents when issued, will contain a reservation for a right-of-way for ditches and canals constructed thereon by the authority of United States under the Act of August 30, 1890 (43 U.S.C. 945).

Access will not be guaranteed to any of the parcels being offered for sale, nor any warranty made as to the use of the property in violation of applicable land use laws and regulations. Before submitting a bid, prospective purchasers should check with the appropriate city or county planning department to verify approved uses.

All persons, other than the successful bidder, claiming to own unauthorized improvements on the land are allowed 60 days from the date of sale to remove the improvements.

All land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action, or 270 days from the date of publication of this notice, whichever occurs first.

With the exception of OR–52784, OR–52578 and OR–52579, sales will be by modified competitive procedures. Federal regulations dealing with sales (43 CFR 2710.0–6(c)(3)(ii)) provide for modified competitive procedures to assure compatibility with possible uses on adjacent land and to protect ongoing uses. The above named landowners abut the property on at least one side, control access and, in some cases, use the land in conjunction with adjacent private land.

Under modified competitive procedures the preference bidders designated above will be given the opportunity to match or exceed the apparent high bid. The apparent high bid will be established by the highest valid sealed bid received from the general public for each parcel. If two or more valid sealed bids of the same amount are received for the same parcel, that amount shall be determined to be the apparent high bid. The bid deposit for the apparent high bid(s) will be retained and all others will be returned.

The preference bidders will be notified by certified mail of the apparent high bid. Where there are two or more preference bidders for a single parcel, they will be allowed 30 days to provide the authorized officer with an agreement as to the division of the property or, if agreement cannot be reached, sealed bids for not less than the apparent high bid. Failure to submit an agreement or a bid shall be considered a waiver of the option to divide the property equitably and forfeiture of the preference consideration. Failure to act by all of the preferred bidders will result in the parcel being offered to the apparent high bidder or declared unsold, if no bids were received in the initial round of bidding.

All sealed bids must be submitted to the Burns District Office, no later than 2:00 p.m. PST on January 14, 1998, the time of the bid opening. Bid envelopes must be clearly marked ''BLM Land Sale'' with the parcel number and the bid opening date. Bids must be for not less than the appraised fair market value specified in this notice. Separate bids must be submitted for each parcel. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Department of the Interior-BLM for not less than 20 percent of the amount bid.

The total purchase price for the land shall be paid within 180 days of the date of the offer to sell. Failure to pay the full price will disqualify the purchaser and the bid deposit will be forfeited. The parcel will then be offered to the apparent high bidder, next highest bidder or declared unsold, as appropriate.

Sale of unsold parcels will be by sealed bid meeting the requirements specified above. Sealed bids for unsold

parcels will be opened on the second Wednesday of each month at 2:00 p.m. PST.

Federal law requires that purchasers must be U.S. citizens, 18 years of age or older, a state or state instrumentality authorized to hold property or a corporation authorized to own real estate in the state in which the land is located.

A successful bid on a parcel will qualify the prospective purchaser to make application for conveyance of those mineral interest offered under the authority of Section 209(b) of the Federal Land Policy and Management Act of 1976. A nonrefundable fee of $50 will be required from the prospective purchaser for purchase of the mineral interests to be conveyed simultaneously with the sale of the land.

DATES: On or before December 24, 1997, interested persons may submit comments regarding the proposed sale to the Burns District Manager at the address described below. Comments or protests must reference a specific parcel and be identified with the appropriate serial number. In the absence of any objections, this proposal will become the determination of the Department of the Interior.

ADDRESSES: Comments, bids, and inquiries should be submitted to the Burns District Manager, HC 74–12533, Hwy 20 West, Hines, Oregon 97738.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this public land sale is available from Craig M. Hansen, Area Manager or Skip Renchler, Realty Specialist, Three Rivers Resource Area at the above address, phone (541) 573–4400.

Dated: October 29, 1997.

Michael T. Green,

District Manager.

[FR Doc. 97–29585 Filed 11–1–97; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Extension of Post-Sale Evaluation Period for Western Gulf of Mexico Lease Sale 168

AGENCY: Minerals Management Service, Interior.

ACTION: Notice to extend post-sale evaluation period for Western Gulf of Mexico Lease Sale 168.

SUMMARY: This notice extends by 15 days, the post-sale evaluation period for Western Gulf of Mexico Lease Sale 169. The Minerals Management Service (MMS) will complete evaluating all the bids received in this sale by December 9, 1997. This action is necessary due to the unusually high number of bids received in response to this lease sale.

DATES: The post-sale evaluation period ends on December 9, 1997.

FOR FURTHER INFORMATION CONTACT: Gary L. Lore, Regional Supervisor, Resource Evaluation, Gulf of Mexico Region, telephone (504) 736–2710.

SUPPLEMENTARY INFORMATION: In the Western Gulf of Mexico Sale 168, held, August 27, 1997, we received 1,224 bids on 804 tracts, 738 of which passed to a second phrase required for detailed evaluations. This unprecedented response by industry in Sale 168 resulted from the enactment of the Outer Continental Shelf Deep Water Royalty Relief Act (Pub. L. 104–58) and other factors, such as higher natural gas and oil prices. Consequently, MMS is unable to conduct and complete the entire bid review process within the 90 days, i.e., by November 24, 1997. Under provisions of § 256.47(e)(2), MMS is extending the bid evaluation period until December 9, 1997.

Dated: November 4, 1997.

Chris C. Oynes,

Regional Director, Gulf of Mexico.

[FR Doc. 97–29586 Filed 11–7–97; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

TIME AND DATE: November 19, 1997 at 2:30 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–368–371 and 731–TA–763–766 (Final) (Certain Steel Wire Rod from Canada, Germany, Trinidad and Tobago, and Venezuela)—briefing and vote.
5. Outstanding action jackets:

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: November 6, 1997.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–29781 Filed 11–6–97; 3:34 pm]

BILLING CODE 7020–02–U

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Keystone Sanitation Company, et al.,* Civil Action No. 1:CV:–93–1482 (M.D. Pa.) was lodged on October 22, 1997, with the United States Court for the Middle District of Pennsylvania.

The consent decree resolves the liability of approximately 376 third and fourth party defendants at the Keystone Sanitation Superfund Site, located near Hanover, Pennsylvania. The decree provides that the Settling Defendants listed in Appendix B to the consent decree and several federal agencies will pay a total of $4.25 million to the United States as follows: $80,000 of that sum will be paid to the Department of the Interior to resolve claims for natural resource damages; $1.25 million will be paid to the Superfund to reimburse the United States for past response costs incurred at the Site; and the balance of $2,920,000 will be paid into a Special Account to be used either for future remedial work at the Site or, if not so used, to be paid back into the Superfund.

The Commonwealth of Pennsylvania is also a party to the decree. It is a third party to the litigation. It grants the settling parties a covenant not to sue under section 107(a) of CERCLA, 42 U.S.C. § 9607(a), its state law counterpart, and other state statutes. In exchange, the Settling Defendants and Settling Federal Agencies agree to pay to the United States the share allocated to the state agencies of $66,775.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Keystone Sanitation Company, et al.,* DOJ Ref. #90–11–2–656A.

The proposed consent decree may be examined at the office of the United

States Attorney, Middle District of Pennsylvania, 228 Walnut Street, Harrisburg, PA 17108; the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $50.00, payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–29532 Filed 11–7–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Digital Imaging Group, Inc.

Notice is hereby given that, on September 25, 1997, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the Digital Imaging Group, Inc. (''Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to § 6(b) of the Act, the identities of the parties are: Adobe Systems Incorporated, San Jose, CA; Canon Inc., Tokyo, Japan; Eastman Kodak Company, Rochester, NY; Hewlett-Packard Company, San Diego, CA; IBM Corporation, Armonk, NY; Intel Corporation, Hillsboro, OR; Fuji Photo Film Co., Ltd., Tokyo, Japan.

Digital Imaging Group, Inc. was formed as a Delaware non-stock member corporation. The primary objective of the venture is to promote the growth of digital imaging by defining and publishing the ''FlashPix'' format and Internet Digital Imaging Protocol, and other deliverables that the Board of Directors may direct from time to time, which will contribute to making digital images a pervasive data type in computers, across networks, and within communication devices of the future.

Membership in the Consortium will remain open and the Consortium will file additional written notifications disclosing all changes in membership.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–29526 Filed 11–7–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Gas Utilization Research Forum

Notice is hereby given that, on October 14, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), Gas Utilization Research Forum (''GURF'') Project No. 2, has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damage under specified circumstances. Specifically, BG plc, Loughborough, Leicestershire, UNITED KINGDOM: and ARCO International Oil and Gas Company, Plano, TX have become new members of GURF Project No. 2.

No other changes have been made in either the membership or planned activity of the group. Membership in this group remains open, and GURF intends to file additional written notification disclosing all changes in membership. Information regarding membership in GURF may be obtained from Dennis Winegar, Vice President, International Marketing & Business Development, Texaco Global Gas and Power, P.O. Box 4700, Houston, TX 77210–4700, Telephone (713) 752–7654, Facsimile: (713) 752–4681.

On May 15, 1995, GURF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 20, 1995, (60 FR 32170).

The last notification was filed with the Department on September 23, 1996. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 5, 1996, (61 FR 56971).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–29527 Filed 11–7–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Gas Utilization Research Forum

Notice is hereby given that, on September 25, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), Gas Utilization Research Forum (''GURF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damage under specified circumstances. Specifically, ARCO International Oil and Gas Company, Plano, TX has become a new member of GURF.

No other changes have been made in either the membership or planned activity of the group. Membership in this group remains open, and GURF intends to file additional written notification disclosing all changes in membership. Information regarding membership in GURF may be obtained from the Secretary, Dennis Winegar, Vice President, International Marketing & Business Development, Texaco Global Gas and Power, P.O. Box 4700, Houston, TX 77210–4700, Telephone (713) 752–7654, Facsimile: (713) 752–4681.

On December 19, 1990, GURF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 16, 1991, (56 FR 1655).

The last notification was filed with the Department on August 11, 1997. The notice has not been published.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–29529 Filed 11–7–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Message Oriented Middleware Association (''MOMA'')

Notice is hereby given that, on September 17, 1997, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the Message Oriented Middleware Association (''MOM'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following organizations have joined MOMA: BEA Systems, Rocky Hill, CT; Candle Corporation, W. Bloomfield, MI; Early, Cloud & Company, Middletown, RI; HUBLink, Inc., Columbus, OH; Dave Isherwood, Staten Island, NY; Liberty Mutual Insurance, Portsmouth, NJ; MINT Communications Systems, New York NY; Motorola, Inc., Schaumburg, IL; National City Corporation, Columbus, OH; SpaceWorks, Inc., Rockville, MD; Technology Investments, Tampa, FL; Vertex Industries, A NetWeave Business Unit, Philadelphia, PA; XING, Paris La Defense, France, ATB Associates has changed its name to ATB, Inc.

The following organizations have withdrawn their membership from MOMA: Bell Sygma Systems Management, Suite Software, Tenektron Software Systems, and Touch Technology, Inc.

No other changes have been made in either the membership or planned activities of MOMA. Membership remains open and MOMA intends to file additional written notifications disclosing all changes in membership.

On May 15, 1995, MOMA filed its original notification pursuant to § 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to § 6(b) of the Act on November 13, 1995 (60 FR 57022).

The last notification was filed with the Department on April 25, 1997. A notice was published in the **Federal Register** on May 19, 1997 (62 FR 27278).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–29531 Filed 11–7–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Storage Industry Consortium

Notice is hereby given that, on April 15, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the National Storage Industry Consortium (''NSIC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the identities of the new members of NSIC are: Digital Instruments, Inc., Santa Barbara, CA; Ontrack Data International, Inc., Eden Prairies, MN; Phase Metrics, Inc., San Diego, CA; VTC Inc., Bloomington, MN; and Zygo Corporation, Middlefield, CT.

The following colleges and universities have joined NSIC as university associate members: IDEMA, Sunnyvale, CA; National Institute of Standards and Technology, Gaithersburg, MD; SRI International, Menlo Park, CA; University of California at Santa Barbara, Santa Barbara, CA; and the University of Colorado, Boulder, CO.

The following member company has changed its name: St. Gobain was formerly known as Saint-Gobain/Norton Industrial Ceramics Corporation.

NSIC's area of activity remains the sponsorship of research in the area of information storage technology.

On June 12, 1991, NSIC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice (the ''Department'') published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 13, 1991 (56 FR 38465).

The last notification was filed with the Department on August 4, 1995. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 20, 1995 (60 FR 65670).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–29528 Filed 11–7–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Management Forum

Notice is hereby given that, on August 8, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the Network Management Forum (''the Forum'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members to the venture are as follows: Telefonos de Mexico, S.A. de C.V., Col. Florida, Mexico D.F., Mexico is a Corporate Member. Orange PCNS, Bristol, England is an Associate Member. G.E. Capital Consulting, Somerset, NJ; and Liacom Systems, Holon, Israel are Affiliate Members.

No other changes have been made since the last notification filed with the Department in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on June 6, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 23, 1997 (62 FR 39550).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–29522 Filed 11–7–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—OBI Consortium Inc.

Notice is hereby given that, on September 10, 1997, pursuant to § 6(a)

of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the OBI Consortium Inc., (''Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to § 6(b) of the Act, the identities of the parties are: American Express, New York City, NY; Actra Business Systems, Sunnyvale, CA; Intelisys Electronic Commerce, LLC, New York City, NY; Oracle Corporation, Redwood Shores, CA; BASF Corporation, Mount Olive, NJ; BOC Group, Inc., Murray Hill, NJ; Corporate Express, Inc., Broomfield, CO; Stream International Holdings, Inc., Norwood, MA; Ford Motor Company, Dearborn, MI; W.W. Grainger, Inc., Lincolnshire, IL; F. Hoffman-LaRoche, Ltd., Nutley, NJ; Office Depot, Inc., Delray, FL; Texas Instruments, Dallas, TX; United Technologies Corporation, Hartford, CT; VWR Scientific Products Corporation, W. Chester, PA; Boise Cascade Office Products Corporation, Itasca, IL; Eastman Chemical Co., Longview, TX.

The venture was formed as a Delaware non-stock member corporation. The primary objective of the venture is to create and promote a standard to facilitate purchasing via the Internet and to cause the broad adoption of that specification by technology vendors, suppliers and customers, in order to facilitate efficient, economic business to business purchasing via the Internet.

Membership in the Consortium will remain open and the Consortium will file additional written notifications disclosing all changes in membership.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–29523 Filed 11–7–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum Project No. 95–10

Notice is hereby given that, on October 2, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the participants in the Petroleum Environmental Research Forum (''PERF'') Project No. 95–10, titled ''Advanced NDE for Heat Exchange Tubular Inspection,'' have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following additional parties have become members of the Project: Shell Oil Company, Houston, TX; and Amoco Corporation, Houston, TX.

No other changes have been made in either the membership or planned activities of PERF Project No. 95–10.

On November 1, 1996, PERF Project No. 95–10 filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 4, 1996, (61 FR 64371).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–29525 Filed 11–7–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; the Salutation Consortium, Inc.

Notice is hereby given that, on July 30, 1997, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the Salutation Consortium, Inc. (Consortium) has filed written notifications for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following have become members to the venture: WhetStone Technologies, Park City, UT; and Komatsu, Ltd., Kenagwa, Japan. The following entities are no longer members of the Consortium: ActiveVoice Corp., Wind River Systems, and Hermes Messaging Service. In addition, certain of the Consortium's previous notifications were amended as follows: The filing dated March 30, 1995 was amended by adding Zerox Corporation, Stamford, CT as a member. The filing dated October 18, 1995, was amended by adding Hermes Messaging Service, Migdal-Haemek Israel. The filing dated January 17, 1996, was amended by adding Axis Communications AB, Lund Switzerland and NICSA, Yomanashi-Ken, Japan. The filing dated April 8, 1997, was amended by adding Senior Technical Staff Consulting, Highland, UT as a member.

On March 30, 1995, Salutation Consortium filed its original notification under the Act under the name ''Smart Office Industry Consortium''. Pursuant to a change in structure from an unincorporated entity to a Delaware non-stock membership corporation, the joint venture changed its name to Salutation Consortium, Inc. on June 29, 1995.

No other changes have been made in the membership or the planned activity of the Consortium. Membership remains open and the Consortium intends to file additional written notifications disclosing all changes in membership.

On March 30, 1995, the Consortium filed its original notification pursuant to § 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to § 6(b) of the Act on June 27, 1995 (60 FR 33233). The last notification was filed on April 9, 1997. The Department of Justice published a notice in the **Federal Register** on May 19, 1997 (62 FR 27279).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–29524 Filed 11–7–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Silicon Integration Initiative, Inc.

Notice is hereby given that, on September 5, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), Silicon Integration Initiative, Inc. (''SI2'') (formerly known as CAD Framework Initiative, Inc. (''CFI'')) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Avant!, Sunnyvale, CA; and Chronology, Inc., Redmond, WA,

have become members of SI2. Advanced Micro Devices; Seiko Instruments; Ikos Systems; CNET–Grenoble; CPQD Telebras; Earl F. Ecklund; Nokolay Vitsyn; and Carl Hage, are no longer members of SI2.

The purpose of SI2 has been amended to read as follows: ''Provide collaborative technology and services which enable higher levels of semiconductor design integration leading to industry accepted standards.''

On December 30, 1988, SI2 filed its original notification pursuant to Section 6(a) of the Act. That filing was amended on February 7, 1989. The Department of Justice published a notice concerning the amended filing in the **Federal Register** pursuant to Section 6(b) of the Act on March 13, 1989 (54 FR 10456). A correction notice was published on April 20, 1989 (54 FR 16013).

The last notification was filed with the Department on May 1, 1997. A notice as published in the **Federal Register** pursuant to Section 6(b) of the Act on July 23, 1997 (62 FR 39549).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–29530 Filed 11–7–97; 8:45 am]

BILLING CODE 4410–11–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–161)]

National Environmental Policy Act; Expansion of Launch Range Operations at Goddard Space Flight Center's Wallops Flight Facility

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Finding of no significant impact.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and NASA policy and procedures (14 CFR Part 1216, Subpart 1216.3), NASA has made a finding of no significant impact (FONSI) with respect to the proposed expansion of launch range operations at Goddard Space Flight Center's Wallops Flight Facility (WFF), Wallops Island, Virginia. NASA proposes to enhance national launch capabilities through improvements to infrastructure and the expansion of its launch range operations at WFF. The major elements of the proposed action include: (1) support of the Virginia Commercial Space Flight Authority's establishment of a commercial launch site to operate from WFF under a Use Agreement with NASA (operation of this launch site would be licensed by the Federal Aviation Administration (FAA)); (2) improvements to real property necessary to support the expansion of launch operations; (3) expansion of operations at WFF to accommodate an increase in orbital launch capability; and (4) restoration of the historical level and nature of suborbital operations on the WFF range. The improvements to infrastructure and the establishment of a licensed commercial launch site at WFF would increase the national capacity for the launch of commercial satellites, and provide additional capacity for all launch operations from Wallops Island.

The FAA has acted as a cooperating agency throughout the NEPA process.

DATE: Upon publication of this FONSI, NASA will proceed immediately to implement the proposed action.

ADDRESSES: The environmental assessment (EA) for the proposed expansion of launch range operations at WFF may be reviewed at the following locations:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street, SW, Washington, DC 20546.

(b) NASA, Goddard Space Flight Center's Wallops Flight Facility, Public Affairs Office, Wallops Island, Virginia 23337.

(c) Eastern Shore Public Library, Accomack, VA 23301.

(d) Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5179).

(e) Spaceport U.S.A., Room 2001, John F. Kennedy Space Center, FL 32899. Please call Lisa Fowler beforehand at 407–867–2497.

In addition, the EA may be reviewed at the following NASA locations by contacting the pertinent Freedom of Information Act Office.

(f) NASA, Ames Research Center, Moffett Field, CA 94035 (650–604–4190)

(g) NASA, Dryden Flight Research Center, Edwards, CA 93523 (805–258–3448).

(h) NASA, Goddard Space Flight Center, Greenbelt, MD 20771 (301–286–0730)

(i) NASA, Johnson Space Center, Houston, TX 77058 (281–483–8612).

(j) NASA, Langley Research Center, Hampton, VA 23665 (757–864–2497).

(k) NASA, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2222).

(l) NASA, Marshall Space Flight Center, AL 35812 (205–544–0031).

(m) NASA, Stennis Space Center, MS 39529 (601–688–2164). A limited number of copies of the EA are available, on a first request basis, by contacting the WFF Public Affairs Office at the address or telephone number indicated herein.

FOR ADDITIONAL INFORMATION CONTACT: Public Affairs Office, NASA Goddard Space Flight Center, Wallops Flight Facility, Wallops Island, VA 23337; telephone 757–824–1579.

SUPPLEMENTARY INFORMATION: NASA has reviewed the EA prepared for the expansion of launch operations at WFF and determined that it represents an accurate and adequate analysis of the scope and level of associated environmental impacts. NASA hereby incorporates the EA by reference in this FONSI.

The purpose of the proposed action is to enhance national launch capabilities through improvements to infrastructure and the expansion of launch range operations at WFF. An FAA licensed commercial launch site at WFF would be established to promote this expansion of launch capabilities. The licensed commercial launch site is needed to further encourage, facilitate, and promote a competitive United States commercial launch industry.

The EA identifies potential impacts that may occur during implementation of the proposed actions. The EA addresses environmental impacts associated both with launch operations and construction of launch support facilities. The expansion of launch range operations would accommodate an increase in orbital launch capability, and a restoration of the historical level of suborbital launches conducted at the WFF launch range. The proposed annual orbital launch schedule for WFF is anticipated to be twelve per year, with environmental impacts associated with an individual launch less than or equivalent to launching a Lockheed-Martin Launch Vehicle-3 with eight strap-ons (LMLV–3). The proposed improvements to WFF's real property and infrastructure necessary to accomplish the proposed expansion include: (1) modifications to existing launch pad 0–A; (2) modifications to existing buildings for payload processing facilities; and (3) the construction of a new launch pad designated as pad 0–B. WFF's proposed launch range expansion would accommodate various solid and liquid (liquid oxygen-hydrogen, liquid oxygen-kerosene) rocket motor configurations.

Reasonable alternatives to the proposed action that were considered included launch sites at: (1) Spaceport

Florida, located adjacent to Cape Canaveral Air Station on the east coast of Florida; (2) California Spaceport, located at Vandenberg Air Force Base, California; (3) and Kodiak Launch Complex, near Kodiak, Alaska. Foreign launch sites, such as Russia, Japan, China, Canada, and India, are not considered reasonable alternative sites. NASA also considered the ''no action'' alternative.

Impacts to the human environment associated with the proposed action can be divided into short-term (construction phase) and long-term (operational phase) impacts. The construction phase would last approximately 12–15 months. The EA evaluated the environmental consequences of both the construction and operational phases including, but not limited to, air and water quality, noise, flora and fauna, threatened and endangered species, health and safety, solid and hazardous waste management, socioeconomics, land use, wetlands and floodplain management.

Overall impacts individually and cumulatively to the human environment are not anticipated to be substantial. Neither construction nor operational activities will have a substantial impact on air quality at WFF. The highly localized, short duration air emissions from rocket launches quickly dissipate and are well below exposure standards established to protect human health. Neither construction nor operational noise levels will differ substantially from current noise levels at WFF. During launch operations, the noise is maintained for only a few seconds, is of low frequency, attenuates rapidly, and occurs infrequently.

Construction activities will disturb some vegetation. Operational activities may include the searing of vegetation within approximately 200 to 300 meters (660 to 980 feet) of the combustion path. The proposed construction area is dominated by Pharagmities australis (common reed) and no longer supports indigenous hydrophilic floral species. Construction activities will not disturb wildlife in the vicinity. Operational activities may include injury or death to fauna within 200 to 300 meters of the combustion path. Some temporary interruption of foraging and nesting activities within a 1,000 meter (3300 feet) radius of the launch pad for 2 to 10 minutes during launch operations may be expected. Construction activities will not disturb any federally or state listed threatened or endangered species or critical habitat. There are no known endangered species within a 1,000 meter (3300 foot) radius of the launch pad. However, a piping plover nesting area is adjacent to this 1,000 meter zone. Pursuant to formal Section 7 consultation, the United States Fish and Wildlife Service has issued a biological opinion that WFF's proposed action is not likely to jeopardize the continued existence of the piping plover. Monitoring the piping plover will take place during the first three launches from pad 0–B that take place during the nesting season.

Relatively small amounts of toxic substances may be needed for payload processing, and limited amounts of solid and hazardous wastes will be generated. No water quality or cultural resource impacts are anticipated, and there are no environmental justice concerns. The proposed action is consistent to the maximum extent practicable with the Virginia coastal zone management program. The proposed construction will occur in a 100-year floodplain and will convert 1,280 square meters (approximately ⅓ acre) of low quality wetlands to industrial use. There are no practicable alternatives which avoid the floodplain or conversion of the wetlands. Wetlands will be established or improved to compensate for the loss created by the project. There will be some positive socioeconomic benefit to the surrounding community through job creation and purchases of goods and services. There are no other issues of potential environmental concern.

NASA sought public and agency review and comment on the environmental impacts of the proposed action through: (1) a notice of availability of the Draft EA concerning expansion of launch range operations at WFF in the **Federal Register** on September 8, 1997 (62 FR 47223); (2) notice of availability of the Draft EA in local news media; (3) consultations with state and federal agencies; and (4) direct mailing of the Draft EA to interested parties. No environmental concerns were raised during the 30-day public comment on the Draft EA.

On the basis of the EA for the expansion of launch range operations at WFF and underlying reference documents, NASA has determined that the environmental impacts associated with the proposed action will not individually or cumulatively have a significant effect on the quality of the human environment.

Therefore, an environmental impact statement is not required.

William F. Townsend,

Acting Associate Administrator for Mission to Planet Earth.

[FR Doc. 97–29637 Filed 11–7–97; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–7580]

Consideration of License Amendment Request for the Fansteel, Inc., Facility in Muskogee, OK and an Opportunity for Hearing

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of consideration of license amendment request for the Fansteel, Inc., Facility in Muskogee, Oklahoma and an opportunity for hearing.

The U.S. Nuclear Regulatory Commission is considering amendment of Source Material License SMB–911, issued to Fansteel, Inc., for modification of the operation at its processing facility in Muskogee, Oklahoma. Fansteel is authorized to reprocess acid ''Work-In-Progress (WIP)'' residues, which were generated from previous operations at its facility, to extract tantalum, niobium and scandium. The WIP residues contain, by weight, more than 0.05 percent natural uranium and thorium, which are source materials and require an NRC license under 10 CFR Part 40. Fansteel has requested an amendment of its license to authorize processing of wastewater treatment residues concurrently with the WIP residues and to generate three additional products: calcium sulfate, sodium sulfate, and sodium fluoroaluminate.

Prior to approving the amendment application, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment. The amendment of the license will be documented in the issuance of an amended SMB–911 license.

The NRC hereby provides notice that this is a proceeding on an application for amendment of a license falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings,'' of NRC's rules and practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to Section 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of the **Federal Register** Notice.

The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Docketing and Services Branch of the 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 D.C. 20555, Attention: Docketing and Services Branch.

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 (h);

(3) The requester's concerns in the area of licensing 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 (d).

Each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, Fansteel, Inc. to the attention of Mr. John Hunter, Number Ten Tantalum Place, Muskogee, Oklahoma, 74403–9296; 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.

Any hearing that is requested and granted will be held in accordance with the NRC's Informal Hearing Procedures for Adjudications in Material Licensing Proceedings in 10 CFR Part 2, Subpart L.

For further details with respect to this action, the licensee's renewed license dated September 30, 1997, and amendment application dated July 30, 1997, are available for inspection at the NRC's Public Document Room, 2120 L Street N.W., Washington, D.C. 20555. Questions should be referred to NRC's project manager for the Fansteel, Inc., facility, Susan D. Chotoo, at (301) 415–8102.

Dated at Rockville, Maryland, this 30th day of October, 1997.

For The Nuclear Regulatory Commission.

Michael F. Weber,

Chief, Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–29616 Filed 11–7–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

The Combined Federal Campaign

AGENCY: Office of Personnel Management.

ACTION: Notice of limitation on the recognition of national federations.

SUMMARY: Pursuant to the Combined Federal Campaign (CFC) regulations at 5 CFR Section 950.301(a) which states that ''the Director may from time to time place a moratorium on the recognition of national federations, I hereby establish such action for a two year period, beginning with the national application process for the 1998 campaign.

This moratorium will provide an opportunity for the Office of Personnel Management to strengthen the monitoring and auditing process, as well as capability to ensure that national federations meet and operate in accordance with the public accountability standards of 5 CFR Section 950.203 and conform to the requirements of 5 CFR Section 950.301.

This action does not prohibit any charity from applying to the CFC national listing as an unaffiliated organization, or from applying to the 20 existing federations, which currently represent 804 of the 1158 charitable organizations. A list of the existing federations is attached.

EFFECTIVE DATES: 1998 and 1999.

CONTACT PERSON FOR MORE INFORMATION: Carol Hill Lowe, Director, Office of Extragovernmental Affairs, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 5450, Washington, DC 20415–0001, (202) 606–2564.

Office of Personnel Management.

Janice R. Lachance,

Acting Director.

National Federations, 1997

American Red Cross
Paul Carter, 430 17th Street, NW., Washington, DC 20006, Phone: 202/639–3334, FAX: 202/634–6184, e-mail:

America's Charities
Don Sodo, Arnold Swope, Mary, 12701 Fair Lakes Circle, Suite 370, Fairfax, VA 22033, Phone: 703/222/3861, FAX: 703/222–3867, e-mail: arnold@acharities.org; don@acharities.org

Animal Funds of America
John Pettitt, President, c/o Guide Dogs of America, 13445 Gleanoaks Boulevard, Sylmar, CA 91342, Phone: 818/362–5834, FAX: 818/362–6870, e-mail: guidedogsofamerica@charitesusa.com

Children's Charities of America
Jodie Darragh, 4040 Crabapple Lake Court, Roswell, GA 30076–4253, Phone: 770/442–0415, FAX: 770/552–0129, e-mail:

Christian Service Organizations of America
Mike Howland, Jeff Lee, 7002 Little River Turnpike, Suite C, Annandale, VA 22003, Phone: 703/916–8855, FAX: 703/916–7588, e-mail: mikehowlandcsoa@mindspring.com; jeffleecsoa@mindspring.com

Conservation and Preservation Charities of America
Amy Owens, President, c/o Appalachian Trail Conference, Director of Development, P.O. Box 807, Harpers Ferry, WV 25425, Phone: 304/535–6331, FAX: 304/535–2667, e-mail: acwen@atconf.org

Do Unto Others: America's Emergency Relief, Devel, Etc. (Formerly World Service Organizations)
Paul McCombs Maxey, 24 New Windsor Road, Suite 102, Westminster, MD 21157–4413, Phone: 410/857–9144, FAX: 410/857–9144, e-mail:

Earth Share
Kal Stein, Steve Karlin, 3400 International Drive, NW, Suite 2K, Washington, DC 20008, Phone: 202/537–7100, FAX: 202/537–7101, e-mail:

Educate America
Jim Aiello, 1320 Jamesville Avenue, Box 131, Syracuse, NY 132–0131, Phone: 315/422–9376, Ext. 224, FAX: 315/422–6369, e-mail:

Health and Medical Research Charities of America
Kimberly Frye, 7777 Leesburg Pike, Suite 202–S, Falls Church, VA 22043, Phone: 888/756–4769, FAX: 505/299–3392, e-mail:

Human & Civil Rights Organizations of America
Marshall Strauss, 615 Third Street, NE, Unit 5, Washington, DC 20002, Phone: 202/547–4105, FAX: 202/547–4106, e-mail:

Human Service Charities of America
Marti Maust, 6509 Lanese Court, Springfield, VA 22152, Phone: 703/697–8250, FAX: 703/697–2870, e-mail:

International Service Agencies
Renee Acosta, Felipe Lulli, Mike Coburn, Phone: 703/548–2200, FAX: 703/548–7684, e-mail: isa@charity.org

Medical Research Agencies of America
Mike Howland, Jeff Lee, 7002 Little River Turnpike, Suite C, Annandale, VA 22003, Phone: 703/916–8855, FAX: 703/916–7588, e-mail mikehowlandcsoa@mindspring.com; jeffleecsoa@mindspring.com

Military, Veterans & Patriotic Service Organizations
David Coker, 1401 Rockville Pike, Rockville, MD 20852, Phone: 301/294–8560, FAX: 301/294–8562, e-mail: Dacoker@aol.com; 301/294–8560

National Black United Federation of Charities
Charlene Taylor, Rosslyn Spriggs, 1212 New York Avenue, NW, Suite 550, Washington, DC 20005, Phone: 202/289–7888, FAX: 202/289–5950, e-mail: nbufc@usbol.com

National Voluntary Health Agencies
Dan Snare, Pam Haberstroh, 1925 K Street, NW, Suite 510, Washington, DC 20006,

Phone: 202/467–5913, FAX: 202/467–4280, e-mail:

United Way of America

Les Talley—703/836–7112, ext 438, Chris Marshall—703/683–7112, ext 491, Pat Wallace, 701 North Fairfax Street, Alexandria, VA 22314–2045, Phone: 703/836–7100, FAX: 703/683–7840, e-mail:

United Service Organizations

Kermit Ellis, Kim Hessler, Washington Navy Yard, 901 M Street, SE, Bldg. 198, Washington, DC 20374–5702, Phone: 202/610–6457, FAX: 202/610–5702, e-mail: usohq@soho.ios.com

Women's Charities of America

Cristin Clarkin Leeper, President, c/o Leeper & Leeper, 620 Woodland Avenue, El Paso, TX 79922, Phone: 915/833–5658, FAX: 915/833–2428, 85, e-mail: ccleeper@juno.com

[FR Doc. 97–29565 Filed 11–7–97; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF PERSONNEL MANAGEMENT

The National Partnership Council

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

Time and Date: 2:00 p.m., November 12, 1997.

Place: OPM Conference Center, Room 1350, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC 20415–0001. The conference center is located on the first floor.

Status: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Individuals with special access needs wishing to attend should contact OPM at the number shown below to obtain appropriate accommodations.

Matters to be Considered: There will be a discussion of the National Partnership Council's strategic action plan for calendar year 1998.

CONTACT PERSON FOR MORE INFORMATION: Michael Cushing, Director, Center for Partnership and Labor-Management Relations, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 7H28, Washington, DC 20415–0001, (202) 606–2930.

SUPPLEMENTARY INFORMATION: We invite interested persons and organizations to submit written comments. Mail or deliver your comments to Michael Cushing at the address shown above.

Office of Personnel Management.

Janice R. Lachance,

Acting Director.

[FR Doc. 97–29772 Filed 11–6–97; 2:19 pm]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22875; 812–10718]

Evergreen Trust, et al.; Notice of Application

November 4, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the ''Act'') from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the reorganization and consolidation of certain registered open-end investment companies, and the conversion of certain common trust funds and collective investment funds into registered open-end investment companies.

APPLICANTS: Evergreen Trust, Evergreen Growth and Income Fund, Evergreen Foundation Trust, The Evergreen Municipal Trust, The Evergreen American Retirement Trust, Evergreen Equity Trust, Evergreen Investment Trust, The Evergreen Lexicon Fund, Evergreen Money Market Trust, Evergreen Tax Free Trust, Keystone Institutional Trust (each a ''Fund'' and collectively, the ''Funds''); Evergreen Select Fixed Income Trust, Evergreen Select Equity Trust, Evergreen Select Money Market Trust, Evergreen Municipal Trust, Evergreen Equity Trust, Evergreen Fixed Income Trust, Evergreen International Trust, Evergreen Money Market Trust (collectively, the ''Delaware Trusts''); First Union National Bank (North Carolina), and First Union National Bank (Pennsylvania) (collectively, the ''Bank'').

FILING DATES: The application was filed on September 19, 1997. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 21, 1997, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Marion A. Cowell, Jr., Esq., General Counsel, First Union Corporation, One First Union Center, Charlotte, North Carolina 28288.

FOR FURTHER INFORMATION CONTACT: Joseph B. McDonald, Jr., Senior Counsel, at (202) 942–0533, or Mary Kay Frech, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation.)

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. Each Fund is registered under the Act as an open-end management investment company. The Funds are organized as either Massachusetts business trusts or Maryland corporations. The Delaware Trusts have been organized as Delaware business trusts to succeed to the Funds' registration statements and operations. The Delaware Trusts either have been or will be registered under the Act as open-end management investment companies.

2. First Union National Bank is a North Carolina corporation and a banking subsidiary of First Union Corporation, a publicly held bank holding company. The Capital Management Group, a division of the Bank, and two of its subsidiaries, Evergreen Asset Management Corp. and Keystone Investment Management Company, act as investment advisers to the Funds and the Delaware Trusts. Evergreen Asset Management Corp. and Keystone Investment Management Company are each registered as investment advisers under the Investment Advisers Act of 1940.

3. Applicants propose to transfer $7 billion of assets in the Bank's various common trust funds and collective investment funds (collectively, ''CTFs''): (i) to certain newly established series of Delaware Trusts; and (ii) to certain Funds prior to the Funds' reorganizing into Delaware Trusts (''CTF Conversions''). Applicants state that the CTF Conversions will be accomplished by transferring CTF assets to the Delaware Trusts or to the Funds having

comparable investment objectives in exchange for shares of the series of the Delaware Trusts or Funds at the then-current market value of the CTF's assets. At the same time, the CTFs will distribute the shares of the respective Delaware Trusts or the funds on a *pro rata* basis to all participants in the CTFs.

4. The Bank's employee pension plan (''Affiliated Plan'') has more than 5% participation in the Equity Growth Fund and, therefore, the Bank may be deemed to have a significant financial interest in this CTF Conversion. In addition, certain of the CTF Conversions will involve converting CTF assets into certain of the Funds where the Bank, as a fiduciary for its customers, may own of record, or hold or control with power to vote 5% or more of the outstanding voting securities of these Funds. This includes 15 Funds in which the Bank, as a fiduciary for its customers, owns of record, or holds or controls with power to vote, 25% or more of the outstanding securities of these Funds.

5. Many of the participants in the CTFs, other than the Affiliated Plan, have an independent or ''second'' fiducicary that supervises and will supervise the investment of CTF's assets (''Second Fiduciary''). In the case of the Affiliated Plan, the Bank's employee benefit review committee (the ''Committee'') serves as a fiduciary. In other situations, the Bank as sole trustee will exercise its fiduciary responsibility to authorize the CTF Conversions.

6. Completion of the CTF Conversions is subject to a number of conditions precedent, including requirements that: (1) The proposed transfers will comply with the provisions of rule 17a–7 (b) through (f) under the Act; and (ii) the CTF Conversions will not occur unless and until (a) the boards of the Delaware Trusts and of the Funds (the ''Boards'') (including a majority of their disinterested directors/trustees (''Disinterested Directors'')) and the Committee, the Second Fiduciary, or the Bank, as the case may be, find that the CTF Conversions are in the best interests of the Funds, the Delaware Trusts, and participants in the CTF, respectively, and (b) the Boards and the Disinterested Directors find that the interests of the existing shareholders will not be diluted as a result of the proposed CTF Conversions. These determinations and the basis upon which they are made will be recorded fully in the records of the Delaware Trusts and The Funds.

7. Where the Bank acts as the sole trustee for a CTF, the Bank will determine in accordance with its fiduciary duties that the proposed CTF Conversion is in the best interests of participants in the CTF. In making this determination, the Bank will consider the anticipated benefits to the CTF participants. These benefits may include increased liquidity, the availability of daily pricing, the accessibility of performance and other information concerning the CTF, the similarity of the investment objectives and policies of the Fund or Delaware Trust and the CTF, the anticipated tax treatment of the proposed transaction and the aggregate fee levels experienced and expected to be experienced by CTF participants before and after the proposed transaction.

8. Applicants also request relief to permit future transactions in which a CTF for which the Bank acts as trustee and in which an employee benefit plan sponsored by the Bank is a participant, proposes to transfer all of its assets to a registered open-end investment company or a series thereof (a) that is advised by the Bank or by any entity controlling, controlled by, or under common control with the Bank, and (b) in which the Bank, as fiduciary for its customers, owns of record or controls or holds with power to vote 5% or more of the outstanding voting securities, provided that the Bank has no beneficial ownership interest in any security of either party to the transaction (''Future Transactions''). Applicants state that they will rely on the requested relief for Future Transactions only in accordance with the terms and conditions contained in the application.

9. On September 16 and 17, 1997, the Board of each Fund, including a majority of the Disinterested Directors, authorized the reorganization of the Funds into the various Delaware Trusts (''Fund Reorganizations''). The purpose of the Fund Reorganizations is to change the domicile of the Funds from Massachusetts or Maryland to Delaware. In conjunction with this proposal, applicants propose that certain of the Funds will be consolidated with other Funds into a single series of a Delaware Trust (''Consolidations'').

10. The Boards of the Funds approved agreements and plans of reorganization under which the Funds being acquired (''Acquired Funds'') have agreed to sell all of their assets and liabilities to a corresponding series of the Delaware Trusts (''Acquiring Series'') (''Agreements''). The exchange of shares will be equal to the net asset value at the close of business on the day before the exchange date specified in the Agreement. The shares will be distributed *pro rata* to the respective Acquired Funds' shareholders in proportion to the number and class of shares of the Acquiring Series owned on the exchange date upon the liquidation and dissolution of the Acquired Funds. At the time of the Fund Reorganizations, the Acquired Funds will have either three or four classes of shares. In all cases, the Acquired Fund shareholders will receive the class of shares which has the same rights and obligations as the class they presently hold.

11. The Agreements are subject to a number of conditions precedent, including requirements that: (I) The Agreements have been approved by the Boards of the Delaware Trusts and the Acquired Funds; (ii) the Acquired Funds and the Delaware Trusts have received opinions of counsel stating, among other things, that the Fund Reorganizations will constitute a ''reorganization'' under section 368 of the Internal Revenue Code of 1986, as amended and, as a consequence, the Fund Reorganizations will not result in Federal income taxes for the Funds or their shareholders; and (iii) the Acquired Funds and the Delaware Trusts have received from the SEC, if necessary, an order exempting the Fund Reorganizations and Consolidations from the provisions of section 17(a) of the Act. Applicants agree not to make any material changes to the Agreements that affect representations in the application without the prior approval of the SEC staff.

12. Proxy solicitation materials describing each Delaware Trust, the Fund Reorganizations, Consolidations, and the terms of the Agreements will be filed with the SEC and mailed to the Funds' shareholders for their approval. A joint special meeting of shareholders of the Funds to consider the Agreements will be held on or about December 15, 1997, and, subject to shareholder approval of the Agreements and the issuance by the SEC of the requested order, the Fund Reorganizations and Consolidations will be completed on or about December 19, 1997.

13. Each Acquired Fund and each Delaware Trust will be responsible for its respective fees and expenses of the Fund Reorganizations and Consolidations. Each Fund will be responsible for its proxy solicitation and other costs associated with its special meeting of shareholders held to consider the Fund Reorganizations and Consolidations. The expenses with respect to the Agreements using Form N–14 will be paid by the Bank.

Applicants' Legal Analysis

1. Section 17(a) of the Act provides that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, knowingly (a) to sell any

security or other property to such registered company, or (b) to purchase from such registered company any security or other property. Section 2(a)(3) of the Act defines the term ''affiliated person'' of another person to include: (a) Any person owning, controlling or holding with power to vote, 5% or more of the outstanding voting securities of such other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (c) any person controlling, controlled by, or under common control with, such other person; and (d) if such other person is an investment company, any investment adviser thereof.

2. Section 17(b) of the Act provides that the SEC may exempt a transaction from section 17(a) of the Act if evidence establishes that (a) the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair 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 Act.

3. Section 6(c) provides that the SEC may exempt any person or transaction from any provision of the Act or any rule under the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Some of the CTF Conversions may be deemed to be subject to the prohibitions of section 17(a) of the Act because the Bank may have legal title to the assets of the CTF and therefore may be viewed as acting as a principal in the CTF Conversions. In addition, the Affiliated Plan is a participant in the Equity Growth Fund conversion. Certain CTF Conversions also involve Funds in which the Bank, as fiduciary for its trust and employee pension plan customers, may own of record or control or hold for such customers with power to vote 5% of a particular Fund's outstanding voting securities (''Affiliated Funds''). Accordingly, applicants request an order from the SEC pursuant to sections 6(c) and 17(b) of the Act exempting the CTF Conversions from section 17(b) of the Act on the terms and subject to the conditions set forth in the application.

5. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) of the Act mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions are satisfied. The Fund Reorganizations and Consolidations may not be exempt from the prohibitions of section 17(a) by reason of rule 17a–8 because the Affiliated Funds may be an affiliated person of the Bank. The Bank or its affiliated persons are investment advisers to the Delaware Trusts. The Affiliated Funds, therefore, may each be an affiliated person of an affiliated person of the Delaware Trusts and, as such, be prohibited by section 17(a)(1) of the Act from selling any security or other property to the Delaware Trusts. As a consequence, the Fund Reorganizations may not meet the requirements of rule 17a–8. For this reason, applicants request an order from the SEC under section 17(b) of the Act exempting applicants from section 17(a) of the Act to the extent necessary to complete the Fund Reorganizations and Consolidations.

6. Applicants submit that the CTF Conversions satisfy the requirements of sections 6(c) and 17(b) of the Act and that the Reorganizations and Consolidations satisfy the requirements of section 17(b) of the Act. Applicants assert that the transactions are in the best interests of the CTFs, Funds, and Delaware Trusts. In approving of or consenting to the transactions, the CTF fiduciaries and the Boards considered that the interests of shareholders will not be diluted; that the registered investment companies' investment objectives and policies are generally substantially identical in the Fund Reorganizations and Consolidations and comparable in the CTF Conversions; that the conditions and policies of rule 17a–7 and rule 17a–8 under the Act will be followed; that no overreaching by any affiliated person is occurring; and that the in-kind transfers of securities avoid the costs of selling securities by the Acquired Funds and the CTFs and purchasing the same or similar securities by the Acquiring Series of the Delaware Trusts. Applicants also submit that the CTF Conversions meet the section 6(c) standards for relief as necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

Applicants' Conditions

1. The proposed CTF Conversions will not occur unless and until: (a) The boards of the Delaware Trusts and of the Funds (including a majority of their disinterested directors/trustees) and the Committee, Second Fiduciary, or the Bank, as the case may be, find that the CTF Conversions are in the best interests of the Delaware Trusts, Funds, and participants in the CTF, respectively, and (b) the boards of the Delaware Trusts and of the Funds (including a majority of their disinterested directors/trustees) find that the interests of the existing shareholders will not be diluted as a result of the proposed transfers. These determinations and the basis upon which they are made will be recorded fully in the records of the Delaware Trusts and the Funds.

2. In order to comply with the policies underlying rule 17a–8, any CTF Conversion will have to be approved by the board of the Delaware Trust or Fund and any CTF's Committee, Secondary Fiduciary, or the Bank, as appropriate, who would be required to find that the interests of beneficial owners would not be diluted.

3. The proposed transaction will comply with the terms of rule 17a–7(b) through (f).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–29601 Filed 11–7–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22873; 812–10848]

Travelers Group Inc., et al.; Notice of Application

November 3, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the ''Act'') from section 15(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the implementation, without shareholder approval, of new investment advisory agreements between Salomon Brothers Asset Management Inc (''SBAM''), Salomon Brothers Asset Management Limited (''SBAM Ltd''), Salomon Brothers Asset Management Asia Pacific (''SBAM AP'') (collectively, the ''Advisers'') and various registered investment companies (''Investment

Companies''), for a period of up to 150 days following the date of consummation of a merger (but in no event later than June 9, 1998). The order also would permit the Advisers to receive all fees earned under the new investment advisory agreements following shareholder approval.

APPLICANTS: Travelers Group Inc. (''Travelers''), Smith Barney Holdings Inc. (''Smith Barney''), and Salomon Inc (''Salomon'').

FILING DATES: The application was filed on October 30, 1997. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 24, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Travelers and Smith Barney, 388 Greenwich Street, New York, NY 10013; Salomon, Seven World Trade Center, New York, NY 10048.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney Advisor, at (202) 942–0569, or Christine Y. Greenless, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicant's Representations

1. Travelers is a diversified, integrated financial services company engaged in investment and asset management, consumer finance, and life and property-casualty insurance services. Salomon is a global investment banking and securities and commodities trading company. Salomon's U.S. asset management business is conducted through SBAM, an indirect, wholly-owned subsidiary of Salomon and an investment adviser registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). SBAM and its non-U.S. investment advisory affiliates [1] provide a broad range of fixed-income and equity investment advisory services, and serve as investment adviser, investment manager, or subadviser (as applicable) to the Investment Companies.[2]

2. On September 24, 1997, Travelers entered into a merger agreement with Salomon, under which a wholly-owned subsidiary of Travelers will be merged into Salomon, with Salomon continuing as the surviving entity and changing its name to Salomon Smith Barney Holdings Inc. (''Salomon Smith Barney''). Thereafter, Smith Barney, a subsidiary of Travelers, will merge with Salomon Smith Barney (the foregoing acquisitions are hereinafter collectively referred to as the ''Transaction''). Applicants expect consummation of the Transaction during the latter part of November 1997.

3. Applicants request an exemption to permit implementation, in connection with the Transaction, prior to obtaining shareholder approval, of (i) new investment advisory agreements between each Investment Company currently being advised by SBAM, and SBAM, and (ii) new subadvisory agreements between each Investment Company's investment adviser for whom an Adviser currently serves in the capacity of subadviser and an Adviser (collectively, ''New Agreements'').[3] The requested exemption would cover an interim period of not more than 150 days beginning on the date the Transaction is consummated and continuing through the date on which each New Agreement is approved or disapproved by the shareholders of each Investment Company, but in no event later than June 9, 1998 (the ''Interim Period''). Applicants represent that the New Agreements will have substantially the same terms and conditions as the existing investment advisory agreements (''Existing Agreements''), except in each case for the effective dates. Applicants state that each Investment Company should receive, during the Interim Period, the same investment advisory services, provided in the same manner and at the same fee levels, as it received prior to the Transaction.

4. Prior to consummation of the Transaction, the board of directors of each Investment Company (the ''Board'') will meet, in accordance with section 15(c) of the Act, to consider the New Agreements and to evaluate whether the terms of the New Agreements are in the

[1] SBAM is affiliated with SBAM Ltd. and SBAM AP, each of which is registered as an investment adviser under the Advisers Act. SBAM Ltd. and SBAM AP act as subadviser to SBAM or share advisory responsibility with SBAM with respect to the Investment Companies.

[2] SBAM serves a the investment adviser to the following registered investment companies: Salomon Brothers Investors Fund Inc, Salomon Brothers Capital Fund Inc, Salomon Brothers Opportunity Fund Inc, Salomon Brothers Series Funds Inc, Solomon Brothers Institutional Series Fund Inc, The Salomon Brothers Fund Inc, Salomon Brothers 2008 Worldwide Dollar Government Term Trust Inc, Salomon Brothers Worldwide Income Fund Inc, Salomon Brothers High Income Fund Inc, The Emerging Markets Income Fund Inc, The Emerging Markets Income Fund II Inc, The Emerging Markets Floating Rate Fund Inc., Global Partners Income Fund Inc., Municipal Partners Fund Inc., and Municipal Partners Fund II Inc. SBAM serves as the subadviser to the following registered investment companies: Salomon Brothers Strategic Bond Opportunities Series and Salomon Brothers U.S. Government Series of New England Zenith Fund; Salomon Brothers/JNL Global Bond Series, Salomon Brothers/JNL U.S. Government & Quality Bond Series, Salomon Brothers/JNL High Yield Series, and Salomon Brothers/JNL Balanced Series of JNL Series Trust; Strategic Bond Trust and U.S. Government Securities Trust, which are series of NASL Series Trust; Strategic Income Fund, U.S. Government Securities Fund and National Municipal Bond Fund, which are series of North American Funds; Salomon Brothers U.S. Government Securities Portfolio, a series of WNL Series Trust; the Emerging Markets Debt Portfolio, a series of SEI International Trust; Nationwide Balanced Fund and Nationwide Multi Sector Bond Fund, which are or will be series of Nationwide Separate Account Trust; Americas Income Trust, Inc.; Heritage Income Trust; Latin America Investment Fund; and Irish Investment Fund. Inc. SBAM Ltd. serves as the subadviser to SBAM with respect to: Salomon Brothers Strategic Bond Fund, a series of Salomon Brothers Series Funds Inc; Salomon Brothers Strategic Bond Opportunities Series, a series of New England Zenith Fund; Salomon Brothers/JNL Global Bond Series, a series of JNL Series Trust; Strategic Bond Trust, a series of NASL Series Trust; Strategic Income Fund, a series of North American Funds; and Nationwide Multi Sector Bond Fund, a series of Nationwide Separate Account Trust. SBAM AP serves as the subadviser to SBAM with respect to: Salomon Brothers Asia Growth Fund, a series of Salomon Brothers Series Funds Inc; and, Salomon Brothers Institutional Asia Growth Fund, a series of Salomon Brothers Institutional Series Fund Inc.

In each of the foregoing cases, whether acting as investment manager, investment adviser, or subadviser, each Adviser (as applicable) is acting as an investment adviser within the meaning of section (2)(a)(20) of the Act, and serves as investment manager, investment adviser or subadviser under a contract subject to section 15 of the Act.

[13] In certain instances, Investment Companies have obtained or, in the case of Nationwide Separate Account Trust, have applied for exemptive relief permitting the investment adviser to the Investment Company to hire and fire subadvisers without shareholder approval. *See NASL Financial Services Inc., et al.,* Investment Company Act Release Nos. 22382 (December 9, 1996) (notice) and 22429 (December 31, 1996) (order); *SEI Institutional Managed trust, et al.,* Investment Company Act Release Nos. 21863 (April 1, 1996) (notice) and 21921 (April 29, 1996) (order). To the extent permitted by their respective exemptive orders, these Investment Companies will not seek shareholder approval of new contracts with SBAM and SBAM Ltd.

best interests of the Investment Companies and their shareholders.[4]

5. Applicants expect that those Investment Companies for which SBAM provides advisory services will distribute proxy statements in November and hold shareholder meetings no later than January, 1998; those Investment Companies for which an Adviser provides subadvisory services will distribute proxy statements and hold shareholder meetings prior to the expiration of the Interim Period, but in no event later than June 9, 1998.

6. Applicants also request an exemption to permit the Advisers to receive from each Investment Company, upon approval by their respective shareholders, all fees earned under the New Agreements during the Interim Period. Applicants state that the fees to be paid during the Interim Period will be at the same rate as the fees that currently are being paid under the Existing Agreements.

7. Applicants propose to enter into an escrow arrangement with an unaffiliated financial institution. The fees payable to the Advisers during the Interim Period under the New Agreements will be paid into an interest-bearing escrow account maintained by the escrow agent. The escrow agent will release the amounts held in the escrow account (including any interest earned): (a) to the relevant Adviser only upon approval of the relevant New Agreement by the shareholders of the relevant Investment Company, or (b) to the relevant Investment Company if the Interim Period has ended and its New Agreement has not received the requisite shareholder approval. Before any such release is made, the directors of the Investment Companies who are not ''interested persons,'' as that term is defined in section 2(a)(19) of the Act (the ''Independent Directors''), will be notified.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it is unlawful for any person to serve as an investment adviser to a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of the investment company. Section 15(a) further requires that the written contract provide for its automatic termination in the event of its ''assignment.'' Section 2(a)(4) of the Act defines the term ''assignment'' to include any direct or indirect transfer of a contract by the assignor.

2. Applicants state that the Transaction could be deemed to result in an assignment of the Existing Agreements and, therefore, their termination upon consummation of the Transaction.

3. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard.

4. Applicants note that the form and timing of the Transaction were determined by Travelers and Salomon in response to a number of factors beyond the scope of the Act and unrelated to the Investment Companies and the Advisers. Applicants submit that those considerations do not allow a time schedule that permits the solicitation of shareholder approval of the New Agreements prior to the consummation of the Transaction. Applicants submit that it is in the best interests of each Investment Company's shareholders to avoid any interruption in services to the Investment Companies and to allow sufficient time for the shareholders to consider the New Agreements.

5. Applicants submit that the scope and quality of services provided to the Investment Companies during the Interim Period will not be diminished. During the Interim Period, the Advisers would operate under the New Agreements, which would be substantially the same as the Existing Agreements, except for their effective dates. Applicants submit that they are not aware of any material changes in the personnel who will provide investment management services during the Interim Period. Accordingly, the Investment Companies should receive, during the Interim Period, the same advisory services, provided in the same manner, at the same fee levels, and by substantially the same personnel as they received before the Transaction.

6. Applicants contend that the best interests of shareholders of the Investment Companies would be served if the Advisers receive fees for their services during the Interim Period. Applicants state that the fees are a substantial part of the Advisers' total revenues and, thus, are essential to maintaining their ability to provide services to the Investment Companies. In addition, the fees to be paid during the Interim Period will be at the same rate as the fees that currently are being paid under the Existing Agreements, which have been approved by the Board and the shareholders of each Investment Company.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. (a) The new advisory agreements to be implemented during the Interim Period will have substantially the same terms and conditions as the existing advisory agreements, (b) the new subadvisory agreements to be implemented during the Interim Period will have substantially the same terms and conditions as the existing subadvisory agreements, except in each case for the effective dates.

2. Fees earned by SBAM, SBAM Ltd and SBAM AP in respect of the new advisory agreements during the Interim Period will be maintained in an interest-bearing escrow account with an unaffiliated bank, and amounts in the account (including interest earned on such paid fees) will be paid (a) to SBAM, SBAM Ltd and SBAM AP in accordance with the new advisory agreements, after the requisite shareholder approvals are obtained, or (b) to the respective Investment Company, in the absence of such approval with respect to such Investment Company.

3. The Investment Companies will hold meetings of shareholders to vote on approval of the new advisory agreements on or before the 150th day following the consummation of the Transaction (but in no event later than June 9, 1998).

4. Travelers or its affiliates will pay the costs of preparing and filing the application, and costs relating to the solicitation of approval of the Investment Companies' shareholders necessitated by the Transaction, unless such solicitation occurs in conjunction with a particular Investment Company's annual meeting of shareholders at which other matters are also considered, in which case a portion of the costs may be allocated to such Investment Company.

5. SBAM, SBAM Ltd and SBAM AP will take all appropriate steps so that the scope and quality of advisory and other services provided to the Investment Companies during the Interim Period will be at least equivalent, in the judgment of the respective Boards, including a majority of the disinterested directors, to the scope and quality of services previously provided. If personnel providing

[4] To the extent that the Board of any Investment Company cannot meet prior to the consummation of the Transaction, applicants acknowledge that such Investment Company may not rely on the exemptive relief requested in the application.

material services during the Interim Period change materially, SBAM, SBAM Ltd and/or SBAM AP will apprise and consult with the Boards of the affected Investment Companies to assure that the Boards, including a majority of the disinterested directors, are satisfied that the services provided will not be diminished in scope or quality.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–29533 Filed 11–7–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of November 10, 1997.

An open meeting will be held on Thursday, November 13, 1997, at 10:00 a.m., followed by a closed meeting.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4) (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Thursday, November 13, 1997, at 10:00 a.m., will be:

(1) Consideration of whether to propose: (i) Amendments to rule 203A–2 under the Investment Advisers Act of 1940, to exempt investment advisers that are required to register in thirty or more states (but do not have $25 million or more of assets under management or otherwise meet the criteria for SEC registration(from the prohibition on SEC registration; and (ii) two alternative amendments to rule 203A–3 under the Investment Advisers Act of 1940, to revise the definition of investment adviser representative. Rule 203A–3, adopted in May 1997, excludes from the definition of investment adviser representative (and thus excludes from state qualification requirements) supervised persons of an SEC-registered adviser if no more than ten percent of their clients are natural persons. The proposed amendments to rule 203A–3 would allow supervised persons who provide services to one or a few institutional or business client accounts to continue to have accommodation clients without being subject to state qualification requirements.

Consideration also will be given to whether to propose amendments to rule 205–3 under the Investment Advisers Act of 1940, which permits investment advisers to charge performance or incentive fees to certain eligible clients. The rule amendments would: (i) eliminate the provisions of the rule that prescribe contractual terms and require specific disclosures; (ii) revise the threshold levels for determining client eligibility to reflect the effects of inflation on the levels established in 1985 when rule 205–3 was adopted; and (iii) make all ''qualified purchasers'' (who are eligible to invest in certain privately offered investment companies exempt from registration under section 3(c)(7) of the Investment Company Act of 1940) eligible for the performance fee exemption. For further information, please contact Kathy Ireland at (202) 942–0530.

(2) Consideration of whether to propose for public comment rule 154 under the Securities Act of 1933 and amendments to rules 30d–1 and 30d–2 under the Investment Company Act of 1940 and rules 14a–3, 14c–3 and 14c–7 under the Securities Exchange Act of 1934. The proposals would permit delivery of a single prospectus or shareholder report to investors sharing the same address. For further information, please contact Marilyn Mann at (202) 942–0582 or Elizabeth Murphy at (202) 942–2848.

The subject matter of the closed meeting scheduled for Thursday, November 13, 1997, following the 10:00 a.m. open meeting, will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: November 5, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–29702 Filed 11–5–97; 4:52 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Trinity Gas Corporation; Order of Suspension of Trading

November 6, 1997.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Trinity Gas Corporation, a Nevada corporation with executive offices located at One Center Ave., Nationsbank Plaza, Suite 200, Brownwood, Texas 76801, and that questions have been raised about recent market activity in the securities of the company and the adequacy of publicly disseminated information concerning, among other things, the valuation of the company's assets, the results of its business operations, and the recent resignation of its auditors.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, It Is Ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. (EST), on November 6, 1997, through 11:59 p.m. (EST), on November 19, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–29749 Filed 11–6–97; 12:35 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39289; File No. SR–CBOE–97–52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated Relating to the Addition of Martin Luther King, Jr. Day as an Exchange Holiday

October 31, 1997.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on October 2, 1997, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On October 31, 1997, the Exchange filed with the Commission Amendment No. 1 to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend Interpretation .03 under Exchange Rule 6.1 to include Martin Luther King, Jr. Day among the Exchange Holidays on which it is closed for business.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] Amendment No. 1 provided a statutory basis for the proposed rule change. See Letter from Mark A. Koerner, Attorney, Exchange, to Michael L. Loftus, Attorney, Division of Market Regulation, Commission, dated October 27, 1997.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Interpretation .03 under Rule 6.1 to include Martin Luther King, Jr. Day among the Exchange holidays on which the Exchange is closed for business. The Exchange will observe the annual holiday on the third Monday in January.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)[3] of the Act, in general, and furthers the objectives of Section 6(b)(5)[4] of the Act, in particular, in that it is designed to perfect the mechanism of a free and open market, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

The foregoing rule change is concerned solely with the administration of the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)[5] of the Act and subparagraph (e) of Rule 19b–4[6] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abroagate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Intersted persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–CBOE–97–52 and should be submitted by December 1, 1997.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(e).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–29602 Filed 11–7–97; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39294; File No. SR–NASD–95–63]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 5 to Proposed Rule Change Governing Broker-Dealers Operating on the Premises of Financial Institutions

November 4, 1997.

On December 28, 1995, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the original proposed rule change relating to broker-dealers operating on the premises of financial institutions. The NASD subsequently filed Amendment Nos. 1, 2, 3 and 4 to the filing. The Commission published the proposed rule and amendments for comment in the **Federal Register**. The Commission received 11 comment letters in response to the publication of Amendment No. 4 of the proposed rule change. In response to comments on Amendment No. 4, on July 17, 1997, the NASD filed Amendment No. 5 to the

proposed rule change. For the reasons discussed below, the Commission is approving the proposed Amendment No. 5 on an accelerated basis.

I. The Rule

Below is the approved text of the rule change incorporating the amendments submitted by the NASD:

Conduct Rules

2350. Broker-Dealer Conduct on the Premises of Financial Institutions

(a) Applicability

This section shall apply exclusively to those broker-dealer services conducted by members on the premises of a financial institution where retail deposits are taken. This section does not alter or abrogate members' obligations to comply with other applicable NASD rules, regulations, and requirements, nor those of other regulatory authorities that may govern members operating on the premises of financial institutions.

(b) Definitions

(1) For purposes of this section, the term ''financial institution'' shall mean federal and state-chartered banks, savings and loan associations, savings banks, credit unions, and the service corporations of such institutions required by law.

(2) ''Networking arrangement'' and ''brokerage affiliate arrangement'' shall mean a contractual or other arrangement between a member and a financial institution pursuant to which the member conducts broker-dealer services for customers of the financial institution and the general public on the premises of such financial institution where retail deposits are taken.

(3) ''Affiliate'' shall mean a company that controls, is controlled by, or is under common control with, a member as defined in Rule 2720.

(4) ''Broker-Dealer services'' shall mean the investment banking or securities business as defined in paragraph (o) of Article I of the By-Laws.

(c) Standards for Member Conduct

No member shall conduct broker-dealer services on the premises of a financial institution where retail deposits are taken unless the member complies initially and continuously with the following requirements:

(1) Setting

Wherever practical, the member's broker-dealer services shall be conducted in a physical location distinct from the area in which the financial institution's retail deposits are taken. In all situations, members shall identify the members' broker-dealer services in a manner that is clearly distinguished from the financial institution's retail deposit-taking activities. The member's name shall be clearly displayed in the area in which the member conducts its broker-dealer services.

(2) Networking and Brokerage Affiliate Agreements

Networking and brokerage affiliate arrangements between a member and a financial institution must be governed by a written agreement that sets forth the responsibilities of the parties and the compensation arrangements. The member must ensure that the agreement stipulates that supervisory personnel of the member and representatives of the Securities and Exchange Commission and the Association will be permitted access to the financial institution's premises where the member conducts broker-dealer services in order to respect the books and records and other relevant information maintained by the member with respect to its broker-dealer services.

(3) Customer Disclosure and Written Acknowledgment

At or prior to the time that a customer account is opened by a member on the premises of a financial institution where retail deposits are taken, the member shall:

(A) Disclose, orally and in writing, that the securities products purchased or sold in a transaction with the member:

(i) Are not insured by the Federal Deposit Insurance Corporation (''FDIC'');

(ii) Are not deposits or other obligations of the financial institution and are not guaranteed by the financial institution; and

(iii) Are subject to investment risks, including possible loss of the principal invested; and

(B) Make reasonable efforts to obtain from each customer during the account opening process a written acknowledgment of receipt of the disclosures required by paragraph (c)(3)(A).

(4) Communications with the Public

(A) All member confirmations and account statements must indicate clearly that the broker-dealer services are provided by the member.

(B) Advertisement and sales literature that announce the location of a financial institution where broker-dealer services are provided by the member or that are distributed by the member on the premises of a financial institution must disclose that securities products: are not insured by the FDIC; are not deposits or other obligations of the financial institution and are not guaranteed by the financial institution; and are subject to investment risks, including possible loss of the principal invested. The shorter, logo format described in paragraph (c)(4)(C) may be used to provide these disclosures.

(C) The following shorter, logo format disclosures may be used by members in advertisements and sales literature, including material published, or designed for use in radio or television broadcasts, Automated Teller Machine (''ATM'') screens, billboards, signs, posters, and brochures, to comply with the requirements of paragraph (c)(4)(B), provided that such disclosures are displayed in a conspicuous manner:

- Not FDIC Insured
- No Bank Guarantee
- May Lose Value

(D) As long as the omission of the disclosures required by paragraph (c)(4)(B) would not cause the advertisement or sales literature to be misleading in light of the context in which the material is presented, such disclosures are not required with respect to messages contained in:

- Radio broadcasts of 30 seconds or less;
- Electronic signs, including billboard-type signs that are electronic, time, and temperature signs and ticker tape signs, but excluding messages contained in such media as television, on-line computer services, or ATMs' and
- Signs, such as banners and posters, when used only as location indicators.

(5) Notifications of Terminations

The member must promptly notify the financial institution if any associated person of the member who is employed by the financial institution is terminated for cause by the member.

II. Description of the Proposal

A. Procedural History of the Filing

The NASD initially published this bank broker-dealer rule for member comment in an NASD Notice to Members.[1] The NASD substantially revised its proposed rule in response to the 284 comment letters that it received about the proposed rule. The NASD filed the proposed rule with the Commission on December 28, 1995, and subsequently submitted Amendment Nos. 1, 2 and 3 to the filing of January 24, January 29, and March 7, 1996,

[1] NASD Notice to Members 94–94.

respectively.[2] The Commission published the proposed rule and amendments for comment in the **Federal Register** on March 22, 1996,[3] and received 98 comments on the proposed rule amendments. While about one-third of the commenters supported the proposal,[4] most suggested modifications to the proposed rule.[5] More than half of the commenters opposed some or all of the provisions of the proposed rule. In response to these comments, on March 25, 1997, the NASD filed substantial amendments to the proposed rule in the form of Amendment No. 4, and the Commission published notice of the amendments in the **Federal Register** on April 21, 1997.[6] In response to the 11 public comments received on Amendment No. 4, on July 17, 1997, the NASD submitted Amendment No. 5 to the proposal, which contains further amendments to the rule.[7] In addition to approving the proposed rule change, as amended, the Commission is granting accelerated approval to Amendment No. 5.

B. Overview of Amendment No. 4

Amendment No. 4 proposed by the NASD included the following substantial revisions to the proposed rule originally filed with the Commission:

1. Setting

The original proposed rule specified certain requirements regarding the setting of the conduct of a broker-dealer's services, including physical separation, that were designed to reduce customer confusion about the differences between deposit taking and securities activities. The great majority of the commenters that addressed this provision of the original proposal criticized it. They argued that the language in the originally proposed rule did not take into account that there may be certain business settings where the member may be unable to comply with the rule and may, therefore, be prevented from conducting business in such a location. These commenters also indicated that the rule as originally proposed conflicts with the Interagency Statement on Retail Sales of Nondeposit Investment Products (''Interagency Statement'') issued by the banking regulators on February 15, 1994. These commenters requested clarification that this provision would not prohibit a member from conducting a brokerage business in a one-person branch, as long as adequate safeguards are adopted, including adequate disclosure and signs announcing the type of business being conducted.

In response to these comments, the setting provision has been revised to make the rule more consistent with the standards of the Interagency Statement. Amendment No. 4 clarifies that the rule will impose the same standards on broker-dealers as are generally imposed on financial institutions by the Interagency Statement, and require only that broker-dealer services should be provided in a physically distinct location *wherever practical*. Under the Amendment No. 4, broker-dealers will not be prohibited from conducting business in the event that a physical separation is not practical. The location, however, must be identified in a manner that clearly distinguishes the broker-dealer services from the activities of the financial institution, and the member's name must be clearly displayed in the area in which the member conducts its broker-dealer services.

2. Confidential Financial Information and Compensation of Unregistered Persons

The original proposal stated that an NASD member shall not use confidential financial information regarding its customers unless a customer granted to the financial institution prior approval for such use. Most of the commenters who addressed this provision objected to the proposed restriction on the use of confidential financial information, and 7requested that the provision either be deleted or substantially revised.[8] These commenters argued that, to the extent there are special concerns when a bank provides confidential financial information about its customers to a broker-dealer, these concerns are properly the subject of federal and state banking and privacy laws. They further argued that the NASD lacks jurisdiction to regulate a financial institution's use of customer information.

The commenters also argued that a member should be able to use such confidential financial information, provided proper disclosure is made and consent for such use has been obtained in accordance with applicable state law, which, according to commenters, does not require written consent. Alternatively, these commenters argued that a member should be able to rely on a representation by the financial institution that customer consent was obtained. In addition, the commenters stated that complying with this provision represented an unwarranted operational burden not justified by the NASD's stated objective of avoiding customer confusion. Finally, some commenters maintained that their customers expect and welcome this sharing of information to enable the financial institution to present them with an array of investment alternatives.

As with other portions of the originally proposed rule, commenters stated that this provision was unreasonably discriminatory and anti-competitive, noting that restrictions regarding the use of confidential financial information are not applied similarly to broker-dealers who are not operating on the premises of a financial institution. These commenters stated that a more equitable approach would be for the NASD to adopt rules that regulate the use of confidential information by all members—not just those members that operate on the premises of financial institutions.

In response to these concerns, the provision has been deleted, and the NASD Board has issued a Notice to Members soliciting comment on a proposed rule governing the use and release of confidential financial

[2] See Letters from Elliot R. Curzon, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, Division of Market Regulation, SEC (January 24, 1996 and march 7, 1996), and Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, Division of market Regulation, SEC (January 29, 1996).

[3] Securities Exchange Act Release No. 36980 (March 15, 1996), 61 FR 11913.

[4] See, *e.g.*, Letter from Dr. Janice C. Shields, Coordinator, Consumer Finance Project, center for Study of Responsive Law, to Jonathan Katz, Secretary, SEC (May 15, 1996); Letter from Dee Riddell Harris, President, North American Securities Administrators Association, Inc., to Jonathan Katz, Secretary, SEC (May 21, 1996).

[5] See, *e.g.*, Letter from Maureen Ryan, Senior Counsel, Barnett Banks, Inc., to Jonathan Katz, Secretary, SEC (May 20, 1996); Letter from Sarah Miller, Senior Government Relations Counsel, American Bankers Association to Jonathan Katz, Secretary, SEC (May 21, 1996) (''ABA Letter''); Letter from Steven J. Freiberg, Chairman & CEO, Citicorp Investment Services to Jonathan Katz, Secretary, SEC (May 20, 1996).

[6] Securities Exchange Act Release No. 38506 (April 14, 1997), 62 FR 19378.

[7] See Letter from May Revell, Assistant General Counsel, NASD Regulation, to Belinda Blaine, Associate Director, SEC (July 17, 1997). The changes made in Amendment No. 5 to the proposed rule change are discussed in detail in Section II.C of this approval order, *infra*.

[8] See, *e.g.*, Letter from Sandra L. Caruba, Counsel, First National Bank of Chicago, to Jonathan Katz, Secretary, SEC (May 20, 1996); Letter from David A. Hebner, Vice President and Assistant General Counsel, First Union Corporation, to Jonathan Katz, Secretary, SEC (May 20, 1996); Letter from Steven Alan Bennett, Senior Vice President and General Counsel, Banc One Corporation, to Jonathan Katz, Secretary, SEC (May 21, 1996); Letter from Robert M. Kurucza, General Counsel, Bank Securities Association, to Jonathan Katz, Secretary, SEC (May 21, 1996).

information that would apply to all members.[9]

3. Communications With the Public

The original proposal set forth requirements for all communications with customers, including account statements, advertisements, and sales literature. Several of the commenters who addressed this provision asked whether the disclosures required by the rule could be provided in the abbreviated format allowed by a 1995 interpretation of the Interagency Statement (''1995 Interpretation'').[10] Several commenters also stated that the requirements of the provision are duplicative of the requirements in existing NASD rules.

In response to these comments, this provision has been revised to make the rule more consistent with the Interagency Statement and the 1995 Interpretation. In addition, those provisions of the originally proposed rule that are duplicative of requirements in existing NASD advertising rules have been deleted.[11] Moreover, several new provisions have been added to clarify the circumstances under which abbreviated risk disclosures may be used and when such disclosures are not required.[12]

4. Compensation of Registered/Unregistered Persons

The original rule proposal stated that members may not provide cash or non-cash compensation to financial institutions in connection with referring customers of the financial institution to the member. A related provision required that networking and brokerage affiliate agreements between a member and a financial institution stipulate that the payment of transaction-related cash or non-cash compensation to unregistered financial institution employees for referrals is prohibited. Commenters who addressed these provisions argued that they were unclear and should be revised. Among other things, they suggested that the NASD clarify that its prohibition on payment of referral fees does not prevent bank management from paying referral fees to bank employees.[13]

Commenters also were concerned with NASD statements in the original rule filing that a member may not do indirectly what it is prohibited from doing directly, by compensating employees of a financial institution for referrals through payments that were directed in the first instance to a financial institution. Commenters were particularly concerned that this provision be clarified to ensure that the NASD was not attempting to regulate a financial institution's compensation practices with respect to its own employees—practices that are subject to regulation by the banking agencies. Finally, some commenters stated that this provision was unreasonably discriminatory and anti-competitive because it would prohibit payment of referral fees by bank broker-dealers, and not prohibit such payments by all member firms. In response to these criticisms, these provisions have been deleted, and the NASD has solicited comment on a proposed rule governing compensation of unregistered persons that would apply to all members.[14]

5. Termination for Cause

As originally filed, the proposed rule specified that networking and brokerage affiliate agreements must contain a provision requiring a member to notify a financial institution if a dual employee of the member and the financial institution is terminated for cause by the member. This provision has been deleted from the paragraph of the bank broker-dealer rule pertaining to matters that must be addressed by networking and brokerage affiliate agreements, and is now a separate affirmative requirement.[15]

C. Overview of Amendment No. 5

In response to the comment letters submitted on Amendment No. 4, the NASD submitted Amendment No. 5 [16] to the proposed rule change. The major issues raised by the commenters, and the changes in Amendment No. 5 in response to those comments, are discussed below.

1. Summary of Comments

Some of the commenters to Amendment No. 4 continued to question the need for the rule. Most commenters, however, believed that the NASD had appropriately amended the rule in response to the issues raised by the 98 commenters on the original proposal. These commenters applauded the NASD for revising the original proposal to eliminate the provisions that they considered objectionable and for making the requirements of the rule more consistent with the guidelines in the Interagency Statement. The commenters also suggested several additional revisions that they believed would result in a clearer, less ambiguous rule that would be even more in accord with the standards in the Interagency Statement.

2. Applicability

The rules applies to broker-dealer services conducted by members ''on the premises'' of a financial institution. Two commenters suggested that the scope of the rule be limited to face-to-face communications with customers on bank premises and that the rule not apply where broker-dealer services are provided by means of telecommunication.[17] The rule, however, is not limited in this way because the potential for confusion exists whenever brokerage services are conducted either in person, over the telephone, or through other electronic medium, by a broker-dealer that has a physical presence on the premises of a financial institution. In addition, two commenters suggested that the disclosure requirements of the rule should be applied to all NASD members that offer both insured products and uninsured securities products.[18] The Commission notes that the NASD has issued a Notice to Members soliciting comment on such a rule.[19]

3. Definition of ''Broker-Dealer Services''

Two commenters requested that the definition of ''broker-dealer services'' be clarified to indicate that the rule does not apply to fiduciary activities or to mutual fund distributors and underwriters.[20] The rule has not been revised to reflect these comments. While the rule most often would be applied to broker-dealer services provided to retail customers, the rule would also apply to brokerage services provided to fiduciary accounts, if such services are provided

[9] See NASD Notice to Members 97–12.

[10] Interpretation of the Interagency Statement (September 12, 1995).

[11] For example, pursuant to NASD Rule 2210, any joint account statement must clearly identify and distinguish securities products from non-securities products, and should clearly identify securities products as being offered by the member. See NASD Rule 2210(f)(2)(C).

[12] See Rule 2350(c)(4), *supra*.

[13] See *e.g.*, ABA Letter, *supra* note 5.

[14] See NASD Notice to Members 97–11.

[15] See Rule 2350(c)(5), *supra*.

[16] *Supra* note 7.

[17] See Letter from Barry E. Simmons, Investment Company Institute, to Jonathan Katz, Secretary, SEC (May 12, 1997) (''1997 ICI Letter''); and Letter from Jack Kopnisky, President & CEO, KeyInvestments, to Jonathan Katz, Secretary, SEC (May 9, 1997) (''1997 KeyInvestments Letter'').

[18] See Letter from Kimberly Crichton, General Counsel and Vice President, Citicorp Investment Services, to Jonathan Katz, Secretary, SEC (May 12, 1997); and Letter from Valorie Seyfert, President, CUSO Financial Services, L.P., to Jonathan Katz, Secretary, SEC (May 21, 1997) (''1997 CUSO Letter'').

[19] See NASD Notice to Members 97–26.

[20] See Letter from Robert R. Davis, Director, Government Relations, America's Community Bakers, to Jonathan Katz, Secretary, SEC (May 13, 1997) (''1997 ACB Letter''); and 1997 ICI Letter, *supra* note 17.

on the premises of a financial institution where retail deposits are taken. Furthermore, the Interagency Statement does not exclude fiduciary activities from the scope of the guidelines; it merely states that the guidelines ''*generally do not apply* to the sale of nondeposit investment products to non-retail customers, such as sales to fiduciary accounts administered by an institution'' (emphasis added). The 1995 Interpretation also clarifies that issue. It states: ''[F]or fiduciary accounts where the customer directs investments, * * * the disclosures prescribed by the Interagency Statement should be provided.''

In addition, the NASD rule would apply by its terms to mutual fund distributors and underwriters if they are engaged in brokerage activities on the premises of a financial institution. For these reasons, the rule has not been revised to respond to this comment.

4. Setting

As discussed above, the revised rule requires that, wherever practical, broker-dealer services must be conducted in a physical location distinct from the area where retail deposits are taken. One commenter suggested amending the rule to require that broker-dealer services be separated from the area of the financial institution where retail deposits are *routinely* taken to make clear that brokerage services must be offered away from the teller line.[21] Because of concern that this proposal could lead to confusion, the rule has not been changed in response to this comment. However, the NASD intends to clarify in a Notice to Members announcing the approval of the rule that brokerage services should be separated from the teller line, the area of the bank where retail deposits are routinely taken. The NASD also intends to clarify that the rule is not meant to preclude certificates of deposit from being offered in the brokerage area if that particular product, rather than an uninsured investment product, is best suited to the customer's investment needs. The rule therefore would not preclude a bank customer from purchasing an array of investment products, including certificates of deposit, so long as the brokerage area is appropriately separated from the other areas of the financial institution with appropriate signs indicating the type of business being conducted and other lines of demarcation, and the customer is given the appropriate disclosures.

5. Customer Disclosure and Written Acknowledgment

The rule requires NASD members to make certain disclosures at or prior to the time that a customer account is opened by the member.[22] One provision requires disclosure that securities products are not insured. Three commenters addressed this requirement in response to Amendment No. 4. Two suggested deleting the phrase ''or other deposit insurance'' to ensure consistency with the Interagency Statement.[23] The third suggested simply stating that securities products are not federally insured.[24] In response to these comments, the phrase ''or other deposit insurance'' has been deleted from the rule.

Another commenter suggested that, in addition to the disclosures required by the current version of the rule, disclosure should be made that products sold by a dual employee are offered by a person who accepts deposits and sells nondeposit investment products.[25] In order to keep the NASD rule consistent with the Interagency Statement, and because the current disclosures are designed to adequately apprise investors of the risks of securities products, this change has not been made.

6. Communications With the Public

Paragraph (c)(4)(B) permits shorter, logo format disclosures in visual media. One commenter suggested that the rule should also allow these abbreviated disclosures in radio advertisements.[26] Because the definition of ''advertisement'' in NASD Rule 2210 (Communications with the Public), includes material designed for use in radio, the rule language has been revised to be consistent with Rule 2210.

The rule also allows the required disclosures to be omitted in specified advertisements and sales literature, provided the omission will not cause the advertisement or sales literature to be misleading. One commenter suggested deleting any reference to the ''misleading'' nature of such omissions.[27] This language has been retained to appropriately reflect the general prohibitions on misleading advertising in NASD rules.[28] Another commenter requested that the rule allow omission of the required disclosures in letters that introduce the broker-dealer to bank customers and do not contain an offer or a solicitation.[29] This suggested change has not been made. Generally, a personalized letter to an individual customer is not included in either the definition of advertisements or sales literature in NASD Rule 2210. The letter would be considered ''correspondence'' subject to the requirements of NASD Rule 3010 (Supervision).[30]

Paragraphs (c)(4)(B), (C), and (D) have been revised to make other clarifying changes, many of which merely make the rule language in Paragraph (c)(4) more consistent with language in NASD Rule 2210. For example, the phrase ''promotional and sales material'' has been replaced with the phrase ''sales literature'' in Paragraph (c)(4)(A), consistent with Rule 2210. Also, Paragraph (c)(4)(C) has been revised to clarify that logo disclosures may be used in all advertisements and sales literature. Finally, in order to ensure consistency with the standards in the Interagency Statement, Paragraph (c)(4)(D) has been revised to add language to the rule that mirrors language in the 1995 Interpretation. These minor revisions clarify the meaning of the rule and make the rule consistent with the Interagency Statement.

7. Notification of Termination

The rule requires members to promptly notify the financial institution if an associated person of the member who also is employed by the financial institution (a dual employee) is terminated for cause by the member. Two commenters suggested that such notification should also be provided in situations where an associated person who is employed only by the member and not directly by the financial institution is terminated.[31] This change has not been made because the purpose

[21] See Letter from Sarah A. Miller, Senior Government Relations Counsel, American Bankers Association, to Jonathan Katz, Secretary, SEC (May 12, 1997) (''1997 ABA Letter'').

[22] The Commission notes that requiring disclosure at or prior to the time of the opening of an account is consistent with other SEC rules. See *e.g.*, Exchange Act Rule 11Ac1–3, 17 CFR 240.11Ac1–3 (regarding payment for order flow).

[23] See 1997 ABA Letter, *supra* note 21, and 1997 ICI Letter, *supra* note 17.

[24] See 1997 CUSO Letter, *supra* note 18.

[25] Id.

[26] See Letter from Kimberly Crichton, General Counsel and Vice President, Citicorp Investment Services, to Jonathan Katz, Secretary, SEC (May 12, 1997).

[27] See 1997 Key Investments Letter, *supra* note 17.

[28] See NASD Rule 2210.

[29] See Letter from Bill Sones, President, Independent Bankers Association of America, to Jonathan Katz, Secretary, SEC (May 12, 1997).

[30] But see NASD Notice to Members 97–37 (requesting comment on proposed definition of correspondence for rules regarding communications with the public).

[31] See 1997 ACB Letter, *supra* note 20. See also Letter from Nicholas J. Ketcha, Jr., Director, Division of Supervision, FDIC, to Belinda Blaine, Associate Director, Division of Market Regulation, SEC, (August 29, 1997).

of the provision is to permit banks and broker-dealers to maintain open communications about dual employees, and it is unclear what purpose would be served by the revision.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 5. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–95–63 and should be submitted by December 1, 1997.

IV. Commission Findings

The Commission finds that the rule change is consistent with the requirements of Section 15A(b)(6) of the Act.[32] Section 15A(b)(6) specifies that the rules of a national securities association be designed, among other things, to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the rule will provide enforceable standards designed to reduce potential customer confusion in dealing with broker-dealers that conduct business on the premises of financial institutions. The rule also should clarify the relationship between a broker-dealer and a financial institution entering into a networking arrangement.[33] The rule should help prevent confusion by clarifying that securities purchased by customers on the premises of a financial institution are not insured by the FDIC or the financial institution. The disclosures required by the rule, and the written acknowledgement of disclosures obtained pursuant to the rule, are intended to assist investors in making investment decisions based on a better understanding of the distinctions between insured deposits and uninsured securities products. Although the rule requires only that members ''make reasonable efforts'' to obtain written customer acknowledgment of the required disclosures in the account opening process, the Commission expects members to obtain such written acknowledgement in all but rare circumstances (*e.g.* when a customer refuses to sign the acknowledgment). It is anticipated that, as is the case today, many firms will provide these disclosures in the new account opening form which, when signed by the customer, constitutes written acknowledgment. The Commission believes that in the rare circumstances where acknowledgment is not obtained, heightened supervisory procedures would be necessary. Reasonable supervisory procedures would include procedures for the registered representative receiving approval from the member's compliance department prior to opening the account, and documenting that the customer has refused to sign the written acknowledgment of such disclosure.

The Commission also agrees with the NASD that the activities of NASD member firms operating on the premises of financial institutions and related customer protection issues are not adequately addressed by existing NASD rules. Because the Interagency Statement is not part of the securities laws or rules, the basis for NASD Regulation disciplinary action against member firms that do not comply with the Interagency Statement is unclear. The proposed rule establishes a clear standard of conduct governing the practices of member firms operating on the premises of financial institutions that is enforceable by the NASD.

The Commission finds good cause for approving Amendment No. 5 prior to the thirtieth day after the date of the publication of notice of filing thereof in the **Federal Register**, because Amendment No. 5 reflects and responds to earlier comments about the proposal and further clarifies the proposal. In addition, accelerated approval of Amendment No. 5 will permit the rule to go into effect without further delay.

V. Effective Date

The NASD will announce the approval of this rule in a Notice to Members no later than 60 days after publication of this Order in the **Federal Register**. The effective date of this rule will be 60 days after publication of the NASD's Notice to Members.

It is therefore ordered, pursuant to Section 19(b)(2)[34] of the Act, that the proposed rule change (SR–NASD–95–63), as amended be, and hereby is, approved.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–29600 Filed 11–7–97; 8:45 am]

BILLING CODE 8010–01–M

[32] 15 U.S.C. 78*o*–3(b)(6).

[33] In approving the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[34] 15 U.S.C. 78s(b)(2).

DEPARTMENT OF STATE

[Public Notice No. 2625]

Secretary of State's Advisory Committee on Private International Law; Meeting Notice

There will be a meeting on Developments in Private International Law of the Secretary of State's Advisory Committee on Private International Law (ACPIL) on Thursday, November 20 from 1:00 p.m. to 5:00 p.m. and Friday, November 21 from 10:00 a.m. to 4:30 p.m. at the Department of State in Washington, D.C.

Comments and advice will be solicited on developments in private international law. The meeting agenda will include a review of the work of international organizations specializing in this field, including the International Institute for Unification of Private Law (UNIDROIT), the Hague Conference on Private International Law, the United Nations Commission on International Trade Law (UNCITRAL), Inter-American Specialized Conferences on Private International Law (CIDIP) sponsored by the Organization of American States (OAS), and other international organizations, as appropriate.

Topics for discussion will include the proposed Hague convention on jurisdiction, recognition and enforcement of foreign judgments; the 1997 UNCITRAL model law on cross-border insolvencies; electronic commerce developments, including jurisdiction, cross-border recognition, and U.S. positions on electronic signatures; whether the Advisory Committee should endorse for U.S. signature and ratification the 1996 Hague Convention on Protection of Children; possible PIL topics at the next O.A.S. Specialized Conference on Private International Law (CIDIP–VI); the proper role non-governmental parties should play in international bodies such as the U.N.; the Hague Conventions on intercountry adoption and international child abduction; the prospects for a Hague convention on

protection of incapacitated adults; international issues involved in reciprocal arrangements for enforcement of support obligations; and whether U.S. policy on commercial law unification should be based on the balancing of provisions of various legal systems, or should adopt economic objectives as the guiding standard. Additional topics may be considered as time permits.

Members of the general public may attend up to the capacity of the meeting room, which may be limited, and participate subject to the direction of the Chair. The meeting will be held in Conference Room 1107 at the Department of State; entry should be only via the Diplomatic entrance at 22d and ''C'' Streets, N.W. As access to the building is controlled, the office indicated below should be notified by mail or fax not later than Friday, November 14, of the name, address, firm or affiliation if any, social security number and date of birth of persons wishing to attend. Providing this information permits us to pre-clear participants and avoid delays that otherwise may occur due to security procedures.

To register for the meeting with the above information or to request copies of documents on particular topics, please contact the Office of the Assistant Legal Adviser for Private International Law (L/PIL), attention Harold S. Burman, Advisory Committee Executive Director, at 2430 ''E'' Street, N.W., Suite 355 South Building, Washington D.C. 20037–2800, or notify Ms. Rosalia Gonzales by fax at (202) 776–8482, phone (202) 776–8420, or by e-mail at pildb@his.com. Members of the public are also invited to request information on the Department's program in this field.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law.

[FR Doc. 97–29582 Filed 11–7–97; 8:45 am]

BILLING CODE 4710–08–M

TRADE AND DEVELOPMENT AGENCY

SES Performance Review Board; Notice

AGENCY: Trade and Development Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the Trade and Development Agency's Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Deirdre E. Curley, Assistant Director for Management, Trade and Development Agency, 1621 N. Kent Street, Arlington, VA 22209–2131, (703) 875–4357.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5), U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The following have been selected as acting members of the Performance Review Board of the Trade and Development Agency: Lois E. Hartman, Deputy Director (retired), Office of Human Resources, Agency for International Development; James Sullivan, Director, Office of Energy and Infrastructure, Bureau for Research and Development, Agency for International Development; and John L. Wilkinson, Associate Assistant Administrator, Bureau for Global Programs, Agency for International Development.

Dated: November 5, 1997.

Deirdre E. Curley,

Assistant Director for Management.

[FR Doc. 97–29620 Filed 11–7–97; 8:45 am]

BILLING CODE 8040–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Akron-Canton Regional Airport, Akron, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Akron-Canton Regional Airport Authority for Akron-Canton Regional Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Akron-Canton Regional Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before April 14, 1998.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is October 16, 1997. The public comment period ends December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Lawrence C. King, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Akron-Canton Regional Airport are in compliance with applicable requirements of Part 150, effective October 16, 1997. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before April 14, 1998. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Akron-Canton Regional Airport Authority submitted to the FAA on September 22, 1997, noise exposure maps, descriptions and other documentation which were produced during the Akron-Canton Regional Airport Noise Compatibility Study update dated 1997. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the

noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Akron-Canton Regional Airport Authority. The specific maps under consideration are Figure 8.2, Pages 107–108 of the NEM, and Figure 4.1, Pages 43–44 of the NCP, in the submission. The FAA has determined that these maps for Akron-Canton Regional Airport are in compliance with applicable requirements. This determination is effective October 16, 1997. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detail overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification of by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Akron-Can Regional Airport, also effective on October 16, 1997. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before April 14, 1998.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111

Mr. Frederick J. Krum, Director of Aviation, Akron-Canton Regional Airport, 5400 Lauby Road, N.W., P.O. Box 9, North Canton, OH 44720–1598

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, on October 16, 1997.

Lawrence C. King,

Acting Assistant Manager, Detroit Airports District Office FAA Great Lakes Region.

[FR Doc. 97–29572 Filed 11–7–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program Sarasota-Bradenton International Airport Sarasota, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Sarasota Manatee Airport Authority under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On May 7, 1996 and April 15, 1997, the FAA determined that the noise exposure maps submitted by the Sarasota Manatee Airport Authority under Part 150 were in compliance with applicable requirements. On October 9, 1997, the Administrator approved the Sarasota-Bradenton International Airport noise compatibility program. All of the program measures were fully approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Sarasota-Bradenton International Airport noise compatibility program is October 9, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando Florida 32822, (407) 812–6331, Extension 29. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Sarasota-Bradenton International Airport, effective October 9, 1997.

Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measure should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in

Part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150:

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical users, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Orlando, Florida.

The Sarasota Manatee Airport Authority submitted to the FAA on May 2, 1996 and April 9, 1997, updated noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from May 1, 1993 through April 7, 1997. the Sarasota-Bradenton International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on May 7, 1996 and April 15, 1997. Notice of this determination was published in the **Federal Register**.

The Sarasota-Bradenton International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2002. It was requested that FAA evaluate and approve this material as a noise compatibility program as described in Section 104(b) of the Act. The FAA began its review of the program on April 15, 1997, and was required by a provision of the Act to approve or disapprove the program within 180-days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained four (4) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective October 9, 1997.

Outright approval was granted for all four (4) of the specific program measures. The approval action was for the following program controls:

Noise abatement measure	Description	NCP pages
	OPERATIONAL MEASURES	
1. Departure Path for Runway 32 ..	Current ATC procedures by SRQ tower and Tampa TRACON instruct all aircraft weighing over 25,000 pounds and all jet aircraft departing northbound on Runway 32 to turn left at 0.9 DME (*i.e.,* the middle marker) to join the 295° radial outbound, then proceed on course as instructed by ATC. Southbound jet aircraft departing on Runway 32 are instructed to turn left at the 0.9 DME to a heading of 270° for vectors to on course. The airport's Flight Tracking System indicates some aircraft using the northbound procedure fly particularly close to residential areas on the eastern shore of Sarasota Bay. It is recommended that the existing procedure be modified so all aircraft weighing over 25,000 pounds and all jet aircraft departing on Runway 32 would be instructed to turn left at 0.9 DME to join the Sarasota 270° radial outbound to at least 7 DME, then proceed on course as instructed by ATC. Should, after implementation, the turn at 7 DME result in a splay of aircraft that is further east then anticipated, it is recommended that aircraft proceed outbound on the 270° radial to the 8 DME, then proceed on course as instructed by ATC. It is further recommended that should approval of the turn to the 270° radial be denied, then the current procedure be maintained until such time as the turn to the 270° radial becomes feasible. Implementation of the modified procedure will reduce noise exposure on sensitive areas northwest of the airport and reduce the number of impacted people with the 65 DNL contour by approximately 1,033 people. FAA Action: Approved. Any decision to implement this procedure is subject to appropriate environmental review, a flight check, and publication of the SID.	Pgs. 4–3 to 4–11, 6–1 and 6–2; Figures 4–1 to 4–3; Tables 4–1 and 6–10; and letter from Mr. Noah Lagos dated June 17, 1997.

Noise abatement measure	Description	NCP pages
	LAND USE MEASURES	
1. Purchase and Resale with Avigation Easements and Sound Insulation.	It is recommended that the SMAA offer to purchase fee simple interest from homeowners who purchased their current home prior to January 1, 1980, and who are located within the 65+DNL contour of the 2000 NEM in Sarasota and Manatee Counties. Priority ranking based upon length of ownership will be given to homeowners located within the 70+DNL contour of the 1995 NEM. Homes purchased by the SMAA will be sound insulated only where feasible and cost effective and all homes will be resold with an avigation easement. This alternative will be implemented in accordance with 49 CFR Part 24 and other applicable guidance. This will reduce existing noncompatible land uses and provide mitigation for homeowners who purchased prior to January 1, 1980, to comply with existing Florida Development of Regional Impact (DRI) Development Order stipulations. FAA Action: Approved.	Pgs. 5–16 to 5–18, 6–13 and 6–14; Figures 5–1 to 5–3, 6–2 and 6–4; Tables 5–7, 5–9 and 6–11; Appendices D, E and F; and Letter from Mr. Noah Lagos dated June 17, 1997.
2. Sound Insulation with Avigation Easements.	It is recommended that the SMAA offer to provide sound insulation, only where feasible and cost effective, in exchange for an avigation easement to fixed single family homeowners located within the 65+DNL contour of the 2000 NEM in Sarasota and Manatee Counties, who purchased their current home prior to December 15, 1986, the date of constructive notice. Mobile homes and large institutional buildings are not included in this program. Priority ranking based upon length of ownership will be given to homeowners located within the 70+DNL contour of the 1995 NEM. This will reduce existing noncompatible land uses and provide mitigation for homeowners who purchased prior to the date of construction notice. FAA Action: Approved.	Pgs. 5–11 to 5–14, 6–11 and 6–12; Figures 5–1, 5–3, 6–2 and 6–4; Tables 5–5, 6–7 and 6–11; Appendices D, E and F; and Letter from Mr. Noah Lagos dated June 17, 1997.
Purchase of Avigation Easement ...	It is recommended that the SMAA offer to purchase avigation easements from homeowners, including mobile homes where owners own their own lots, located within the 65–DNL contour of the 2000 NEM in Sarasota and Manatee Counties, who purchased their current home prior to December 15, 1986, the date of construction notice. Priority rating based upon length of ownership will be given to homeowners located within the 70+DNL contour of the 1995 NEM. This will reduce existing noncompatible land uses and provide mitigation for homeowners who purchased prior to the date of constructive notice. FAA Action: Approved.	Pgs. 5–14 to 5–16 and 6–13; Figures 5–1, 5–3, 6–2 and 6–4; Tables 5–6, 6–8 and 6–11; Appendices D, E and F; and Letter from Mr. Noah Lagos dated June 17, 1997.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on October 9, 1997. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative office of the Sarasota Manatee Airport Authority.

Issued in Orlando, Florida on October 24, 1997.

Gordon H. Shepardson,

Acting Manager, Orlando Airports District Office.

[FR Doc. 97–29580 Filed 11–7–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–55]

Petitions for Exemption; Summary of Petitions; Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 26, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Heather Thorson (202) 267–7470 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on October 31, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28905.

Petitioner: Petroleum Helicopters, Inc.

Sections of the FAR Affected: 14 CFR 135.152(a).

A summary of this petition was inadvertently published a second time in the **Federal Register** on October 27, 1997. This notice serves to clarify that the close of the comment period remains November 3, 1997.

Docket No.: 28855.

Petitioner: Offshore Logistics, Inc.

Sections of the FAR Affected: 14 CFR 135.152(a).

A summary of this petition was inadvertently published a second time in the **Federal Register** on October 27, 1997. This notice serves to clarify that the close of the comment period remains November 3, 1997.

[FR Doc. 97–29566 Filed 11–7–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–56]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of the notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 1, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rule Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Heather Thorson (202) 267–7470 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on November 3, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 28166.

Petitioner: Ronald T. Brown.

Sections of the FAR Affected: 14 CFR 43.3.

Description of Relief Sought/ Disposition: To permit the petitioner to perform unsupervised maintenance, repairs, and inspections on his 1943 Fairchild PT23C–M62C 66020 aircraft (Serial No. 147HO) without being an appropriately certificated airframe and powerplant mechanic with an inspection authorization.

Denial, October 14, 1997, Exemption No. 6691.

Docket No.: 27547.

Petitioner: Hughes Aircraft Company.

Sections of the FAR Affected: 14 CFR 91.319(c).

Description of Relief Sought/ Disposition: To permit the petitioner to operate over densely populated areas or in congested airways with aircraft certificated in the experimental category.

Denial, September 26, 1997, Exemption No. 6687.

Docket No.: 25640.

Petitioner: American Eurocopter Corporation.

Sections of the FAR Affected: 14 CFR 21.195(a).

Description of Relief Sought/ Disposition: To permit the petitioner to apply for an experimental airworthiness certificate for its EC135 helicopter, for which a type certificate will be held by Eurocopter Deutschland, for the purpose of conducting market surveys, sales demonstrations, or customer crew training in the United States.

Grant, October 14, 1997, Exemption No. 6694.

Docket No.: 28317.

Petitioner: Eagle Canyon Airlines, Inc.

Sections of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit the petitioner to operate certain Cessna aircraft without TSO–C112 (Mode S) transponders installed subject to certain conditions and limitations.

Grant, October 22, 1997, Exemption No. 6195A.

Docket No.: 28972.

Petitioner: Samoa Aviation, Inc.

Sections of the FAR Affected: 14 CFR 121.641.

Description of Relief Sought/ Disposition: To permit the petitioner, a part 121 flag air carrier, to comply with the fuel requirements prescribed in 14 CFR part 121.639 that are applicable to all domestic operations, in lieu of the fuel requirements prescribed in 14 CFR part 121.641 that are applicable to flag operations using nonturbine and turbopropeller-powered airplanes.

Denial, October 20, 1997, Exemption No. 6695.

Docket No.: 28619.

Petitioner: F.S. Air.

Sections of the FAR Affected: 14 CFR 135.267(b)(2) and (c) and 135.269(b) (2), (3), and (4).

Description of Relief Sought/ Disposition: To permit the petitioner to assign its flight crewmembers and allow its flight crewmembers to accept a flight assignment of up to 16 hours of flight time during a 20-hour duty period for the purpose of conducting international emergency evacuation operations.

Denial, October 23, 1997, Exemption No. 6534A.

[FR Doc. 97–29568 Filed 11–7–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Boston Logan International Airport, Boston, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a Passenger Facility Charge at Boston Logan International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 10, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Peter Blute, Executive Director, Massachusetts Port Authority at the following address: Massachusetts Port Authority, 10 Park Plaza, Boston, Massachusetts, 02116.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Massachusetts Port Authority under section 158.23 of part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (617) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a Passenger Facility Charge (PFC) at Boston Logan International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 24, 1997, the FAA determined that the application to use the revenue from a PFC submitted by the Massachusetts Port Authority was substantially complete within the requirements of section 158.25 of part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than January 26, 1998.

The following is a brief overview of the use application.

PFC Project #: 97–03–U–00–BOS.

Level of the proposed PFC: $3.00.

Charge effective date: November 1, 1993.

Estimated charge expiration date: October 1, 2017.

Estimated total net PFC revenue: $434,106,000.

Brief description of projects: International Gateway Terminal Construction.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Massachusetts Port Authority, 10 Park Plaza, Boston, Massachusetts, 02116.

Issued in Burlington, Massachusetts on October 28, 1997.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 97–29577 Filed 11–7–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (#97–04–I–00–JAC) To Impose a Passenger Facility Charge (PFC) at Jackson Hole Airport, Submitted by Jackson Hole Airport Board, Jackson, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose PFC revenue at Jackson Hole Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before December 10, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. George Larson, Airport Director, at the following address: Jackson Hole Airport Board, P.O. Box 159, Jackson, Wyoming 83001.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Jackson Hole Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#97–04–I–00–JAC) to impose PFC revenue at Jackson Hole Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 29, 1997, the FAA determined that the application to impose a PFC submitted by the Jackson Hole Airport Board, Jackson Hole Airport, Jackson, Wyoming, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 28, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July 1, 1998.

Proposed charge expiration date: March 1, 2000.

Total requested for use approval: $600,000.00.

Brief description of proposed project: Differential Global Positioning System.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Jackson Hole Airport.

Issued in Renton, Washington, on October 29, 1997.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 97–29576 Filed 11–7–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at La Crosse Municipal Airport, La Crosse, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at La Crosse Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 10, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Michael A. Daigle, Airport Manager of the La Crosse Municipal Airport at the following address: La Crosse Municipal Airport, 2850 Airport Road, La Crosse, WI 54603.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of La Crosse under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Sandra E. DePottey, Program Manager, Minneapolis Airports District Office, 6020 28th Avenue South, room 102, Minneapolis, MN 55450, 612–713–4363. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at La Crosse Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 28, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of La Crosse was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 20, 1998.

The following is a brief overview of the application.

PFC application number: 97–04–C–00–LSE.

Level of the proposed PFC: $3.00.

Proposed charge effective date: August 1, 1998.

Proposed charge expiration date: December 1, 2000.

Total estimated PFC revenue: $615,000.

Brief description of proposed projects: Relocate threshold Runway 13/31, Airfield sealcoating, Reconstruct Runway 18/36 (phase 1), Construct airport entrance sign, PFC administration.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: no request to exclude carriers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of La Crosse.

Issued in Des Plaines, Illinois on October 31, 1997.

Robert A. Benko,

Acting Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 97–29573 Filed 11–7–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Tupelo Municipal Airport, Tupelo, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Tupelo Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 11, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA/Airports District Office, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208–2306.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Roger Blickensderfer, Executive Director of the Tupelo Airport Authority at the following address: 2763 West Jackson, Suite A, Tupelo, Mississippi 38801.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Tupelo Airport Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: David Shumate, Manager, FAA Airports District Office, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208–2306, telephone number 601–965–4628. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Tupelo Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October, 28, 1997, the FAA determined that the application to use the revenue from a PFC submitted by Tupelo Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 26, 1998.

The following is a brief overview of the application.

PFC Application Number: 98–02–U–00–TUP.

Level of the proposed PFC: $3.00.

Proposed charge effective date: 8–1–1994.

1*Proposed charge expiration date:* 9–3–1999.

Total estimate net PFC revenue: $225,400.

Estimated PFC revenues to be used on projects in this application: $225,400.

Brief description of proposed projects: Overlay and groove runway 18/36; Expand airport terminal building.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the office of the Tupelo Airport Authority.

Issued in Jackson, Mississippi, on October 29, 1997.

Wayne Atkinson,

Manager, Airports District Office, Southern Region, Jackson, Mississippi.

[FR Doc. 97–29578 Filed 11–7–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Burlington Northern Santa Fe Railway

[Waiver Petition Docket Number PB–97–13]

The Burlington Northern Santa Fe Railway (BNSF) seeks a waiver of compliance from certain provisions of the Railroad Power Brake and Drawbars regulations, 49 CFR Section 232.25(d), concerning the calibration of the front unit of a two-way end-of-train device. Specifically, BNSF would like relief from the annual calibration requirements of head-end units to the manufacturer's radio alignment specifications and be permitted to use what BNSF calls a ''realistic service test'' that will prove the ability to place the rear of the train in emergency from the head-end-device as designed.

Section 232.25(d) states: The telemetry equipment shall be calibrated for accuracy according to the manufacturer's specifications at least every 365 days. The date of the last calibration, the location where the calibration was made, and the name of the person doing the calibration shall be legibly displayed on a weather-resistant sticker or other marking device affixed to the outside of both the front unit and rear unit. The Two-Way End-of-Train Device Final Rule was published on January 2, 1997, and became effective July 1, 1997. FRA provided a grace period until September 1, 1997, for railroads to accomplish the calibration and labeling requirements of front units.

BNSF indicates that they have their communications teams perform the entire calibration and alignment procedures per manufacturer's instructions and specifications when new devices are received. BNSF believes this more than ensures a safe and effective operation and does not see any benefit of removing the devices from locomotives, transporting them to a radio shop for a four hour procedure, then transporting the devices back to the locomotives for installation every 365 days. BNSF feels the procedure is overly long and burdensome and does not enhance the performance of the device. BNSF also states that devices are damaged due to the excessive handling required to perform the test. Therefore, they believe the best use of the device is to permanently mount them on the locomotive and leave them there for the safety of the train crew.

Rather than annually test the device to manufacturer's radio alignment specifications, BNSF would like to test the device every 365 days for functionality in railroad service using a test code that includes testing for sufficient output wattage at the correct frequency, together with proof of arming ability and emergency activation.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number PB–97–13) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, S.W., Mail Stop 10, Washington, D.C. 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at FRA's temporary docket room located at 1120 Vermont Avenue, N.W., Room 7051, Washington, D.C. 20005.

Issued in Washington, D.C. on November 5, 1997.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 97–29614 Filed 11–7–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Waivers of Compliance

In accordance with part 211 of Title 49, Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received requests for waivers of compliance with certain requirements of its safety standards. The individual petitions are described below, including the parties seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioners' arguments in favor of relief.

Southeastern Pennsylvania Transportation Authority

[Waiver Petition Docket Number LI–97–5]

The Southeastern Pennsylvania Transportation Authority (SEPTA) seeks a temporary waiver of compliance with certain provisions of the Locomotive Safety Standards, 49 CFR part 229. SEPTA is seeking relief for a period of one year, until December 31, 1998, from the requirements of Section 229.125(d) which requires each lead locomotive operating at speeds over 20 mph over one or more public highway-rail crossings be equipped with operative auxiliary lights effective December 31, 1997.

SEPTA operates a fleet of 304 electric MU passenger locomotives, 8 electric locomotives, and 5 diesel-electric locomotives. The railroad states they have experienced numerous problems with contractors in providing needed material to equip their MU locomotive fleet thus resulting in significant delays in installation of the auxiliary lights.

Union Pacific Railroad Company

[Waiver Petition Docket Number LI–97–6]

The Union Pacific Railroad Company (UP) seeks a temporary waiver of compliance with certain provisions of the Locomotive Safety Standards, 49 CFR part 229. UP is seeking relief for a period of one year, until December 31, 1998, from the requirements of Section

229.125(d) which requires each lead locomotive operating at speeds over 20 mph over one or more public highway-rail crossings be equipped with operative auxiliary lights effective December 31, 1997.

UP indicates that they currently have 3060 locomotives equipped with auxiliary lights which accounts for 49.4 percent of their locomotive fleet. The railroad states they have experienced increased business levels, and locomotives scheduled for retirement prior to the rule taking effect will now be continued in service. The railroad plans to continue to equip locomotives as they are shopped for reasons other than periodic maintenance. Whenever possible, equipped locomotives will be utilized as lead units.

Meridian & Bigbee Railroad Company

[Waiver Petition Docket Number PB–97–7]

The Meridian & Bigbee Railroad Company (MBRR) seeks a permanent waiver of compliance from certain provisions of the Railroad Power Brake and Drawbars regulations, 49 CFR Section 232.23, requiring the use of two-way end-of-train telemetry devices.

MBRR operates one train at a time, seven days a week, between the hours of 6 a.m. and 6 p.m., and one train at a time, four days a week, Monday through Thursday, between the hours of 6 p.m. and 6 a.m. The day train originates in Meridian, Mississippi, runs to Myrtlewood, Alabama, then returns to Meridian. The night train originates in Meridian, runs to Naheola, Alabama, then returns to Meridian. Both trains operate with a three man crew and complete the scheduled round-trips within an average of ten hours. The maximum track speed is 40 mph and the ruling grade on the mainline is 0.92 percent. The average tonnage on eastbound trains is 3,020 tons and westbound trains 3,454 tons, although these figures many times go above 4,000 tons. MBRR would continue to use a one-way end-of-train device on their trains.

MBRR states that the type of accidents which would require a two-way device to apply brakes on the rear portion of the train has never occurred and probably would never occur on their railroad. MBRR does not feel safety would be compromised if two-way end-of-train devices were not required on their trains, and that to reduce their track speed to 30 mph would reduce timely service to their customers and connecting railroads with no increase in safety.

White River Scenic Railroad, Incorporated

[Waiver Petition Docket Number RSGM–97–5]

The White River Scenic Railroad, Incorporated (WRR) seeks a permanent waiver of compliance with the Safety Glazing Standards, 49 CFR part 223.11(c), which requires certified glazing in all locomotive windows except locomotives used in yard service. WRR is seeking this waiver for locomotive number WRR 2089, built in 1952 by the American Locomotive Company for the United States Army Transportation Corps, which was never equipped with FRA certified glazing. The locomotive owner indicates that the locomotive is utilized in passenger excursion service between Flippin and Sylamore, Arkansas, in a rural area along the White River. The railroad's maximum authorized speed is 25 mph.

Burlington Northern Santa Fe Railway

[Waiver Petition Docket Numbers SA–97–5 and PB–97–8]

The Burlington Northern Santa Fe Railway (BNSF) seeks a waiver of compliance from certain provisions of the Safety Appliance Standards, 49 CFR Section 231, for operating the Triple Crown RoadRailer trains between Argentine Yard in Kansas City, Kansas, and the Saginaw Yard in Saginaw, Texas.

The train consist will be restricted to 125 RoadRailers equipped with a CouplerMate between the hauling locomotive and the first car in the RoadRailer train.

The RoadRailer has no safety appliances and the waiver would permit non-compliance with all the provisions of the Safety Appliance Standards. These regulatory standards include provisions for the number, location, and dimensional specification for the handholds, ladders, sill steps, and hand brakes that are required for each railroad freight car.

Burlington Northern Santa Fe Railway

[Waiver Petition Docket Numbers SA–97–6 and PB–97–11]

The Burlington Northern Santa Fe Railway (BNSF) seeks a waiver of compliance from certain provisions of the Safety Appliance Standards, 49 CFR Section 231, for operating a Thrall built articulated multi-level car and Wabash AllRailer and AutoRailer train between San Diego and Richmond, California.

The train makeup would consist of the two units, Thrall built, articulated multi-level car on the head end, followed by a CouplerMate and three unit AllRailers, and then another CouplerMate and eleven AutoRailers.

The RoadRailer has no safety appliances and the waiver would permit non-compliance with all the provisions of the Safety Appliance Standards. These regulatory standards include provisions for the number, location, and dimensional specification for the handholds, ladders, sill steps, and hand brakes that are required for each railroad freight car.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number LI–97–5) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, S.W., Mail Stop 10, Washington, D.C. 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.—5:00 p.m.) at FRA's temporary docket room located at 1120 Vermont Avenue, N.W., Room 7051, Washington, D.C. 20005.

Issued in Washington, D.C. on November 5, 1997.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 97–29615 Filed 11–7–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–97–3056]

Notice of Receipt of Petition for Decision That Nonconforming 1992 BMW 7 Series Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1992 BMW

7 Series passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1992 BMW 7 Series passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 10, 1997.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Kingsville, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether 1992 BMW 7 Series passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 1992 BMW 7 Series passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Bayerische Motoren Werke, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1992 BMW 7 Series passenger cars to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 1992 BMW 7 Series passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1992 BMW 7 Series passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *., 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver From the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified 1992 BMW 7 Series passenger cars comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked ''Brake'' for a lens with the ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model sealed beam headlamps and front sidemarker lights; (b) installation of U.S.-model taillamps which incorporate rear sidemarker lights; (c) installation of a U.S.-model high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* installation of a seat belt warning buzzer, wired to the driver's seat belt latch. The petitioner states that non-U.S. certified 1992 BMW 7 Series passenger cars are equipped in both front seating positions with a door-mounted automatic belt system that is identical to the automatic belt system found on their U.S. certified counterparts. Additionally, the petitioner states that the vehicles are equipped in their rear seating positions with manual belts identical to those on U.S. certified vehicles.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicles to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 4, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–29603 Filed 11–7–97; 8:45 am]

BILLING CODE 4910–59–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–97–3067; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1992–1994 Kawasaki EL250 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1992–1994 Kawasaki EL250 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1992–1994 Kawasaki EL250 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 10, 1997.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1992–1994 Kawasaki EL250 motorcycles are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1992–1994 Kawasaki EX–250 motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared 1992–1994 Kawasaki EL250 motorcycles to 1992–1994 Kawasaki EX–250 motorcycles, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1992–1994 Kawasaki EL250 motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as 1992–1994 Kawasaki EX–250 motorcycles, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that 1992–1994 Kawasaki EL250 motorcycles are identical to 1992–1994 Kawasaki EX–250 motorcycles with respect to compliance with Standard Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* and 122 *Motorcycle Brake Systems.*

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S.-model headlamp assemblies.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a tire information placard.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S. model speedometer calibrated in miles per hour.

The petitioner also states that vehicle identification number plates meeting the requirements of 49 CFR Part 565 will be affixed to 1992–1994 Kawasaki EL250 motorcycles.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 4, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–29604 Filed 11–7–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–97–3021; Notice 2]

Notice of Receipt of Petition for Decision That Nonconforming 1994–1997 BMW R1100 Motorcycles Are Eligible for Importation; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Correction to notice of receipt of petition for decision that nonconforming 1994–1997 BMW R1100 motorcycles are eligible for importation.

SUMMARY: This document corrects a notice published Wednesday, October 22, 1997 (62 FR 54896) announcing receipt by NHTSA of a petition for a

decision that 1994–1997 BMW R1100 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States. The notice incorrectly identified the docket number for this petition as ''Docket No. NHTSA 3021.'' The docket number should have been properly identified as ''Docket No. NHTSA–97–3021.'' Those intending to comment on the petition should ensure that they reference the correct docket number in their comments.

Authority: 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on November 5, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–29605 Filed 11–7–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20912]

Peter Pan Bus Lines, Inc.—Pooling—Greyhound Lines, Inc.

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of proposed pooling application.

SUMMARY: Applicants, Peter Pan Bus Lines, Inc., of Springfield, MA, and Greyhound Lines, Inc., of Dallas, TX, jointly seek approval under 49 U.S.C. 14302 of an operations and revenue pooling agreement to govern their motor passenger and express transportation service between Boston, MA, and New York, NY, and between Springfield, MA, and New York, NY.

DATES: Comments are due by, December 10, 1997 and, if comments are filed, applicants' rebuttal statement is due by December 30, 1997.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC-F–20912 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. Also, send one copy of comments to each of applicants' representatives: (1) Jeremy Kahn, Suite 810, 1730 Rhode Island Avenue, N.W., Washington, DC 20036; (2) Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, N.W., Washington, DC 20005–3934.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Applicants are competitors on certain intercity routes between Boston, MA, and New York, NY, and between Springfield, MA, and New York, NY. They seek to pool portions of their passenger and express services over routes which they both operate, and to share the revenues derived from their operations over these routes.[1] Applicants state that their services between these points overlap and that excess schedules are operated because of the need to protect their respective market shares. According to applicants, this has resulted in unacceptably low load factors, an over-served market, and inefficient operations.

Applicants submit that the pooling agreement will allow them to reduce excess bus capacity, cement their business relationship, and allow them to share in the financial vicissitudes of the pooled-route operations. They claim public benefits that will include: (1) Rationalization of schedules, eliminating some duplicative departures ''on the hour'' while adding some departures on the half-hour during the busiest times of the day, resulting in more frequent bus service over a broader time period; (2) more coordinated use of terminals and ticketing agents, resulting in greater flexibility for passengers to use buses, tickets, and terminals; (3) capital improvements; and (4) continued bus service by more sound and financially stable carriers. In addition, they assert that approval of the pooling agreement will not significantly affect either the quality of the human environment or the conservation of energy resources. In fact, they claim that the reduction in the number of schedules each carrier operates will result in a salutary effect on the environment.

Applicants state that competition will not be unreasonably restrained. They argue that: (1) The pooled service is subject to substantial intermodal competitive pressure from Amtrak, airlines, and private automobiles; and (2) other motor passenger carriers may easily enter and compete in the market.

Copies of the application may be obtained free of charge by contacting applicants' representatives. A copy of this notice will be served on the Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530.

Decided: October 30, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–29613 Filed 11–7–97; 8:45 am]

BILLING CODE 4915–00–P

[1] Applicants have already received authority to pool their operations and revenues for their motor passenger and express transportation service between Philadelphia, PA, and New York City in *Peter Pan Bus Lines, Inc.—Pooling—Greyhound Lines, Inc.*, STB Docket No. MC–F–20904 (STB served June 30, 1997). A similar request involving operations between New York City and Washington, DC is pending in *Peter Pan Bus Lines, Inc.—Pooling—Greyhound Lines, Inc.*, STB Docket No. MC–F–20908. According to applicants, the instant application is a logical extension of the New York-Philadelphia pooling and the New York-Washington pooling. Applicants state that they intend to file a fourth such application involving operations between Albany, NY, and Boston, MA shortly. Applicants state that they consider the four agreements to be interrelated and intend to implement them simultaneously after approval by the Board. We note that the United States Department of Justice, Antitrust Division, has filed comments in STB Docket No. MC–F–20908, recommending that the Board find that there is a substantial likelihood that the proposed pooling of operations between New York City and Washington would unduly restrain competition.

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application For Amended Basic Permit Under the Federal Alcohol Administration Act.

DATES: Written comments should be received on or before January 9, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marsha Baker, Regulations Branch. 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8476.

SUPPLEMENTARY INFORMATION:

Title: Application For Amended Basic Permit Under the Federal Alcohol Administration Act.

OMB Number: 1512–0090.

Form Number: ATF F 1643 (5100.18).

Abstract: Any person who desires to operate as a wholesaler, producer, rectifier, bottler, or warehouseman of distilled spirits or wine, or wholesaler or importer of malt beverages must obtain a basic permit in order to engage in those activities. Amendment of the basic permit becomes necessary when material changes occur in name, ownership, location, or activities of the permittee.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 4,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 4,000.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 3, 1997.

John W. Magaw,

Director.

[FR Doc. 97–29589 Filed 11–7–97; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application For License or Permit Under 18 U.S.C. Chapter 40, Explosives.

DATES: Written comments should be received on or before January 9, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Gail H. Davis, Firearms, Explosives and Arson Programs Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8053.

SUPPLEMENTARY INFORMATION:

Title: Application For License or Permit Under 18 U.S.C. Chapter 40, Explosives.

OMB Number: 1512–0182.

Form Number: ATF F 5400.13/5400.16.

Abstract: Chapter 40, Title 18, U.S.C. provides that any person engaged in the business of explosive materials as a dealer, manufacturer, or importer shall be licensed. The information collected on the form is used to determine if the applicant is qualified to be a licensee or permittee under the provisions of the statute. There is no record retention requirement for the applicant.

Current Actions: The explosive regulations are proposed to be amended, therefore, ATF F 5400.13/5400.16 is proposed to be revised. The form revisions include proposals to add new codes to the categories of Explosive License and Explosives Permit. The form also reflects the proposed increase in fees for all license and permit types. Additionally, ATF proposes to revise the form by providing a worksheet as an attachment for item 15. for use in describing all explosive storage magazine data. The categories of ''race'' and ''sex'' are proposed to be added to item 18. A section is proposed to be added to the form to require the applicant to certify that he/she has notified the chief law enforcement officer and fire marshal for all sites at which explosives will be stored. The following definitions are proposed to be added or clarified: chief law enforcement officer, fire marshal, manufacturer, and high explosives. Items 10, 11, 13, 14, 15, 16, and 17 of the Instruction Sheet will be amended to reflect the new attachment worksheet. There are proposed restructuring changes to the form that would reflect the proposed amendments to the explosive regulations. The frequency of applying for a license or permit is proposed to be changed from 1 year to 3 years. As a result, the burden hours and cost would decrease.

Type of Review: Revision.

Affected Public: Business or other for-profit, individuals or households, not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 2,100.

Estimated Time Per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 2,436 every 3 years.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 3, 1997.

John W. Magaw,

Director.

[FR Doc. 97–29590 Filed 11–7–97; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application for Registration For Tax-Free Transactions Under 26 U.S.C. 4221 (Firearms and Ammunition).

DATES: Written comments should be received on or before January 9, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marsha Baker, Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8476.

SUPPLEMENTARY INFORMATION:

Title: Application For Registration For Tax-Free Transactions Under 26 U.S.C. 4221 (Firearms and Ammunition).

OMB Number: 1512–0508.

Form Number: ATF F 5300.28.

Recordkeeping Requirement ID Number: ATF REC 5300/28.

Abstract: The information requested on ATF F 5300.28 is necessary for ATF to determine if persons (applicants) should be granted the privilege of purchasing or selling firearms and ammunition tax-free. There is no record retention requirement for the applicant.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, State or local governments.

Estimated Number of Respondents: 125.

Estimated Time Per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 375.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 3, 1997.

John W. Magaw,

Director.

[FR Doc. 97–29591 Filed 11–7–97; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 9460 and 9477

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Forms 9460 and 9477, Tax Forms Inventory Report.

DATES: Written comments should be received on or before January 9, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Tax Forms Inventory Report.

OMB Number: 1545–1305.

Form Number: Forms 9460 and 9477.

Abstract: Forms 9460 and 9477 are designed to collect tax forms inventory information from banks, post offices, and libraries that distribute federal tax forms. Data is collected detailing the quantities and types of tax forms remaining at the end of the filing season. The data is combined with the shipment date for each account and used to establish forms distribution guidelines for the following year. Form 9460 is used for accounts who order forms in carton quantities, and Form 9477 is used for those who order forms in less than carton quantities.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and the Federal government.

Estimated Number of Respondents: 10,720.

Estimated Time Per Respondent: 14 minutes.

Estimated Total Annual Burden Hours: 2,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the

quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 4, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–29638 Filed 11–7–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–80–93]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–80–93 (T.D. 8645), Rules for Certain Rental Real Estate Activities (§ 1.469–9).

DATES: Written comments should be received on or before January 9, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Rules for Certain Rental Real Estate Activities.

OMB Number: 1545–1455.

Regulation Project Number: PS–80–93.

Abstract: This regulation provides rules relating to the treatment of rental real estate activities of certain taxpayers under the passive activity loss and credit limitations of Internal Revenue Code section 469.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 20,100.

Estimated Time Per Respondent: 9 minutes.

Estimated Total Annual Burden Hours: 3,015.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 4, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–29639 Filed 11–7–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209835–86]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning an existing final regulation, REG–209835–86 (TD 8708), Computation of Foreign Taxes Deemed Paid Under Section 902 Pursuant to a Pooling Mechanism for Undistributed Earnings and Foreign Taxes (§ 1.902–1).

DATES: Written comments should be received on or before January 9, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Computation of Foreign Taxes Deemed Paid Under Section 902 Pursuant to a Pooling Mechanism for Undistributed Earnings and Foreign Taxes.

OMB Number: 1545–1458.

Regulation Project Number: REG–209835–86 (formerly INTL-933–86).

Abstract: These regulations provide rules for computing foreign taxes deemed paid under Internal Revenue Code section 902. The regulations affect foreign corporations and their United States corporate shareholders that own directly at least 10% of the voting stock of the foreign corporation.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

The burden for the collection of information is reflected in the burden for Form 1118, Foreign Tax Credit—Corporations.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 4, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–29640 Filed 11–7–97; 8:45 am]

BILLING CODE 4830–01–U

Corrections

Federal Register
Vol. 62, No. 217
Monday, November 10, 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 JUSTICE

Immigration and Naturalization Service

[INS No. 1780-96; AG Order No. 2126-97]

RIN 1115-AE26

Designation of Sudan Under Temporary Protected Status

Correction

In notice document 97–29077 beginning on page 59737, in the issue of Tuesday, November 4, 1997, make the following corrections:

1. On page 59737, in the second column, the INS No. should be as set forth above.

2. On page 59737, in the second column:

a. In the **EFFECTIVE DATES** section, in the second line, remove the period after ''1997''.

b. In the **FOR FURTHER INFORMATION CONTACT** section, in the last line ''5t14-5014.'' should read ''514-5014.''

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1775-96; AG Order No. 2124-97]

RIN 1115-AE26

Designation of Burundi Under Temporary Protected Status

Correction

In notice document 97–29079 beginning on page 59735, in the issue of Tuesday, November 4, 1997, make the following correction:

On page 59736, in the first column, in the second paragragh designated (3), in the first line, ''specificially'' should read ''specifically''.

BILLING CODE 1505-01-D

federal register

Monday
November 10, 1997

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants Pesticide Active Ingredient Production; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5916–5]

RIN–2060–AE83

National Emission Standards for Hazardous Air Pollutants Pesticide Active Ingredient Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for the pesticide active ingredient (PAI) production source category under section 112 of the Clean Air Act as amended (CAA). The intent of the proposed standard is to reduce emissions of hazardous air pollutants (HAP) from existing and new facilities that manufacture PAI used in herbicides, insecticides, and fungicides. The proposed standards protect human health and the environment by reducing HAP emissions to the level corresponding to the maximum achievable control technology (MACT) through the use of pollution prevention measures and control strategies. The major HAP emitted by facilities covered by this proposed rule include toluene, methanol, methyl chloride, and hydrogen chloride (HCl). All of these pollutants can cause reversible or irreversible toxic effects following exposure. The proposed rule is estimated to reduce HAP emissions from existing facilities by 5,150 megagrams per year (Mg/yr) (5,680 tons per year (tons/yr)), a reduction of 76 percent from the baseline emission level. Because many of these 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 (the Act), as amended in 1990, 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 July 16, 1992 source category list included an agricultural chemicals industry group that contained 10 source categories. Today's notice groups these 10 agricultural chemicals source categories into one source category, renames the source category, and adds additional chemicals to the source category.

DATES: *Comments.* Comments must be received on or before January 9, 1998.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by December 1, 1997, a public hearing will be held on December 10, 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 December 1, 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: Air Docket Section (LE–131), Attention: Docket No. A–95–20, 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 on the proposed NESHAP may also be submitted electronically by following the instructions provided in the **SUPPLEMENTARY INFORMATION** section. No Confidential Business Information (CBI) should be submitted through e-mail.

Public Hearing. The public hearing, if required, will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina.

Docket. Docket No. A–95–20, containing supporting information used in developing the proposed standards, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, Room 1500, 1st Floor, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the MACT standard, contact Mr. Lalit Banker at (919) 541–5420, 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 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 format or ASCII file format. All comments and data in electronic form must be identified by the docket number [A–95–20]. Electronic comments on this proposed determination may be filed online at many Federal Depository Libraries.

Regulated entities. Entities potentially regulated are those which produce as primary intended products PAI's that are used in herbicides, insecticides, or fungicides and are located at facilities that are major sources as defined in section 112 of the Act. Regulated categories and entities include:

Category	Regulated entities
Industry	• Producers of the active ingredients (as defined under FIFRA section 2(a)) used in herbicides, insecticides, or fungicides. Typically, production of these compounds is described by the SIC codes 2879 and 2869. • Producers of any integral intermediate used in the onsite production of an active ingredient used in a herbicide, insecticide, or fungicide, provided that 50 percent or more of the annual production of the intermediate is used in pesticide active ingredient processes.

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, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability criteria in § 63.1360 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Basis and Purpose and Supplementary Information Documents. The contents of this notice are available in Docket No. A–95–20, on the Technology Transfer Network (TTN), or from the EPA contact person listed in the **FOR FURTHER INFORMATION CONTACT** section. The TTN, a network of electronic bulletin boards developed and operated by the Office of Air Quality Planning and Standards, 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 transfer. The TTN may also be accessed via TELNET at the Internet web site address http://ttnwww.rtpnc.epa.gov. For further information, contact the TTN HELP line at (919) 541–5384, from 1 p.m. to 5 p.m. Monday through Friday.

The basis and purpose document (BPD), containing much of the rationale for these proposed standards, is also available on the TTN. The supplementary information document (SID) for the proposed standard, which contains a compilation of technical memoranda, may be obtained from the docket or from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to ''Emissions from Pesticide Active Ingredient Production—Supplementary Information Document'' (located in docket No. A–95–20).

The information presented in this preamble is organized as follows:

I. List of Source Categories
A. Original Source Categories
B. Addition of Other Pesticide Active Ingredients
C. Single Source Category
D. Change of the Source Category Name
II. Background
A. Summary of Collected Data
B. Summary of Considerations Made in Developing this Rule
C. Regulatory Background
III. Authority for NESHAP Decision Process
A. Source of Authority for NESHAP Development
B. Criteria for Development of NESHAP
C. Authority for Development of Risk-Based Standards
IV. Summary of Proposed Standards
A. Source Categories to be Regulated
B. Pollutants to be Regulated and Associated Environmental and Health Benefits
C. Affected Sources
D. Format of the Standards
E. Proposed Standards
F. Compliance and Performance Test Provisions
G. Monitoring Requirements
H. Reporting and Recordkeeping Requirements
V. Summary Of Environmental, Energy, Cost, and Economic Impacts
A. Facilities Affected by These NESHAP
B. Air Impacts
C. Water and Solid Waste Impacts
D. Energy Impacts
E. Cost Impacts
F. Economic Impacts
VI. Emissions Averaging
VII. Solicitation of Comments
VIII. 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
G. Unfunded Mandates
H. Miscellaneous

I. List of Source Categories

Section 112 of the Act requires that EPA evaluate and control emissions of HAP. The control of HAP is achieved through promulgation of emission standards under sections 112(d) and 112(f) and work practice and equipment standards under section 112(h) for categories of sources that emit HAP. On July 16, 1992, EPA published an initial list of major and area source categories to be regulated (57 FR 31576). Today's notice groups the original agricultural chemicals source categories into one source category, renames the source category, and adds additional chemicals to the category.

A. Original Source Categories

Included on the original list were major sources emitting HAP from 10 categories of agricultural chemicals production; in addition to being an agricultural chemical, each of these compounds is also a PAI. One source category on the original source category list, butadiene furfural cotrimer (R–11) production, was moved from the polymers and resins industry group to this industry group on June 4, 1996 (61 FR 28197). Butadiene furfural cotrimer (R–11) is an insecticide commonly used for delousing cows. The EPA decided to include butadiene furfural cotrimer (R–11) production with the agricultural chemicals source categories because: (1) There are similarities in process operations, emission characteristics, and control device applicability and costs, and (2) it is a PAI.

B. Addition of Other Pesticide Active Ingredients

In developing the proposed rule, the EPA identified a number of other PAI production operations that were not on the initial source category list. It was determined that production of these compounds is similar to the production of the compounds in the 11 initial agricultural chemical source categories. Production of these other PAI's are being added to the source category list under section 112(c) of the Act based on information obtained during the gathering of HAP emission data for this proposed rule. From this information, it was determined that: (1) There are similarities in process operations, emission characteristics, control device applicability and costs, and opportunities for pollution prevention of these PAI's with the listed agricultural chemicals, and (2) the production of these PAI's occurs at facilities that are major sources. Like the original agricultural chemicals, these PAI's are those that are used in herbicides, insecticides, and fungicides that are registered as end-use products under section 3 of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

C. Single Source Category

In developing the proposed rule, EPA decided not to set MACT for each individual PAI chemical but, rather, to aggregate all PAI's together under the same source category. The PAI's that EPA proposes to include in this source category are all PAI's that are used to produce insecticide, herbicide, or fungicide products. Data gathered from the PAI production industry indicate that the process equipment, emission characteristics, and applicable control technologies are sufficiently similar for the broad group of sources that EPA intends to regulate under a single set of standards. There are no significant differences in the types of control technologies applicable to controlling emissions from the various PAI processes. Common HAP control technologies are applicable to the production operations at all of the facilities. Based on these factors, EPA concluded that determining MACT for each individual PAI is not warranted.

The EPA believes that it is technically feasible to regulate emissions from a variety of PAI processes by a single set of emission standards. Similar to the Hazardous Organic NESHAP (HON) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI), separate requirements are proposed for process vents, storage tanks, equipment leaks, and wastewater HAP emission points (often referred to as planks). The set of standards also establishes different control requirements based on distinctions in the size of the emission points. Variability in the characteristics of the production processes for each

individual PAI chemical may affect the quantity of HAP emissions. This variability has been addressed by incorporating cutoffs for uncontrolled emissions in the standards for individual planks.

Several other reasons support the development of a single set of emission standards for a group of PAI processes. Many of these PAI's are only produced at a single facility or by a single company. In addition, data indicate that many of the PAI processes that EPA is proposing to regulate by this set of standards are collocated within individual facilities; at some facilities, multiple PAI's are also produced in the same equipment (i.e., flexible processing equipment). Facilities with collocated PAI manufacturing could more easily comply with a single set of emission standards than with individual standards for each of the collocated processes. Several industry representatives in the partnership group also expressed interest in a generic regulation that would specify consistent requirements for a wide range of processes.

Another justification for developing a single set of emission standards to regulate production of a variety of PAI's is that it is more efficient and less costly for EPA to develop a single standard than to develop separate standards for several individually listed source categories which have similar emission characteristics and applicable control technologies. Development of a single set of standards would avoid the costs associated with having to develop emission standards for separate source categories of PAI's. A single set of standards for PAI manufacturing will ensure that process equipment with comparable HAP emissions and control technologies are subject to consistent emission control requirements. In addition, compliance and enforcement activities would be more efficient and less costly.

D. Change of the Source Category Name

Under today's action, EPA is revising the source category list published under section 112(c) of the Act to add a source category called ''Pesticide Active Ingredient Production'' and to subsume the 11 original, separate PAI production source categories into that category, as well as to include other identified PAI operations which are major sources of HAP. All 11 agricultural chemicals on the initial source category list are PAI's; all of the other pesticide chemicals identified during data gathering and that have been added to the list are also PAI's. Because these other PAI's have been added to the source category list and because they have been grouped with the 11 agricultural chemicals, which are also PAI's, the EPA decided that it is appropriate to change the title of this NESHAP source category. Effective by this notice, EPA is changing the title of the source category to ''pesticide active ingredient production.'' This change is appropriate to avoid confusion regarding the definition of the source category and to aid in distinguishing the types of air emission sources addressed by this source category.

II. Background

A. Summary of Collected Data

Data on this industry were collected from 20 major sources that manufacture PAI's. Production methods used in the manufacture of PAI's include both batch and continuous operations. Batch operations make up approximately two-thirds of the processes, but continuous processes produce more than 50 percent of the annual PAI production. The sizes of the facilities that are major sources of HAP emissions range from those that make one active ingredient at the rate of several hundred Mg/yr to those that produce numerous intermediates and active ingredients on the scale of tens of thousands Mg/yr. Air emissions of HAP compounds originate from breathing and withdrawal losses from storage tanks, venting of process vessels, leaks from piping equipment used to transfer HAP compounds (equipment leaks), and volatilization of HAP from wastewater streams. Data obtained from the 20 major sources show at least 40 different HAP are emitted from various PAI production processes. Among the most prevalent are toluene and methanol, which account for almost 40 percent of all baseline HAP emissions at these 20 plants. Detailed information describing manufacturing processes and emissions can be found in chapters 3 and 5 of the Basis and Purpose Document (located in docket No. A–95–20).

As of 1991, over 250 U.S. companies at approximately 329 facilities (both major and area sources) were producing PAI's. This is the number of facilities that were registered with EPA under section 7 of FIFRA as producers of technical material or active ingredients for manufacturing use only. The number of plants producing active ingredients for use in herbicides, insecticides, and fungicides may be less than 329 because the section 7 data base reported some formulated products as active ingredients and it also included research facilities in the category of active ingredient manufacturers. Also, some plants may be producing active ingredients only for use in rodenticides or antimicrobials. Typically, manufacturing operations covered by this NESHAP are classified under North American Industrial Classification System (NAICS) Codes 325199 and 32532 (i.e., previously known as Standard Industrial Classification System Codes 2869 and 2879). An estimated 78 facilities are considered to be major sources according to the Act criteria of having the potential to emit 10 tons/yr or more of any one HAP or 25 tons/yr or more of any combination of HAP. This estimate is based on the extrapolation of information from 12 State regulatory agencies that identified which of the 329 facilities in their States were major sources of HAP.

The proposed standards would apply to all major sources that produce any of the PAI's that are used to produce insecticide, herbicide, or fungicide end-use products. Facilities that are area sources, facilities that produce only active ingredients that are not used in insecticide, herbicide, or fungicide products, and facilities that only formulate or repackage pesticide products would not be subject to these standards.

B. Summary of Considerations Made in Developing This Rule

The Act was created in part ''to protect and enhance the quality of the Nation's air resources so as to promote the health and welfare and the productive capacity of its population'' (the Act, section 101(b)(1)). Section 112(b) of the Act lists 189 HAP believed to cause adverse health or environmental effects. Section 112(d) of the Act requires that emission standards be promulgated for all categories and subcategories of major sources of these HAP and for many smaller ''area'' sources listed for regulation under section 112(c) in accordance with the schedules listed under section 112(c). Major sources are defined as those that emit or have the potential to emit at least 10 tons/yr of any single HAP or 25 tons/yr of any combination of HAP.

On July 16, 1992 (57 FR 31576), EPA published the initial list of categories of sources slated for regulation. As noted above, this list included 10 categories of Agricultural Chemicals Production; with today's notice, these source categories are combined into a single category called Pesticide Active Ingredient Production, and additional PAI processes are added to the source category. The statute requires emissions standards for the listed source categories to be promulgated between November 1992 and November 2000. On December 3, 1993, the EPA published a schedule

for promulgating these standards (58 FR 83841).

In the Act, Congress specified that each standard for major sources must require the maximum reduction in emissions of HAP that EPA determines is achievable considering cost, health and environmental impacts, and energy requirements. In essence, these MACT standards would ensure that all major sources of air toxic emissions achieve the level of control already being achieved by the better controlled and lower emitting sources in each category. This approach provides assurance to citizens that each major source of toxic air pollution will be required to effectively control its emissions.

Available emissions data, collected during development of this proposed rule, show that pollutants that are listed in section 112(b)(1) of the Act and are emitted in substantial amounts by the PAI production source category include toluene, methanol, methyl chloride, and HCl. The PAI production source category also emits small amounts of other listed pollutants including benzene, benzyl chloride, 1,3-butadiene, carbon tetrachloride, chloroform, ethylbenzene, ethyl chloride, ethylene dichloride, hexachlorobenzene, hexachlorocyclopentadiene, hexachloroethane, hexane, methylene chloride, tetrachloroethylene, trichlorobenzene, trichloroethylene, xylenes, acetonitrile, captan, formaldehyde, glycol ethers, hydroquinone, methyl ethyl ketone, methyl isobutyl ketone, methyl isocyanate, napthalene, phosgene, chlorine, and hydrogen cyanide. Some of these pollutants have been classified as known, possible, or probable human carcinogens when inhaled, and all can cause reversible and irreversible toxic effects following exposure. These effects include respiratory and skin irritation, neurological disorders (e.g., dizziness, headache, and narcosis), effects upon the eye (including blindness), damage to organ systems (e.g., liver, kidney, and testes), and in extreme cases, death. These pollutants have the potential to be reduced by implementation of the proposed emission limits.

The list of HAP in section 112(b) of the Act includes 22 HAP compounds (or classes of compounds) that have been reported to be possible endocrine disruptors. Many of these 22 HAP are PAI's, or are used in the production of PAI's, and, thus, could possibly be emitted from PAI manufacturing plants. Only one of the 22 HAP compounds was reported to be emitted from 20 surveyed plants in the source category, and the quantity emitted was very low relative to the quantity of the total HAP emissions from the source category. The other HAP that are possible endocrine disruptors are each produced (or used) by only one or a small number of facilities, and their vapor pressures tend to be low relative to the solvents and raw materials used in the PAI manufacturing processes (the lower the vapor pressure, the less material that will volatilize). As a result, the HAP that are possible endocrine disruptors are likely emitted in small quantities, if at all, relative to the HAP listed above. The EPA is requesting comments and information on the emission levels of these possible endocrine disruptors from PAI manufacturing processes.

The Agency is also requesting comments on whether the risk posed by endocrine disruptors warrants more stringent requirements than those proposed. Based upon the criteria used in selecting the proposed regulatory option, the Agency judged that the existing information on emissions and health effects did not justify the additional cost of more stringent standards. Therefore, in providing comments, commenters should (to the extent possible) provide a quantitative risk assessment to support the need for the adoption of more stringent requirements.

The alternatives considered in the development of this regulation, including those alternatives selected as standards for new and existing sources, are based on process and emissions data received from 20 of the existing facilities known by EPA to be in operation. Regulatory alternatives more stringent than the MACT floor (the minimum control level required by the Act) were selected when they were judged to be reasonable, considering cost, nonair impacts, and energy requirements.

The proposed standards give existing facilities 3 years from the date of promulgation to comply. This is the maximum amount of time allowed by the Act. New facilities are required to comply with the standard upon startup.

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 affected 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 EPA has also attempted to maintain consistency with existing regulations by either incorporating text from existing regulations or referencing the applicable sections.

Representatives from other interested EPA offices and programs, State environmental agency personnel, and industry participated in the regulatory development process as MACT partnership members. The partnership members were given opportunities to review and comment on the regulation prior to proposal. Industry, regulatory authorities, environmental groups, and other interested parties will have another opportunity to comment on the proposed standards and provide additional information during the public comment period.

C. Regulatory Background

The proposed rule implements section 112(d) of the Act, which requires the Administrator to regulate emissions of HAP listed in section 112(b) of the Act. The intent of this rule is to protect the public health and the environment by requiring new and existing major sources to reduce generation of emissions by using pollution prevention strategies or to control emissions to the level achievable by the maximum achievable control technology (MACT), taking into consideration the cost of achieving such emission reductions, any nonair quality and other air quality related health and environmental impacts, and energy requirements.

In 1994, EPA promulgated National Emission Standards for Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks (59 FR 19587). Processes producing Captafol®, Captan®, Chlorothalonil, Dacthal, and Tordon™ acid that use butadiene, carbon tetrachloride, methylene chloride, or ethylene dichloride as a reactant or process solvent, are subject to the Negotiated Regulation for Equipment Leaks. The EPA is proposing today to require control of leaking components that are currently not subject to the Negotiated Regulation for Equipment Leaks, but that contain HAP and are associated with processes in this source category.

III. Authority for NESHAP Decision Process

A. Source of Authority for NESHAP Development

Section 112 of the Act gives the EPA the authority to establish national standards to reduce air emissions from sources that emit one or more HAP. Section 112(b) contains a list of HAP to be regulated by NESHAP. Section 112(c) directs the Agency to use this pollutant list to develop and publish a list of source categories for which NESHAP

will be developed; this list was published in the **Federal Register** on July 16, 1992 (57 FR 31576). The Agency must list all known categories and subcategories of ''major sources'' that emit one or more of the listed HAP. A major source is defined in section 112(a) as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit in the aggregate, considering controls, 10 tons/yr or more of any one HAP or 25 tons/yr or more of any combination of HAP.

Under section 112(c)(1) of the Act, List of Source Categories, the Administrator has the authority to establish additional source categories as seems appropriate. Ten (revised to 11) categories of agricultural chemicals were included on the original list. Because the processes, HAP emissions, control technologies, and control costs for these 11 agricultural chemicals are similar to the processes, HAP emissions, control technologies, and control costs for other PAI's, the Administrator included other PAI's on the source category list and grouped the agricultural chemicals and the PAI's together into one source category.

B. Criteria for Development of NESHAP

The NESHAP are to be developed to control HAP emissions from both new and existing sources according to the statutory directives set out in section 112(d) of the Act. The statute requires the standards to reflect the maximum degree of reduction in emissions of HAP that is achievable for new or existing sources. This control level is based on the ''maximum achievable control technology'' (MACT). The selection of MACT must reflect consideration of the cost of achieving the emission reduction, any nonair quality health and environmental impacts, and energy requirements for control levels more stringent than the floor (described below).

The MACT floor is the least stringent level for MACT standards. For new sources, the standards for a source category or subcategory ''shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator'' (section 112(d)(3)). Existing source standards can 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 5 sources for categories or subcategories with fewer than 30 sources (section 112(d)(3)). The determination of the MACT floor for existing sources under today's rule is that the average emission limitation achieved by the best performing sources is based on a measure of central tendency, such as the arithmetic mean, median, or mode.

In establishing the floors, the EPA adopted a different approach in order to reduce the paperwork burden on the industry. Through literature reviews, State contacts, and plant visits, EPA identified companies which appeared to have the best controlled plants and sent data collection requests only to these companies. In identifying these companies, EPA also considered the need to include a variety of process and product types in the survey. Data for the PAI production industry were collected from facilities that achieve high emissions reductions, produce a variety of PAI's, use a variety of production processes, and are major sources. As the standards for existing sources are based on the best-performing 12 percent of sources, the number of best-performing sources for this source category is 9 facilities (i.e., 12 percent of 78 facilities). Information from the data collection requests was received from 20 facilities. The best-performing 9 facilities are included in these 20 surveyed facilities.

C. Authority for Development of Risk-Based Standards

The Act includes an exception to the general statutory requirement to establish emission standards based on MACT. Section 112(d)(4) of the Act provides EPA with authority, at its discretion, to develop risk-based standards for HAP ''for which a health threshold has been established,'' provided that the standard achieves an ''ample margin of safety.'' Under this authority, EPA may propose not to regulate HAP emissions if the results of exposure assessment modeling show exposure levels to HAP emissions to be below the health threshold value by an ample margin of safety, and if no significant or widespread adverse environmental effects from HAP emissions are expected.

The following discussion in today's notice summarizes the Agency's determination of HCl as a threshold pollutant, an ecological assessment of HCl, and the data that would have to be provided for EPA to consider adopting a risk-based approach to regulate HCl emissions from PAI manufacturing facilities.

Based on negative carcinogenicity data in one animal study, and on EPA's knowledge of how HCl reacts in the body and its likely mechanism of action, the Agency presumptively considers HCl to be a threshold pollutant. For HCl (and other pollutants that are considered to have a ''threshold of safety'' below which adverse effects are not expected), information on noncarcinogenic effects must be evaluated to determine the potential hazards associated with exposure. One approach for determining the potential hazards of a pollutant is to use its Inhalation Reference Concentration (RfC). The RfC for HCl is 20 micrograms per cubic meter ($\mu g/m^3$); this value was derived from a single animal study.

The emissions standards must also protect against significant and widespread adverse environmental effects to wildlife, aquatic life, and other natural resources. Based on a review of published studies, the Agency concluded that the RfC can reasonably be expected to protect against widespread adverse effects in animal species, and that effects on plant tissues and aquatic organisms likely will be local rather than widespread. The HCl concentrations were more than an order of magnitude above the RfC in some of the studies in which deleterious effects were observed; other studies did not report the HCl concentrations.

The Agency has not conducted an exposure assessment for the PAI manufacturing industry because the data needed in the analysis, including the identity of some of the 78 estimated affected sources, are not available. Furthermore, the burden to EPA and the industry of collecting and analyzing the data may not be warranted given the relatively small potential reduction in HCl control costs that could occur. However, the Agency solicits comments on the adequacy, desirability, and feasibility of developing a risk-based standard for HCl emissions from PAI manufacturing facilities. For EPA to develop a risk-based standard for HCl emissions from PAI manufacturing facilities, the industry would need to provide data for each affected source. Specifically, the HCl emissions and stack parameters for each HCl emission point (stack and fugitive sources) at the contiguous facility (i.e., both PAI and all other processes) for each affected source would be needed.

IV. Summary of Proposed Standards

This section describes the source category and pollutants covered, defines an affected source, and summarizes the proposed rule requirements for each emission point. A pollution prevention alternative is also summarized in this section. For an explanation of the process and rationale used to select

these requirements, see chapters 6 and 8 of the Basis and Purpose Document (located in docket No. A–95–20).

A. Source Categories To Be Regulated

The proposed standards would regulate HAP emissions from facilities that are major sources that produce PAI's for use in insecticide, herbicide, or fungicide products. The standards would apply to existing sources as well as new sources.

B. Pollutants To Be Regulated and Associated Environmental and Health Benefits

Pesticide Active Ingredients production facilities emit an estimated 6,750 Mg/yr of organic and inorganic HAP. Organic HAP's include methylene chloride, methanol, and toluene as well as other HAP. Hydrogen chloride is an inorganic HAP emitted by this industry. The proposed rule would reduce HAP emissions from PAI facilities by 76 percent. Some of these pollutants are considered to be carcinogenic, and all can cause toxic health effects following exposure, including nausea, headaches, and possible reproductive effects. The EPA does recognize that the degree of adverse effects to human health can range from mild to severe. The extent and degree to which the human health effects may be experienced is dependent upon (1) the ambient concentration observed in the area (e.g., as influenced by emission rates, meteorological conditions, and terrain), (2) the frequency of and duration of exposures, (3) characteristics of exposed individuals (e.g., genetics, age, pre-existing health conditions, and lifestyle) which vary significantly with the population, and (4) pollutant specific characteristics (toxicity, half-life in the environment, bioaccumulation, and persistence).

Most of the organic HAP emitted from this industry are classified as VOC. The proposed emission controls for HAP will reduce non-HAP VOC emissions as well. Emissions of VOC have been associated with a variety of health and welfare impacts. Volatile organic compound emissions, together with nitrogen oxides, are precursors to the formation of tropospheric ozone. Exposure to ambient ozone is responsible for a series of public health impacts, such as alterations in lung capacity; eye, nose, and throat irritation; nausea; and aggravation of existing respiratory disease. Among the welfare impacts from exposure to ambient ozone include damage to selected commercial timber species and economic losses for commercially valuable crops such as soybeans and cotton.

Hydrogen chloride is listed under section 112(r) of the CAA. The intent of section 112(r), Prevention of Accidental Releases, is to focus on chemicals that pose a significant hazard to the community should an accident occur, to prevent their accidental release, and to minimize consequences should a release occur. Hydrogen chloride, along with the other substances listed under section 112(r)(3), is listed because it is known to cause, or may be reasonably anticipated to cause death, injury, or serious adverse effects to human health or the environment (see 59 FR 4478, January 31, 1994). Sources that handle hydrogen chloride in greater quantities than the established threshold quantity under section 112(r)(5) will be subject to the risk management program requirements under section 112(r)(7) (see 58 FR 54190, October 20, 1993).

In essence, the MACT standards mandated by the CAA will ensure that all major sources of air toxic emissions achieve the level of control already being achieved by the better controlled and lower emitting sources in each category. This approach provides assurance to citizens that each major source of toxic air pollution will be required to effectively control its emissions. In addition, the emission reductions achieved by these proposed standards, when combined with the reductions achieved by other MACT standards, will contribute to achieving the primary goal of the CAA, which is to ''protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population'' (the CAA, section 101(b)(1)).

C. Affected Sources

The affected source for the purpose of this regulation is the facility-wide collection of emission points; these emission points include process vents, storage tanks, waste management units and associated treatment residuals, heat exchange systems, and equipment components that are associated with PAI manufacturing operations.

New sources occur as a result of reconstructing existing sources, constructing new ''greenfield'' facilities, or adding PAI manufacturing operations at a plant site that currently does not produce PAI's. Additionally, if a facility adds to the PAI manufacturing operations at a plant site that is an existing affected source, the addition will be subject to the requirements for new sources provided that the addition meets the definition of construction in § 63.2 of subpart A of part 63 (General Provisions) and the addition has the potential to emit 10 tons/yr or more of any one HAP or 25 tons/yr or more of any combination of HAP. Otherwise, the added PAI manufacturing operations are considered part of the existing source and would be subject to existing source standards.

D. Format of the Standards

The proposed standards for gaseous organic HAP and HCl emissions from process vents are presented in a combination of percent reduction and mass limit format. Facilities will have the option of using any control technology, as long as the HAP reductions or mass limits are achieved. The format of the proposed standards for storage tanks is a combination of equipment standard and performance standard—tanks that must be controlled are required to be fitted with floating roofs or with add-on devices meeting a percent removal requirement. The proposed standards for wastewater emission points allow: (1) Several percent mass removal options, (2) concentration limit, (3) mass limit, or (4) equipment design and operation formats. The proposed wastewater standards, and thus the format of the standards, are the same as in the HON, except that only a percent mass removal option is allowed for facilities that have total HAP loading greater than a specified cutoff. Equipment leak standards are in the form of equipment/work practice standards. Facilities would be required to implement the program specified in the proposed regulation to achieve compliance with the standards. The proposed standards for particulate HAP emissions from bag dumps and product dryers are presented in a concentration format. Additional information pertaining to the selection of the proposed standards is provided in Chapter 8 of the Basis and Purpose Document (located in docket No. A–95–20).

An alternative pollution prevention standard is also being proposed. This standard can be met in lieu of meeting separate standards for process vents, equipment leaks, storage tanks, wastewater, bag dumps, and heat exchange systems associated with each PAI production process. The format for this alternative standard is a mass reduction in HAP consumption per unit mass of product produced in the process.

E. Proposed Standards

1. Standards

Table 1 summarizes the proposed standards for process vents, storage tanks, wastewater, equipment leaks, bag

dumps and product dryers, and heat exchange systems at existing and new affected sources. The proposed standards are based on the MACT floor level of control, except where a more stringent level of control was determined to be technically feasible at a reasonable cost. Detailed information describing the approach used to determine the MACT floor and regulatory alternatives is presented in the Basis and Purpose Document (located in docket No. A–95–20).

TABLE 1.—PROPOSED STANDARDS FOR PAI PRODUCTION

Emission source	Applicability	Requirement
Process vents	Existing:	
	Processes having uncontrolled organic HAP emissions ≥0.15 Mg/yr.	90% for organic HAP per process or <20 ppmv TOC.
	Processes having uncontrolled HCl emissions ≥6.8 Mg/yr.	94% for HCl per process.
	Individual process vents meeting TRE criteria that have gaseous organic HAP emissions controlled to less than 90% as of proposal date.	98% gaseous organic HAP control per vent or <20 ppmv TOC.
	New:	
	Processes having uncontrolled organic HAP emissions ≥0.15 Mg/yr.	98% for organic HAP per process or <20 ppmv TOC at control device outlet.
	Processes having uncontrolled HCl emissions ≥6.8 Mg/yr and <191 Mg/yr.	94% for HCl per process.
	Processes having uncontrolled HCl emissions ≥191 Mg/yr.	99.9% for HCl per process.
Storage tanks	Existing: ≥0.11 Mg/yr uncontrolled HAP emissions:	
	• ≥38 m^3 <76 m^3 capacity	41% control per tank.
	• ≥76 m^3 capacity	95% control per tank.
	New: ≥0.45 kg/yr uncontrolled HAP emissions and ≥26 m^3 capacity.	98% control per tank or <20 ppmv TOC at control device outlet.
Wastewater [a]	Existing: ≥10,000 ppmw Table 9 compounds at any flowrate or ≥1,000 ppmw Table 9 compounds at ≥10 L/min.	Reduce concentration of total Table 9 compounds to <50 ppmw (or other options).
	New:	
	Same criteria as for existing sources	Reduce concentration of total Table 9 compounds to <50 ppmw (or other options).
	Total HAP load in wastewater POD streams ≥2,100 Mg/yr.	99% reduction of Table 9 compounds from all streams.
Equipment leaks	Subpart H	Subpart H with minor changes.
Bag dumps and product dryers	All	Particulate HAP concentration not to exceed 0.01 gr/dscf.
Heat exchange systems	Each heat exchange system used to cool process equipment in PAI manufacturing operations.	Monitoring and leak repair program as in HON.

[a] Table 9 is listed in the appendix to subpart G of 40 CFR part 63.

a. *Process Vents.* The proposed standards would require existing sources to reduce organic HAP and HCl emissions from process vents. Specifically, existing sources would be required to reduce organic HAP emissions by 90 percent from each process where the sum of uncontrolled organic HAP emissions from all vents in the process is greater than or equal to 0.15 Mg/yr (330 pounds per year [lb/yr]). Alternatively, the proposed rule would require that combustion, recovery, or recapture control devices meet an outlet total organic carbon (TOC) concentration of 20 parts per million by volume (ppmv); the 90 percent reduction requirement would apply to the sum of uncontrolled organic HAP emissions from all other vents in the process. Additionally, the proposed rule would require organic HAP emissions from any individual vent that meets certain annual emissions and flowrate criteria to be reduced by 98 weight percent or to an outlet concentration of 20 ppmv; the 90 percent requirement would apply to the sum of organic HAP emissions from all other vents in the process. The proposed standards would also require existing sources to reduce HCl emissions by 94 percent from each process where the sum of uncontrolled emissions from all vents in the process is greater than or equal to 6.8 Mg/yr (7.5 tons/yr).

New sources would be required to meet various process-based control levels. Specifically, for each process where the sum of the uncontrolled organic HAP emissions from all vents in the process is greater than or equal to 0.15 Mg/yr (330 lb/yr), the proposed standards would require an overall 98 percent reduction in the organic HAP emissions per process. Alternatively, the proposed standards would require that combustion, recovery, or recapture devices meet an outlet TOC concentration of 20 ppmv, and the 98 percent reduction requirement would apply to the sum of uncontrolled organic HAP emissions from all other vents in the process. The proposed standards would also require a 94 percent reduction of HCl emissions from each process where the sum of uncontrolled HCl emissions from all vents in the process is greater than or equal to 6.8 Mg/yr (7.5 tons/yr) and less than 191 Mg/yr (211 tons/yr). The proposed standards would require new sources to reduce HCl emissions by 99.9 percent from each process where the sum of uncontrolled HCl emissions from all vents in the process is greater than or equal to 191 Mg/yr (211 tons/yr).

The proposed standards for organic HAP from process vents at existing sources are based on a regulatory alternative that consists of the MACT floor level of control for most vents and a more stringent level of control for vents that meet certain applicability criteria. An applicability cutoff, based on a linear equation relating vent flowrate and annual HAP load, is used to determine the vents that have organic

HAP emissions that must be controlled to the more stringent level of 98 percent. The cost of this alternative above the MACT floor is $2,500/Mg and was judged to be reasonable. The proposed standards for HCl from process vents at existing sources are based on the MACT floor level. The proposed standards for both organic HAP and HCl emissions from process vents at new sources are based on the MACT floor level for new sources. For additional information, see chapters 6 and 8 of the Basis and Purpose Document (located in docket No. A–95–20).

b. *Storage Tanks.* The proposed standards would require existing sources to control storage tanks that have a capacity greater than or equal to 38 cubic meters (m^3) (10,000 gal) and uncontrolled organic HAP emissions greater than or equal to 0.11 Mg/yr (240 lb/yr). Specifically, the proposed standards would require that organic HAP emissions be reduced by 41 percent from storage tanks having volumes greater than or equal to 38 m^3 (10,000 gal) and less than 76 m^3 (20,000 gallons) and by 95 percent from storage tanks with capacities greater than or equal to 76 m^3 (20,000 gallons). However, storage tanks greater than or equal to 76 m^3 (20,000 gallons) that are currently controlled at or above the floor level (41 percent) would not be required to achieve 95 percent. One of the following control systems can be applied to meet these requirements:

(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 either a 41 percent or a 95 percent efficient control device, as appropriate.

New sources would be required to reduce uncontrolled organic HAP emissions from storage tanks with capacities greater than or equal to 26 m^3 (7,000 gal) and uncontrolled HAP emissions greater than or equal to 0.45 kg/yr (1.0 lb/yr) by 98 percent or use a combustion, recovery, or recapture control device that meets an outlet TOC concentration of 20 ppmv. This requirement can be met with a closed vent system with a 98 percent efficient control device.

At existing sources, the proposed standards for storage tanks that have uncontrolled emissions greater than or equal to 0.11 Mg/yr (240 lb/yr) and capacities less than 76 m^3 (20,000 gal) are based on the MACT floor control level. The proposed standards for storage tanks at existing sources that have uncontrolled emissions greater than or equal to 0.11 Mg/yr (240 lb/yr) and capacities greater than or equal to 76 m^3 (20,000 gal) are based on a regulatory alternative that is more stringent than the MACT floor. Floating roof technology is considerably less expensive than add-on controls for storage tanks with capacities greater than or equal to 76 m^3 (20,000 gal); therefore, there is no additional cost for the regulatory alternative above the MACT floor. The proposed standards for storage tanks at new sources are based on the MACT floor level for new sources.

c. *Wastewater.* The wastewater provisions are similar to the HON wastewater provisions (subpart G of 40 CFR part 63), with modifications made for the PAI production industry. The proposed standards would require existing and new sources to control Group 1 wastewater streams. Under the proposed standards, existing and new sources would be required to determine Group 1 status for both process wastewater streams and maintenance wastewater streams. A wastewater stream is a Group 1 stream for compounds listed in Table 9 of the appendix to subpart G of 40 CFR part 63 (i.e., ''Table 9'' compounds in the remainder of this discussion) if:

(1) The total annual average concentration of Table 9 compounds is greater than or equal to 10,000 ppmw at any flowrate; or

(2) The total annual average concentration of Table 9 compounds is greater than or equal to 1,000 ppmw and the annual average flowrate is greater than or equal to 10 liters per minute (L/min) (2.6 gallons per minute (gal/min)).

The proposed standards would require existing sources with Group 1 wastewater streams for Table 9 compounds:

(1) To reduce the concentration of Table 9 compounds to less than 50 ppmw;

(2) To use a steam stripper with specific design and operating requirements;

(3) To reduce the mass flow rate of Table 9 compounds by at least 99 percent;

(4) To reduce the mass flow rate of Table 9 compounds by an amount equal to or greater than the Fr value in Table 9;

(5) For a source using biotreatment for at least one wastewater stream that is Group 1 for Table 9 compounds, to achieve a required mass removal greater than or equal to 95 percent for Table 9 compounds; or

(6) To treat wastewater streams with permitted RCRA units or by discharging to a permitted underground injection well.

The proposed standards would require new sources with Group 1 wastewater streams for Table 9 compounds to control Table 9 compounds to the same level required for existing sources. In addition, new sources with a total mass flow rate from the source of 2,100 Mg/yr (2,300 tons/yr) or more of Table 9 compounds would be required to reduce the mass flow rate of Table 9 compounds from all wastewater streams by 99 percent. This difference from the HON was needed because the MACT floor for new sources is more stringent than the provisions in the HON for facilities that exceed this mass flow rate cutoff.

A source is exempted from the wastewater standards if:

(1) The total mass flow rate of Table 9 compounds in Group 1 streams is less than 1 Mg/yr (1.1 tons/yr); or

(2) If the total mass flow rate of Table 9 compounds in untreated Group 1 wastewater streams and in Group 1 wastewater streams that are treated to levels less stringent than the levels required by the standard is less than 1 Mg/yr (1.1 tons/yr).

The proposed standards for wastewater at existing sources are based on a regulatory alternative more stringent than the MACT floor control level. The cost of the regulatory alternative was determined to be $3,070/Mg. This value was judged to be acceptable based on decisions for previously promulgated part 63 rules for sources with organic HAP emissions. In addition, this regulatory alternative requires the same degree of control as the HON. The wastewater streams from PAI units are similar to those released from HON units, and often occur at the same plant sites.

The proposed standards for wastewater at new sources with a total HAP load less than 2,100 Mg/yr (2,300 tons/yr) are based on a regulatory alternative more stringent than the MACT floor level for new sources. These proposed standards are the same as the proposed standards for existing sources; therefore, the cost was judged to be reasonable. Proposed standards for new sources with a total HAP load greater than or equal to 2,100 Mg/yr (2,300 tons/yr) are based on the MACT floor control level for new sources, which, as noted above, is more stringent than the standards for new sources that have a mass flow rate below the mass flow rate cutoff. For additional information, see chapters 6 and 8 of the Basis and Purpose Document (located in docket No. A–95–20).

d. *Equipment Leaks.* The proposed standards would require that new and existing PAI production sources implement for each process a leak detection and repair (LDAR) program that is slightly modified from the program specified in the Negotiated Regulation for Equipment Leaks (40 CFR part 63, subpart H). The LDAR program specified under subpart H requires specific equipment modifications and work practices that reduce emissions from equipment leaks. This program was modified to consider the emissions from receivers and surge control vessels to be from process vents rather than equipment leaks.

For existing sources, the MACT floor for equipment leaks was determined to be no control, and the regulatory alternative consisted of the LDAR program specified under subpart H. The proposed standards for existing sources are based on the regulatory alternative because the LDAR program was determined to be technically feasible, and the cost of $550/Mg was judged to be reasonable. For new sources, the proposed standards are based on the MACT floor level of control.

The EPA will consider consolidating the equipment leaks program specified in this subpart (subpart MMM) with the subpart H LDAR program after promulgation of subpart MMM. The EPA will also consider cross-referencing the Consolidated Air Rule (CAR) if the CAR is complete before this rule is promulgated.

e. *Bag Dumps and Process Dryers.* Under the proposed standards, particulate HAP emissions from bag dumps and dryers at both new and existing sources would not be allowed to exceed 0.01 grains per dry standard cubic feet (gr/dscf). The standard is based on the MACT floor for both new and existing sources. For additional information, see chapters 6 and 8 of the Basis and Purpose Document (located in docket No. A–95–20).

f. *Heat Exchange Systems.* Heat exchange systems that cool process equipment or materials used in PAI manufacturing are also emissions points subject to the proposed rule. The proposed standards are based on HON provisions. A source must (1) monitor monthly for leaks in the cooling water for 6 months and quarterly thereafter, and (2) repair leaks and test to demonstrate that the leak has been repaired.

2. Alternative Pollution Prevention Standard

For existing sources, the proposed rule also includes a pollution prevention (P2) alternative standard that meets the requirements of the MACT standards, and can be implemented in lieu of the requirements described above. The P2 alternative standard provides a way for facilities to comply with the MACT standards by reducing overall consumption of HAP from their processes. The two options that were developed are described in Table 2 and are discussed below. This alternative does not apply to HAP that are used as reactants (below the stoichiometric amount needed to produce the product) or to HAP that are generated in the process.

TABLE 2.—ALTERNATIVE P2 STANDARD

Option	Description of P2 option
1	Demonstrate an 85% reduction in the kg consumption/kg production factor from a baseline year of 1987.
2	Demonstrate a 50% reduction in the kg consumption/kg production factor and additional reduction from add-on control equivalent to yield 85% overall reduction in kg consumption/kg production.

In the first option, an owner or operator can satisfy the MACT requirements for all process vents, storage tanks, equipment leaks, wastewater, bag dumps, and heat exchange systems associated with an existing process by demonstrating that the production-indexed consumption of HAP has decreased by 85 percent from a baseline set at the first 12-month period for which data are available but no earlier than the 1987 calendar year. (1987 was the first year industrial facilities had to report their estimated toxic releases to the EPA under the Emergency Planning and Community Right-to-Know Act of 1986). Emissions from product dryers are excluded from the P2 option because reductions in consumption would not affect product emissions. The production-indexed consumption factor is expressed as kg HAP consumed per kg product produced (kg consumed/kg produced factor). The numerator in the kg consumed/kg produced factor is the total consumption of material, which describes all the different areas where material can be consumed, either through losses to the environment, consumption in the process as a reactant, or otherwise destroyed. Consumption, rather than emissions, is tracked because it can be used as a true measure of pollution prevention; any decrease in consumption for the same unit of product generated must involve some type of increase in process efficiency, including reduction of waste, increased product yield, and in-process recycling. Because HAP are used generally as raw materials and solvents in this industry, reductions in consumption can be generally associated with reductions in emissions to air, water, or solid waste.

The second option also uses the production-indexed consumption factor and is also applied to existing processes. It encourages and allows an owner or operator to supplement reductions achieved with P2 with add-on controls. The EPA believes that such an option will provide greater flexibility and cost efficiency to the operators who already may have some add-on controls. An owner or operator would be required to demonstrate reductions in the kg consumed/kg produced factor of 50 percent via P2 measures, and actual mass emission reductions equivalent to 35 percent of the kg consumed/kg produced factor would be required using add-on controls. Thus, the total reduction required by option 2 would be equivalent to or greater than an 85 percent reduction in the kg consumed/kg produced factor, the same as in option 1.

F. Compliance and Performance Test Provisions

1. Proposed Standards

a. *Process Vents.* To determine compliance with the percent reduction requirements for gaseous HAP and HCl emissions from PAI process vents, the owner or operator would be required to quantify the uncontrolled and controlled gaseous emissions from all process vents to demonstrate the appropriate overall reduction requirements. For process vents controlled by a device with an inlet of less than 10 tons/yr of HAP, the owner or operator can either test or use calculational methodologies to determine the uncontrolled and controlled emission rates from individual process vents. For process vents controlled by a device with an inlet of 10 tons/yr or more of HAP, performance tests would be required to determine the reduction efficiency of each device. Because of their cyclic nature, batch operations tend to have variable emissions. Therefore, performance test provisions were structured to account for the peak-case emissions. Continuous processes tend to have more consistent emissions, but for simplicity, the same performance test provisions are applied to controls for continuous processes. This approach essentially considers emissions from

continuous processes to be peak-case at all times. Control devices that have previously been tested under conditions required by this standard and condensers are exempt from performance testing.

b. *Storage Tanks.* For demonstrating compliance with various requirements, the proposed rule allows the owner or operator to either conduct performance tests or to document compliance using engineering calculations. Appropriate compliance and monitoring provisions are included in the regulation.

c. *Wastewater.* For demonstrating compliance with the various requirements, owners and operators have a choice of using a specified design, conducting performance tests, or documenting engineering calculations. Appropriate inspection, monitoring, reporting, and recordkeeping requirements are included in the regulation.

d. *Equipment Leaks.* To determine compliance with the standard for equipment leaks, facilities would have to demonstrate that an LDAR program meeting the requirements of the modified subpart H is in use.

e. *Bag Dumps and Product Dryers.* To demonstrate compliance with the particulate HAP emission limit of 0.01 gr/dscf, the owner or operator would be required to conduct a performance test.

2. Pollution Prevention Alternative Standard

Initial demonstration of compliance with the P2 alternative standard would be accomplished by documenting yearly quantities of HAP raw materials and products using available records, including standard purchasing and accounting records, and calculating the kg consumed/kg produced values. Procedures are also specified to demonstrate that the required reductions are achieved by the control devices used to meet option 2.

G. Monitoring Requirements

1. MACT Emission Standards

Monitoring would be required by the proposed standards to determine whether a source is in compliance on an ongoing basis. This monitoring is done either by (1) continuously measuring emission reductions directly or (2) continuously measuring a site-specific operating parameter, the value of which is established by the owner or operator during the initial compliance determination. The operating parameter value is defined as the minimum or maximum value established for a control device or process parameter that, if achieved on a daily average by itself or in combination with one or more other operating parameter values, determines that the owner or operator is complying with the applicable emission standards. Except for the bag leak detectors, these parameters are required to be monitored at 15-minute intervals throughout the operation of the control device. For a device controlling streams that, in aggregate, contain less than 1 ton/yr of HAP, only a site-specific periodic verification that the device is operating as designed is required to demonstrate continuous compliance. Owners and operators must determine the most appropriate method of verification and propose this method to the Agency for approval in the Precompliance Report, which is due 1 year prior to the compliance date of the standard.

Under the proposed NESHAP, the owner or operator must install a bag leak detection system for each fabric filter used to control particulate HAP emissions from bag dumps or product dryers. The bag leak detection system is required because opacity is not a good indicator of performance at the low, controlled particulate levels characteristic of these sources. The bag leak detection system would be equipped with an audible alarm that automatically sounds when an increase in particulate emissions above a predetermined level is detected. The proposed rule requires that the monitor provide an output of relative or absolute particulate emissions. Such a device would serve as an indicator of the performance of the fabric filter and would provide an indication of when maintenance of the fabric filter is needed. An alarm by itself does not indicate noncompliance with the particulate HAP limit, but would indicate an increase in PM emissions and trigger an inspection of the fabric filter to determine the cause of the alarm. The owner or operator would initiate corrective actions according to procedures submitted with their Notification of Compliance Status report. The owner or operator would be considered in violation of the particulate HAP standard upon failure to initiate corrective actions within 1 hour of the alarm. If the alarm is activated for more than 5 percent of the total operating time during the 6-month reporting period, the EPA proposes that the owner or opertor develop and implement a written quality improvement plan (QIP) consistent with subpart D of the draft approach to compliance assurance monitoring.

2. Alternative Standard

An owner or operator electing to use the P2 alternative can demonstrate ongoing compliance by calculating the rolling average of the kg consumed/kg produced factor for each applicable process or portions of the process. For continuous processes, the rolling average is calculated every 30 days, and for batch processes, the rolling average is calculated every 10 batches. In both cases, the rolling average is based on data from the previous 12 months. In addition, an owner or operator electing to use P2 Option 2 would have to monitor the emission reduction obtained through the use of traditional controls using the methods described above.

H. Reporting and Recordkeeping Requirements

The owner or operator of any PAI production facility subject to these standards would be required to fulfill all reporting requirements outlined in the General Provisions of subpart A to 40 CFR part 63. A table included in the proposed rule designates which sections of subpart A apply to the proposed rule. Specific recordkeeping and reporting requirements for each type of emission point are also included in the proposed rule.

V. Summary of Environmental, Energy, Cost, and Economic Impacts

The emission reductions that would be required by this regulation could be met using one or more of several different techniques. Impacts were estimated for control scenarios based on traditional control techniques that were judged to be the most feasible for meeting the requirements of the proposed standards from a technical and cost standpoint. Energy, cost, and economic impacts of the P2 alternative would be equivalent to or lower than the estimated impacts for traditional controls because it is likely that an owner or operator would elect to implement only those P2 techniques that have lower impacts than traditional controls.

A. Facilities Affected by These NESHAP

These NESHAP would affect PAI production facilities that are major sources in and of themselves, or constitute a portion of a major source. There are estimated to be approximately 329 existing facilities manufacturing PAI's, 78 of which were estimated to be major sources for the purpose of developing these standards and calculating impacts. The rate of growth for the PAI production industry is

estimated to be 2 percent per year for the next 5 years.

B. Air Impacts

The proposed standards would reduce HAP emissions from existing sources by 5,150 Mg/yr (5,680 tons/yr) from the baseline level, a reduction of 76 percent from baseline, and 93 percent from uncontrolled. These reductions would also occur if facilities elect to implement the alternative pollution prevention standard. In addition to reducing HAP emissions, VOC will also be reduced. This reduction includes VOC that are HAP and other VOC that are not HAP. Volatile organic compounds are precursors in the atmospheric reaction with oxides of nitrogen that generates tropospheric ozone. The amount of VOC reduction (beyond the HAP portion of the VOC) due to implementation of the PAI standards cannot be quantified.

C. Water and Solid Waste Impacts

With the assumption that overheads from steam stripping will be recoverable as material or fuel, no solid waste is expected to be generated from steam stripping wastewater streams. Additionally, no solid waste is expected to be generated from controls of other emission points.

The proposed standards would increase wastewater generated from water scrubbers used to control HCl emissions by an estimated 10.8 million liters per year (2.9 million gallons per year). The volume of wastewater generated would also increase at plants that choose a water scrubber to control certain water soluble organic HAP; however, the increase is expected to be minimal because the use of water scrubbers for this purpose is expected to be uncommon.

D. Energy Impacts

The proposed standards would require an additional energy usage of $4{,}880 \times 10^9$ British thermal units per year (Btu/yr).

E. Cost Impacts

The total control cost includes the capital cost to install control devices (including floating roofs), the costs involved in operating control devices (energy and operating and maintenance costs), costs associated with monitoring control devices to ensure compliance, costs associated with implementing work practices, and the cost savings generated by reducing the loss of valuable product in the form of emissions. Monitoring costs include the cost to purchase and operate monitoring devices, as well as reporting and recordkeeping costs required to demonstrate compliance. Average cost effectiveness, $/Mg of HAP removed, is also presented as part of cost impacts and is determined by dividing the annual cost by the annual emission reduction.

The estimated total capital costs for existing and new sources would be $70.3 million and $10.4 million, respectively (June 1995 dollars). The total annual costs for control at existing and new sources are estimated to be approximately $39.0 million and $5.73 million, respectively (June 1995 dollars). The average cost effectiveness of the standards is estimated to be about $7,600/Mg for existing sources and $7,700/Mg for new sources. The EPA estimates that industry's nationwide annual cost burden will average $0.37 million for monitoring, recordkeeping, and reporting requirements over the first 3 years following promulgation.

It is expected that the actual compliance cost impacts of the proposed rule would be less than described above because of the potential to use common control devices, upgrade existing control devices, use other less expensive control technologies, implement pollution prevention technologies, or use emissions averaging. Since 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 costs would be reduced. The EPA believes that the overall control costs and the monitoring, reporting, and recordkeeping costs will be substantially reduced for the facilities opting to comply via the P2 option.

F. Economic Impacts

The control costs imposed on producers in the PAI production industry will increase their cost of production. The effects of the changes in production costs are evaluated in the ''Economic Impact Analysis of the Proposed NESHAP for the Production of Pesticide Active Ingredients.'' The resulting increase in production costs will increase the market price by less than 1 percent and decrease market output by less than 1 percent. In addition, the regulation's impact on foreign competition is relatively small. Social cost incorporates the changes in welfare to consumers, unaffected producers, and foreign producers and consumers to the cost of the regulation. These costs were determined to be negligible for the PAI production industry; therefore, the total social cost is estimated to be equal to the total control cost. No plant closures are expected from compliance with this set of alternatives.

VI. Emissions Averaging

The proposed rule includes provisions that would allow emissions averaging among process vents, storage tanks, and wastewater within an existing affected source. New affected sources are not allowed to use emissions averaging. Under emissions averaging, a system of ''credits'' and ''debits'' is used to determine whether an affected source is achieving the required emissions reductions. The new sources have historically been held to a stricter standard than existing sources, because it is most cost-effective to integrate state-of-the-art controls into equipment design and to install the technology during the construction of new sources. One reason for allowing averaging is to permit existing sources flexibility to achieve compliance at diverse points with varying degrees of control already in place in the most economically and technically reasonable fashion. This concern does not apply to new sources because they can and should be designed and constructed with compliance in mind.

VII. Solicitation of Comments

The Administrator welcomes comments from interested persons on any aspect of the proposed rule, and on any statement in the preamble or the referenced supporting documents. The proposed rule was developed on the basis of available information. The Administrator is specifically requesting factual information that may support either the approach taken in the proposed standards or an alternate approach. To receive proper consideration, documentation or data should be provided. This section requests comments on specific issues identified during the development of the standard.

The EPA is requesting comment on the addition of other PAI's to this source category. The original source category contained 10 agricultural chemicals (i.e., PAI's); during information gathering for this proposed standard, other PAI's with similar processes, emissions, and control equipment were identified and added to the source category.

The EPA is requesting comments on the clarity of the approach used to identify PAI processes subject to the standards. Under FIFRA, all facilities producing PAI's (and other pesticide products) are required to be registered. Further, all of these registered pesticide-

producing establishments are required to report, on EPA form 3540–16, the amount of each PAI that they produced in the previous year and an estimate of the amount to be produced in the current year. The facilities also must classify each PAI in one of 18 product classification categories. Under today's proposed rule, PAI processes subject to the standards are those that are used in the production of insecticide, herbicide, or fungicide products. For the purposes of the proposed rule, PAI processes that satisfy this definition are those that are classified as an insecticide, insecticide-fungicide, fungicide, herbicide, herbicide-fungicide, plant regulator, defoliant, desiccant, or multi-use active ingredient on form 3540–16. The EPA also evaluated and rejected other approaches for identifying the processes that would be subject to the standards. One approach would be to list each subject PAI process. This approach was rejected because new products are always being developed and existing products are discontinued so that a list would soon be out of date. Another option would be to cover only registered PAI's. Drawbacks of this option are that PAI's produced only for export need not be registered, the ongoing reregistration process is likely to result in the cancellation of many currently registered PAI's in the next few years, and the registration process does not classify the PAI as an insecticide, herbicide, or fungicide. The Agency requests comments on the benefits and drawbacks of these and any other approaches to identify PAI processes subject to the standards.

The EPA is requesting particulate emissions data from bag dumps and product dryers in the PAI production industry. The proposed standard for particulates for bag dumps and product dryers was based on information for a product dryer from a single facility; this was the only surveyed facility that dried a PAI that is also a HAP. Other facilities that manufacture PAI's that have PM HAP emissions from bag dumps or product dryers may submit available test data or engineering estimates of the emissions, along with any available information about the design and operation of the control device.

The EPA is requesting information and data on equipment leak emissions in the PAI production industry. During the development of this proposed regulation, various industry representatives commented that (1) SOCMI emission factors used to estimate emissions from equipment leaks overestimate the actual emissions, (2) the proposed equipment leak requirements (HON, subpart H of this part) are too stringent, i.e., the frequent monitoring requirements associated with the HON are burdensome, especially because industry believes equipment components are well-controlled, and (3) the requirements in the Consolidated Air Rule (CAR) are possible alternatives to the HON requirements for equipment leak standards. To support their comments, industry has submitted a summary of test results to EPA to demonstrate that the industry is already well-controlled with respect to equipment leaks. The EPA has reviewed these data and believes that the data are insufficient to support the industry position. The EPA is requesting additional information and test data [screening data] on this issue. These data should be collected in accordance with accepted EPA protocol (Protocol for Equipment Leak Emission Estimates, EPA Document No. EPA–453/R–95–017).

The EPA is soliciting comments on several aspects of performance testing and monitoring. The rule currently requires performance testing to document efficiencies for control devices that are used to reduce uncontrolled emissions of 10 tons per year or more. The rule currently requires that the performance test be conducted under ''peak-case'' conditions and provides for three options—absolute, representative, and hypothetical peak-case. The EPA is soliciting comments on appropriate test conditions to be defined for different types of control devices, especially scrubbers and carbon adsorbers.

The proposed rule provides for parametric monitoring to comply with the standard and includes specific operating parameters to be monitored. The EPA is soliciting comments on the use of alternative parameters without the requirement of prior notification in the Precompliance report. Parameters other than those specified in the rule that could be used to demonstrate compliance include: (1) For condensers, coolant temperature and flow (only with emissions testing), (2) for scrubbers, measurement of pressure drop, scrubber fluid composition, or pH, and (3) for carbon adsorbers, adsorption cycle and regeneration frequency, bed temperature, regeneration stream flow, periodic test for bed poisoning, and periodic vent testing and/or predetermined scheduled replacement. The EPA is soliciting comment on the adequacy of these parameters for demonstrating continuous compliance with the rule.

An issue raised by industry associated with parametric monitoring is related to the setting of a parameter based on an initial compliance determination at conditions which represent the upper limit (with regard to achievable control) of conditions that will be encountered during the course of operations. The concern is that the rule effectively requires a control level that is greater than the standard because the control devices will presumably achieve higher control on conditions that are below this upper limit, which may occur frequently in this industry because of the predominance of batch processes. The EPA has tried to resolve this issue by allowing owners and operators to set more than one parameter level for a given control device for processes or portions of processes not requiring control levels as high as the peak-case or upper limit. These parametric levels are required to be defined in advance in the Notification of compliance report. If more than one level is set, owners and operators must make a determination of compliance with the standards based on what processes or emission characteristics are routed to the device at the time in which a monitoring reading is taken. Additionally, the determination of an exceedance is based on a maximum of 24 hours worth of data, or 96 15-minute readings, per process. Therefore, readings outside of acceptable ranges can be averaged in with readings that are within range and effectively normalized. The EPA believes that the approach taken offers the industry needed flexibility while preserving the assurance of continuous compliance.

Currently, the Notification of Compliance report is the compliance ''blueprint'' for implementation of the standard. All information regarding documentation of the facility's compliance status with regard to the standard should be included in this report. Process descriptions, emission estimates, control device performance documentation, and continuous compliance demonstration strategies, including monitoring, are to be presented in the report. This report could be incorporated by reference into the facility's title V permit. If a change occurred at the facility which required the submittal of additional information, or if the plant chose to revise procedures that had been previously documented in the notification, this information would be submitted in quarterly reports, thus ensuring that the notification and associated reports would always contain the most current compliance strategy for the facility. Only changes requiring site-specific approval, such as the use of a monitoring parameter that was not

specifically identified in the standard, would trigger some significant review action under title V. This would allow the facility enough flexibility to change processes, operating, and compliance procedures as necessary without prior approval, if the changes were straightforward, and would assure that the compliance plan for the facility would always be current. The EPA is also soliciting comments on the incorporation by reference of the Notification of Compliance report into the title V permit, and comments on the types of changes that should trigger review actions under title V.

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 PAI 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.

Pursuant to the terms of Executive Order 12866, the OMB has notified the EPA that it considers this a ''significant regulatory action'' under criterion four of the Executive Order. The EPA has submitted this action for OMB review. Changes made in response to suggestions or recommendations from the OMB will be documented and included in the public record.

D. Enhancing the Intergovernmental Partnership Under Executive Order 12875

In compliance with Executive Order 12875, EPA has involved State governments in the development of this rule. These governments will implement the rule and collect permit fees to offset the resource burden of implementing the rule. Representatives of four State governments are members of the MACT partnership group. This partnership group was consulted throughout the development of this proposed regulation. Comments from the partnership members were carefully considered. In addition, all States are encouraged to comment on this proposed rule during the public comment period, and the EPA intends to fully consider these comments in the final rulemaking.

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. 1807.01), 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 1,360 hours per respondent for the first year and 990 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 chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after November 10, 1997, a comment to OMB is best assured of having its full effect if OMB receives it by December 10, 1997. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

F. Regulatory Flexibility

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. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant economic impact on a substantial number of small entities. In a screening of potential impacts on small entities, the EPA found that there are three small companies operating in the PAI production industry. The majority of facilities are owned by large chemical manufacturers having greater than 500 employees. In all instances, the average total annual cost for affected firms is

less than 1 percent of company-wide revenues. The screening analysis for this rule is detailed in the Economic Impact Analysis (see Docket No. A–95–20). Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

G. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed standards do not include a Federal mandate that may result in estimated costs of, in the aggregate, $100 million or more to either State, local or Tribal governments, or to the private sector, nor do the standards significantly or uniquely impact small governments, because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the requirements of the UMRA do not apply to this proposed rule.

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.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 27, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

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

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

2. It is proposed that part 63 be amended by adding subpart MMM to read as follows:

Subpart MMM—National Emission Standards for Hazardous Air Pollutants From Pesticide Active Ingredient Production

Sec.

63.1360 Applicability.
63.1361 Definitions.
63.1362 Standards.
63.1363 Compliance dates.
63.1364 Test methods and compliance procedures.
63.1365 Monitoring and inspection requirements.
63.1366 Recordkeeping requirements.
63.1367 Reporting requirements.
63.1368 Delegation of authority.
Table 1 to Subpart MMM—General Provisions Applicability to Subpart MMM
Table 2 to Subpart MMM—Proposed Standards for PAI Production

Subpart MMM—National Emission Standards for Hazardous Air Pollutants From Pesticide Active Ingredient Production

§ 63.1360 Applicability.

(a) The provisions of this subpart apply to each affected source. Except as specified in paragraph (d) of this section, the affected source subject to this subpart is the facility-wide collection of process vents, storage tanks, waste management units, heat exchange systems, cooling towers, equipment identified in § 63.149, and equipment components (pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems) in pesticide active ingredient (PAI) manufacturing operations at a major source of hazardous air pollutant (HAP) emissions. Pesticide active ingredient manufacturing operations also include the manufacturing of each intermediate:

(1) That is integral to a PAI production process; and

(2) For which 50 percent or more of the annual production of the intermediate is used in any onsite PAI processes.

(b) Except as specified in paragraph (d) of this section, a new source is defined as a source meeting the criteria of paragraph (b) (1), (2), or (3) of this section.

(1) A plant site previously without HAP emissions points that is part of a major source on which construction of PAI manufacturing operations commenced after November 10, 1997;

(2) Additions to an existing plant meeting the criteria in paragraph (g) of this section; or

(3) A reconstructed source that meets the definition of reconstruction in § 63.2 and for which reconstruction commenced after November 10, 1997.

(c) Table 1 of this subpart specifies the provisions of subpart A of this part that apply to an owner or operator of an affected source subject to this subpart, and clarifies specific provisions in subpart A of this part as necessary for this subpart.

(d) The provisions of this subpart do not apply to:

(1) Research and development facilities;

(2) Emission points in pesticide active ingredient manufacturing operations that meet the applicability requirements

under subparts F, G, H, and I of this part;

(3) Emission points in pesticide active ingredient manufacturing operations that meet the applicability criteria under any other existing MACT standard; and

(4) The following emission points listed:

(i) Stormwater from segregated sewers;

(ii) Water from fire-fighting and deluge systems, including testing of such systems;

(iii) Spills;

(iv) Water from safety showers;

(v) Noncontact steam boiler blowdown and condensate;

(vi) Laundry water;

(vii) Vessels and equipment storing and/or handling material that contain no organic HAP and/or organic HAP as impurities only; and

(viii) Equipment that is intended to operate in organic HAP service for less than 300 hours during the calendar year.

(e) An owner or operator shall follow the startup, shutdown, and malfunction provisions specified in paragraphs (e)(1) and (2) of this section.

(1) For batch processes, the provisions of this subpart shall apply during startup and shutdown, and periods of malfunction shall be regulated according to § 63.6 of subpart A of this part.

(2) For continuous processes, startup, shutdown, and malfunction shall be regulated according to § 63.6 of subpart A of this part.

(f) An owner or operator shall follow the procedures specified in paragraphs (f)(1) through (3) of this section to determine whether a storage tank is part of the PAI manufacturing operations. If the storage tank is determined to be part of the PAI manufacturing operations, and the PAI manufacturing operations are located at a major source of HAP emissions, then the storage tank is part of the affected source to which this subpart applies.

(1) If a storage tank is already subject to another subpart of 40 CFR part 63 on November 10, 1997, said storage tank shall belong to the process unit or manufacturing process subject to the other standard.

(2) The storage tank is part of the PAI manufacturing operations if either the input to the tank from PAI manufacturing processes, collectively, is greater than or equal to the input from all other sources or the output from the tank to PAI manufacturing processes, collectively, is greater than or equal to the output to all other sources. If the use varies from year to year, then the use for purposes of this subpart shall be based on the utilization that occurred during the year preceding November 10, 1997. This determination shall be reported as part of an operating permit application or as otherwise specified by the permitting authority.

(3) Where a storage tank is located in a tank farm (including a marine tank farm), the provisions in paragraphs (f)(3)(i) and (ii) of this section shall be used to determine if the storage tank is considered part of the PAI manufacturing operations.

(i) The storage tank is not part of the PAI manufacturing operations if all of the PAI manufacturing processes that utilize the tank have an intervening storage tank. With respect to a PAI manufacturing process, an intervening storage tank means a storage tank connected by hard-piping to the PAI manufacturing process and to the storage tank in the tank farm so that product or raw material entering or leaving the PAI manufacturing process flows into (or from) the intervening storage tank and does not flow directly into (or from) the storage tank in the tank farm.

(ii) For storage tanks that do not meet the provisions of paragraph (f)(3)(i) of this section, the provisions in paragraph (f)(2) of this section shall be used to determine if the storage tank is part of the PAI manufacturing operations.

(5) If the storage tank begins receiving material from (or sending material to) other manufacturing operations, or ceasing to receive material from (or send material to) PAI manufacturing operations, or if the applicability of this subpart has been determined according to the provisions of paragraph (f)(2) of this section and there is a significant change in the use of the storage tank, the owner or operator shall reevaluate the applicability of this subpart to the storage tank.

(g) If a facility adds PAI manufacturing operations at a plant site, the addition shall be subject to the requirements for a new source in this subpart if the addition meets the criteria in paragraph (g)(1) and either (g)(2) or (3) of this section.

(1) The addition meets the definition of construction in § 63.2 of subpart A of this part and construction commenced after November 10, 1997; and

(2) The addition has the potential to emit 10 tons/yr or more of any HAP or 25 tons/yr or more of any combination of HAP, unless the Administrator establishes a lesser quantity at a plant that currently is an affected source; or

(3) The addition is at a plant site that does not currently produce PAI's 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 of this part.

(h) An owner or operator may elect to include any of the intermediates manufacturing operations that are identified in paragraphs (h)(1) and (2) of this section in the PAI manufacturing operations subject to this subpart:

(1) The manufacturing of integral intermediates for which less than 50 percent of the intermediate is used in onsite manufacturing of PAI's.

(2) The manufacturing of isolated intermediates.

§ 63.1361 Definitions.

Terms used in this subpart are defined in the Act, in subpart A of this part, or in this section. If the same term is defined in subpart A of this part and in this section, it shall have the meaning given in this section for the purposes of this subpart MMM.

Air pollution control device means equipment installed on a process vent or storage tank or wastewater treatment exhaust stack or stacks that reduces the mass of HAP emitted to the air. Examples include incinerators, carbon adsorption units, condensers, and gas absorbers. Process condensers are not considered air pollution control devices.

Batch cycle refers to manufacturing a PAI or integral intermediate from start to finish in a batch unit operation.

Batch emission episode means a discrete venting episode that may be associated with a single unit operation. A unit operation may have more than one batch emission episode. For example, a displacement of vapor resulting from the charging of a vessel with HAP will result in a discrete emission episode that will last through the duration of the charge and will have an average flowrate equal to the rate of the charge. If the vessel is then heated, there will also be another discrete emission episode resulting from the expulsion of expanded vessel vapor space. Both emission episodes may occur in the same vessel or unit operation. There are possibly other emission episodes that may occur from the vessel or other process equipment, depending on process operations.

Batch operation or Batch process means a noncontinuous operation involving intermittent or discontinuous feed into PAI or integral intermediate manufacturing equipment, and, in general, involves the emptying of the equipment after the batch operation ceases and prior to beginning a new operation. Addition of raw material and withdrawal of product do not occur simultaneously in a batch operation.

Closed-vent system means a system that is not open to the atmosphere and

is composed of piping, ductwork, connections, and, if necessary, flow inducing devices that transport gas or vapor from an emission point to a control device.

Combustion device means an individual unit of equipment, such as a flare, incinerator, process heater, or boiler, used for the combustion of organic HAP vapors.

Consumption means the makeup quantity of HAP materials entering a process that are not used as reactant. The quantity of material used as reactant is the theoretical amount needed assuming a 100 percent stoichiometric conversion. Makeup is the net amount of material that must be added to the process to replenish losses.

Container, as used in the wastewater provisions, means any portable waste management unit that has a capacity greater than or equal to 0.1 m^3 (3.5 ft^3) in which a material is stored, transported, treated, or otherwise handled. Examples of containers are drums, hoses, barrels, tank trucks, barges, dumpsters, tank cars, dump trucks, and ships.

Continuous process means a process where the inputs and outputs flow continuously throughout the duration of the process. Continuous processes are typically steady state.

Continuous seal means a seal that forms a continuous closure that completely covers the space between the wall of the storage tank and the edge of the floating roof. A continuous seal may be a vapor-mounted, liquid-mounted, or metallic shoe seal.

Controlled emissions means the quantity of HAP components discharged to the atmosphere from the air pollution control device.

Cover, as used in the wastewater provisions, means a device or system which is placed on or over a waste management unit containing wastewater or residuals so that the entire surface area is enclosed and sealed to minimize air emissions. A cover may have openings necessary for operation, inspection, and maintenance of the waste management unit such as access hatches, sampling ports, and gauge wells provided that each opening is closed and sealed when not in use. Examples of covers include a fixed roof installed on a wastewater tank, a lid installed on a container, and an air-supported enclosure installed over a waste management unit.

External floating roof means a pontoon-type or double-deck type cover that rests on the liquid surface in a storage tank or waste management unit with no fixed roof.

FIFRA means the Federal Insecticide, Fungicide, and Rodenticide Act.

Fill or filling means the introduction of organic HAP into a storage tank or the introduction of a wastewater stream or residual into a waste management unit, but not necessarily to complete capacity.

Fixed roof means a cover that is mounted on a waste management unit or storage tank in a stationary manner and that does not move with fluctuations in liquid level.

Floating roof means a cover consisting of a double deck, pontoon single deck, internal floating cover or covered floating roof, which rests upon and is supported by the liquid being contained, and is equipped with a closure seal or seals to close the space between the roof edge and waste management unit or storage tank wall.

Group 1 process vent means any process vent from a process at an existing or new affected source for which the uncontrolled emissions from the sum of all process vents are greater than or equal to 150 kg/yr (330 lb/yr).

Group 2 process vent means any process vent that does not meet the definition of a Group 1 process vent.

Group 1 storage tank means a storage tank at an existing affected source that has uncontrolled emissions greater than or equal to 110 kg/yr (240 lb/yr) and capacity equal to or greater than 37 m^3 (10,000 gal), or a storage tank at a new affected source that has uncontrolled emissions greater than or equal to 0.45 kg/yr (1 lb/yr) and capacity equal to or greater than 26 m^3 (7,000 gal).

Group 2 storage tank means a storage tank that does not meet the definition of a Group 1 storage tank.

Group 1 wastewater stream means wastewater at an existing or new source that meets the criteria for Group 1 status in § 63.132(c) of subpart G of this part for Table 9 compounds in Table 9 of subpart G of this part (as defined in § 63.111 of subpart G of this part).

Group 2 wastewater stream means any wastewater stream that does not meet the definition of a Group 1 wastewater stream.

Hard-piping means tubing that is manufactured and properly installed using good engineering judgment and standards, such as ANSI B31–3.

Individual drain system means the stationary system used to convey wastewater streams or residuals to a waste management unit. The term includes hard piping, all process drains and junction boxes, together with their associated sewer lines and other junction boxes, manholes, sumps, and lift stations, conveying wastewater streams or residuals. A segregated stormwater sewer system, which is a drain and collection system designed and operated for the sole purpose of collecting rainfall-runoff at a facility, and which is segregated from all other individual drain systems, is excluded from this definition.

Integral intermediate process means a process manufacturing an intermediate that is used in on-site production of any PAI's and is not removed to storage before used to produce the PAI(s).

Intermediate means a compound produced in a chemical reaction that is further processed or modified in one or more additional chemical reactions to produce a PAI.

Internal floating roof means a cover that rests or floats on the liquid surface (but not necessarily in complete contact with it) inside a storage tank or waste management unit that has a permanently affixed roof.

Isolated Intermediate means any intermediate that is removed from the manufacturing process for temporary or permanent storage or transferred to shipping containers.

Junction box means a manhole or access point to a wastewater sewer line or a lift station.

Liquid-mounted seal means a foam liquid-filled seal mounted in contact with the liquid between the wall of the storage tank or waste management unit and the floating roof. The seal is mounted continuously around the tank or unit.

Metallic shoe seal or mechanical shoe seal means metal sheets that are held vertically against the wall of the storage tank by springs, weighted levers, or other mechanisms and is connected to the floating roof by braces or other means. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

Pesticide active ingredient manufacturing operations means all of the processing equipment; storage tanks; waste management units; components such as pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems; and associated equipment such as heat exchange systems that are located at a facility for the purpose of manufacturing PAI's.

Pesticide active ingredient or PAI means any material that is an active ingredient within the meaning of FIFRA section 2(a); that is used to produce an insecticide, herbicide, or fungicide end use pesticide product; and that must be labeled in accordance with 40 CFR part 156 for transfer, sale, or distribution. These materials are typically described

by North American Industrial Classification System (NAICS) Codes 325199 and 32532 (i.e., previously known as Standard Industrial Classification System Codes 2869 and 2879). These materials are identified by product classification codes 01, 21, 02, 04, 44, 07, 08, and 16 in block 19 on EPA form 3540–16, the Pesticides Report for Pesticide-Producing Establishments.

Point of determination (POD) means the point where a wastewater stream exits the process, storage tank, or equipment components. The POD may be at the equipment or following the last recovery device.

Note: The regulation in this subpart allows determination of the characteristics of a wastewater stream (1) at the point of determination or (2) downstream of the point of determination if corrections are made for changes in flow rate and annual average concentration of Table 8 or Table 9 compounds as determined in § 63.144 of subpart G of this part. Such changes include losses by air emissions; reduction of annual average concentration or changes in flow rate by mixing with other water or wastewater streams; and reduction in flow rate or annual average concentration by treating or otherwise handling the wastewater stream to remove or destroy HAP.

Process means a logical grouping of processing equipment which collectively function to produce a PAI. For the purpose of this subpart, process includes all or a combination of reaction, recovery, separation, purification, or other activity, operation, or manufacture which are used to produce a PAI, including each integral intermediate. The physical boundaries of a process are flexible, providing a process ends with an active ingredient. Solvent recovery operations are considered part of a process; formulation of pesticide products is not considered part of the process.

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 tank means a tank that is physically located within the bounds of a process that is used to collect material discharged from a feedstock storage tank or unit operation within the process and transfer this material to another unit operation within the process or a product storage tank. Surge control vessels and bottoms receivers that fit these conditions are considered process tanks.

Process vent means a vent from a unit operation through which a HAP-containing gas stream is, or has the potential to be, released to the atmosphere. Examples of process vents include, but are not limited to, vents on condensers used for product recovery, bottom receivers, surge control vessels, reactors, filters, centrifuges, process tanks, and product dryers. Process vents do not include vents on storage tanks regulated under § 63.1362(c), vents on wastewater emission sources regulated under § 63.1362(d), pieces of equipment regulated under § 63.1362(e), or bag dumps.

Product dryer vent means a vent from an atmospheric dryer through which a gas stream containing gaseous organic HAP, particulate matter HAP, or both is, or has the potential to be, released to the atmosphere. Gaseous organic HAP emissions are considered to be process vent emissions.

Production-indexed HAP consumption factor (HAP factor) is the result of dividing the annual consumption of total HAP by the annual production rate, per process.

Production-indexed VOC consumption factor (VOC factor) is the result of dividing the annual consumption of total VOC by the annual production rate, per process.

Publicly owned treatment works (POTW) means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature as defined in section 212(2)(A) of the Clean Water Act, as amended (33 U.S.C. 1292(2)(A)). A POTW includes the treatment works, intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment. The POTW is defined at 40 CFR 403.3(0).

Reactor means a device or vessel in which one or more chemicals or reactants, other than air, are combined or decomposed in such a way that their molecular structures are altered and one or more new organic compounds are formed.

Recapture device means an individual unit of equipment capable of and used for the purpose of recovering chemicals, but not normally for use, reuse, or sale. For example, a recapture device may recover chemicals primarily for disposal. Recapture devices include, but are not limited to, absorbers, carbon adsorbers, and condensers.

Recovery device means an individual unit of equipment capable of and normally used for the purpose of recovering chemicals for fuel value (i.e., the recovered stream must have a net positive heating value), use, reuse, or for sale for fuel value, use, or reuse. Examples of equipment that may be recovery devices include absorbers, carbon adsorbers, condensers, oil-water separators, or organic-water separators or organic removal devices such as decanters, strippers, or thin-film evaporation units. For purposes of the monitoring, recordkeeping, and reporting requirements of this subpart, recapture devices are considered recovery devices.

Research and development facility means research or laboratory operations whose primary purpose is to conduct research and development, where the operations are under the close supervision of technically trained personnel, and is not engaged in the manufacture of products for commercial sale, except in a de minimis manner.

Residual means any liquid or solid material containing Table 9 compounds (as defined in § 63.111 of subpart G of this part) that is removed from a wastewater stream by a waste management unit or treatment process that does not destroy organics (nondestructive unit). Examples of residuals from nondestructive wastewater management units are: the organic layer and bottom residue removed by a decanter or organic-water separator and the overheads from a steam stripper or air stripper. Examples of materials which are not residuals are: Silt; mud; leaves; bottoms from a steam stripper or air stripper; and sludges, ash, or other materials removed from wastewater being treated by destructive devices such as biological treatment units and incinerators.

Sewer line means a lateral, trunk line, branch line, or other conduit including, but not limited to, grates, trenches, etc., used to convey wastewater streams or residuals to a downstream waste management unit.

Single-seal system means a floating roof having one continuous seal that completely covers the space between the wall of the storage tank and the edge of the floating roof. This seal may be a vapor-mounted, liquid-mounted, or metallic shoe seal.

Storage tank means a tank or other vessel that is used to store organic liquids that contain one or more HAP. The following are not considered storage tanks for the purposes of this subpart:

(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 storing and/or handling material that contains no organic HAP and/or organic HAP only as impurities;

(4) Wastewater storage tanks; and

(5) Process tanks.

Surface impoundment means a waste management unit which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or waste containing free liquids. A surface impoundment is used for the purpose of treating, storing, or disposing of wastewater or residuals, and is not an injection well. Examples of surface impoundments are equalization, settling, and aeration pits, ponds, and lagoons.

Treatment process means a specific technique that removes or destroys the organics in a wastewater or residual stream such as a steam stripping unit, thin-film evaporation unit, waste incinerator, biological treatment unit, or any other process applied to wastewater streams or residuals to comply with § 63.138 of this subpart. Most treatment processes are conducted in tanks. Treatment processes are a subset of waste management units.

Uncontrolled HAP emissions means a gas stream containing HAP which has exited the last recovery device, but which has not yet been introduced into an air pollution control device to reduce the mass of HAP in the stream. If the process vent is not routed to an air pollution control device, uncontrolled emissions are those HAP emissions released to the atmosphere.

Unit operation means those processing steps that occur within distinct equipment that are used, among other things, to prepare reactants, facilitate reactions, separate and purify products, and recycle materials. Equipment used for these purposes includes but is not limited to reactors, distillation columns, extraction columns, absorbers, decanters, dryers, condensers, and filtration equipment.

Vapor-mounted seal means a continuous seal that completely covers the annular space between the wall, the storage tank or waste management unit and the edge of the floating roof and is mounted such that there is a vapor space between the stored liquid and the bottom of the seal.

Volatile organic compounds are defined in 40 CFR 51.100.

Wastewater means water that:

(1) Contains either:

(i) An annual average concentration of compounds in Table 9 of subpart G of this part (as defined in § 63.111 of subpart G of this part) of at least 5 ppmw and has an average flow rate of 0.02 L/min or greater; or

(ii) An annual average concentration of Table 9 compounds (as defined in § 63.111 of subpart G of this part) of at least 10,000 ppmw at any flow rate; and

(2) Is discarded from PAI manufacturing operations at a major source.

(3) Wastewater is process wastewater or maintenance wastewater.

Waste management unit means the equipment, structures, and/or devices used to convey, store, treat, or dispose of wastewater streams or residuals. Examples of waste management units include wastewater tanks, surface impoundments, individual drain systems, and biological treatment units. Examples of equipment that may be waste management units include containers, air flotation units, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units. If such equipment is used for recovery then it is part of a PAI process and is not a waste management unit.

Wastewater tank means a stationary waste management unit that is designed to contain an accumulation of wastewater or residuals and is constructed primarily of nonearthen materials (e.g., wood, concrete, steel, plastic) which provide structural support. Wastewater tanks used for flow equalization are included in this definition.

Water seal controls means a seal pot, p-leg trap, or other type of trap filled with water (e.g., flooded sewers that maintain water levels adequate to prevent air flow through the system) that creates a water barrier between the sewer line and the atmosphere. The water level of the seal must be maintained in the vertical leg of a drain in order to be considered a water seal.

§ 63.1362 Standards.

(a) On and after the compliance dates specified in § 63.1363 of this subpart, each owner or operator of an affected source subject to the provisions of this subpart shall control HAP emissions to the levels specified in Table 2 of this subpart and paragraphs (b) through (g) of this section.

(b) *Process vents.* (1) The owner or operator of an existing source shall comply with the requirements of paragraphs (b)(2) and (3) of this section. The owner or operator of a new source shall comply with the requirements of paragraphs (b)(4) and (5) of this section. Compliance with this section shall be demonstrated through the applicable test methods and procedures in § 63.1364(c).

(2) For each process, the owner or operator of an existing source shall comply with the requirements of either paragraph (b)(2)(i) of this section or both paragraphs (b)(2)(ii) and (iii) of this section.

(i) The uncontrolled organic HAP emission rate shall not exceed 0.15 Mg/yr (330 lb/yr) from the sum of all process vents within a process.

(ii) The owner or operator shall comply with the requirements specified in either paragraph (b)(2)(ii)(A) or (B) of this section.

(A) The uncontrolled organic HAP emissions from the sum of all process vents within a process, excluding process vents that meet the criteria for 98 percent control in paragraph (b)(2)(iii)(A) of this section, shall be reduced by 90 weight percent or greater, or

(B) The uncontrolled organic HAP emissions from one or more process vents within a process shall be controlled by combustion, recovery, or recapture devices meeting an outlet TOC concentration of 20 ppmv or less. Uncontrolled organic HAP emissions from the sum of all other process vents within the process shall be reduced by 90 weight percent or greater.

(iii) Uncontrolled organic HAP emissions from each process vent meeting the requirements of paragraph (b)(2)(iii)(A) of this section shall be reduced by 98 weight percent or greater, or the emissions shall be controlled by combustion, recovery, or recapture devices meeting an outlet TOC concentration of 20 ppmv or less.

(A) Process vents having a flowrate equal to or less than the flowrate calculated when multiplying the uncontrolled yearly HAP emissions, in lb/yr, by 0.02 and subtracting 1,000 according to the following equation:

$$FR = 0.02*(HL) - 1{,}000$$

where:

FR = flowrate, scfm.

HL = yearly uncontrolled HAP emissions, lb/yr.

(B) If the owner or operator can demonstrate that a control device installed on a process vent subject to the requirements of paragraph (b)(2)(iii)(A) of this section on or before November 10, 1997 was designed to reduce inlet emissions of total organic HAP by greater than or equal to 90 percent but less than 98 percent, then the control device is required to be operated to

reduce inlet emissions of total organic HAP by 90 percent or greater.

(3) For each process, the owner or operator of an existing source shall comply with the requirements of either paragraph (b)(3) (i) or (ii) of this section.

(i) The uncontrolled HCl and Cl_2 emissions, including HCl generated from the combustion of halogenated process vent emissions, from the sum of all process vents within a process shall not exceed 6.8 Mg/yr (7.5 tons/yr).

(ii) HCl and Cl_2 emissions, including HCl generated from combustion of halogenated process vent emissions, from the sum of all process vents within a process shall be reduced by 94 percent or greater.

(4) For each process, the owner or operator of a new source shall comply with the requirements of either paragraph (b)(4)(i), (ii), or (iii) of this section.

(i) The uncontrolled organic HAP emissions shall not exceed 0.15 Mg/yr (330 lb/yr) from the sum of all process vents within a process.

(ii) The uncontrolled organic HAP emissions from the sum of all process vents within a process shall be reduced by 98 weight percent or greater; or

(iii) The uncontrolled organic HAP emissions from one or more process vents within a process shall be controlled by combustion, recovery, or recapture devices meeting an outlet TOC concentration of 20 ppmv or less. The uncontrolled emissions from the sum of all other process vents within the process shall be reduced by 98 weight percent or greater.

(5) For each process, the owner or operator of a new source shall comply with the requirements of either paragraph (b)(5)(i), (ii), or (iii) of this section.

(i) The uncontrolled HCl and Cl_2 emissions, including HCl generated from combustion of halogenated process vent emissions, from the sum of all process vents within a process shall not exceed 6.8 Mg/yr (7.5 tons/yr).

(ii) If HCl and Cl_2 emissions, including HCl generated from combustion of halogenated process vent emissions, from the sum of all process vents within a process are greater than or equal to 6.8 Mg/yr (7.5 tons/yr) and less than 191 Mg/yr (211 tons/yr), these HCl and Cl_2 emissions shall be reduced by 94 percent.

(iii) If HCl and Cl_2 emissions, including HCl generated from combustion of halogenated process vent emissions, from the sum of all process vents within a process are greater than 191 Mg/yr (211 tons/yr), these HCl and Cl_2 emissions shall be reduced by 99.9 percent or greater.

(c) *Storage tanks.* (1) The owner or operator of a Group 1 storage tank with a design capacity greater than or equal to 75 m^3 (20,000 gal) at an existing affected source shall equip the affected storage tank with a fixed roof and internal floating roof, an external floating roof, an external floating roof converted to an internal floating roof, or a closed vent system and control device that meets the requirements of paragraphs (c)(1)(i) and (ii) of this section.

(i) Except as provided in paragraph (c)(1)(ii) of this section, the control device shall be designed and operated to reduce inlet emissions of organic HAP by 95 percent or greater, as demonstrated through the test methods and procedures in § 63.1364(d).

(ii) If the owner or operator can demonstrate that a control device installed on a storage tank on or before November 10, 1997 is designed to reduce inlet emissions of organic HAP by greater than 41 percent but less than 95 percent, then the control device is required to be operated to reduce inlet emissions of organic HAP by 41 percent or greater, as demonstrated through the test methods and procedures in § 63.1364(d).

(2) The owner or operator of a Group 1 storage tank with a design capacity less than 75 m^3 (20,000 gal) at an existing affected source shall equip the affected storage tank with a fixed roof and internal floating roof, an external floating roof, an external floating roof converted to an internal floating roof, or a closed vent system and control device that is designed and operated to reduce emissions of total organic HAP by 41 percent or greater, as demonstrated through the test methods and procedures in § 63.1364(d).

(3) The owner or operator of a Group 1 storage tank at a new affected source shall equip the affected storage tank with a closed vent system and control device that is designed and operated to reduce emissions by 98 weight percent or to an outlet TOC concentration of 20 ppmv or less, and compliance shall be demonstrated through the test methods in § 63.1364(b) and the procedures in § 63.1364(d).

(d) *Wastewater.* The owner or operator of each affected source shall comply with the requirements of §§ 63.131 through 63.149 of subpart G of this part, with the differences noted in paragraphs (d)(1) through (10) of this section for the purposes of this subpart.

(1) When the determination of equivalence criteria in § 63.102(b) is referred to in §§ 63.132, 63.133, and 63.137, the provisions in § 63.6(g) shall apply.

(2) When the storage tank requirements contained in §§ 63.119 through 63.123 are referred to in §§ 63.132 through 63.148, §§ 63.119 through 63.123 are applicable, with the exception of the differences noted in paragraphs (d)(2) (i) through (iv) of this section.

(i) When the term ''storage vessel'' is used in §§ 63.119 through 63.123, the definition of the term ''storage tank'' in § 63.1361 shall apply for the purposes of this subpart.

(ii) When December 31, 1992, is referred to in § 63.119, November 10, 1997, shall apply for the purposes of this subpart.

(iii) When April 22, 1994 is referred to in § 63.119, [date of publication of the final rule] shall apply for the purposes of this subpart.

(iv) The compliance date for storage tanks at affected sources subject to the provisions of this section is specified in § 63.1363.

(3) To request approval to monitor alternative parameters, as referred to in § 63.146(a), the owner or operator shall comply with the procedures in § 63.8(h), as referred to in § 63.1367(a)(2)(i), instead of the procedures in § 63.151 (f) or (g).

(4) When the Notification of Compliance Status requirements contained in § 63.152(b) are referred to in §§ 63.146, the Notification of Compliance Status requirements in § 63.1367(a)(1)(d) shall apply for the purposes of this subpart.

(5) When the recordkeeping requirements contained in § 63.152(f) are referred to in § 63.147(d), the recordkeeping requirements in § 63.1366(a) shall apply for the purposes of this subpart.

(6) When the Periodic Report requirements contained in § 63.152(c) are referred to in §§ 63.146 and 63.147, the Periodic Report requirements contained in § 63.1367(b) shall apply for the purposes of this subpart.

(7) The term ''process wastewater'' in §§ 63.132 through 63.149 shall mean ''wastewater'' as defined in § 63.1361 for the purposes of this subpart.

(8) The term ''Group 1'' in §§ 63.132 through 63.149 shall have the meaning as defined in § 63.1361 for both new sources and existing sources for the purposes of this subpart.

(9) When the total load of Table 9 compounds in the sum of all process wastewater from PAI manufacturing operations at a new affected source is 2,100 Mg/yr (2,300 tons/yr) or more, the owner or operator shall reduce, by removal or destruction, the mass flow rate of all compounds in Table 9 of subpart G of this part in all wastewater

(process and maintenance wastewater) by 99 percent or more. Alternatively, the owner or operator may treat the wastewater in a unit identified in and complying with § 63.138(h) of subpart G of this part. The removal/destruction efficiency shall be determined by the procedures specified in § 63.145(c) of subpart G of this part, for noncombustion processes, or § 63.145(d) of subpart G of this part, for combustion processes.

(10) The compliance date for the affected source subject to the provisions of this section is specified in § 63.1363.

(e) *Equipment leaks.* (1) Except as provided in paragraph (e)(2) of this section, the owner or operator of an affected source shall comply with the requirements of subpart H of this part to control emissions from equipment leaks. Compliance shall be demonstrated through the test methods and procedures in § 63.180 of subpart H of this part.

(2) Standards for surge control vessels and bottom receivers as described in § 63.170 of this part do not apply. Surge control vessels and bottoms receivers shall be considered to be process equipment with process vents. Emissions from these process vents shall be controlled according to the provisions of paragraph (c) of this section.

(f) *Bag dumps and product dryers.* The owner or operator shall reduce particulate HAP emissions from bag dumps and product dryers to a concentration not to exceed 0.01 gr/dscf. Gaseous organic HAP emissions from product dryers shall be controlled in accordance with the provisions for process vent emissions in paragraph (b) of this section.

(g) *Heat exchange system requirements.* (1) Unless one or more of the conditions specified in § 63.104(a) (1) through (6) of subpart F of this part are met, an owner or operator of an affected source subject to this subpart shall monitor each heat exchange system that is used to cool process equipment in PAI manufacturing operations meeting the conditions of § 63.1360(a) according to the provisions in either paragraph (g) (2) or (3) of this section. Whenever a leak is detected, the owner or operator shall comply with the requirements in paragraph (g)(4) of this section.

(2) An owner or operator who elects to comply with the requirements of paragraph (g)(1) of this section by monitoring the cooling water for the presence of one or more organic HAP or other representative substances whose presence in cooling water indicates a leak shall comply with the requirements specified in § 63.104(b) (1) through (6) of subpart F of this part. The cooling water shall be monitored for total HAP, total VOC, total organic carbon, one or more speciated HAP compounds, or other representative substances that would indicate the presence of a leak in the heat exchange system.

(3) An owner or operator who elects to comply with the requirement of paragraph (g)(1) of this section by monitoring using a surrogate indicator of heat exchange system leaks shall comply with the requirements specified in paragraphs (g)(3) (i) through (iii) of this section. Surrogate indicators that could be used to develop an acceptable monitoring program are ion specific electrode monitoring, pH, and conductivity or other representative indicators.

(i) The owner or operator shall prepare and implement a monitoring plan that documents the procedures that will be used to detect leaks of process fluids into cooling water. The plan shall include the information specified in § 63.1365(f)(2).

(ii) If a substantial leak is identified by methods other than those described in the monitoring plan and the method(s) specified in the plan could not detect the leak, the owner or operator shall revise the plan and document the basis for the changes. The owner or operator shall complete the revisions to the plan no later than 180 days after discovery of the leak.

(iii) The owner or operator shall maintain, at all times, the monitoring plan that is currently in use. The current plan shall be maintained onsite, or shall be accessible from a central location by computer or other means that provides access within 2 hours after a request. A superseded plan shall be retained onsite (or shall be accessible from a central location by computer or other means that provides access within 2 hours after a request) for at least 6 months after it is superseded.

(4) If a leak is detected according to the criteria of paragraphs (g) (2) or (3) of this section, the owner or operator shall comply with the requirements in paragraphs (g)(4) (i) and (ii) of this section, except as provided in paragraph (g)(5) of this section.

(i) The leak shall be repaired as soon as practical but not later than 45 calendar days after the owner or operator receives results of monitoring tests indicating a leak. The leak shall be repaired unless the owner or operator demonstrates that the results are due to a condition other than a leak.

(ii) Once the leak has been repaired, the owner or operator shall confirm that the heat exchange system has been repaired within 7 calendar days of the repair or startup, whichever is later.

(5) Delay of repair of heat exchange systems for which leaks have been detected is allowed under the conditions specified in § 63.104(e) of subpart F of this part. If an owner or operator elects to delay repair of heat exchange systems, the owner or operator shall also comply with the documentation requirements in § 63.104(e).

(6) The owner or operator shall retain the records specified in § 63.1366(g) and include the information identified in § 63.1367(e) in reports.

(h) *Planned routine maintenance.* The specifications and requirements in paragraphs (b), (c), and (f) of this section for control devices do not apply during periods of planned routine maintenance. Maintenance wastewaters meeting the definition of a Group 1 wastewater stream shall be treated in accordance with the requirements of paragraph (d) of this section.

(i) Periods of planned routine maintenance of the control device, during which the control device does not meet the specifications of paragraphs (b), (c), and (f) of this section, as applicable, shall not exceed 240 hr/yr.

(j) *Pollution prevention.* Except as provided in paragraph (j)(1) of this section, an owner or operator may choose to meet the pollution prevention alternative requirement specified in either paragraph (j) (2) or (3) of this section for any process, in lieu of the requirements specified in paragraphs (b), (c), (d), (e), and (f) of this section. Compliance with the requirements of paragraphs (j) (2) and (3) of this section shall be demonstrated through the procedures in § 63.1364(g).

(1) HAP that are generated in the process shall be controlled according to the requirements of paragraphs (b), (c), (d), (e), and (f) of this section.

(2) The production-indexed HAP consumption factor (HAP factor) shall be reduced by 85 percent from an average baseline established no earlier than the 1987 calendar year, or the first year thereafter in which the process was operational and data are available. No increase in the production-indexed VOC consumption factor (VOC factor) for the applicable period of demonstration shall occur.

(3) Both requirements specified in paragraph (j)(3) (i) and (ii) of this section are met.

(i) The HAP factor shall be reduced by 50 percent from an average baseline established no earlier than the 1987 calendar year, or the first year thereafter in which the process was operational

and data are available. No increase in the VOC factor for the applicable period of demonstration shall occur.

(ii) The total process HAP emissions shall be reduced from an uncontrolled baseline by an amount, in kg/yr, that, when divided by the annual production rate, in kg, will yield a value of at least 35 percent of the average baseline HAP factor established in paragraph (j)(3)(i) of this section. The annual reduction in HAP air emissions must be due to the use of the following control devices:

(A) Combustion control devices such as incinerators, flares, or process heaters.

(B) Recovery control devices such as condensers and carbon adsorbers whose recovered product is destroyed or shipped offsite for destruction.

(C) Any control device that does not ultimately allow for recycling of material back to the process.

(D) Any control device for which the owner or operator can demonstrate that the use of the device in controlling HAP emissions will have no effect on the HAP factor for the process.

(k) *Emissions averaging provisions.* Except as provided in paragraphs (k) (1) through (6) of this section, the owner or operator of an existing affected facility may choose to comply with the emission standards in paragraphs (b), (c), and (d) of this section by using emissions averaging procedures specified in § 63.1364(i) for organic HAP emissions from any storage tank, process, or waste management unit that is part of an affected source subject to this subpart.

(1) A State may restrict the owner or operator of an existing source to use only the procedures in paragraphs (b), (c), and (d) of this section to comply with the emission standards where State Authorities prohibit averaging of HAP emissions.

(2) Group 1 emission points that are controlled as specified in paragraphs (k)(2) (i) through (iii) of this section may not be used to calculate emissions averaging credits, unless the control technology has been approved for use in a different manner, and a higher nominal efficiency has been assigned according to the procedures in § 63.150(i) of subpart G of this part.

(i) Storage tanks with capacity equal to or greater than 76 m^3 (20,000 gal) controlled with an internal floating roof meeting the specifications of § 63.119(b) of subpart G of this part, and external floating roof meeting the specifications of § 63.119(c) of subpart G of this part, an external floating roof converted to an internal floating meeting the specifications of § 63.119(d) of subpart G of this part, or a closed-vent system to a control device achieving 95 percent reduction in organic HAP emissions.

(ii) Process vents controlled with a combustion, recovery, or recapture device used to reduce organic HAP emissions by 98 weight percent or to an outlet TOC concentration of 20 ppmv.

(iii) Wastewater controlled as specified in paragraphs (k)(2)(iii) (A) through (C) of this section.

(A) With controls specified in § 63.133 through § 63.137 of subpart G of this part;

(B) With a steam stripper meeting the specifications of § 63.138(d) of subpart G of this part, or any of the other alternative control measures specified in § 63.138 (b), (c), (e), (f), (g), or (h) of subpart G of this part; and

(C) With a control device to reduce by 95 percent (or to an outlet concentration of 20 ppmv for combustion devices or for noncombustion devices controlling air emissions from waste management units other than surface impoundments or containers) the organic HAP emissions in the vapor streams vented from wastewater tanks, oil-water tanks, oil-water separators, containers, surface impoundments, individual drain systems, and treatment processes (including the steam stripper specified in paragraph (k)(2)(iii)(B) of this section) managing wastewater.

(3) Maintenance wastewater streams and wastewater streams treated in biological treatment units may not be included in any averaging group.

(4) Processes which have been permanently shut down, and storage tanks permanently taken out of HAP service may not be included in any averaging group.

(5) Processes, storage tanks, and wastewater streams already controlled on or before November 15, 1990 may not be used to generate emissions averaging credits, unless the level of control is increased after November 15, 1990. In these cases, credit will be allowed only for the increase in control after November 15, 1990.

(6) Emission points controlled to comply with a State or Federal rule other than this subpart may not be included in an emissions averaging group, unless the level of control has been increased after November 15, 1990, above what is required by the other State or Federal rule. Only the control above what is required by the other State or Federal rule will be credited. However, if an emission point has been used to generate emissions averaging credit in an approved emissions average, and the point is subsequently made subject to a State or Federal rule other than this subpart, the point can continue to generate emissions averaging credit for the purpose of complying with the previously approved average.

§ 63.1363 Compliance dates.

(a) An owner or operator of an existing affected source shall comply with the provisions of this subpart no later than 3 years after the effective date of the standard.

(b) An owner or operator of a new or reconstructed affected source, for which construction or reconstruction commences after November 10, 1997, shall comply with the provisions of this subpart immediately upon startup.

§ 63.1364 Test methods and compliance procedures.

(a) Emissions testing or engineering evaluations, as specified in paragraphs (c), (d), (e), (f) and (g) of this section, are required to demonstrate initial compliance with § 63.1362 (b), (c), (d), (f) and (j), respectively, of this subpart.

(b) When testing is conducted to measure emissions from an affected source, the test methods specified in paragraphs (b)(1) through (b)(10) of this section shall be used. Compliance tests shall be performed under conditions specified in paragraph (b)(11) of this section.

(1) EPA Method 1 or 1A of appendix A of 40 CFR part 60 shall be used for sample and velocity traverses.

(2) EPA Method 2, 2A, 2C, or 2D of appendix A of 40 CFR part 60 shall be used for velocity and volumetric flow rates.

(3) EPA Method 3 of appendix A of 40 CFR part 60 shall be used for gas analysis.

(4) EPA Method 4 of appendix A of 40 CFR part 60 shall be used for stack gas moisture.

(5) EPA Methods 2, 2A, 2C, 2D, 3, and 4 shall be performed, as applicable, at least twice during each test period.

(6) Method 25A and/or Methods 18 and 25A, as appropriate, of appendix A of 40 CFR part 60 shall be used to determine the organic HAP concentration of air exhaust streams.

(7) The methods in either paragraph (b)(7) (i) or (ii) of this section shall be used to determine the concentration, in mg/dscm, of total hydrogen halides and halogens.

(i) EPA Method 26 or 26A of 40 CFR part 60, appendix A.

(ii) Any other method if the method or data has been validated according to the applicable procedures of Method 301 of appendix A of this part.

(8) Method 5 shall be used to determine the concentration of particulate matter HAP in exhaust gas streams from bag dumps and product dryers.

(9) Wastewater analysis shall be conducted in accordance with § 63.144(b)(5)(i) through (iii) of subpart G of this part.

(10) For emission streams controlled using condensers, a direct measurement of condenser outlet gas temperature to be used in predicting upper concentration limits at saturated conditions is allowed in lieu of concentration measurements described in paragraph (b)(6) of this section.

(11) Test conditions and durations shall be as specified in paragraphs (b)(11)(i) through (v) of this section, as appropriate.

(i) Testing of process vents on equipment operating as part of a continuous process shall consist of three 1-hour runs. Gas stream volumetric flow rates shall be measured every 15 minutes during each 1-hour run. Organic 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 (every 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 continuous gas streams, the emission rate used to determine compliance shall be the average emission rate of the three test runs.

(ii) Testing of process vents on equipment where the flow of gaseous emissions is intermittent (batch operations) shall include testing for the largest (or peak) HAP emission episode or aggregated episodes in the batch cycle or cycles (in the event that equipment may be manifolded and vented through a common stack). Testing shall be conducted at absolute peak-case conditions, representative peak-case conditions, or hypothetical peak-case conditions as required by paragraph (c)(3)(iii) of this section. Gas stream volumetric flow rates shall be measured at 15-minute intervals. Organic HAP or TOC concentration shall be determined from samples collected in an integrated sample over the duration of the peak case episode(s), or from grab samples collected simultaneously with the flow rate measurements (every 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 absolute peak-case, representative peak-case, or hypothetical peak-case conditions shall be characterized by the criteria presented in paragraphs (b)(11)(ii)(A), (B), and (C) of this section. In all cases, a site-specific plan shall be submitted to the Administrator for approval prior to testing in accordance with § 63.7(c) of subpart A of this part. The test plan shall include the emissions profile described in paragraph (b)(11)(iii) of this section.

(A) Absolute peak-case conditions are defined by any of the criteria presented in paragraphs (b)(11)(ii)(A)(*1*) through (*3*) of this section.

(*1*) The period in which the inlet to the control device will contain at least 50 percent of the maximum HAP load (in kg) capable of being vented to the control device over any 8 hour period. An emission profile as described in paragraph (b)(11)(iii) of this section shall be used to identify the 8-hour period that includes the maximum projected HAP load.

(*2*) A 1-hour period of time in which the inlet to the control device will contain the highest HAP mass loading rate, in kg/hr, capable of being vented to the control device. An emission profile as described in paragraph (b)(11)(iii) of this section shall be used to identify the 1-hour period of maximum HAP loading.

(*3*) If a condenser is used as a control device, absolute peak-case conditions shall represent a 1-hour period of time in which the gas stream capable of being vented to the condenser will require the maximum heat removal capacity, in kW, to cool the stream to a temperature that, upon calculation of HAP concentration, will yield the required removal efficiency for the process. The calculation of maximum heat load shall be based on the emission profile described in paragraph (b)(11)(iii) of this section and a concentration profile that will allow calculation of sensible and latent heat loads.

(B) Representative peak-case conditions are defined by any of the criteria presented in paragraphs (b)(11)(ii)(B)(*1*) and (*2*) of this section. Representative peak-case conditions shall include the worst-case process as well as any other processes that are emitting to the control device during the test.

(*1*) A 1-hour period of time that contains the highest HAP mass loading rate, in kg/hr, from a single process;

(*2*) If a condenser is used as the control device, the 1-hour period of time in which the vent from a single process will require the maximum heat removal capacity, in kW, to cool the stream to a temperature that, upon calculation of HAP concentration, will yield the required removal efficiency for the process.

(C) Hypothetical peak-case conditions are simulated test conditions that, at a minimum, contain the highest total average hourly HAP load of emissions that would be predicted to be vented to the control device from the emissions profile described in paragraph (b)(11)(iii) of this section.

(iii) For batch operations, the owner or operator may choose to perform tests only during those periods of the peak-case episode(s) that the owner or operator selects to control as part of achieving the required emission reduction. The owner or operator shall develop an emission profile for the vent to the control device, based on either process knowledge, engineering analyses, or test data collected, to identify the appropriate test conditions. The emission profile must include average HAP loading rate (in kg/hr) versus time for all emission episodes contributing to the 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 provided the results are still relevant to the current process vent stream conditions. The average hourly HAP loading rate may be calculated by first dividing the HAP emissions from each episode by the duration of each episode, in hours, and selecting the highest hourly block average.

(iv) For testing of process vents of duration greater than 8 hours, the owner or operator shall perform a maximum of 8 hours of testing. The test period must include the one hour period in which the highest HAP loading rate, in kg/hr, is predicted by the emission profile.

(v) For testing durations of greater than 1 hour, the emission rate from a single test run may be used to determine compliance. For testing durations less than or equal to 1 hour, testing shall include three runs.

(c) *Compliance with process vent provisions.* An owner or operator of an affected source shall demonstrate compliance with the process vent standards in § 63.1362(b) using the procedures described in paragraphs (c)(1) through (5) of this section.

(1) Except as provided in paragraph (c)(4) of this section, compliance with the process vent standards in § 63.1362(b) shall be demonstrated in accordance with the provisions specified in paragraphs (c)(1)(i) through (viii) of this section.

(i) Compliance with the emission limit cutoffs in § 63.1362(b)(2)(i) and (4)(i) is demonstrated when the uncontrolled organic HAP emissions from the sum of all process vents within a process are less than or equal to 330

lb/yr. Uncontrolled HAP emissions shall be determined using the procedures described in paragraph (c)(2) of this section.

(ii) Compliance with the emission limit cutoffs in § 63.1362(b)(3)(i) and (5)(i) is demonstrated when the uncontrolled HCl and Cl_2 emissions from the sum of all process vents within a process are less than or equal to 6.8 Mg/yr (7.5 tons/yr). Compliance with the emission limit cutoffs in § 63.1362(b)(5)(ii) and (iii) is demonstrated when the uncontrolled HCl and Cl_2 emissions are greater than or equal to 6.8 Mg/yr (7.5 tons/yr) or greater than or equal to 191 Mg/yr (211 tons/yr), respectively. Uncontrolled emissions shall be determined using the procedures described in paragraph (c)(2) of this section.

(iii) Compliance with the organic HAP percent removal efficiency specified in § 63.1362(b)(2)(ii) is demonstrated when the annual uncontrolled organic HAP emissions from the sum of all process vents within a process are reduced by 90 percent. This demonstration shall be based on controlled HAP emissions determined using the procedures described in paragraph (c)(3) of this section and uncontrolled HAP emissions determined using the procedures described in paragraph (c)(2) of this section or by controlling the process vents using a device meeting the criteria specified in paragraph (c)(4) of this section.

(iv) Compliance with the HCl and Cl_2 percent removal efficiency specified in § 63.1362(b)(3)(ii) and (5)(ii) is demonstrated when the annual uncontrolled HCl and Cl_2 emissions from the sum of all process vents within a process are reduced by 94 percent. Compliance with the HCl and Cl_2 percent removal efficiency specified in § 63.1362(b)(5)(iii) is demonstrated when the annual HCl and Cl_2 emissions from the sum of all process vents within a process are reduced by 99.9 percent. This demonstration shall be based on controlled emissions of HCl and Cl_2 determined using the procedures described in paragraph (c)(3) of this section and uncontrolled emissions of HCl and Cl_2 determined using the procedures described in paragraph (c)(2) of this section.

(v) Compliance with the organic HAP percent removal efficiency specified in § 63.1362(b)(4)(ii) is demonstrated when the annual uncontrolled organic HAP emissions from the use of all process vents within a process are reduced by 98 percent. This demonstration shall be based on controlled HAP emissions determined using the procedures described in paragraph (c)(3) of this section and uncontrolled HAP emissions determined using the procedures described in paragraph (c)(2) of this section or by controlling the process vents using a device meeting the criteria specified in paragraph (c)(4) of this section.

(vi) Compliance with the emission reduction requirement in § 63.1362(b)(2)(iii) is demonstrated when the annual uncontrolled HAP emissions from each process vent meeting the flowrate cutoff specified in § 63.1362(b)(2)(iii)(A) are reduced by 98 percent or greater. This demonstration shall be based on controlled HAP emissions determined using the procedures described in paragraph (c)(3) of this section and uncontrolled HAP emissions determined using the procedures described in paragraph (c)(2) of this section or by controlling the process vents using a device meeting the criteria specified in paragraph (c)(4) of this section.

(vii) Compliance with the emission reduction requirement in § 63.1362(b)(2)(iii)(B) is demonstrated when the annual uncontrolled HAP emissions from each process vent meeting the flow rate cutoff of § 63.1362(b)(2)(iii)(A) are reduced by 90 percent. This demonstration shall be based on controlled HAP emissions determined using the procedures described in paragraph (c)(3) of this section and uncontrolled HAP emissions determined using the procedures described in paragraph (c)(2) of this section or by controlling the process vents using a device meeting the criteria specified in paragraph (c)(4) of this section.

(viii) Compliance with the outlet TOC concentration limit in § 63.1362(b)(2)(ii)(B), (2)(iii), and (4)(iii) is demonstrated by the method specified in paragraph (c)(l)(viii)(A) of this section for combustion devices or by the method specified in either paragraph (c)(l)(viii)(B) or (C) of this section for recovery or recapture devices.

(A) An initial Method 18 performance test shall be conducted. An operating parameter, as specified by the owner or operator in the Notification of Compliance Status report, shall be monitored continuously. The level of the parameter shall be established during the performance test.

(B) The TOC concentration shall be monitored continuously using an FID. The organic HAP used as the calibration gas shall be the predominant HAP in the vent stream.

(C) An initial performance test shall be conducted at absolute peak-case conditions using Method 25A. An operating parameter shall be monitored continuously. The value of the parameter shall be established during the performance test.

(2) An owner or operator of an affected source complying with the emission limitation required by § 63.1362(b)(2)(i), (3)(i), (4)(i) or (5)(i), or the emission reductions specified in § 63.1362(b)(2)(ii)(A), (2)(iii), (3)(ii), (4)(ii), (4)(iii), (5)(ii), or (5)(iii) for each process vent within a process, shall calculate uncontrolled emissions according to the procedures described in paragraph (c)(2)(i) or (ii) of this section, as appropriate.

(i) An owner or operator shall determine uncontrolled emissions of HAP using emission measurements and/or calculations for each batch emission episode within each unit operation according to the engineering evaluation methodology in paragraphs (c)(2)(i)(A) through (F) of this section.

(A) Individual HAP partial pressures in multicomponent systems shall be determined in accordance with the methods specified in paragraphs (c)(2)(i)(A)(*1*) through (*6*) of this section.

(*1*) If the components are miscible in one another, use Raoult's law to calculate the partial pressures;

(*2*) If the solution is a dilute aqueous mixture, use Henry's law constants to calculate partial pressures;

(*3*) If Raoult's law or Henry's law are not appropriate or available, use experimentally obtained activity coefficients, Henry's law constants, or solubility data;

(*4*) If Raoult's law or Henry's law are not appropriate or available, use experimentally obtained activity coefficients or models such as the group-contribution models, to predict activity coefficients;

(*5*) If Raoult's law or Henry's law are not appropriate or available, assume the components of the system behave independently and use the summation of all vapor pressures from the HAP as the total HAP partial pressure;

(*6*) Chemical property data can be obtained from standard reference texts.

(B) Emissions from vapor displacement due to transfer of material shall be calculated according to equation (1):

$$E = \frac{(y_i)(V)(P_T)(MW)}{(R)(T)} \qquad (1)$$

Where:

E = mass emission rate.

y_i = saturated mole fraction of HAP in the vapor phase.

V = volume of gas displaced from the vessel.

R = ideal gas law constant.
T = temperature of the vessel vapor space; absolute.
P_T = pressure of the vessel vapor space.
MW = molecular weight of the HAP.

(C) Emissions from purging shall be calculated using Equation 1, except that for purge flow rates greater than 100 scfm, the mole fraction of HAP will be assumed to be 25 percent of the saturated value.

(D) Emissions caused by the heating of a vessel shall be calculated using the procedures in either paragraph (c)(2)(i)(D)(*1*), (*2*), or (*3*) of this section, as appropriate.

(*1*) If the final temperature to which the vessel contents are heated is lower than 50K below the boiling point of the HAP in the vessel, then emissions shall be calculated using equations (2) through (5) in paragraphs (c)(2)(i)(D)(*1*)(*i*), (*ii*), (*iii*), and (*iv*) of this section.

(*i*) The mass of HAP emitted per episode shall be calculated using equation 2:

$$E = \frac{\frac{\sum (P_i)_{T1}}{Pa_1} + \frac{\sum (P_i)_{T2}}{Pa_2}}{2} \times \Delta\eta \times MW_{HAP} \qquad (2)$$

Where:
E = mass of HAP vapor displaced from the vessel being heated.
$(P_i)T_n$ = partial pressure of each HAP in the vessel headspace at initial (n = 1) and final (n = 2) temperatures.
Pa_1 = initial noncondensable gas pressure in the vessel.
Pa_2 = final noncondensable gas pressure.
MW_{HAP} = The average molecular weight of HAP present in the vessel.

(*ii*) The moles of noncondensable gas displaced is calculated using equation 3:

$$\Delta\eta = \frac{V}{R}\left[\left(\frac{Pa_1}{T_1}\right) - \left(\frac{Pa_2}{T_2}\right)\right] \qquad (3)$$

Where:
$\Delta\eta$ = number of lb-moles of noncondensable gas displaced.
V = volume of free space in the vessel.
R = ideal gas law constant.
Pa_1 = initial noncondensable gas pressure in the vessel.
Pa_2 = final noncondensable gas pressure.
T_1 = initial temperature of vessel.
T_2 = final temperature of vessel.

(*iii*) The initial and final pressure of the noncondensable gas in the vessel shall be calculated according to the equation 4:

$$Pa_n = P_{atm} - \sum (P_i)T_n \qquad (4)$$

Where:
Pa_n = partial pressure of noncondensable gas in the vessel headspace at initial (n = 1) and final (n = 2) temperatures.
P_{atm} = atmospheric pressure.
$(P_i)T_n$ = partial pressure of each condensable volatile organic compound (including HAP) in the vessel headspace at the initial temperature (n = 1) and final (n = 2) temperature.

(*iv*) The average molecular weight of HAP in the displaced gas shall be calculated using equation 5:

$$MW_{HAP} = \frac{\sum_{i=1}^{n} (\text{mass of HAP})_i}{\sum_{i=1}^{n} \frac{(\text{mass of HAP})_i}{(\text{HAP molecular weight})_i}} \qquad (5)$$

where n is the number of different HAP compounds in the emission stream.

(*2*) If the vessel contents are heated to a temperature greater than 50K below the boiling point, then emissions from the heating of a vessel shall be calculated as the sum of the emissions calculated in accordance with paragraphs (c)(2)(i)(D)(*2*)(*i*) and (*ii*) of this section.

(*i*) For the interval from the initial temperature to the temperature 50K below the boiling point, emissions shall be calculated using Equation 2, where T_2 is the temperature 50K below the boiling point.

(*ii*) For the interval from the temperature 50K below the boiling point to the final temperature, emissions shall be calculated as the summation of emissions for each 5K increment, where the emission for each increment shall be calculated using Equation 2.

(*A*) If the final temperature of the heatup is lower than 5K below the boiling point, the final temperature for the last increment shall be the final temperature of the heatup, even if the last increment is less than 5K.

(*B*) If the final temperature of the heatup is higher than 5K below the boiling point, the final temperature for the last increment shall be the temperature 5K below the boiling point, even if the last increment is less than 5K.

(*C*) If the vessel contents are heated to the boiling point and the vessel is not operating with a process condenser, the final temperature for the final increment shall be the temperature 5K below the boiling point, even if the last increment is less than 5K.

(*3*) If the vessel is operating with a process condenser, and the vessel contents are heated to the boiling point, the primary condenser is considered part of the process. Emissions shall be calculated as the sum of Equation 2, which calculates emissions due to heating the vessel contents to the temperature of the gas exiting the condenser, and Equation 1, which calculates emissions due to the displacement of the remaining saturated noncondensable gas in the vessel. The final temperature in Equation 2 shall be set equal to the exit gas temperature of the process condenser. In Equation 1, V shall be set equal to the free space volume, and T_2 shall be set equal to the condenser exit gas temperature.

(E) Emissions from depressurization shall be calculated using the procedures in paragraphs (c)(2)(i)(E)(*1*) through (*5*) of this section.

(*1*) The moles of HAP vapor initially in the vessel are calculated using the ideal gas law in equation 6:

$$N_{HAP} = \frac{(Y_{HAP})(V)(P_1)}{R \quad T} \qquad (6)$$

Where:

Y_{HAP} = mole fraction of HAP (the sum of the individual HAP fractions, ΣYi).

V = free volume in the vessel being depressurized.

P_1 = initial vessel pressure.

R = gas constant.

T = vessel temperature, absolute units.

(*2*) The moles of noncondensable gas present initially in the vessel are calculated using equation 7:

$$n_1 = \frac{VP_{nc_1}}{RT} \qquad (7)$$

Where:

V = free volume in the vessel being depressurized.

P_{nc1} = initial partial pressure of the noncondensable gas, $P_1 - -\Sigma P_i$.

R = gas law constant, K.

T = temperature, absolute units.

(*3*) The moles of noncondensable gas present at the end of depressurization are calculated using Equation 8:

$$n_2 = \frac{VP_{NC_2}}{RT} \qquad (8)$$

Where:

V = free volume in the vessel being depressurized.

P_{nc2} = final partial pressure of the noncondensable gas, $P_2 - \Sigma X_i P_i$.

R = gas law constant.

T = temperature, absolute.

(*4*) The moles of HAP emitted during the depressurization are calculated by taking an approximation of the average ratio of moles of HAP to moles of noncondensable and multiplying by the total moles of noncondensables released during the depressurization using Equation 9:

$$\frac{\left(\frac{n_{HAP}}{n_1} + \frac{n_{HAP}}{n_2}\right)}{2}\left[n_1 - n_2\right] = N_{HAP} \qquad (9)$$

Where:

N_{HAP} = moles of HAP emitted.

(*5*) The moles of HAP emitted can be converted to a mass rate using Equation 10:

$$\frac{N_{HAP} * MW_{HAP}}{t} = Er_{HAP} \qquad (10)$$

Where:

Er_{HAP} = emission rate of the HAP.

MW_{HAP} = molecular weight of the HAP.

t = time of the depressurization.

(F) Emissions from vacuum systems may be calculated if the air leakage rate is known or can be approximated, using Equation 11:

$$E_r = MWs\frac{La}{29}\left(\frac{P_{system}}{P_{system} - P_i} - 1\right) \qquad (11)$$

Where:

E_r = rate of HAP emission, in lb/hr.

P_{system} = absolute pressure of receiving vessel or ejector outlet conditions, if there is no receiver.

P_i = vapor pressure of the HAP at the receiver temperature, in mmHg.

La = total air leak rate in the system, lb/hr.

29 = molecular weight of air, lb/lbmole.

(ii) For emission episodes in which an owner or operator can demonstrate that the methods in paragraph (c)(2)(i) of this section are not appropriate according to the criteria specified in paragraph (c)(2)(iii) of this section, an owner or operator shall calculate uncontrolled emissions by conducting an engineering assessment which includes, but is not limited to, the information and procedures described in paragraphs (c)(2)(ii)(A) through (E) of this section:

(A) Previous test results provided the tests are representative of current operating practices at the process unit.

(B) Bench-scale or pilot-scale test data representative of the process under representative operating conditions.

(C) Maximum flow rate, HAP emission rate, concentration, or other relevant parameter specified or implied within a permit limit applicable to the process vent.

(D) Design analysis based on accepted chemical engineering principles, measurable process parameters, or physical or chemical laws or properties. Examples of analytical methods include, but are not limited to:

(*1*) Use of material balances based on process stoichiometry to estimate maximum organic HAP concentrations;

(*2*) Estimation of maximum flow rate based on physical equipment design such as pump or blower capacities; and

(*3*) Estimation of HAP concentrations based on saturation conditions.

(E) All data, assumptions, and procedures used in the engineering assessment shall be documented in accordance with § 63.1366(b). Data or other information supporting a finding that the emissions estimation equations are inappropriate shall be reported in the Notification of Compliance Status.

(iii) The emissions estimation equations in paragraph (c)(2)(i) of this section shall be considered inappropriate for estimating emissions for a given batch emissions episode if one or more of the criteria in paragraphs (c)(2)(iii)(A) and (B) of this section are met.

(A) Previous test data are available that show a greater than 20 percent discrepancy between the test value and the estimated value.

(B) The owner or operator can demonstrate to the Administrator through any other means that the emissions estimation equations are not appropriate for a given batch emissions episode.

(3) An owner or operator shall determine controlled emissions using emission measurements and/or calculations for each process vent using the control efficiency calculated for each device that controls process vents with total HAP emissions of less than 9.1 Mg/yr (10 tons/yr), before control, according to the design evaluation described in paragraph (c)(3)(i) of this section, or using the emission estimation equations described in paragraph (c)(2) of this section, as appropriate. An owner or operator shall determine controlled emissions for each process vent using the control efficiency determined for each device that controls process vents with total HAP emissions of greater than 9.1 Mg/yr (10 tons/yr), before control, by conducting a performance test on the control device as described in paragraphs (c)(3)(ii) through (iv) of this section, or by using the results of a previous performance test as described in paragraph (c)(5) of this section. An owner or operator is not required to conduct performance tests for devices described in paragraphs (c)(4) and (c)(5) of this section that control total emissions of greater than 10 tons/yr, before control.

(i) The design evaluation shall include documentation demonstrating that the control device being used achieves the required control efficiency during the emission episodes in which it is functioning in reducing emissions. This documentation shall include a description of the gas stream which enters the control device, including flow and HAP concentration, and the information specified in paragraphs (c)(3)(i)(A) through (G) of this section, as applicable.

(A) If the control device receives vapors, gases or liquids, other than fuels, from emission points other than storage tanks subject to this subpart, the efficiency demonstration shall include consideration of all vapors, gases, and liquids, other than fuels, received by the control device.

(B) If an enclosed combustion device with a minimum residence time of 0.5 seconds and a minimum temperature of 760 °C is used to meet any of the emission reduction requirements specified in § 63.1362(c), documentation that those conditions exist is sufficient

to meet the requirements of paragraph (c)(3)(i) of this section.

(C) Except as provided in paragraph (c)(3)(i)(B) of this section, for thermal incinerators, the design evaluation shall include the autoignition temperature of the organic HAP, the flow rate of the organic HAP emission stream, the combustion temperature, and the residence time at the combustion temperature.

(D) For carbon adsorbers, the design evaluation shall include the affinity of the organic HAP vapors for carbon, the amount of carbon in each bed, the number of beds, the humidity of the feed gases, the temperature of the feed gases, the flow rate of the organic HAP emission stream, the desorption schedule, the regeneration stream pressure or temperature, and the flow rate of the regeneration stream. For vacuum desorption, pressure drop shall be included.

(E) For condensers, the design evaluation shall include the final temperature of the organic HAP vapors, the type of condenser, and the design flow rate of the organic HAP emission stream.

(F) For gas absorbers, the design evaluation shall include the flow rate of the emission stream, the type of solvent, and solvent flow rate, pH of the inlet solvent, and the design of the absorber.

(G) For fabric filters, the design evaluation shall include the pressure drop through the device, and the net gas-to-cloth ratio.

(ii) Except for control devices that meet an outlet TOC concentration of 20 ppmv, the performance test shall be conducted by performing emission testing on the inlet and outlet of the control device following the test methods and procedures of paragraph (b) of this section. For control devices that meet an outlet TOC concentration of 20 ppmv, the performance testing shall be conducted by performing emission testing on the outlet of the control device following the test methods and procedures of paragraph (b) of this section. Each owner or operator seeking to demonstrate that the outlet stream from a combustion, recovery, or recapture device has a TOC concentration below 20 ppmv shall calculate the concentration according to the procedures specified in paragraphs (c)(3)(ii)(A) and (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 equation 12:

$$C_{roc} = \sum_{i=1}^{x} \frac{\left(\sum_{j=1}^{n} C_{ji}\right)}{x} \qquad (12)$$

Where:

C_{TOC} = concentration of TOC, dry basis, ppmv.

C_{ji} = concentration of individual component j in sample i, dry basis, ppmv.

n = number of individual components in the sample.

x = number of samples in the sample run.

(B) The concentration of TOC shall be corrected to 3 percent oxygen. The integrated sampling and analysis procedures of Method 3B of 40 CFR part 60, appendix A, shall be used to determine the oxygen concentration (percent $O2_d$) that is used in the TOC concentration correction factor calculation. The samples shall be taken during the same time that the TOC samples are taken. The concentration corrected to 3 percent oxygen (C_c) shall be computed using Equation 13:

$$C_c = C_m\left(\frac{17.9}{20.9 - \%O_{2d}}\right) \qquad (13)$$

Where:

C_c = concentration of TOC corrected to 3 percent oxygen, dry basis, ppmv.

C_m = concentration of TOC, dry basis, ppmv.

$\%O_{2d}$ = concentration of oxygen, dry basis, percent by volume.

(iii) Performance testing shall be conducted under the conditions specified in paragraphs (c)(3)(iii)(A) and (B) of this section.

(A) Except as specified in paragraphs (c)(3)(iii)(B) through (D) of this section, the owner or operator shall test over absolute or hypothetical peak-case conditions for all control devices.

(B) For thermal incinerators, the owner or operator may also choose to test over representative peak-case conditions; however, if the owner or operator chooses to test over representative peak-case conditions, the maximum allowable vent stream flowrate into the thermal incinerator is restricted to the level for which it was designed. The design basis of the incinerator shall be included as part of the Notification of Compliance Status.

(C) For carbon adsorbers, the owner or operator may also choose to test over representative peak-case conditions.

(D) For wet scrubbers, the owner or operator may also choose to test over representative peak-case conditions. The results of the performance test shall be used to calibrate or validate the results of validated models used to establish the operating parameter values.

(iv) The owner or operator may elect to conduct more than one performance test on the control device for the purpose of establishing operating conditions associated with a range of achievable control efficiencies.

(4) An owner or operator is not required to conduct a performance test when a control device specified in paragraphs (c)(4)(i) through (v) of this section is used to comply with the organic HAP emission reductions required by § 63.1362(b)(2)(ii), (2)(iii), or (4)(ii). Emissions from these devices are considered in compliance with the reductions required by § 63.1362(b)(2)(ii), (2)(iii), and (4)(ii).

(i) A boiler or process heater with a design heat input capacity of 44 megawatts or greater.

(ii) A boiler or process heater where the vent stream is introduced with the primary fuel or is used as the primary fuel.

(iii) A boiler or process heater burning hazardous waste for which the owner or operator:

(A) Has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H, or

(B) Has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(iv) A hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O, or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O.

(v) A flare that complies with the provisions in § 63.11(b) of subpart A of this part.

(5) An owner or operator is not required to conduct a performance test for any of the control systems described in paragraphs (c)(5)(i) and (ii) of this section.

(i) Any control device for which a previous performance test was conducted, provided the test was conducted using the same procedures specified in § 63.1364(b) of this subpart over conditions typical of the appropriate worst-case, as defined in paragraph (c)(3)(iii)(A) of this section. The results of the previous performance test shall be used to demonstrate compliance.

(ii) A condenser system that is equipped with a temperature sensor and recorder, such that the condenser exit gas temperature can be measured at 15-minute intervals when the condenser is

functioning in cooling a vent stream. The condenser exit gas temperature shall be used to calculate removal efficiency of the condenser in demonstrating compliance.

(d) *Compliance with storage tank provisions.* The owner or operator of an affected storage tank shall demonstrate compliance with § 63.1362(c)(1) and (2), as applicable, by fulfilling the requirements of paragraph (d)(1) and either paragraph (d)(2), (3), or (4) of this section. The owner or operator of an affected storage tank shall demonstrate compliance with § 63.1362(c)(3) by fulfilling the requirements of paragraph (d)(1) and either paragraph (d)(2), (3), or (5) of this section.

(1) To determine the Group 1 status of a tank, the owner or operator shall determine the uncontrolled emissions using the methods described in American Petroleum Institute Publication 2518, Evaporative Loss From Fixed-Roof Tanks (incorporated by reference as specified in § 63.14 of subpart A of this part).

(2) For each Group 1 storage tank, the owner or operator shall compute the mass rate of total organic HAP (E_I, E_O) to demonstrate compliance with the percent reduction requirement of § 63.1362(c)(1), (2) or (3).

(i) Equations 14 and 15 shall be used:

$$E_i = K_2\left(\sum_{j=1}^{n} C_{ij}M_{ij}\right)Q_i \qquad (14)$$

$$E_o = K_2\left(\sum_{j=1}^{n} C_{oj}M_{oj}\right)Q_o \qquad (15)$$

Where:

C_{iJ}, C_{OJ}=concentration of sample component j of the gas stream at the inlet and outlet of the control device, respectively, dry basis, ppmv.

E_i, E_O=mass rate of total organic HAP at the inlet and outlet of the control device, respectively, dry basis, kg/hr.

M_{ij}, M_{oj}=molecular weight of sample component j of the gas stream at the inlet and outlet of the control device, respectively, g/gmole.

Q_i, Q_o=flow rate of gas stream at the inlet and outlet of the control device, respectively, dscmm.

K_2=constant, 2.494×10^{-6} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature is 20 °C.

(ii) The percent reduction in total organic HAP shall be calculated using equation 16:

$$R = \frac{E_i - E_o}{E_i}(100) \qquad (16)$$

Where:

R=control efficiency of control device, percent.

E_i=mass rate of total organic HAP at the inlet to the control device as calculated under paragraph (d)(l)(i) of this section, kilograms organic HAP per hour.

E_o=mass rate of total organic HAP at the outlet of the control device, as calculated under paragraph (d)(2)(i) of this section, kilograms organic HAP per hour.

(iii) A performance test is not required to be conducted if the control device used to comply with § 63.1362(c) (storage tank provisions) is also used to comply with § 63.1362(b) (process vent provisions), and compliance with § 63.1362(b) has been demonstrated in accordance with paragraph (c)(2) of this section.

(iv) A performance test is not required if the control device meets any of the conditions specified in paragraphs (c)(4) or (5) of this section.

(3) To demonstrate compliance with the percent reduction requirement of § 63.1362(c)(1), (2) or (3), a design evaluation shall be prepared. The design evaluation shall include documentation showing that the control device being used achieves the required control efficiency during reasonably expected maximum filling rate. This documentation shall include a description of the gas stream which enters the control device, including flow and organic HAP content under varying liquid level conditions, and the information specified in paragraphs (c)(3)(i)(A) through (E) of this section, as applicable.

(4) If the owner or operator of an affected source chooses to comply with the provisions of § 63.1362(c)(1) or (2) by installing a floating roof, the owner or operator shall comply with the procedures described in § 63.119(b), (c), or (d) of subpart G of this part and the procedures described in § 63.120 of subpart G of this part, with the differences specified in § 63.1362(d)(2)(i) through (iv).

(5) Except as provided in paragraphs (d)(5)(i) through (iv) of this section, compliance with the concentration requirement of § 63.1362(c)(3) shall be demonstrated by determining the outlet concentration of organic HAP using the applicable test methods described in paragraph (b) of this section. If a combustion control device is used, the organic HAP concentration shall be corrected to 3 percent oxygen according to the procedures specified in paragraph (c)(3)(ii)(B) of this section.

(i) A performance test is not required if the conditions described in paragraph (d)(2)(iii) of this section apply.

(ii) A performance test is not required if the control device meets any of the conditions specified in paragraphs (c)(4)(i) through (v) of this section.

(iii) A performance test is not required for any control device for which a previous test was conducted, provided the test was conducted using the same procedures specified in paragraph (b) of this section.

(iv) A performance test is not required for a condenser system operated in accordance with the provisions specified in paragraph (c)(5)(ii) of this section.

(e) *Compliance with wastewater provisions.* An owner or operator shall demonstrate compliance with the wastewater requirements by complying with the provisions in §§ 63.131 through 63.149, except that the owner or operator need not comply with the requirement to determine visible emissions that is specified in § 63.145(j)(1).

(f) *Compliance with the bag dump and product dryer provisions.* Compliance with the particulate HAP concentration limits specified in § 63.1362(f) is demonstrated when the concentration of particulate HAP is less than 0.01 gr/dscf, as measured or estimated using one of the procedures described in paragraph (f) (1) or (2) of this section.

(1) The concentration of particulate HAP shall be measured using the method described in paragraph (a)(8) of this section.

(2) The concentration of particulate HAP shall be calculated based on knowledge of the process. The owner or operator shall provide sufficient information to document the concentration. An example of information that could constitute such knowledge include previous test results, provided the results are still representative of current operating practices at the process unit.

(g) *Pollution prevention alternative standard.* The owner or operator shall demonstrate compliance with § 63.1362(j) using the procedures described in either paragraph (g) (1) or (2) of this section.

(1) Compliance with § 63.1362(j)(2) is demonstrated when the annual HAP factor is reduced to a value equal to or less than 15 percent of the baseline HAP factor, and the annual VOC factor is equal to or less than the baseline VOC factor. Factors shall be calculated in accordance with the procedures

specified in paragraphs (g)(1) (i) and (ii) of this section.

(i) The baseline HAP and VOC factors shall be calculated by dividing the consumption of total HAP and total VOC by the production rate, per process, for the first 12-month period for which data are available, to begin no earlier than January 1, 1987.

(ii) The annual HAP and VOC factors shall be calculated in accordance with the procedures specified in paragraphs (g)(1)(ii) (A) through (C) of this section.

(A) The consumption of both total HAP and total VOC shall be divided by the production rate, per process, for 12-month periods at the frequency specified in either paragraph (g)(1)(ii) (B) or (C) of this section, as applicable.

(B) For continuous processes, the annual factors shall be calculated every 30 days for the 12-month period preceding the 30th day (annual rolling average calculated every 30 days).

(C) For batch processes, the annual factors shall be calculated every 10 batches for the 12-month period preceding the 10th batch (annual rolling average calculated every 10 batches).

(2) Compliance with § 63.1362(j)(3) is demonstrated when the requirements of paragraphs (g)(2) (i) through (iv) of this section are met.

(i) The annual HAP factor is reduced to a value equal to or less than 50 percent of the baseline HAP factor, and the annual VOC factor is equal to or less than the baseline VOC factor. Factors shall be calculated in accordance with the procedures specified in paragraphs (g)(1) (i) and (ii) of this section.

(ii) The yearly reduction, in kg HAP/yr, associated with add-on controls that meet the criteria of § 63.1362(j)(3)(ii) (A) through (D), is equal to or greater than the mass of HAP calculated using equation 17:

$$[\text{kg/kg}]_b * .35 * [\text{kg produced}]_a = [\text{kg reduced}]_a \qquad (17)$$

Where:

$[\text{kg/kg}]_b$ = the baseline HAP factor, kg HAP consumed/kg product.

$[\text{kg produced}]_a$ = the annual production rate, kg/yr.

$[\text{kg reduced}]_a$ = the annual HAP emissions reduction required by add-on controls, kg/yr.

(iii) Demonstration that the criteria in §§ 63.1362(j)(3)(ii) (A) through (D) are met shall be accomplished through a description of the control device and of the material streams entering and exiting the control device.

(iv) The annual reduction achieved by the add-on control shall be quantified using the methods described in paragraph (c) of this section.

(h) *Planned maintenance.* The owner or operator shall demonstrate compliance with the requirements of § 63.1362(b), and (c) by including in each Periodic Report required by § 63.1367 the periods of planned routine maintenance specified by date and time (planned routine maintenance of a control device, during which the control device does not meet the specifications of § 63.1362, as applicable, shall not exceed 240 hours per year).

(i) *Compliance with emissions averaging provisions.* An owner or operator shall demonstrate compliance with the emissions averaging provisions of § 63.1362(k) by fulfilling the requirements of paragraphs (i)(1) through (6) of this section.

(1) The owner or operator shall develop and submit for approval an Implementation Plan containing all the information required in § 63.1366(f). The Implementation Plan shall be submitted 18 months prior to the compliance date of the standard. The Administrator shall have 60 days to approve or disapprove the emissions averaging plan after which time the plan shall be considered approved. The plan shall be considered approved if the Administrator either approves the plan in writing, or fails to disapprove the plan in writing. The 60 day period shall begin when the Administrator receives the request. If the request is denied, the owner or operator must still be in compliance with the standard by the compliance date.

(2) For all points included in an emissions average, the owner or operator shall comply with the procedures that are specified in paragraphs (i)(2)(i) through (v) of this section.

(i) Calculate and record monthly debits for all Group 1 emission points that are controlled to a level less stringent than the standard for those emission points. Equations in paragraph (i)(5) of this section shall be used to calculate debits.

(ii) Calculate and record monthly credits for all Group 1 and Group 2 emission points that are overcontrolled to compensate for the debits. Equations in paragraph (i)(6) of this section shall be used to calculate credits. All process vent, storage tank, and wastewater emission points except those specified in § 63.1362(k)(1) through (6) may be included in the credit calculation.

(iii) Demonstrate that annual credits calculated according to paragraph (i)(6) of this section are greater than or equal to debits calculated according to paragraph (i)(5) of this section for the same annual compliance period. The initial demonstration in the Implementation Plan or operating permit application that credit-generating emission points will be capable of generating sufficient credits to offset the debit-generating emission points shall be made under representative operating conditions. After the compliance date, actual operating data shall be used for all debit and credit calculations.

(iv) Demonstrate that debits calculated for a quarterly (3-month) period according to paragraph (i)(5) of this section are not more than 1.30 times the credits for the same period calculated according to paragraph (i)(6) of this section. Compliance for the quarter shall be determined based on the ratio of credits and debits from that quarter, with 30 percent more debits than credits allowed on a quarterly basis.

(v) Record and report quarterly and annual credits and debits as required in §§ 63.1366(f) and 63.1367(d).

(3) Credits and debits shall not include emissions during periods of malfunction. Credits and debits shall not include periods of startup and shutdown for continuous processes.

(4) During periods of monitoring excursions credits and debits shall be adjusted as specified in paragraphs (i)(4) (i) through (iii) of this section.

(i) No credits would be assigned to the credit-generating emission point.

(ii) Maximum debits would be assigned to the debit-generating emission point.

(iii) The owner or operator may demonstrate to the Administrator that full or partial credits or debits should be assigned using the procedures in § 63.150(l) of subpart G of this part.

(5) Debits are generated by the difference between the actual emissions from a Group 1 emission point that is uncontrolled or controlled to a level less stringent than the applicable standard and the emissions allowed for the Group 1 emission point. Debits shall be calculated in accordance with the procedures specified in paragraphs (i)(5) (i) through (iv) of this section.

(i) Source-wide debits shall be calculated using Equation 18 of this subpart:

Debits=

$$\text{Debits} = \sum_{i=1}^{n}\left(EPV_{iA} - (0.10)\left(EPV_{iU}\right)\right) + \sum_{i=1}^{n}\left(ES_{iA} - (0.05)\left(ES_{iU}\right)\right) + \sum_{i=1}^{n}\left(EWW_{iA} - \left(EWW_{iC}\right)\right) \quad (18)$$

Where:

Debits and all terms of Equation 18 are in units of Mg/month, and

EPV_{iU}=uncontrolled emissions from process i calculated according to the procedures specified in paragraph (i)(5)(ii) of this section.

EPV_{iA}=actual emissions from each Group 1 process i that is uncontrolled or is controlled to a level less stringent than the applicable standard. EPV_{iA} is calculated using the procedures in paragraph (i)(5)(ii) of this section.

ES_{iU}=uncontrolled emissions from storage tank i calculated according to the procedures specified in paragraph (i)(5)(iii) of this section.

ES_{iA}=actual emissions from each Group 1 storage tank i that is uncontrolled or is controlled to a level less stringent than the applicable standard. ES_{iA} is calculated using the procedures in paragraph (i)(5)(iii) of this section.

EWW_{iC}=emissions from each Group 1 wastewater stream i if the standard had been applied to the uncontrolled emissions. EWW_{iC} is calculated using the procedures in paragraph (i)(5)(iv) of this section.

EWW_{iA}=actual emissions from each Group 1 wastewater stream i that is uncontrolled or is controlled to a level less stringent than the applicable standard. EWW_{iA} is calculated using the procedures in paragraph (i)(5)(iv) of this section.

n=the number of emission points being included in the emissions average. The value of n is not necessarily the same for process vents, storage tanks, and wastewater.

(ii) Emissions from process vents shall be calculated in accordance with the procedures specified in paragraphs (i)(5)(ii) (A) through (C) of this section.

(A) Except as provided in paragraph (i)(5)(ii)(C) of this section, uncontrolled emissions for process vents shall be calculated using the procedures that are specified in paragraph (c)(2) of this section.

(B) Except as provided in paragraph (i)(5)(ii)(C) of this section, actual emissions for process vents shall be calculated using the procedures specified in paragraph (c)(3) of this section.

(C) As an alternative to the procedures described in paragraphs (h)(5)(ii) (A) and (B) of this section, for continuous processes, uncontrolled and actual emissions may be calculated by the procedures described in § 63.150(g)(2) of subpart G of this part. For purposes of complying with this paragraph, the 98 percent reduction in § 63.150(g)(2)(iii) of subpart G of this part shall mean 90 percent.

(iii) Uncontrolled emissions from storage tanks shall be calculated in accordance with the procedures described in paragraph (d)(1) of this section. Actual emissions from storage tanks shall be calculated using the procedures specified in § 63.150(g)(3)(ii), (iii), or (iv) of subpart G of this subpart, as appropriate, except as provided in paragraphs (i)(5)(iii) (A) and (B) of this section.

(A) When § 63.150(g)(3)(ii)(C) refers to § 63.119(e)(2) and 90-percent reduction, § 63.1362(d)(1)(ii) and 41-percent reduction shall apply for the purposes of this subpart.

(B) When § 63.150(g)(3)(ii)(B) refers to the procedures in § 63.120(d) for determining percent reduction for a control device, § 63.1364(d) (2) or (3) shall apply for the purposes of this subpart.

(iv) Emissions from wastewater shall be calculated using the procedures specified in § 63.150(g)(5) of subpart G of this part.

(6) Credits are generated by the difference between emissions that are allowed for each Group 1 and Group 2 emission point and the actual emissions from that Group 1 or Group 2 emission point that has been controlled after November 15, 1990 to a level more stringent than what is required in this subpart or any other State or Federal rule or statute. Credits shall be calculated in accordance with the procedures specified in paragraphs (i)(6)(i) through (v) of this section.

(i) Source-wide credits shall be calculated using Equation 19 in this paragraph (i)(6)(i):

Credits=

$$\begin{aligned}\text{Credits} = {} & D\sum_{i=1}^{n}\left((0.10)\left(EPV1_{iU}\right) - EPV1_{iA}\right) + D\sum_{i=1}^{m}\left(EPV2_{iB} - EPV2_{iA}\right) + \\ & D\sum_{i=1}^{n}\left((0.05)\left(ES1_{iU}\right) - ES1_{iA}\right) + D\sum_{i=1}^{m}\left(ES2_{iB} - ES2_{iA}\right) + \\ & D\sum_{i=1}^{n}\left(EWW1_{iC} - EWW1_{iA}\right) + D\sum_{i=1}^{m}\left(EWW2_{iB} - EWW2_{iA}\right)\end{aligned} \quad \sqrt{\ } (19)$$

Where: Credits and all terms in equation 19 are in units of Mg/month, the baseline date is November 15, 1990, the terms consisting of a constant multiplied by the uncontrolled emissions are the emissions from each emission point subject to the standards in § 63.1362 (b) and (c) that is controlled to a level more stringent than the standard, and

$EPV1_{iU}$ = uncontrolled emissions from each Group 1 process i calculated according to the procedures in paragraph (i)(6)(iii)(A) of this section.

$EPV1_{iA}$ = actual emissions from each Group 1 process i that is controlled to a level more stringent than the applicable standard. EPV_{iA} is calculated according to the

procedures in paragraph (i)(6)(iii)(B) of this section.

$EPV2_{iB}$ = emmissions from each Group 2 process i at the baseline date. $EPV2_{iB}$ is calculated according to the procedures in paragraph (i)(6)(iii)(C) of this section.

$EPV2_{iA}$=actual emissions from each Group 2 process i that is controlled. $EPV2_{iA}$ is calculated according to the procedures in paragraph (i)(6)(iii)(C) of this section.

$ES1_{iU}$=uncontrolled emissions from each Group 1 storage tank i calculated according to the procedures in paragraph (i)(6)(iv) of this section.

$ES1_{iA}$=actual emissions from each Group 1 storage tank i that is controlled to a level more stringent that the applicable standard. $ES1_{iA}$ is calculated according to the procedures in paragraph (i)(6)(iv) of this section.

$ES2_{iB}$=emissions from each Group 2 storage tank i at the baseline date. $ES2_{iB}$ is calculated according to the procedures in paragraph (i)(6)(iv) of this section.

$ES2_{iA}$=actual emissions from each Group 2 storage tank i that is controlled. $ES2_{iA}$ is calculated according to the procedures in paragraph (i)(6)(iv) of this section.

$EWW1_{iC}$=emissions from each Group 1 wastewater stream i if the standard had been applied to the uncontrolled emissions. $EWW1_{iC}$ is calculated according to the procedures in paragraph (i)(6)(v) of this section.

$EWW1_{iA}$=emissions from each Group 1 wastewater stream i that is controlled to a level more stringent than the applicable standard. $EWW1_{iA}$ is calculated according to the procedures in paragraph (i)(6)(v) of this section.

$EWW2_{iB}$=emissions from each Group 2 wastewater stream i at the baseline date. $EWW2_{iB}$ is calculated according to the procedures in paragraph (i)(6)(v) of this section.

$EWW2_{iA}$=actual emissions from each Group 2 wastewater stream i that is controlled. $EWW2_{iA}$ is calculated according to the procedures in paragraph (i)(6)(v) of this section.

n=number of Group 1 emission points that are included in the emissions average. The value of n is not necessarily the same for process vents, storage tanks, and wastewater.

m=number of Group 2 emission points included in the emissions average. The value of m is not necessarily the same for process vents, storage tanks, and wastewater.

D=discount factor equal 0.9 for all credit-generating emission points except those controlled by a pollution prevention measure, which will not be discounted.

(ii) For an emission point controlled using a pollution prevention measure, the nominal efficiency for calculating credits shall be as determined as described in § 63.150(j) of subpart G of this part.

(iii) Emissions from process vents shall be calculated in accordance with the procedures specified in paragraphs (i)(6)(iii) (A) through (C) of this section

(A) Uncontrolled emissions from Group 1 process vents shall be calculated according to the procedures in paragraph (i)(5)(ii) (A) or (C) of this section.

(B) Actual emissions from Group 1 process vents with a nominal efficiency greater than the applicable standard or a pollution prevention measure shall be calculated using equation 20:

$$EPV1_{Ai}=EPV1_{Ui}\times[(1-(\text{Nominal efficiency, }\%)/100\%)] \qquad (20)$$

(C) Baseline and actual emissions from Group 2 process vents shall be calculated according to the procedures in § 63.150(h)(2) (iii) and (iv) with the following modifications:

(*1*) The term ''98 percent reduction'' shall mean ''90 percent reduction''; and

(*2*) The references to paragraph (g)(2) of this section shall mean paragraph (i)(5)(ii) of this section.

(iv) Uncontrolled emissions from storage tanks shall be calculated according to the procedures described in paragraph (d)(1) of this section. Actual and baseline emissions from storage tanks shall be calculated according to the procedures specified in § 63.150(h)(3) of subpart G of this part, except when § 63.150(h)(3) refers to § 63.150(g)(3)(i), paragraph (d)(1) of this section shall apply for the purposes of this subpart.

(v) Emissions from wastewater shall be calculated using the procedures in § 63.150(h)(5) of subpart G of this part.

§ 63.1365 Monitoring and inspection requirements.

(a) The owner or operator of any existing, new, or reconstructed affected source shall provide evidence of continued compliance with the standard. During the initial compliance demonstration, maximum or minimum operating parameters, as appropriate, shall be established for emission sources that will indicate the source is in compliance. Test data, calculations, or information from the evaluation of the control device design shall be used to establish the operating parameter. If the operating parameter to be established is a maximum and if performance testing has been required, the value of the parameter shall be the average of the maximum values from each of the three test runs. If the operating parameter to be established is a minimum and if performance testing has been required, the value of the parameter shall be the average of the minimum values from each of the three test runs. Parameter values for process vents from batch operations shall be determined as specified in paragraphs (b)(1) and (2) of this section. The owner or operator shall operate processes and control devices within these parameters to ensure continued compliance with the standard. Monitoring parameters are specified for continuous process vent control scenarios in paragraphs (a)(1) through (8) of this section.

(1) For all control devices that are used to control process vent streams totaling less than 0.91 Mg/yr (1 ton/yr) HAP emissions, before control, monitoring shall consist of a periodic verification that the device is operating properly. This verification shall include, but not be limited to, a periodic demonstration that the unit is working as designed. This demonstration shall be included in the Precompliance report, to be submitted 12 months prior to the compliance date of the standard.

(2) For affected sources using water scrubbers that are used to control process vent streams totaling greater than 0.91 Mg/yr (1 ton/yr), before controls, the owner or operator shall establish a minimum scrubber water flow rate as a site-specific operating parameter which must be measured and recorded every 15 minutes. The affected source will be in violation of the emission standard if the scrubber water flow rate, averaged over the operating day, is below the minimum value established during the initial compliance demonstration.

(3) For affected sources using condensers that are used to control process vent streams totaling greater than 0.91 Mg/yr (1 ton/yr), before controls, the owner or operator shall establish the maximum condenser outlet gas temperature as a site-specific operating parameter which must be measured and recorded every 15 minutes. The affected source will be in violation of the emission standard if the condenser outlet gas temperature, averaged over the operating day, is greater than the maximum value established during the initial compliance demonstration.

(4) For affected sources using carbon adsorbers that are used to control process vent streams totaling greater

than 0.91 Mg/yr (1 ton/yr), before controls, the owner or operator shall establish the site-specific operating parameter(s) specified in either paragraph (a)(4) (i), (ii), or (iii) of this section.

(i) A maximum outlet HAP concentration shall be specified as the site-specific operating parameter. The affected source will be in violation of the emission standard if the outlet HAP concentration, averaged over the operating day, is greater than the maximum value established during the initial compliance demonstration.

(ii) The outlet TOC concentration shall be established as the site-specific operating parameter. The affected source will be in violation of the emission standard if the outlet TOC concentration, averaged over the operating day for each process, is greater than 20 ppmv.

(iii) The adsorption/regeneration cycle characteristics shall be established under absolute peak-case conditions, and the frequency of monitoring for the operating parameters specified below shall be described in the Notification of Compliance Status Report. The affected source will be in violation of the emission standard if any of the values for these parameters established during the initial compliance demonstration are exceeded.

(A) Maximum time of adsorption;

(B) Minimum bed temperature during regeneration;

(C) Maximum bed temperature after cooling;

(D) Minimum regeneration stream flow rate; and

(E) Maximum time between tests to determine bed poisoning.

(5) For affected sources using flares that are used to control process vent streams totaling greater than 0.91 Mg/yr (1 ton/yr), before controls, the presence of the pilot flame shall be monitored every 15 minutes. Loss of pilot flame is a violation of the emission standard.

(6) For affected sources using combustion devices that are used to control process vents totaling greater than 0.91 Mg/yr (1 ton/yr), before controls, the owner or operator shall monitor the temperature of the gases exiting the combustion chamber as the site-specific operating parameter which must be measured and recorded every 15 minutes. The affected sources will be in violation of the emission standard if the chamber temperature averaged over the operating day, is greater than the maximum value established during the initial compliance demonstration.

(7) For each fabric filter used to control particulate HAP emissions from bag dumps and product dryers totaling more than 0.91 Mg/yr (1 ton/yr), before controls, the owner or operator shall install, calibrate, maintain, and continuously operate a bag leak detection system that meets the requirements in paragraphs (a)(7) (i) through (viii) of this section.

(i) The bag leak detection system sensor must provide output of relative or absolute PM emissions.

(ii) The bag leak detection system must be equipped with an alarm system that will sound when an increase in PM emissions over a preset level is detected.

(iii) For positive pressure fabric filters, a bag leak detector must be installed in each fabric filter compartment or cell. If a negative pressure or induced air filter is used, the bag leak detector must be installed downstream of the fabric filter. Where multiple bag leak detectors are required (for either type of fabric filter), the system instrumentation and alarm may be shared among detectors.

(iv) The bag leak detection system shall be installed, operated, calibrated and maintained in a manner consistent with available guidance from the U.S. Environmental Protection Agency or, in the absence of such guidance, the manufacturer's written specifications and instructions.

(v) Calibration of the system shall, at a minimum, consist of establishing the relative baseline output level by adjusting the range and the averaging period of the device and establishing the alarm set points and the alarm delay time.

(vi) The owner or operator shall not adjust the range, averaging period, alarm set points, or alarm delay time contained in the Notification of Compliance Status report without written approval from the Administrator.

(vii) If the alarm on a bag leak detection system is triggered, the owner or operator shall inspect the control device to determine the cause of the deviation and initiate within 1 hour of the alarm the corrective actions specified in the Notification of Compliance Status report. Failure to initiate the corrective action procedures within 1 hour of the alarm is a violation of the particulate HAP emission standard.

(viii) If the bag leak detection system alarm is activated for more than 5 percent of the total operating time during a 6-month reporting period, the owner or operator shall develop and implement a written quality improvement plan consistent with subpart D of this part of the draft approach to compliance assurance monitoring.

(8) For each waste management unit, treatment process, or control device used to comply with § 63.1362(d), the owner or operator shall comply with the procedures specified in § 63.143 of subpart G of this part, except that when the procedures to request approval to monitor alternative parameters according to the procedures in § 63.151(f) are referred to in § 63.143(d)(3), the procedures in paragraph (c) of this section shall apply for the purposes of this subpart.

(b) The owner or operator of any existing, new, or reconstructed affected source that chooses to comply with the emission limit or emission reduction requirement for batch process vents and combined streams from process vents and storage tanks shall provide evidence of continued compliance with the standard. As part of the initial compliance demonstrations for batch process vents and storage tanks, test data, compliance calculations, or information from the control device design evaluation shall be used to establish a maximum or minimum level of a relevant operating parameter for each control device that the owner or operator selects to operate as part of achieving the required emission reduction or emission limitation. The owner or operator shall operate processes and control devices within these parameters to ensure continued compliance with the standard.

(1) For devices that are used to control batch process vent streams totaling less than 0.91 Mg/yr (1 ton/yr) HAP emissions, before control, monitoring shall consist of a periodic verification that the device is operating properly. This verification shall include, but not be limited to, a periodic demonstration that the unit is working as designed. This demonstration shall be included in the Precompliance report, to be submitted 12 months prior to the compliance date of the standard.

(2) For batch process vents that are routed to a device that receives HAP in excess of 0.91 Mg/yr (1 ton/yr), before control, the level(s) shall be established in accordance with paragraphs (b)(2) (i) through (iv) of this section.

(i) If more than one batch emission episode or more than one portion of a batch emission episode has been selected to be controlled, a single level for the batch cycle(s) or process(es) shall be calculated from the initial compliance demonstration. The appropriate parameter shall be determined for the peak-case conditions, as determined in § 63.1364(b)(7) (ii) and (iii), selected to be controlled. The average parameter monitoring level for the cycle(s) or

process(es) shall be based on the parameter value determined from the peak-case conditions.

(ii) Instead of establishing a single level for the batch cycle(s) or process(es), as described in paragraph (b)(2)(i) of this section, an owner or operator may establish separate levels for each batch emission episode, or portion thereof, selected to be controlled.

(iii) For devices controlling at least 9.1 Mg/yr (10 tons/yr) for which a performance test is required, the owner or operator may establish the parametric monitoring level(s) based on 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 rationale for the specific level for each parameter, including any data and calculations used to develop the level(s) and a description of why the level indicates proper operation of the control device shall be provided in the Precompliance report. The procedures specified in this section have not been approved by the Administrator and determination of the parametric monitoring level using these procedures is subject to review and approval by the Administrator.

(iv) For devices controlling at least 9.1 Mg/yr (10 tons/yr) for which a performance test is conducted at routine conditions, the owner or operator shall establish the parametric monitoring level(s) at conditions of the test. The level(s) established shall be provided in the Notification of Compliance Status report.

(3) Except as provided in paragraphs (b) (4) through (8) of this section, if the sum of HAP emissions, before control, routed to the device is greater than 0.91 Mg/yr (1.0 ton/yr), the appropriate parameter shall be monitored at 15-minute intervals, or at least once for batch emission episodes of duration shorter than 15 minutes, for the entire period in which the control device is functioning in achieving required removals.

(4) Affected sources with condensers on process vents shall establish the maximum condenser outlet gas temperature as a site-specific operating parameter. The affected source will be in violation of the emission standard if the condenser outlet gas temperature, averaged over the operating day for each process, is greater than the value established during the initial compliance demonstration.

(5) For affected sources using water scrubbers, the owner or operator shall establish a minimum scrubber water flow rate as a site-specific operating parameter. The affected source will be in violaton of the emission standard if the scrubber water flow rate, averaged over the operating day for each process, is below the minimum flow rate established during the initial compliance demonstration.

(6) For affected sources using carbon adsorbers, the owner or operator shall establish and monitor the site-specific operating parameter(s) in either paragraph (b)(6)(i), (ii), or (iii) of this section:

(i) A maximum outlet HAP concentration shall be established as the site-specific operating parameter. The affected source will be in violation of the emission standard if the outlet HAP concentration, averaged over the operating day for each process, is greater than the value established during the initial compliance demonstration.

(ii) The outlet TOC concentration shall be established as the site-specific operating parameter. The affected source will be in violation of the emission standard if the outlet TOC concentration, averaged over the operating day for each process, is greater than 20 ppmv.

(iii) The adsorption/regeneration cycle characteristics shall be established under absolute peak-case conditions, and the frequency of monitoring for the operating parameters specified below shall be described in the Notification of Compliance Status Report. The affected source will be in violation of the emission standard if any of the values for these parameters established during the initial compliance demonstration are exceeded.

(A) Maximum time of adsorption;

(B) Minimum bed temperature during regeneration;

(C) Maximum bed temperature after cooling;

(D) Minimum regeneration stream flow rate; and

(E) Maximum time between tests to determine bed poisoning.

(7) For affected sources using flares, the presence of the pilot flame shall be monitored. Loss of pilot flame is a violation of the emission standard.

(8) For affected sources using combustion devices, the temperature of the gases exiting the combustion chamber shall be monitored. The affected source will be in violation of the emission standard if the combustion chamber temperature, averaged over the operating day for each process, is less than the value established during the initial compliance demonstration.

(c) An owner or operator may request approval to monitor parameters other than those required by paragraphs (a)(2) through (8) and (b)(5) through (8) of this section. The request shall be submitted according to the procedures specified in § 63.8(f) of subpart A of this part or in the Precompliance Report (as specified in § 63.1367(a)(2)).

(d) Periods of time when monitoring measurements exceed the parameter values as well as periods of inadequate monitoring data do not constitute a violation if they occur under the conditions described in paragraph (d)(1) or (2) of this section.

(1) For continuous processes, during a startup, shutdown, or malfunction, and the facility follows its startup, shutdown, and malfunction plan.

(2) For batch processes, during a malfunction, and the facility follows its startup, shutdown, and malfunction plan.

(e) *Equipment leaks.* The owner or operator of any affected source complying with the requirements of subpart H of this part shall meet the monitoring requirements specified in subpart H of this part.

(f) *Heat exchangers.* The owner or operator of an affected source complying with the requirements of § 63.1362(g) shall meet the monitoring requirements specified in paragraph (f)(1) or (2) of this section.

(1) An owner or operator that elects to comply with the requirements of § 63.1362(g)(2) shall meet the monitoring requirements specified in § 63.104(b) of subpart F of this part.

(2) An owner or operator that elects to comply with the requirements of § 63.1362(g)(3) shall prepare and implement a monitoring plan that includes the information specified in paragraphs (f)(2) (i) through (iv) of this section. The plan shall require monitoring of one or more surrogate indicators or monitoring of one or more process parameters or other conditions that indicate a leak. Monitoring that is already being conducted for other purposes may be used to satisfy the requirements of this section.

(i) A description of the parameter or condition to be monitored and an explanation of how the selected parameter or condition will reliably indicate the presence of a leak.

(ii) The parameter level(s) or condition(s) that shall constitute a leak. This shall be documented by data or calculations showing that the selected levels or conditions will reliably identify leaks. The monitoring must be sufficiently sensitive to determine the range of parameter levels or conditions when the system is not leaking. When the selected parameter level or

condition is outside that range, a leak is detected.

(iii) The monitoring frequency which shall be no less frequent than monthly for the first 6 months and quarterly thereafter to detect leaks.

(iv) The records that will be maintained to document compliance with the requirements of § 63.1362(f).

(g) *Pollution prevention.* The owner or operator of an affected source that chooses to comply with the requirements of § 63.1362(j)(2) or (3) shall calculate annual rolling average values of the HAP and VOC factors in accordance with the procedures specified in § 63.1364(g)(1) (i) and (ii).

The owner or operator will be considered out of compliance any time the annual HAP factor exceeds the baseline HAP factor by the amount specified in either § 63.1364 (g)(1) or (2)(i), or the annual VOC factor exceeds the baseline VOC factor.

(h) *Emissions averaging.* The owner or operator of an affected source that chooses to comply with the requirements of § 63.1362(k) shall meet all monitoring requirements specified in paragraphs (a), (b), (c), and (d) of this section, as applicable, for all processes, storage tanks, and waste management units included in the emissions average.

§ 63.1366 Recordkeeping requirements.

(a) The owner or operator of an affected source shall keep records of daily values of equipment operating parameters specified to be monitored under § 63.1365, or specified by the Administrator. Records shall be kept in accordance with the requirements of applicable paragraphs of § 63.10 of subpart A of this part, as specified in the General Provisions applicability table of this subpart (Table 1). The owner or operator shall keep records up-to-date and readily accessible.

(1) A daily (24-hour) average shall be calculated as the average of all values for a monitored parameter recorded during the operating day.

(2) The operating day shall be the period defined in the operating permit or the Notification of Compliance Status in § 63.9(h) of subpart A of this part. It may be from midnight to midnight or another continuous 24-hour period.

(3) For every operating day in which the daily average value for an operating parameter is outside its established range, the owner or operator shall keep records of each parameter value reading taken during the day on which the excursion occurred.

(4) For processes subject to § 63.1362(j), records shall be maintained of annual HAP and VOC factors calculated every 30 days for continuous processes and every 10 batches for batch processes.

(5) For each bag leak detector used to monitor particulate HAP emissions from a fabric filter, the owner or operator shall maintain records of any bag leak detection alarm, including the date and time, with a brief explanation of the cause of the alarm and the corrective action taken.

(b) The owner or operator of an affected source that complies with the standards for process vents, storage tanks, and wastewater systems shall maintain up-to-date, readily accessible records of the information specified in paragraphs (b) (1) through (5) of this section to document that HAP emissions or HAP loadings (for wastewater) are below the limits specified in § 63.1362:

(1) The emissions of gaseous organic HAP and HCl per batch for each process.

(2) The wastewater concentrations and flowrates per POD and process.

(3) The number of batches per year for each batch process.

(4) The operating hours per year for continuous processes.

(5) The number of tank turnovers per year.

(c) The owner or operator of an affected source subject to the standards in § 63.1362(e), and implementing the leak detection and repair program specified in subpart H of this part, shall implement the recordkeeping requirements specified in § 63.181 of subpart H of this part. All records shall be retained for a period of 5 years, in accordance with the requirements of § 63.10(b)(1) of subpart A of this part.

(d) For unit operations occurring more than once per day, exceedances of established parameter limits shall result in no more than one violation per operating day for each monitored item of equipment utilized in the unit operation.

(e) For certain items of monitored equipment used for more than one type of unit operation in the course of an operating day, exceedances shall result in no more than one violation per operating day, per item of monitored equipment, for each type of unit operation in which the item is in service.

(f) An owner or operator of an affected source that chooses to comply with the requirements of § 63.1362(k) shall maintain up-to-date records of the following information:

(1) An Implementation Plan which shall include in the plan, for all emission points included in each of the emissions averages, the information listed in paragraphs (f)(1) (i) through (v) of this section.

(i) The identification of all emission points in each emissions average.

(ii) The values of all parameters needed for input to the emission debits and credits equations in § 63.1364(i).

(iii) The calculations used to obtain the debits and credits.

(iv) The estimated values for all parameters required to be monitored under § 63.1365(h) for each emission point included in an average. These parameter values, or as appropriate, limited ranges for parameter values, shall be specified as enforceable operating conditions for the operation of the process, storage tank, or waste management unit, as appropriate. Changes to the parameters must be reported as required by § 63.1367(d).

(v) A statement that the compliance demonstration, monitoring, inspection, recordkeeping and reporting provisions in § 63.1364(i), § 63.1365(h), and § 63.1367(d) that are applicable to each emission point in the emissions average will be implemented beginning on the date of compliance.

(2) The Implementation Plan shall demonstrate that the emissions from the emission points proposed to be included in the average will not result in greater hazard or, at the option of the operating permit authority, greater risk to human health or the environment than if the emission points were controlled according to the provisions in § 63.1362(b) through (d).

(i) This demonstration of hazard or risk equivalency shall be made to the satisfaction of the operating permit authority.

(A) The Administrator may require an owner or operator to use specific methodologies and procedures for making a hazard or risk determination.

(B) The demonstration and approval of hazard or risk equivalency shall be made according to any guidance that the Administrator makes available for use or any other technically sound information or methods.

(ii) An Implementation Plan that does not demonstrate hazard or risk equivalency to the satisfaction of the Administrator shall not be approved. The Administrator may require such adjustments to the Implementation Plan as are necessary in order to ensure that the average will not result in greater hazard or risk to human health or the environment than would result if the emission points were controlled according to § 63.1362(b) through (d).

(iii) A hazard or risk equivalency demonstration must satisfy the requirements specified in paragraphs (f)(2)(iii)(A) through (C) of this section.

(A) Be a quantitative, comparative chemical hazard or risk assessment;

(B) Account for differences between averaging and non-averaging options in chemical hazard or risk to human health or the environment; and

(C) Meet any requirements set by the Administrator for such demonstrations.

(3) Records as specified in paragraphs (a), (b) and (d) of this section.

(4) A calculation of the debits and credits as specified in § 63.1364(i) for the last quarter and the prior four quarters.

(g) The owner or operator of an affected source subject to the requirements in § 63.1362(g) shall retain the records identified in paragraphs (g)(1) through (4) of this section as specified in paragraph (a) of this section.

(1) Monitoring data required by § 63.1362(g)(2) or (3) indicating a leak was detected, and if demonstrated not to be a leak, the basis for that determination.

(2) Records of any leaks detected by procedures subject to § 63.1362(g)(3)(ii) and the date the leak was discovered.

(3) The dates of efforts to repair leaks.

(4) The method or procedure used to confirm repair of a leak and the date repair was confirmed.

§ 63.1367 Reporting requirements.

(a) The owner or operator of an affected source that elects to comply with the emission limit or emission reduction requirements for process vents, storage tanks, and waste management units, shall comply with the reporting requirements of applicable paragraphs of §§ 63.9 and 63.10 of subpart A of this part, as specified in the General Provisions applicability table.

(1) The Notification of Compliance Status report required under § 63.9(h) shall be submitted within 150 calendar days of the compliance date and shall include the information specified in paragraphs (a)(1)(i) through (iv) of this section.

(i) The results of any applicability determinations, emission calculations, or analyses used to identify and quantify HAP emissions from applicable sources.

(ii) The results of emissions profiles, performance tests, engineering analyses, design evaluations, or calculations used to demonstrate compliance. For performance tests, results should include descriptions of sampling and analysis procedures and quality assurance procedures.

(iii) Descriptions of monitoring devices, monitoring frequencies, and the values of monitored parameters established during the initial compliance determinations, including data and calculations to support the levels established.

(iv) For fabric filters that are monitored with bag leak detectors, descriptions of procedures for the proper operation and maintenance of the fabric filters and corrective actions to be taken when the particulate concentration exceeds the standard and activates the alarm.

(2) The Precompliance report shall be submitted 12 months prior to the compliance date of the standard. For new sources, the Precompliance report shall be submitted to the Administrator with the application for approval of construction or reconstruction. The Administrator shall have 60 days to approve or disapprove the plan. The plan shall be considered approved if the Administrator either approves the plan in writing, or fails to disapprove the plan in writing. The 60 day period shall begin when the Administrator receives the request. If the request is denied, the owner or operator must still be in compliance with the standard by the compliance date. The Precompliance report shall include the information specified in paragraphs (a)(2)(i) through (iii) of this section.

(i) Requests for approval to use alternative monitoring parameters according to the procedures specified in § 63.8(f) of subpart A of this part or requests to set monitoring parameters according to § 63.1365(b)(2)(iii).

(ii) Descriptions of how the control devices subject to § 63.1365(a)(1) and (b)(1) will be checked to verify that they are operating as designed.

(iii) A description of test conditions and limits of operation for control devices tested under normal conditions, and the corresponding monitoring parameter values.

(b) *Quarterly reports.* The owner or operator shall submit to the Administrator, as part of the quarterly excess emissions and continuous monitoring system performance report and summary report required by § 63.10(e)(3) of subpart A of this part, the recorded information specified in paragraphs (b)(1) though (3) of this section.

(1) Reports of monitoring data, including 15-minute monitoring values, daily average values of monitored parameters for all operating days when the average values were outside the ranges established in the Notification of Compliance Status or operating permit, and records of all alarms from the bag leak detection systems.

(2) Reports of the duration of periods when monitoring data are not collected for each excursion caused by insufficient monitoring data. An excursion means either of the two cases listed in paragraph (b)(2)(i) or (ii) of this section. For a control device where multiple parameters are monitored, if one or more of the parameters meets the excursion criteria in paragraph (b)(2)(i) or (ii) of this section, this is considered a single excursion for the control device.

(i) When the period of control device operation is 4 hours or greater in an operating day and monitoring data are insufficient to constitute a valid hour of data, as defined in paragraph (a)(2)(iii) of this section, for at least 75 percent of the operating hours.

(ii) When the period of control device operation is less than 4 hours in an operating day and more than one of the hours during the period of operation does not constitute a valid hour of data due to insufficient monitoring data.

(iii) Monitoring data are insufficient to constitute a valid hour of data, as used in paragraphs (b)(2)(i) and (ii) of this section, if measured values are unavailable for any of the 15-minute periods within the hour.

(3) Whenever a process change, as defined in § 63.115(e) of subpart G of this part, is made that causes the emission rate from a de minimis emission point to become a process vent with an emission rate of 0.45 kg/yr (1 lb/yr) or greater, or a change is made in any of the information submitted in the Notification of Compliance Report, 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 summary report required under § 63.10(e)(3) of subpart A of this part. The report shall include:

(i) A description of the process change;

(ii) The results of the recalculation of the emission rate;

(iii) Revisions to any of the information reported in the original Notification of Compliance Status under § 63.1367(a)(1); and

(iv) Information required by the Notification of Compliance Status under § 63.1367(a)(1) for changes involving the addition of processes or equipment.

(c) *Equipment leaks.* The owner or operator of an affected source subject to the standards in § 63.1362(e), shall implement the reporting requirements specified in § 63.182 of this part. Copies of all reports shall be retained as records for a period of 5 years, in accordance with the requirements of § 63.10(b)(1) of subpart A of this part.

(d) *Emissions averaging.* An owner or operator of an affected source that chooses to comply with the requirements of § 63.1362(k) shall submit all information as specified in § 63.1366(f) for all emission points included in the emissions average. The

owner or operator shall also submit to the Administrator all information specified in paragraph (b) of this section for each emission point included in the emissions average.

(1) The reports shall also include the information listed in paragraphs (c)(1)(i) through (iv) of this section:

(i) Any changes of the processes, storage tanks, or waste management unit included in the average.

(ii) The calculation of the debits and credits for the reporting period.

(iii) Changes to the Implementation Plan which affect the calculation methodology of uncontrolled or controlled emissions or the hazard or risk equivalency determination.

(iv) Any changes to the parameters monitored according to § 63.1365(h).

(2) Every 4th quarter report shall include the results according to § 63.1366(f)(4) to demonstrate the emissions averaging provisions of § 63.1362(k), § 63.1364(i), § 63.1365(h), and § 63.1366(f) are satisfied.

(e) *Heat exchange systems.* If an owner or operator of an affected source invokes the delay of repair provisions for a heat exchange system as specified in § 63.1362(g)(5), the information in paragraphs (e) (1) through (5) of this section shall be submitted in the next excess emissions report required in paragraph (b) of this section. If the leak remains unrepaired, the information shall also be submitted in each subsequent report, until repair of the leak is reported.

(1) The presence of the leak and the date the leak was detected.

(2) Whether or not the leak has been repaired.

(3) The reason(s) for delay of repair. If delay of repair is invoked due to the reasons described in § 63.104(e)(2) of subpart F of this part, documentation of emissions estimates shall also be submitted.

(4) If the leak remains unrepaired, the expected date of repair.

(5) If the leak is repaired, the date the leak was successfully repaired.

(f) An owner or operator who submits an operating permit application instead of an Implementation plan shall submit the information specified in paragraphs (e) (1) through (3) of this section with the operating permit.

(1) The information specified in § 63.1366(f) for emission points included in the emissions average;

(2) The information specified in § 63.9(h) of subpart A of this part, as applicable; and

(3) The information specified in paragraph (a)(2) of this section, as applicable.

§ 63.1368 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) [Reserved]

TABLE 1 TO SUBPART MMM.—GENERAL PROVISIONS APPLICABILITY TO SUBPART MMM

Reference to subpart A	Applies to subpart MMM	Comment
§ 63.1(a)(1)	Yes	Additional terms are defined in § 63.1361.
§ 63.1(a)(2)–(3)	Yes.	
§ 63.1(a)(4)	Yes	Subpart MMM (this table) specifies applicability of each paragraph in subpart A to subpart MMM.
§ 63.1(a)(5)	N/A	Reserved.
§ 63.1(a)(6)–(7)	Yes.	
§ 63.1(a)(8)	No	Discusses State programs.
§ 63.1(a)(9)	N/A	Reserved.
§ 63.1(a)(10)–(14)	Yes.	
§ 63.1(b)(1)	No	§ 63.1360 specifies applicability.
§ 63.1(b)(2)–(3)	Yes.	
§ 63.1(c)(1)	Yes	Subpart MMM (this table) specifies the applicability of each paragraph in subpart A to sources subject to subpart MMM.
§ 63.1(c)(2)	No	Area sources are not subject to subpart MMM.
§ 63.1(c)(3)	N/A	Reserved.
§ 63.1(c)(4)–(5)	Yes.	
§ 63.1(d)	N/A	Reserved.
§ 63.1(e)	Yes.	
§ 63.2	Yes	Additional terms are defined in § 63.1361; when overlap between subparts A and MMM occurs, subpart MMM takes precedence.
§ 63.3	Yes	Other units used in subpart MMM are defined in that subpart.
§ 63.4(a)(1)–(3)	Yes.	
§ 63.4(a)(4)	N/A	Reserved.
§ 63.4(a)(5)–(c)	Yes.	
§ 63.5(a)	Yes	Except replace the terms ''source'' and ''stationary source'' in § 63.5(a)(1) of subpart A with ''affected source''.
§ 63.5(b)(1)	Yes.	
§ 63.5(b)(2)	N/A	Reserved.
§ 63.5(b)(3)–(5)	Yes.	
§ 63.5(b)(6)	No	§ 63.1360(g) specifies requirements for determining applicability of added PAI equipment.
§ 63.5(c)	N/A	Reserved.
§ 63.5(d)–(e)	Yes.	
§ 63.5(f)(1)	Yes	Except replace ''source'' in § 63.5(f)(1) of subpart A with ''affected source''.
§ 63.5(f)(2)	Yes.	
§ 63.6(a)	Yes.	
§ 63.6(b)(1)–(2)	No	§ 63.1363 specifies compliance dates.
§ 63.6(b)(3)–(4)	Yes.	
§ 63.6(b)(5)	Yes.	
§ 63.6(b)(6)	N/A	Reserved.
§ 63.6(b)(7)	Yes.	

TABLE 1 TO SUBPART MMM.—GENERAL PROVISIONS APPLICABILITY TO SUBPART MMM—Continued

Reference to subpart A	Applies to subpart MMM	Comment
§ 63.6(c)(1)–(2)	Yes	Except replace ''source'' in § 63.6(c)(1)–(2) of subpart A with ''affected source''.
§ 63.6(c)(3)–(4)	N/A	Reserved.
§ 63.6(c)(5)	Yes.	
§ 63.6(d)	N/A	Reserved.
§ 63.6(e)	Yes	Except § 63.1360 specifies that the standards in subpart MMM apply during startup and shutdown for batch processes; therefore, these activities would not be covered in the startup, shutdown, and malfunction plan.
§ 63.6(f)	Yes	Except § 63.1360 specifies that the standards in subpart MMM also apply during startup and shutdown for batch processes.
§ 63.6(g)	Yes	An alternative standard has been proposed; however, affected sources will have the opportunity to demonstrate other alternatives to the Administrator.
§ 63.6(h)	No	Subpart MMM does not contain any opacity or visible emissions standards.
§ 63.6(i)(1)	Yes.	
§ 63.6(i)(2)	Yes	Except replace ''source'' in § 63.6(2)(i) and (ii) of subpart A with ''affected source.''
§ 63.6(i)(3)–(14)	Yes.	
§ 63.6(i)(15)	N/A	Reserved.
§ 63.6(i)(16)	Yes.	
§ 63.6(j)	Yes.	
§ 63.7(a)(1)	Yes.	
§ 63.7(a)(2)(i)–(vi)	Yes	§ 63.1367 specifies that test results must be submitted in the Notification of Compliance Status due 150 days after the compliance date.
§ 63.7(a)(2)(vii)–(viii)	N/A	Reserved.
§ 63.7(a)(2)(ix)–(c)	Yes.	
§ 63.7(d)	Yes	Except replace ''source'' in § 63.7(d) of subpart A with ''affected source.''
§ 63.7(e)(1)	Yes	§ 63.1364 contains test methods specific to PAI sources.
§ 63.7(e)(2)	Yes.	
§ 63.7(e)(3)	Yes	Except § 63.1364 specifies less than 3 runs for certain tests.
§ 63.7(e)(4)	Yes.	
§ 63.7(f)	Yes.	
§ 63.7(g)(1)	Yes	Except § 63.1367(a) specifies that the results of the performance test be submitted with the Notification of Compliance Status report.
§ 63.7(g)(2)	N/A	Reserved.
§ 63.7(g)(3)	Yes.	
§ 63.7(h)	Yes.	
§ 63.8(a)(1)–(2)	Yes.	
§ 63.8(a)(3)	N/A	Reserved.
§ 63.8(a)(4)	Yes.	
§ 63.8(b)(1)	Yes.	
§ 63.8(b)(2)	No	§ 63.1365 specifies CMS requirements.
§ 63.8(b)(3)–(c)(3)	Yes.	
§ 63.8(c)(4)	No	§ 63.1365 specifies monitoring frequencies.
§ 63.8(c)(5)–(8)	No.	
§ 63.8(d)–(f)(3)	Yes.	
§ 63.8(f)(4)	Yes	Except § 63.1367(b) specifies that requests may also be included in the Precompliance report.
§ 63.8(f)(5)	Yes.	
§ 63.8(f)(6)	No	Subpart MMM does not require CEM's.
§ 63.8(g)	No	§ 63.1365 specifies data reduction procedures.
§ 63.9(a)–(d)	Yes.	
§ 63.9(e)	No.	
§ 63.9(f)	No	Subpart MMM does not contain opacity and visible emission standards.
§ 63.9(g)	No.	
§ 63.9(h)(1)	Yes.	
§ 63.9(h)(2)(i)	Yes	Except § 63.1367(a)(1) specifies additional information to include in the Notification of Compliance Status report.
§ 63.9(h)(2)(ii)	No	§ 63.1367 specifies the Notification of Compliance Status report is to be submitted within 150 days after the compliance date.
§ 63.9(h)(3)	Yes.	
§ 63.9(h)(4)	N/A	Reserved.
§ 63.9(h)(5)–(6)	Yes.	
§ 63.9(i)–(j)	Yes.	
§ 63.10(a)–(b)(1)	Yes.	
§ 63.10(b)(2)	No	§ 63.1366 specifies recordkeeping requirements.
§ 63.10(b)(3)	Yes.	
§ 63.10(c)	Yes.	
§ 63.10(d)(1)	Yes.	
§ 63.10(d)(2)	Yes	Except § 63.1367(a) specifies that the results of the performance test be submitted with the Notification of Compliance Status report.
§ 63.10(d)(3)	No	Subpart MMM does not include opacity and visible emission standards.
§ 63.10(d)(4)	Yes.	

TABLE 1 TO SUBPART MMM.—GENERAL PROVISIONS APPLICABILITY TO SUBPART MMM—Continued

Reference to subpart A	Applies to subpart MMM	Comment
§ 63.10(d)(5)	Yes	Except that actions and reporting for batch processes do not apply during startup and shutdown.
§ 63.10(e)(1)–(2)(i)	Yes.	
§ 63.10(e)(2)(ii)	No	Subpart MMM does not include opacity monitoring requirements.
§ 63.10(e)(3)	Yes.	
§ 63.10(e)(4)	No	Subpart MMM does not include opacity monitoring requirements.
§ 63.10(f)	Yes.	
§ 63.11–§ 63.15	Yes.	

TABLE 2 TO SUBPART MMM.—PROPOSED STANDARDS FOR PAI PRODUCTION

Emission source	Applicability	Requirement
Process vents	Existing:	
	Processes having uncontrolled organic HAP emissions ≥0.15 Mg/yr.	90% for organic HAP per process or ≤20 ppmv TOC.
	Processes having uncontrolled HCl emissions ≥6.8 Mg/yr.	94% for HCl per process.
	Individual process vents meeting TRE criteria that have gaseous organic HAP emissions controlled to less than 90% as of proposal date.	98% gaseous organic HAP control per vent or ≤20 ppmv TOC.
	New:	
	Processes having uncontrolled organic HAP emissions ≥0.15 Mg/yr.	98% for gaseous organic HAP per process or ≤20 ppmv TOC at control device outlet.
	Processes having uncontrolled HCl emissions ≥6.8 Mg/yr and <191 Mg/yr.	94% for HCl per process.
	Processes having uncontrolled HCl emissions ≥191 Mg/yr.	99.9% for HCl per process.
Storage tanks	Existing: ≥0.113 Mg/yr uncontrolled HAP emissions:	
	• <76 m^3 capacity	41% control per tank.
	• ≥76 m^3 capacity	95% control per tank.
	New: ≥0.45 kg/yr uncontrolled HAP emissions	98% control per tank or ≤20 ppmv TOC at control device outlet.
Wastewater [a]	Existing: ≥10,000 ppmw Table 9 compounds at any flowrate or ≥1,000 ppmw Table 9 compounds at ≥10 L/min.	Reduce concentration of total Table 9 compounds to <50 ppmw (or other options).
	New:	
	Same criteria for existing sources	Reduce concentration of total Table 9 compounds to <50 ppmw (or other options).
	Total HAP load in wastewater POD streams ≥2,100 Mg/yr.	99% reduction of Table 9 compounds from all streams.
Equipment leaks	Subpart H	Subpart H with minor changes.
Bag dumps and product dryers.	All	Particulate HAP concentration not to exceed 0.01 gr/dscf.
Heat exchange systems	Each heat exchange system used to cool process equipment in PAI manufacturing operations.	Monitoring and leak repair program as in HON.

[a] Table 9 is listed in the appendix to subpart G of 40 CFR part 63.

[FR Doc. 97–29149 Filed 11–7–97; 8:45 am]

BILLING CODE 6560–50–P

federal register

Monday
November 10, 1997

Part III

Department of Health and Human Services

Food and Drug Administration
National Institutes of Health

Protection of Human Subjects: Suggested Revisions to the Institutional Review Board (IRB) Expedited Review List; Request for Comments; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0447]

Protection of Human Subjects: Suggested Revisions to the Institutional Review Board (IRB) Expedited Review List; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), in consultation with the Office for Protection from Research Risks (OPRR), is requesting written comments relating to the proposed republication of the Expedited Review List that identifies certain research involving human subjects that may be reviewed by the Institutional Review Board (IRB) through the expedited review procedures authorized in FDA's regulations. Since the list was created, significant advances have been made in medicine and biological technology such that it is appropriate to consider revising this list to include additional categories of research. FDA seeks information and suggestions from the research community and the public on possible revisions to the Expedited Review List. The proposed list included in this notice is for discussion purposes only. FDA and OPRR will consider the comments received in deciding whether to revise the list.

DATES: Submit written comments on or before March 10, 1998.

ADDRESSES: Submit written comments to Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Because FDA and OPRR are simultaneously publishing identical lists, comments need not be sent to both agencies.

FOR FURTHER INFORMATION CONTACT: Paul W. Goebel, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1685.

SUPPLEMENTARY INFORMATION: FDA's regulations for protection of human subjects can be found under part 50 (21 CFR part 50), and the regulations for IRB's under part 56 (21 CFR part 56). The regulations require, with limited exceptions, review of research involving human subjects by an IRB and obtaining and documenting legally effective informed consent for all human subjects of research.

Section 56.110 provides for expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in previously approved research during the period for which approval is authorized. In the **Federal Register** of January 26, 1981 (46 FR 8392), FDA published the Expedited Review List that is referenced in § 56.110(a), which is a list of categories of research that could be reviewed by an IRB through the expedited review procedures set forth in FDA's regulations. In the **Federal Register** of January 27, 1981 (46 FR 8980), a separate Expedited Review List is referenced in 45 CFR part 46 that applies to matters under the Department of Health and Human Services' (HHS) jurisdiction was published. The HHS and FDA lists that published in 1981 differ slightly, in that item 9 on the 1981 HHS list pertains only to 45 CFR 46.110. Because behavioral research was not regulated by FDA, that category was not included in the list published by FDA in 1981, which is reproduced here to facilitate comparison with the proposed list.

Current List: Items Included in the List Published in 1981

The current (1981) list allows an IRB to utilize the expedited review procedure for research activities involving no more than minimal risk and in which the only involvement of human subjects will be in one or more of the following categories (carried out through standard methods):

(1) Collection of hair and nail clippings, in a non-disfiguring manner; deciduous teeth; and permanent teeth if patient care indicates a need for extraction.

(2) Collection of excreta and external secretions including sweat, uncannulated saliva, placenta at delivery, and amniotic fluid at the time of rupture of the membrane prior to or during labor.

(3) Recording of data from subjects who are 18 years of age [of] older using noninvasive procedures routinely employed in clinical practice. This includes the use of physical sensors that are applied either to the surface of the body or at a distance and do not involve input of matter or significant amounts of energy into the subject or an invasion of the subject's privacy. It also includes such procedures as weighting, electrocardiography, electroencephalography, thermography, detection of naturally occurring radioactivity, diagnostic echography, and electroretinography. This category does not include exposure to electromagnetic radiation outside the visible range (for example, x-rays, microwaves).

(4) Collection of blood samples by venipuncture, in amounts not exceeding 450 milliliters in an eight-week period and no more often than two times per week, from subjects who are 18 years of age or older and who are in good health and not pregnant.

(5) Collection of both supra- and subgingival dental plaque and calculus, provided the procedure is not more invasive than routine prophylactic scaling of the teeth and the process is accomplished in accordance with accepted prophylactic techniques.

(6) Voice recordings made for research purposes such as investigations of speech defects.

(7) Moderate exercise by healthy volunteers.

(8) The study of existing data, documents, records, pathological specimens, or diagnostic specimens.

(9) Research on drugs or devices for which an investigational new drug exemption or an investigational device exemption is not required.

FDA, in consultation with OPRR, is proposing to revise the current Expedited Review List to include additional procedures or categories of research that may be reviewed under the expedited review procedure. FDA seeks comments from the public on procedures or categories of research involving human subjects that may be amenable to expedited review in accordance with the procedures outlined in § 56.110(b), instead of review at a convened meeting of the IRB. The proposed list is being published for discussion purposes only. FDA and OPRR intend to determine, after review of comments received, whether any changes should be made to the current list. FDA and OPRR have not determined that the suggested additional categories of research in the proposed list are appropriate for expedited review procedures. The proposed list does not bind FDA or OPRR to include any of the suggested categories in a list that is expected to be published after review of comments.

The following is a proposed revision of the current Expedited Review Lists published in the **Federal Register** of January 26, 1981 (46 FR 8392), and January 27, 1981 (46 FR 8980). In order to simplify review, the proposed revision is identical to the list published elsewhere in this issue of the **Federal Register** by OPRR. Judgment is reserved on whether FDA and OPRR will publish identical lists after comments are received and reviewed. FDA welcomes and encourages comments from the research community and the public.

Proposed List: Research Activities Which May Be Reviewed Through Expedited Review Procedures [1]

Research activities (carried out through standard methods) that: (1) Involve no more than minimal risk, and

[1] The expedited review procedure consists of a review of research involving human subjects by the IRB chairperson or by one or more experienced reviewers designated by the chairperson from among members of the IRB in accordance with the requirements set forth in § 56.110.

(2) appear in one or more of the following categories may be reviewed by the IRB through the expedited review procedure authorized in 45 CFR 46.110 and § 56.110. The activities that appear on this list should not be deemed to be of minimal risk simply because they are included on this list. Appearance on this list merely means that the activity is eligible for review through the expedited process when the specific circumstances of the proposed research involve no more than minimal risk to the human subjects. The categories in this list apply regardless of the age of subjects, except as noted.

(1) Research on drugs or devices for which an investigational new drug exemption or an investigational device exemption is not required.

(2) Collection of blood samples by finger stick or venipuncture as follows:

(a) From healthy, nonpregnant adults [2] who weigh at least 110 pounds (lb), in amounts not exceeding 550 milliliters (mL) in an 8-week period and no more than 2 times per week.

(b) From healthy, pregnant adults who weigh at least 110 lb, in amounts not exceeding 100 mL in an 8-week period and no more than 2 times per week.

(c) From healthy children, in amounts not exceeding 3 mL/kilograms (kg) in an 8-week period and no more than 2 times per week.

(d) From medically vulnerable adults who weigh at least 110 lb, in amounts not exceeding 50 mL in an 8-week period and no more than 2 times per week.

(3) Prospective collection for research purposes of the following biological specimens:

(a) Hair and nail clippings in a nondisfiguring manner.

(b) Deciduous teeth at time of exfoliation, or if routine patient care indicates a need for extraction.

(c) Permanent teeth if routine patient care indicates a need for extraction.

(d) Excreta and external secretions (including sweat).

(e) Uncannulated saliva collected either in an unstimulated fashion or stimulated by chewing gumbase or wax or by applying a dilute citric solution to the tongue.

(f) Placenta removed at delivery.

(g) Amniotic fluid obtained at the time of rupture of the membrane prior to or during labor.

(h) Supra-and subgingival dental plaque and calculus, provided the collection procedure is not more invasive than routine prophylactic scaling of the teeth and the process is accomplished in accordance with accepted prophylactic techniques.

(i) Stool cultures obtained by rectal swab.

(j) Mucosal and skin cells collected by buccal scraping or swab, skin swab, or mouth washings.

(k) Sputum collected after saline mist nebulization.

(4) Research involving existing identifiable data, documents, records, or biological specimens (including pathological or diagnostic specimens) where these materials, in their entirety, have been collected prior to the research, for a purpose other than the proposed research.

(5) Research involving solely (a) prospectively collected identifiable residual or discarded specimens, or (b) prospectively collected identifiable data, documents, or records, where (a) or (b) has been generated for nonresearch purposes.

(6) Collection of data through use of the following procedures:

(a) Noninvasive procedures routinely employed in clinical practice and not involving exposure to electromagnetic radiation outside the visible range (i.e., not involving x-rays, microwaves, etc.).

(b) Physical sensors that are applied either to the surface of the body or at a distance and do not involve input of significant amounts of energy into the subject or an invasion of the subject's privacy.

(c) Weighing, testing sensory acuity, electrocardiography, electroencephalography, thermography, detection of naturally occurring radioactivity, electroretinography, echography, sonography, ultrasound, magnetic resonance imaging (MRI), diagnostic infrared imaging, doppler blood flow, and echocardiography.

(d) Moderate exercise, muscular strength testing, body composition assessment, and flexibility testing involving healthy subjects.

(7) Collection of data from voice, video, or image recordings made for research purposes where identification of the subjects and/or their responses would not reasonably place them at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation.

(8) Research on individual or group characteristics or behavior (including but not limited to research involving perception, cognition, surveys, interviews, and focus groups) as follows:

(a) Involving adults, where (i) the research does not involve stress to subjects, and (ii) identification of the subjects and/or their responses would not reasonably place them at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation.

(b) Involving children, where (i) the research involves neither stress to subjects nor sensitive information about themselves, or their family; (ii) no alteration or waiver of regulatory requirements for parental permission has been proposed; and (iii) identification of the subjects and/or their responses would not reasonably place them or their family members at risk of criminal or civil liability or be damaging to the financial standing, employability, or reputation of themselves or their family members.

(9) Research previously approved by the convened IRB as follows:

(a) Where (i) the research is permanently closed to the enrollment of new subjects; (ii) all subjects have completed all research-related interventions; and (iii) the research remains active only for long-term follow-up of subjects; or

(b) Where the research remains active only for the purposes of data analysis; or

(c) Where the IRB has determined that the research involves no greater than minimal risk and no additional risks have been identified; or

(d) Where no subjects have been enrolled and no additional risks have been identified.

The following tabulation of changes is included to enable readers to more easily compare the categories of research included in both lists.

[2] Throughout this document, when FDA refers to ''adult,'' FDA defers to state law for determining the age of majority.

COMPARISON OF THE PROPOSED LIST WITH THE CURRENT LIST

Proposed Expedited Review List	1981 (Current) Expedited Review List
1. Research on drugs or devices for which an investigational new drug exemption or an investigational device exemption is not required.	Unchanged; currently number 9.
2. Collection of blood samples by finger stick or venipuncture as follows:	Currently number 4, limited to venipuncture; ''finger stick'' not included.
(a) From healthy, nonpregnant adults, in amounts not exceeding 550 mL in an 8-week period and no more than 2 times per week.	Amounts currently limited to 450 ml.
(b) From healthy, pregnant adults, in amounts not exceeding 100 mL in an 8-week period and no more than 2 times per week.	Not included.
(c) From healthy children, in amounts not exceeding 3 mL/kg in an 8-week period and no more than 2 times per week.	Not included.
(d) From medically vulnerable adults, in amounts not exceeding 50 mL in an 8-week period and no more than 2 times per week.	Not included.
3. Prospective collection for research purposes of the following biological specimens:	''Prospective'' and ''for research purposes'' currently not included.
(a) Hair and nail clippings in a nondisfiguring manner.	Currently part of number 1; unchanged.
(b) Deciduous teeth at time of exfoliation, or if routine patient care indicates a need for extraction.	Currently part of number 1; ''deciduous teeth'' included without qualifiers.
(c) Permanent teeth if routine patient care indicates a need for extraction.	Currently part of number 1; ''routine'' not included.
(d) Excreta and external secretions (including sweat).	Currently part of number 2; unchanged.
(e) Uncannulated saliva collected either in an unstimulated fashion or stimulated by chewing gumbase or wax or by applying a dilute citric solution to the tongue.	Currently part of number 2; ''uncannulated saliva'' included without qualifiers.
(f) Placenta removed at delivery.	Currently part of number 2; unchanged.
(g) Amniotic fluid obtained at the time of rupture of the membrane prior to or during labor.	Currently part of number 2; unchanged.
(h) Supra- and subgingival dental plaque and calculus, provided the collection procedure is not more invasive than routine prophylactic scaling of the teeth and the process is accomplished in accordance with accepted prophylactic techniques.	Currently number 5; ''procedure'' is not qualified with the word ''collection.''
(i) Stool cultures obtained by rectal swab.	Not included.
(j) Mucosal and skin cells collected by buccal scraping or swab, skin swab, or mouth washings.	Not included.
(k) Sputum collected after saline mist nebulization.	Not Included.
4. Research involving existing identifiable data, documents, records, or biological specimens (including pathological or diagnostic specimens) where these materials, in their entirety, have been collected prior to the research, for a purpose other than the proposed research.	Currently number 8; stated as: ''The study of existing data, documents, records, pathological specimens, or diagnostic specimens.''
5. Research involving solely (a) prospectively collected identifiable residual or discarded specimens, or (b) prospectively collected identifiable data, documents, or records, where (a) or (b) has been generated for nonresearch purposes.	Not included.
6. Collection of data through use of the following procedures:	Currently number 3; ''recording'' instead of ''collection.''
(a) Noninvasive procedures routinely employed in clinical practice and not involving exposure to electromagnetic radiation outside the visible range (i.e., not involving x-rays, microwaves, etc.).	Currently number 3; limited to subects 18 years of age or older.
(b) Physical sensors that are applied either to the surface of the body or at a distance and do not involve input of significant amounts of energy into the subject or an invasion of the subject's privacy.	Currently number 3; limited to subjects 18 years of age or older.

COMPARISON OF THE PROPOSED LIST WITH THE CURRENT LIST—Continued

Proposed Expedited Review List	1981 (Current) Expedited Review List
(c) Weighing, testing sensory acuity, electrocardiography, electroencephalography, thermography, detection of naturally occurring radioactivity, electroretinography, echography, sonography, ultrasound, magnetic resonance imaging (MRI), diagnostic infrared imaging, doppler blood flow, and echocardiography.	Currently number 3; limited to subjects 18 years of age or older; limited echography to ''diagnostic echography''; does not include ''sonography, ultrasound, magnetic resonance imaging (MRI), diagnostic infrared imaging, doppler blood flow, and echocardiography.''
(d) Moderate exercise, muscular strength testing, body composition assessment, and flexibility testing involving health subjects.	Currently number 7; limited to ''Moderate exercise by healthy volunteers.''
7. Collection of data from voice, video, or image recordings made for research purposes where identification of the subjects and/or their responses would not reasonably place them at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation.	Currently number 6; stated as: ''Voice recordings made for research purposes such as investigations of speech defects.''
8. Research on individual or group characteristics or behavior (including but not limited to research involving perception, cognition, surveys, interviews, and focus groups) as follows:	Not included.
(a) Involving adults, where (i) the research does not involve stress to subjects, and (ii) identification of the subjects and/or their responses would not reasonably place them at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation.	
(b) Involving children, where (i) the research involves neither stress to subjects nor sensitive information about themselves, or their family; (ii) no alteration or waiver of regulatory requirements for parental permission has been proposed; and (iii) identification of the subjects and/or their responses would not reasonably place them or their family members at risk of criminal or civil liability or be damaging to the financial standing, employability, or reputation of themselves or their family members.	
9. Research previously approved by the convened IRB as follows:	Not included.
(a) Where (i) the research is permanently closed to the enrollment of new subjects; (ii) all subjects have completed all research-related interventions; and (iii) the research remains active only for long-term follow-up of subjects; or	
(b) Where the research remains active only for the purposes of data analysis; or	
(c) Where the IRB has determined that the research involves no greater than minimal risk and no additional risks have been identified; or	
(d) Where no subjects have been enrolled and no additional risks have been identified.	

Dated: November 4, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–29651 Filed 11–5–97; 3:51 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Protection of Human Subjects: Suggested Revisions to the Institutional Review Board (IRB) Expedited Review List

AGENCY: Office for Protection from Research Risks, National Institutes of Health, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Office for Protection from Research Risks (OPRR), in consultation with the Food and Drug Administration (FDA), is requesting written comments relating to the proposed republication of the list that identifies certain research involving human subjects which may be reviewed by the Institutional Review Board (IRB) through the expedited review procedure authorized in § 46.110 of 45 CFR Part 46. This list was originally published in 1981 and subsequently referenced in the Federal Policy (Common Rule) for the Protection of Human Subjects (56 FR 28003). Pursuant to § 46.110(a), the Secretary, HHS, has the authority to amend and republish the list. In the 16 years since the list was created, significant advances have been made in medicine and biological technology such that it is appropriate to consider revising this list

to include additional procedures or categories of research. OPRR seeks information and suggestions from the research community and public on possible revisions to the expedited review list.

DATES: Submit written comments on or before March 10, 1998.

ADDRESSES: Comments should be sent to Michele Russell-Einhorn, Director of Regulatory Affairs, Office for Protection from Research Risks, National Institutes of Health, 6100 Executive Blvd., Suite 3B01, Rockville, Md. 20892–7507. Since OPRR and FDA are simultaneously publishing identical lists, comments need not be sent to both agencies.

FOR FURTHER INFORMATION CONTACT: Michele Russell-Einhorn at the address above, or telephone (301) 435–5649 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The Federal Policy (Common Rule) for the Protection of Human Subjects was published in the **Federal Register** on June 18, 1991 (56 FR 28003) and is employed by 17 Executive Branch agencies. This Federal Policy requires adherence to certain requirements by Federal agencies or institutions receiving Federal support for research activities involving human subjects. The Federal Policy has three cornerstones: review of any research involving human subjects by an Institutional Review Board (IRB); with limited exceptions, informed consent of all research subjects; and formal, written assurance of institutional compliance with the Policy. The Department of Health and Human Services' (HHS) codification of the Federal Policy can be found at 45 CFR Part 46.

Section ____.110 of the Federal Policy provides for expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research. This same section gives the Secretary, HHS, the authority to amend and republish the Expedited Review List as needed after consultation with the departments and agencies that are subject to the Federal Policy. The expedited review list that is referenced in the Federal Policy was originally published by the Secretary, HHS in 1981 as a Notice in the **Federal Register** of a list of categories of research that could be reviewed by the IRB through an expedited review procedure. The Food and Drug Administration (FDA) also references an expedited review list (21 CFR Part 56) for matters under FDA's jurisdiction. The HHS and FDA lists differ slightly, in that item 9 on the 1981 HHS expedited review list regarding certain types of behavioral research is not included in the list referenced in 21 CFR Part 56.110.

The current (1981) list allows an IRB to utilize the expedited review procedure for research activities involving no more than minimal risk and in which the only involvement of human subjects will be in one or more of the following categories (carried out through standard methods):

(1) Collection of hair and nail clippings, in a nondisfiguring manner; deciduous teeth; and permanent teeth if patient care indicates a need for extraction. (2) Collection of excreta and external secretions including sweat, uncannulated saliva, placenta removed at delivery, and amniotic fluid at the time of rupture of the membrane prior to or during labor. (3) Recording of data from subjects 18 years of age or older using noninvasive procedures routinely employed in clinical practice. This includes the use of physical sensors that are applied either to the surface of the body or at a distance and do not involve input of matter or significant amounts of energy into the subject or an invasion of the subject's privacy. It also includes such procedures as weighing, testing sensory acuity, electrocardiography, electroencephalography, thermography, detection of naturally occurring radioactivity, diagnostic echography, and electroretinography. It does not include exposure to electromagnetic radiation outside the visible range (for example, x-rays, microwaves). (4) Collection of blood samples by venipuncture, in amounts not exceeding 450 milliliters in an eight-week period and no more often than two times per week, from subjects 18 years of age or older and who are in good health and not pregnant. (5) Collection of both supra-and subgingival dental plaque and calculus, provided the procedure is not more invasive than routine prophylactic scaling of the teeth and the process is accomplished in accordance with accepted prophylactic techniques. (6) Voice recordings made for research purposes such as investigations of speech defects. (7) Moderate exercise by healthy volunteers. (8) The study of existing data, documents, records, pathological specimens, or diagnostic specimens. (9) Research on individual or group behavior or characteristics of individuals, such as studies of perception, cognition, game theory, or test development, where the investigator does not manipulate subjects' behavior and the research will not involve stress to subjects. (10) Research on drugs or devices for which an investigational new drug exemption or an investigational device exemption is not required.

OPRR, in consultation with FDA, is proposing to revise the expedited review list to include additional procedures or categories of research that may be reviewed under the expedited review procedure. Since 1981, OPRR has received some suggestions to this effect and has incorporated several into the proposed revision of the list that is published herein. OPRR seeks additional comments from the public on procedures or categories of research involving human subjects that may be amenable to review by the IRB chairperson or other designated IRB member instead of review by a convened meeting of the IRB.

The following is a proposed revision of the current expedited review list found at 46 FR 8392 (Jan. 26, 1981) and 46 FR 8980 (Jan. 27, 1981). FDA is simultaneously publishing an identical list. Judgment is reserved on whether OPRR and FDA will publish identical lists after comments are received and reviewed. OPRR welcomes and encourages comments from the research community and public.

Research Activities Which May Be Reviewed Through Expedited Review Procedures [1]

Research activities (carried out through standard methods) which involve (1) no more than minimal risk, and (2) appear in one or more of the following categories may be reviewed by the Institutional Review Board through the expedited review procedure authorized in 45 CFR 46.110 and 21 CFR 56.110. The activities that appear on this list should not be deemed to be of minimal risk simply because they are included on this list. Appearance on this list merely means that the activity is eligible for review through the expedited process when the specific circumstances of the proposed research involve no more than minimal risk to the human subjects. The categories in this list apply regardless of the age of subjects, except as noted.

(1) Research on drugs or devices for which an investigational new drug exemption or an investigational device exemption is not required.

(2) Collection of blood samples by finger stick or venipuncture as follows:

(a) From healthy, nonpregnant adults [2] who weigh at least 110 pounds, in

[1] The expedited review procedure consists of a review of research involving human subjects by the IRB chairperson or by one or more experienced reviewers designated by the chairperson from among members of the IRB in accordance with the requirements set forth in Section ____.110.

[2] Throughout this document, when OPRR refers to ''adult,'' OPRR defers to state law for determining the age of majority.

amounts not exceeding 550 ml in an 8 week period and no more than 2 times per week.

(b) From healthy, pregnant adults who weigh at least 110 pounds, in amounts not exceeding 100 ml in an 8 week period and no more than 2 times per week.

(c) From healthy children, in amounts not exceeding 3 ml/kg in an 8 week period and no more than 2 times per week.

(d) From medically vulnerable adults who weigh at least 110 pounds, in amounts not exceeding 50 ml in an 8 week period and no more than 2 times per week.

(3) Prospective collection for research purposes of the following biological specimens:

(a) Hair and nail clippings in a nondisfiguring manner.

(b) Deciduous teeth at time of exfoliation, or if routine patient care indicates a need for extraction.

(c) Permanent teeth if routine patient care indicates a need for extraction.

(d) Excreta and external secretions (including sweat).

(e) Uncannulated saliva collected either in an unstimulated fashion or stimulated by chewing gumbase or wax or by applying a dilute citric solution to the tongue.

(f) Placenta removed at delivery.

(g) Amniotic fluid obtained at the time of rupture of the membrane prior to or during labor.

(h) Supra- and subgingival dental plaque and calculus, provided the collection procedure is not more invasive than routine prophylactic scaling of the teeth and the process is accomplished in accordance with accepted prophylactic techniques.

(i) Stool cultures obtained by rectal swab.

(j) Mucosal and skin cells collected by buccal scraping or swab, skin swab, or mouth washings.

(k) Sputum collected after saline mist nebulization.

(4) Research involving existing identifiable data, documents, records, or biological specimens (including pathological or diagnostic specimens) where these materials, in their entirety, have been collected prior to the research, for a purpose other than the proposed research.

(5) Research involving solely (a) prospectively collected identifiable residual or discarded specimens, or (b) prospectively collected identifiable data, documents, or records, where (a) or (b) has been generated for nonresearch purposes.

(6) Collection of data through use of the following procedures:

(a) Noninvasive procedures routinely employed in clinical practice and not involving exposure to electromagnetic radiation outside the visible range (i.e., not involving x-rays, microwaves, etc.).

(b) Physical sensors that are applied either to the surface of the body or at a distance and do not involve input of significant amounts of energy into the subject or an invasion of the subject's privacy.

(c) Weighing, testing sensory acuity, electrocardiography, electroencephalography, thermography, detection of naturally occurring radioactivity, electroretinography, echography, sonography, ultrasound, magnetic resonance imaging (MRI), diagnostic infrared imaging, doppler blood flow, and echocardiography.

(d) Moderate exercise, muscular strength testing, body composition assessment, and flexibility testing involving healthy subjects.

(7) Collection of data from voice, video, or image recordings made for research purposes where identification of the subjects and/or their responses would not reasonably place them at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation.

(8) Research on individual or group characteristics or behavior (including but not limited to research involving perception, cognition, surveys, interviews, and focus groups) as follows:

(a) Involving adults, where (i) the research does not involve stress to subjects, and (ii) identification of the subjects and/or their responses would not reasonably place them at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation.

(b) Involving children, where (i) the research involves neither stress to subjects nor sensitive information about themselves, or their family; (ii) no alteration or waiver of regulatory requirements for parental permission has been proposed; and (iii) identification of the subjects and/or their responses would not reasonably place them or their family members at risk of criminal or civil liability or be damaging to the financial standing, employability, or reputation of themselves or their family members.

(9) Research previously approved by the convened IRB as follows:

(a) Where (i) the research is permanently closed to the enrollment of new subjects; (ii) all subjects have completed all research-related interventions; and (iii) the research remains active only for long-term follow-up of subjects; or

(b) Where the research remains active only for the purposes of data analysis; or

(c) Where the IRB has determined that the research involves no greater than minimal risk and no additional risks have been identified; or

(d) Where no subjects have been enrolled and no additional risks have been identified.

The following tabulation of changes is included to enable readers to more easily compare the categories of research included in both lists.

Proposed expedited review list	1981 (Current) expedited review list
1. Research on drugs or devices for which an investigational new drug exemption or an investigational device exemption is not required.	Unchanged; currently number 9.
2. Collection of blood samples by finger stick or venipuncture as follows:	Currently number 4, limited to venipuncture; ''finger stick'' not included
(a) From healthy, nonpregnant adults, in amounts not exceeding 550 ml in an 8 week period and no more than 2 times per week.	Amounts currently limited to 450 ml
(b) From healthy, pregnant adults, in amounts not exceeding 100 ml in an 8 week period and no more than 2 times per week.	Not included.
(c) From healthy children, in amounts not exceeding 3 ml/kg in an 8 week period and no more than 2 times per week.	Not included.
(d) From medically vulnerable adults, in amounts not exceeding 50 ml in an 8 week period and no more than 2 times per week.	Not included.
3. Prospective collection for research purposes of the following biological specimens:	''Prospective'' and ''for research purposes'' currently not included.
(a) Hair and nail clippings in a nondisfiguring manner	Currently part of number 1; unchanged.

Proposed expedited review list	1981 (Current) expedited review list
(b) Deciduous teeth at time of exfoliation, or if routine patient care indicates a need for extraction.	Currently part of number 1; ''deciduous teeth'' included without qualifiers.
(c) Permanent teeth if routine patient care indicates a need for extraction.	Currently part of number 1; ''routine'' not included.
(d) Excreta and external secretions (including sweat)	Currently part of number 2; unchanged.
(e) Uncannulated saliva collected either in an unstimulated fashion or stimulated by chewing gumbase or wax or by applying a dilute citric solution to the tongue.	Currently part of number 2; ''uncannulated saliva'' included without qualifiers.
(f) Placenta removed at delivery	Currently part of number 2; unchanged.
(g) Amniotic fluid obtained at the time of rupture of the membrane prior to or during labor.	Currently part of number 2; unchanged.
(h) Supra- and subgingival dental plaque and calculus, provided the collection procedure is not more invasive than routine prophylactic scaling of the teeth and the process is accomplished in accordance with accepted prophylactic techniques.	Currently number 5; ''procedure'' was not qualified with the word ''collection.''
(i) Stool cultures obtained by rectal swab	Not included.
(j) Mucosal and skin cells collected by buccal scraping or swab, skin swab, or mouth washings.	Not included.
(k) Sputum collected after saline mist nebulization	Not included.
4. Research involving existing identifiable data, documents, records, or biological specimens (including pathological or diagnostic specimens) where these materials, in their entirety, have been collected prior to the research, for a purpose other than the proposed research.	Currently number 8; stated as: ''The study of existing data, documents, records, pathological specimens, or diagnostic specimens.''
5. Research involving solely (a) prospectively collected identifiable residual or discarded specimens, or (b) prospectively collected identifiable data, documents, or records, where (a) or (b) has been generated for nonresearch purposes.	Not included.
6. Collection of data through use of the following procedures:	Currently number 3; ''recording'' instead of ''collection.''
(a) Noninvasive procedures routinely employed in clinical practice and not involving exposure to electromagnetic radiation outside the visible range (i.e., not involving x-rays, microwaves, etc.).	Currently number 3; limited to subjects 18 years of age or older.
(b) Physical sensors that are applied either to the surface of the body or at a distance and do not involve input of significant amounts of energy into the subject or an invasion of the subject's privacy.	Currently number 3; limited to subjects 18 years of age or older.
(c) Weighing, testing sensory acuity, electrocardiography, electroencephalography, thermography, detection of naturally occurring radioactivity, electroretinography, echography, sonography, ultrasound, magnetic resonance imaging (MRI), diagnostic infrared imaging, doppler blood flow, and echocardiography.	Currently number 3; limited to subjects 18 years of age or older; limited echography to ''diagnostic echography''; does not include ''sonography, ultrasound, magnetic resonance imaging (MRI), diagnostic infrared imaging, doppler blood flow, and echocardiography.''
(d) Moderate exercise, muscular strength testing, body composition assessment, and flexibility testing involving healthy subjects.	Currently number 7; limited to ''Moderate exercise by healthy volunteers.''
7. Collection of data from voice, video, or image recordings made for research purposes where identification of the subjects and/or their responses would not reasonably place them at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation.	Currently number 6; stated as: ''Voice recordings made for research purposes such as investigations of speech defects.''
8. Research on individual or group characteristics or behavior (including but not limited to research involving perception, cognition, surveys, interviews, and focus groups) as follows:	Currently number 9, stated as follows: Research on individual or group behavior or characteristics of individuals, such as studies of perception, cognition, game theory, or test development, where the investigator does not manipulate subjects' behavior and the research will not involve stress to subjects.''
(a) Involving adults, where (i) the research does not involve stress to subjects, and (ii) identification of the subjects and/or their responses would not reasonably place them at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation.	
(b) Involving children, where (i) the research involves neither stress to subjects nor sensitive information about themselves, or their family; (ii) no alteration or waiver of regulatory requirements for parental permission has been proposed; and (iii) identification of the subjects and/or their responses would not reasonably place them or their family members at risk of criminal or civil liability or be damaging to the financial standing, employability, or reputation of themselves or their family members.	
9. Research previously approved by the convened IRB as follows:	Not Included.
(a) Where (i) the research is permanently closed to the enrollment of new subjects; (ii) all subjects have completed all research-related interventions; and (iii) the research remains active only for long-term follow-up of subjects; or	
(b) Where the research remains active only for the purposes of data analysis; or	

Proposed expedited review list	1981 (Current) expedited review list
(c) Where the IRB has determined that the research involves no greater than minimal risk and no additional risks have been identified; or (d) Where no subjects have been enrolled and no additional risks have been identified	

Dated: October 31, 1997.

Gary B. Ellis,

Director, Office for Protection from Research Risks.

[FR Doc. 97–29652 Filed 11–5–97; 3:51 pm]

BILLING CODE 4140–01–P

federal register

Monday
November 10, 1997

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 16 and 900

Quality Mammography Standards; Correction; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16 and 900

[Docket No. 95N–0192]

RIN 0910–AA24

Quality Mammography Standards; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document entitled ''Quality Mammography Standards'' that appeared in the **Federal Register** of October 28, 1997. The document was published with some inadvertent typographical errors and incorrect dates in the regulatory text. This document corrects those errors. FDA is also identifying with greater specificity those sections of the quality standards that will become effective October 28, 2002. For the convenience of the reader, FDA is republishing 21 CFR part 900 in its entirety with corrections.

DATES: This regulation is effective April 28, 1999; except § 900.12(b)(8)(i), (e)(4)(iii)(B), (e)(5)(i)(B) which become effective October 28, 2002.

FOR FURTHER INFORMATION CONTACT: Roger Burkhart, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration 5600 Fishers Lane, Rockville, MD 20850, 301–594–3332, FAX 301–594–3306.

SUPPLEMENTARY INFORMATION: In FR Doc. 97–26351, appearing on page 55852 in the **Federal Register** of Tuesday, October 28, 1997, the following corrections are made:

1. On page 55852, in the first column, the ''**DATES**'' section is corrected as set forth above.

2. On page 55854, in the first column, in the third full paragraph, line 12, ''Mammography Matters'' should be italicized.

3. On page 55872, in the first column, in the fourth full paragraph, in line 14, the ''+'' sign is corrected to read ''±''.

4. On page 55895, in the second column, in the fifth paragraph, in line 16, ''gi11'' is removed and the paragraph is indented at ''(Comment 225)''.

5. On page 55919, in the third column, in the fourth full paragraph, in line 4, in the fifth full paragraph, in line 5, and in the sixth full paragraph, in line 5, the ''+'' sign is corrected to read ''±''.

6. On page 55920, in the first column, in lines 1 and 6, the ''+'' sign is corrected to read ''±''; and in the second column, in the first full paragraph, in line 7, ''(10-4'' is corrected to read ''(~10^{-4}''.

7. On page 55930, in the second column, in the third line from the bottom, the word ''patents'' is corrected to read ''patients''.

8. On page 55938, in the third column, in the second full paragraph, in line 19, ''advided'' is corrected to read ''advised''.

9. On page 55954, in the first column, in the seventh paragraph, beginning in line 6, ''Journal of the Medical Association'' should be italicized.

10. On page 55967, in the first column, in the third line from the bottom of the page, ''becauseit'' is corrected to read ''because it''.

11. On page 55975, in the second column, in the second full paragraph, line 7, ''(C).'' is corrected to read ''. (C)''; and in the third full paragraph, in line 4, ''(B).'' is corrected to read ''. (B)''.

12. On page 55976, in the second column, in reference 5, in line 2, ''≤'' is corrected to read ''≥''; and in line 3, ''1995–1993'' is corrected to read ''1993–1995''.

Part 16 [Corrected]

13. On page 55976, in the authority citation for 21 CFR part 16, ''41–40'' is corrected to read ''40–41''; and in amendatory instruction 2., in the section heading, ''§ 716.1'' is corrected to read ''§ 16.1''.

§ 900.3 [Corrected]

14. On page 55979, in the second column in § 900.3(c)(4), a comma is inserted after ''July 28, 1998''.

§ 900.12 [Corrected]

15. On page 55986, in the first column, in the introductory text of § 900.12(a)(2)(iv), a comma is inserted after ''October 28, 1997''.

16. On page 55987, in the second column, in § 900.12(b)(6)(ii) the word ''valve'' is corrected to read ''value''; in § 900.12(b)(8)(i), ''October 28, 1999'' is corrected to read ''October 28, 2002''.

17. On page 55989, in the first column, in § 900.12(e)(1)(ii), (iii), (e)(2)(ii), and (e)(5)(ii) the ''+'' sign is corrected to read ''±''; and in § 900.12(e)(4)(iii)(B), (e)(5)(i)(B), and (e)(5)(iii) ''October 28, 1999'' is corrected to read ''October 28, 2002'' each time it appears.

18. On page 55990, in the third column, in § 900.12(e)(5)(x)(A), ''October 28, 1999'' is corrected to read ''October 28, 2002''.

19. On page 55991, in the third column, in § 900.12(e)(12) the ''+'' sign is corrected to read ''±''.

20. On page 55992, in the heading for § 900.12(h), the word ''compliant'' is corrected to read ''complaint''.

§ 900.18 [Corrected]

21. On page 55993, in § 900.18(a)(1), the word ''assuing'' is corrected to read ''assuring''.

As corrected, 21 CFR part 900 is republished to read as follows:

PART 900—MAMMOGRAPHY

Subpart A—Accreditation

Sec.

900.1 Scope.
900.2 Definitions.
900.3 Application for approval as an accreditation body.
900.4 Standards for accreditation bodies.
900.5 Evaluation.
900.6 Withdrawal of approval.
900.7 Hearings.
900.8—900.9 [Reserved]

Subpart B—Quality Standards and Certification

900.10 Applicability.
900.11 Requirements for certification.
900.12 Quality standards.
900.13 Revocation of accreditation and revocation of accreditation body approval.
900.14 Suspension or revocation of certificates.
900.15 Appeals of adverse accreditation or reaccreditation decisions that preclude certification or recertification.
900.16 Appeals of denials of certification.
900.17 [Reserved]
900.18 Alternative requirements for § 900.12 quality standards.

Authority: 21 U.S.C. 360i, 360nn, 374(e); 42 U.S.C. 263b.

Subpart A—Accreditation

§ 900.1 Scope.

The regulations set forth in this part implement the Mammography Quality Standards Act (MQSA) (42 U.S.C. 263b). Subpart A of this part establishes procedures whereby an entity can apply to become a Food and Drug Administration (FDA)-approved accreditation body to accredit facilities to be eligible to perform screening or diagnostic mammography services. Subpart A further establishes requirements and standards for accreditation bodies to ensure that all mammography facilities under the jurisdiction of the United States are adequately and consistently evaluated for compliance with national quality standards for mammography. Subpart B of this part establishes minimum national quality standards for mammography facilities to ensure safe, reliable, and accurate mammography. The regulations set forth in this part do

not apply to facilities of the Department of Veterans Affairs.

§ 900.2 Definitions.

The following definitions apply to subparts A and B of this part:

(a) *Accreditation body* or *body* means an entity that has been approved by FDA under § 900.3(d) to accredit mammography facilities.

(b) *Action limits* or *action levels* means the minimum and maximum values of a quality assurance measurement that can be interpreted as representing acceptable performance with respect to the parameter being tested. Values less than the minimum or greater than the maximum action limit or level indicate that corrective action must be taken by the facility. Action limits or levels are also sometimes called control limits or levels.

(c) *Adverse event* means an undesirable experience associated with mammography activities within the scope of 42 U.S.C. 263b. Adverse events include but are not limited to:

(1) Poor image quality;

(2) Failure to send mammography reports within 30 days to the referring physician or in a timely manner to the self-referred patient; and

(3) Use of personnel that do not meet the applicable requirements of § 900.12(a).

(d) *Air kerma* means kerma in a given mass of air. The unit used to measure the quantity of air kerma is the Gray (Gy). For X-rays with energies less than 300 kiloelectronvolts (keV), 1 Gy = 100 radian (rad) = 114 roentgens (R) of exposure.

(e) *Breast implant* means a prosthetic device implanted in the breast.

(f) *Calendar quarter* means any one of the following time periods during a given year: January 1 through March 31, April 1 through June 30, July 1 through September 30, or October 1 through December 31.

(g) *Category I* means medical educational activities that have been designated as Category I by the Accreditation Council for Continuing Medical Education (ACCME), the American Osteopathic Association (AOA), a state medical society, or an equivalent organization.

(h) *Certificate* means the certificate described in § 900.11(a).

(i) *Certification* means the process of approval of a facility by FDA to provide mammography services.

(j) *Clinical image* means a mammogram.

(k) *Consumer* means an individual who chooses to comment or complain in reference to a mammography examination, including the patient or representative of the patient (e.g., family member or referring physician).

(l) *Continuing education unit* or *continuing education credit* means one contact hour of training.

(m) *Contact hour* means an hour of training received through direct instruction.

(n) *Direct instruction* means:

(1) Face-to-face interaction between instructor(s) and student(s), as when the instructor provides a lecture, conducts demonstrations, or reviews student performance; or

(2) The administration and correction of student examinations by an instructor(s) with subsequent feedback to the student(s).

(o) *Direct supervision* means that:

(1) During joint interpretation of mammograms, the supervising interpreting physician reviews, discusses, and confirms the diagnosis of the physician being supervised and signs the resulting report before it is entered into the patient's records; or

(2) During the performance of a mammography examination or survey of the facility's equipment and quality assurance program, the supervisor is present to observe and correct, as needed, the performance of the individual being supervised who is performing the examination or conducting the survey.

(p) *Established operating level* means the value of a particular quality assurance parameter that has been established as an acceptable normal level by the facility's quality assurance program.

(q) *Facility* means a hospital, outpatient department, clinic, radiology practice, mobile unit, office of a physician, or other facility that conducts mammography activities, including the following: Operation of equipment to produce a mammogram, processing of the mammogram, initial interpretation of the mammogram, and maintaining viewing conditions for that interpretation. This term does not include a facility of the Department of Veterans Affairs.

(r) *First allowable time* means the earliest time a resident physician is eligible to take the diagnostic radiology boards from an FDA-designated certifying body. The ''first allowable time'' may vary with the certifying body.

(s) *FDA* means the Food and Drug Administration.

(t) *Interim regulations* means the regulations entitled ''Requirements for Accrediting Bodies of Mammography Facilities'' (58 FR 67558–67565) and ''Quality Standards and Certification Requirements for Mammography Facilities'' (58 FR 67565–67572), published by FDA on December 21, 1993, and amended on September 30, 1994 (59 FR 49808–49813). These regulations established the standards that had to be met by mammography facilities in order to lawfully operate between October 1, 1994, and April 28, 1999.

(u) *Interpreting physician* means a licensed physician who interprets mammograms and who meets the requirements set forth in § 900.12(a)(1).

(v) *Kerma* means the sum of the initial energies of all the charged particles liberated by uncharged ionizing particles in a material of given mass.

(w) *Laterality* means the designation of either the right or left breast.

(x) *Lead interpreting physician* means the interpreting physician assigned the general responsibility for ensuring that a facility's quality assurance program meets all of the requirements of § 900.12(d) through (f). The administrative title and other supervisory responsibilities of the individual, if any, are left to the discretion of the facility.

(y) *Mammogram* means a radiographic image produced through mammography.

(z) *Mammographic Modality* means a technology, within the scope of 42 U.S.C. 263b, for radiography of the breast. Examples are screen-film mammography and xeromammography.

(aa) *Mammography* means radiography of the breast, but, for the purposes of this part, does not include:

(1) Radiography of the breast performed during invasive interventions for localization or biopsy procedures; or

(2) Radiography of the breast performed with an investigational mammography device as part of a scientific study conducted in accordance with FDA's investigational device exemption regulations in part 812 of this chapter.

(bb) *Mammography equipment evaluation* means an onsite assessment of mammography unit or image processor performance by a medical physicist for the purpose of making a preliminary determination as to whether the equipment meets all of the applicable standards in § 900.12(b) and (e).

(cc) *Mammography medical outcomes audit* means a systematic collection of mammography results and the comparison of those results with outcomes data.

(dd) *Mammography unit* or *units* means an assemblage of components for the production of X-rays for use during mammography, including, at a minimum: An X-ray generator, an X-ray

control, a tube housing assembly, a beam limiting device, and the supporting structures for these components.

(ee) *Mean optical density* means the average of the optical densities measured using phantom thicknesses of 2, 4, and 6 centimeters with values of kilovolt peak (kVp) clinically appropriate for those thicknesses.

(ff) *Medical physicist* means a person trained in evaluating the performance of mammography equipment and facility quality assurance programs and who meets the qualifications for a medical physicist set forth in § 900.12(a)(3).

(gg) *MQSA* means the Mammography Quality Standards Act.

(hh) *Multi-reading* means two or more physicians, at least one of whom is an interpreting physician, interpreting the same mammogram.

(ii) *Patient* means any individual who undergoes a mammography evaluation in a facility, regardless of whether the person is referred by a physician or is self-referred.

(jj) *Phantom* means a test object used to simulate radiographic characteristics of compressed breast tissue and containing components that radiographically model aspects of breast disease and cancer.

(kk) *Phantom image* means a radiographic image of a phantom.

(ll) *Physical science* means physics, chemistry, radiation science (including medical physics and health physics), and engineering.

(mm) *Positive mammogram* means a mammogram that has an overall assessment of findings that are either ''suspicious'' or ''highly suggestive of malignancy.''

(nn) *Provisional certificate* means the provisional certificate described in § 900.11(b)(2).

(oo) *Qualified instructor* means an individual whose training and experience adequately prepares him or her to carry out specified training assignments. Interpreting physicians, radiologic technologists, or medical physicists who meet the requirements of § 900.12(a) would be considered qualified instructors in their respective areas of mammography. Other examples of individuals who may be qualified instructors for the purpose of providing training to meet the regulations of this part include, but are not limited to, instructors in a post-high school training institution and manufacturer's representatives.

(pp) *Quality control technologist* means an individual meeting the requirements of § 900.12(a)(2) who is responsible for those quality assurance responsibilities not assigned to the lead interpreting physician or to the medical physicist.

(qq) *Radiographic equipment* means X-ray equipment used for the production of static X-ray images.

(rr) *Radiologic technologist* means an individual specifically trained in the use of radiographic equipment and the positioning of patients for radiographic examinations and who meets the requirements set forth in § 900.12(a)(2).

(ss) *Serious adverse event* means an adverse advent that may significantly compromise clinical outcomes, or an adverse event for which a facility fails to take appropriate corrective action in a timely manner.

(tt) *Serious complaint* means a report of a serious adverse event.

(uu) *Standard breast* means a 4.2 centimeter (cm) thick compressed breast consisting of 50 percent glandular and 50 percent adipose tissue.

(vv) *Survey* means an onsite physics consultation and evaluation of a facility quality assurance program performed by a medical physicist.

(ww) *Time cycle* means the film development time.

(xx) *Traceable to a national standard* means an instrument is calibrated at either the National Institute of Standards and Technology (NIST) or at a calibration laboratory that participates in a proficiency program with NIST at least once every 2 years and the results of the proficiency test conducted within 24 months of calibration show agreement within ± 3 percent of the national standard in the mammography energy range.

§ 900.3 Application for approval as an accreditation body.

(a) *Eligibility.* Private nonprofit organizations or State agencies capable of meeting the requirements of this subpart A may apply for approval as accreditation bodies.

(b) *Application for initial approval.* (1) An applicant seeking initial FDA approval as an accreditation body shall inform the Division of Mammography Quality and Radiation Programs (DMQRP), Center for Devices and Radiology Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, marked Attn: Mammography Standards Branch, of its desire to be approved as an accreditation body and of its requested scope of authority.

(2) Following receipt of the request, FDA will provide the applicant with additional information to aid in submission of an application for approval as an accreditation body.

(3) The applicant shall furnish to FDA, at the address in § 900.3(b)(1), three copies of an application containing the following information, materials, and supporting documentation:

(i) Name, address, and phone number of the applicant and, if the applicant is not a State agency, evidence of nonprofit status (i.e., of fulfilling Internal Revenue Service requirements as a nonprofit organization);

(ii) Detailed description of the accreditation standards the applicant will require facilities to meet and a discussion substantiating their equivalence to FDA standards required under § 900.12;

(iii) Detailed description of the applicant's accreditation review and decisionmaking process, including:

(A) Procedures for performing accreditation and reaccreditation clinical image review in accordance with § 900.4(c), random clinical image reviews in accordance with § 900.4(f), and additional mammography review in accordance with § 900.12(j);

(B) Procedures for performing phantom image review;

(C) Procedures for assessing mammography equipment evaluations and surveys;

(D) Procedures for initiating and performing onsite visits to facilities;

(E) Procedures for assessing facility personnel qualifications;

(F) Copies of the accreditation application forms, guidelines, instructions, and other materials the applicant will send to facilities during the accreditation process, including an accreditation history form that requires each facility to provide a complete history of prior accreditation activities and a statement that all information and data submitted in the application is true and accurate, and that no material fact has been omitted;

(G) Policies and procedures for notifying facilities of deficiencies;

(H) Procedures for monitoring corrections of deficiencies by facilities;

(I) Policies and procedures for suspending or revoking a facility's accreditation;

(J) Policies and procedures that will ensure processing of accreditation applications and renewals within a timeframe approved by FDA and assurances that the body will adhere to such policies and procedures; and

(K) A description of the applicant's appeals process for facilities contesting adverse accreditation status decisions.

(iv) Education, experience, and training requirements for the applicant's professional staff, including reviewers of clinical or phantom images;

(v) Description of the applicant's electronic data management and

analysis system with respect to accreditation review and decision processes and the applicant's ability to provide electronic data in a format compatible with FDA data systems;

(vi) Resource analysis that demonstrates that the applicant's staffing, funding, and other resources are adequate to perform the required accreditation activities;

(vii) Fee schedules with supporting cost data;

(viii) Statement of policies and procedures established to avoid conflicts of interest or the appearance of conflicts of interest by the applicant's board members, commissioners, professional personnel (including reviewers of clinical and phantom images), consultants, administrative personnel, and other representatives of the applicant;

(ix) Statement of policies and procedures established to protect confidential information the applicant will collect or receive in its role as an accreditation body;

(x) Disclosure of any specific brand of imaging system or component, measuring device, software package, or other commercial product used in mammography that the applicant develops, sells, or distributes;

(xi) Description of the applicant's consumer complaint mechanism;

(xii) Satisfactory assurances that the applicant shall comply with the requirements of § 900.4; and

(xiii) Any other information as may be required by FDA.

(c) *Application for renewal of approval.* An approved accreditation body that intends to continue to serve as an accreditation body beyond its current term shall apply to FDA for renewal or notify FDA of its plans not to apply for renewal in accordance with the following procedures and schedule:

(1) At least 9 months before the date of expiration of a body's approval, the body shall inform FDA, at the address given in § 900.3(b)(1), of its intent to seek renewal.

(2) FDA will notify the applicant of the relevant information, materials, and supporting documentation required under § 900.3(b)(3) that the applicant shall submit as part of the renewal procedure.

(3) At least 6 months before the date of expiration of a body's approval, the applicant shall furnish to FDA, at the address in § 900.3(b)(1), three copies of a renewal application containing the information, materials, and supporting documentation requested by FDA in accordance with § 900.3(c)(2).

(4) No later than July 28, 1998, any accreditation body approved under the interim regulations published in the **Federal Register** of December 21, 1993 (58 FR 67558), that desires to continue to serve as an accreditation body under the final regulations shall apply for renewal of approval in accordance with the procedures set forth in paragraphs (c)(1) through (c)(3) of this section.

(5) Any accreditation body that does not plan to renew its approval shall so notify FDA at the address given in paragraph (b)(1) of this section at least 9 months before the expiration of the body's term of approval.

(d) *Rulings on applications for initial and renewed approval.* (1) FDA will conduct a review and evaluation to determine whether the applicant substantially meets the applicable requirements of this subpart and whether the accreditation standards the applicant will require facilities to meet are substantially the same as the quality standards published under subpart B of this part.

(2) FDA will notify the applicant of any deficiencies in the application and request that those deficiencies be rectified within a specified time period. If the deficiencies are not rectified to FDA's satisfaction within the specified time period, the application for approval as an accreditation body may be rejected.

(3) FDA shall notify the applicant whether the application has been approved or denied. That notification shall list any conditions associated with approval or state the bases for any denial.

(4) The review of any application may include a meeting between FDA and representatives of the applicant at a time and location mutually acceptable to FDA and the applicant.

(5) FDA will advise the applicant of the circumstances under which a denied application may be resubmitted.

(6) If FDA does not reach a final decision on a renewal application in accordance with this paragraph before the expiration of an accreditation body's current term of approval, the approval will be deemed extended until the agency reaches a final decision on the application, unless an accreditation body does not rectify deficiencies in the application within the specified time period, as required in paragraph (d)(2) of this section.

(e) *Relinquishment of authority.* An accreditation body that decides to relinquish its accreditation authority before expiration of the body's term of approval shall submit a letter of such intent to FDA, at the address in § 900.3(b)(1), at least 9 months before relinquishing such authority.

(f) *Transfer of records.* An accreditation body that does not apply for renewal of accreditation body approval, is denied such approval by FDA, or relinquishes its accreditation authority and duties before expiration of its term of approval, shall:

(1) Transfer facility records and other related information as required by FDA to a location and according to a schedule approved by FDA.

(2) Notify, in a manner and time period approved by FDA, all facilities accredited or seeking accreditation by the body that the body will no longer have accreditation authority.

(g) *Scope of authority.* An accreditation body's term of approval is for a period not to exceed 7 years. FDA may limit the scope of accreditation authority.

§ 900.4 Standards for accreditation bodies.

(a) *Code of conduct and general responsibilities.* The accreditation body shall accept the following responsibilities in order to ensure safe and accurate mammography at the facilities it accredits and shall perform these responsibilities in a manner that ensures the integrity and impartiality of accreditation body actions.

(1)(i) When an accreditation body receives or discovers information that suggests inadequate image quality, or upon request by FDA, the accreditation body shall review a facility's clinical images or other aspects of a facility's practice to assist FDA in determining whether or not the facility's practice poses a serious risk to human health. Such reviews are in addition to the evaluation an accreditation body performs as part of the initial accreditation or renewal process for facilities.

(ii) If review by the accreditation body demonstrates that a problem does exist with respect to image quality or other aspects of a facility's compliance with quality standards, or upon request by FDA, the accreditation body shall require or monitor corrective actions, or suspend or revoke accreditation of the facility.

(2) The accreditation body shall inform FDA as soon as possible but in no case longer than 2 business days after becoming aware of equipment or practices that pose a serious risk to human health.

(3) The accreditation body shall establish and administer a quality assurance (QA) program that has been approved by FDA in accordance with § 900.3(d) or paragraph (a)(8) of this section. Such quality assurance program shall:

(i) Include requirements for clinical image review and phantom image review;

(ii) Ensure that clinical and phantom images are evaluated consistently and accurately; and

(iii) Specify the methods and frequency of training and evaluation for clinical and phantom image reviewers, and the bases and procedures for removal of such reviewers.

(4) The accreditation body shall establish measures that FDA has approved in accordance with § 900.3(d) or paragraph (a)(8) of this section to reduce the possibility of conflict of interest or facility bias on the part of individuals acting on the body's behalf. Such individuals who review clinical or phantom images under the provisions of paragraphs (c) and (d) of this section or who visit facilities under the provisions of paragraph (f) of this section shall not review clinical or phantom images from or visit a facility with which such individuals maintain a financial relationship, or when it would otherwise be a conflict of interest for them to do so, or when they have a bias in favor of or against the facility.

(5) The accreditation body may require specific equipment performance or design characteristics that FDA has approved. However, no accreditation body shall require, either explicitly or implicitly, the use of any specific brand of imaging system or component, measuring device, software package, or other commercial product as a condition for accreditation by the body, unless FDA determines that it is in the best interest of public health to do so.

(i) Any representation, actual or implied, either orally, in sales literature, or in any other form of representation, that the purchase or use of a particular product brand is required in order for any facility to be accredited or certified under § 900.11(b), is prohibited, unless FDA approves such representation.

(ii) Unless FDA has approved the exclusive use and promotion of a particular commercial product in accordance with this section, all products produced, distributed, or sold by an accreditation body or an organization that has a financial or other relationship with the accreditation body that may be a conflict of interest or have the appearance of a conflict of interest with the body's accreditation functions, shall bear a disclaimer stating that the purchase or use of such products is not required for accreditation or certification of any facility under § 900.11(b). Any representations about such products shall include a similar disclaimer.

(6) When an accreditation body denies accreditation to a facility, the accreditation body shall notify the facility in writing and explain the bases for its decision. The notification shall also describe the appeals process available from the accreditation body for the facility to contest the decision.

(7) No accreditation body may establish requirements that preclude facilities from being accredited under § 900.11(b) by any other accreditation body, or require accreditation by itself under MQSA if another accreditation body is available to a facility.

(8) The accreditation body shall obtain FDA authorization for any changes it proposes to make in any standards that FDA has previously accepted under § 900.3(d).

(9) An accreditation body shall establish procedures to protect confidential information it collects or receives in its role as an accreditation body.

(i) Nonpublic information collected from facilities for the purpose of carrying out accreditation body responsibilities shall not be used for any other purpose or disclosed, other than to FDA or its duly designated representatives, including State agencies, without the consent of the facility;

(ii) Nonpublic information that FDA or its duly designated representatives, including State agencies, share with the accreditation body concerning a facility that is accredited or undergoing accreditation by that body shall not be further disclosed except with the written permission of FDA.

(b) *Monitoring facility compliance with quality standards.* (1) The accreditation body shall require that each facility it accredits meet standards for the performance of quality mammography that are substantially the same as those in this subpart and in subpart B of this part.

(2) The accreditation body shall notify a facility regarding equipment, personnel, and other aspects of the facility's practice that do not meet such standards and advise the facility that such equipment, personnel, or other aspects of the practice should not be used by the facility for activities within the scope of part 900.

(3) The accreditation body shall specify the actions that facilities shall take to correct deficiencies in equipment, personnel, and other aspects of the practice to ensure facility compliance with applicable standards.

(4) If deficiencies cannot be corrected to ensure compliance with standards or if a facility is unwilling to take corrective actions, the accreditation body shall immediately so notify FDA, and shall suspend or revoke the facility's accreditation in accordance with the policies and procedures described under § 900.3(b)(3)(iii)(I).

(c) *Clinical image review for accreditation and reaccreditation.* (1) Frequency of review. The accreditation body shall review clinical images from each facility accredited by the body at least once every 3 years.

(2) Requirements for clinical image attributes. The accreditation body shall use the following attributes for all clinical image reviews, unless FDA has approved other attributes:

(i) Positioning. Sufficient breast tissue shall be imaged to ensure that cancers are not likely to be missed because of inadequate positioning.

(ii) Compression. Compression shall be applied in a manner that minimizes the potential obscuring effect of overlying breast tissue and motion artifact.

(iii) Exposure level. Exposure level shall be adequate to visualize breast structures. Images shall be neither underexposed nor overexposed.

(iv) Contrast. Image contrast shall permit differentiation of subtle tissue density differences.

(v) Sharpness. Margins of normal breast structures shall be distinct and not blurred.

(vi) Noise. Noise in the image shall not obscure breast structures or suggest the appearance of structures not actually present.

(vii) Artifacts. Artifacts due to lint, processing, scratches, and other factors external to the breast shall not obscure breast structures or suggest the appearance of structures not actually present.

(viii) Examination identification. Each image shall have the following information indicated on it in a permanent, legible, and unambiguous manner and placed so as not to obscure anatomic structures:

(A) Name of the patient and an additional patient identifier.

(B) Date of examination.

(C) View and laterality. This information shall be placed on the image in a position near the axilla. Standardized codes specified by the accreditation body and approved by FDA in accordance with § 900.3(d) or paragraph (a)(8) of this section shall be used to identify view and laterality.

(D) Facility name and location. At a minimum, the location shall include the city, State, and zip code of the facility.

(E) Technologist identification.

(F) Cassette/screen identification.

(G) Mammography unit identification, if there is more than one unit in the facility.

(3) Scoring of clinical images. Accreditation bodies shall establish and administer a system for scoring clinical images using all attributes specified in paragraphs (c)(2)(i) through (c)(2)(viii) of this section or an alternative system that FDA has approved in accordance with § 900.3(d) or paragraph (a)(8) of this section. The scoring system shall include an evaluation for each attribute.

(i) The accreditation body shall establish and employ criteria for acceptable and nonacceptable results for each of the 8 attributes as well as an overall pass-fail system for clinical image review that has been approved by FDA in accordance with § 900.3(d) or paragraph (a)(8) of this section.

(ii) All clinical images submitted by a facility to the accreditation body shall be reviewed independently by two or more clinical image reviewers.

(4) Selection of clinical images for review. Unless otherwise specified by FDA, the accreditation body shall require that for each mammography unit in the facility:

(i) The facility shall submit craniocaudal (CC) and mediolateral oblique (MLO) views from two mammographic examinations that the facility produced during a time period specified by the accreditation body;

(ii) Clinical images submitted from one such mammographic examination for each unit shall be of dense breasts (predominance of glandular tissue) and the other shall be of fat-replaced breasts (predominance of adipose tissue);

(iii) All clinical images submitted shall be images that the facility's interpreting physician(s) interpreted as negative or benign.

(iv) If the facility has no clinical images meeting the requirements in paragraphs (c)(4)(i) through (c)(4)(iii) of this section, it shall so notify the accreditation body, which shall specify alternative clinical image selection methods that do not compromise care of the patient.

(5) Clinical image reviewers. Accreditation bodies shall ensure that all of their clinical image reviewers:

(i) Meet the interpreting physician requirements specified in § 900.12(a)(1);

(ii) Are trained and evaluated in the clinical image review process, for the types of clinical images to be evaluated by a clinical image reviewer, by the accreditation body before designation as clinical image reviewers and periodically thereafter; and

(iii) Clearly document their findings and reasons for assigning a particular score to any clinical image and provide information to the facility for use in improving the attributes for which significant deficiencies were identified.

(6) Image management. The accreditation body's QA program shall include a tracking system to ensure the security and return to the facility of all clinical images received and to ensure completion of all clinical image reviews by the body in a timely manner. The accreditation body shall return all clinical images to the facility within 60 days of their receipt by the body, with the following exceptions:

(i) If the clinical images are needed earlier by the facility for clinical purposes, the accreditation body shall cooperate with the facility to accommodate such needs.

(ii) If a clinical image reviewer identifies a suspicious abnormality on an image submitted for clinical image review, the accreditation body shall ensure that this information is provided to the facility and that the clinical images are returned to the facility. Both shall occur no later than 10 business days after identification of the suspected abnormality.

(7) Notification of unsatisfactory image quality. If the accreditation body determines that the clinical images received from a facility are of unsatisfactory quality, the body shall notify the facility of the nature of the problem and its possible causes.

(d) *Phantom image review for accreditation and reaccreditation.* (1) Frequency of review. The accreditation body shall review phantom images from each facility accredited by the body at least once every 3 years.

(2) Requirements for the phantom used. The accreditation body shall require that each facility submit for review phantom images that the facility produced using a phantom and methods of use specified by the body and approved by FDA in accordance with § 900.3(d) or paragraph (a)(8) of this section.

(3) Scoring phantom images. The accreditation body shall use a system for scoring phantom images that has been approved by FDA in accordance with § 900.3(b) and (d) or paragraph (a)(8) of this section.

(4) Phantom images selected for review. For each mammography unit in the facility, the accreditation body shall require the facility to submit phantom images that the facility produced during a time period specified by the body.

(5) Phantom image reviewers. Accreditation bodies shall ensure that all of their phantom image reviewers:

(i) Meet the requirements specified in § 900.12(a)(3) or alternative requirements established by the accreditation body and approved by FDA in accordance with § 900.3 or paragraph (a)(8) of this section;

(ii) Are trained and evaluated in the phantom image review process, for the types of phantom images to be evaluated by a phantom image reviewer, by the accreditation body before designation as phantom image reviewers and periodically thereafter; and

(iii) Clearly document their findings and reasons for assigning a particular score to any phantom image and provide information to the facility for use in improving its phantom image quality with regard to the significant deficiencies identified.

(6) Image management. The accreditation body's QA program shall include a tracking system to ensure the security of all phantom images received and to ensure completion of all phantom image reviews by the body in a timely manner. All phantom images that result in a failure of accreditation shall be returned to the facility.

(7) Notification measures for unsatisfactory image quality. If the accreditation body determines that the phantom images received from a facility are of unsatisfactory quality, the body shall notify the facility of the nature of the problem and its possible causes.

(e) *Reports of mammography equipment evaluation, surveys, and quality control.* The following requirements apply to all facility equipment covered by the provisions of subparts A and B:

(1) The accreditation body shall require every facility applying for accreditation to submit:

(i) With its initial accreditation application, a mammography equipment evaluation that was performed by a medical physicist no earlier than 6 months before the date of application for accreditation by the facility. Such evaluation shall demonstrate compliance of the facility's equipment with the requirements in § 900.12(e).

(ii) Prior to accreditation, a survey that was performed no earlier than 6 months before the date of application for accreditation by the facility. Such survey shall assess the facility's compliance with the facility standards referenced in paragraph (b) of this section.

(2) The accreditation body shall require that all facilities undergo an annual survey to ensure continued compliance with the standards referenced in paragraph (b) of this section and to provide continued oversight of facilities' quality control programs as they relate to such standards. The accreditation body shall require for all facilities that:

(i) Such surveys be conducted annually;

(ii) Facilities take reasonable steps to ensure that they receive reports of such surveys within 30 days of survey completion; and

(iii) Facilities submit the results of such surveys and any other information that the body may require to the body at least annually.

(3) The accreditation body shall review and analyze the information required in this section and use it to identify necessary corrective measures for facilities and to determine whether facilities should remain accredited by the body.

(f) *Accreditation Body Onsite Visits and Random Clinical Image Reviews.* The accreditation body shall conduct onsite visits and random clinical image reviews of a sample of facilities to monitor and assess their compliance with standards established by the body for accreditation. The accreditation body shall submit annually to FDA, at the address given in § 900.3(b)(1), 3 copies of a summary report describing all facility assessments the body conducted under the provisions of this section for the year being reported.

(1) Onsite visits. (i) Sample size. Annually, each accreditation body shall visit at least 5 percent of the facilities it accredits. However, a minimum of 5 facilities shall be visited, and visits to no more than 50 facilities are required, unless problems identified in paragraph (f)(1)(i)(B) of this section indicate a need to visit more than 50 facilities.

(A) At least 50 percent of the facilities visited shall be selected randomly.

(B) Other facilities visited shall be selected based on problems identified through State or FDA inspections, serious complaints received from consumers or others, a previous history of noncompliance, or any other information in the possession of the accreditation body, inspectors, or FDA.

(C) Before, during, or after any facility visit, the accreditation body may require that the facility submit to the body for review clinical images, phantom images, or any other information relevant to applicable standards in this subpart and in subpart B of this part.

(ii) Visit plan. The accreditation body shall conduct facility onsite visits according to a visit plan that has been approved by FDA in accordance with § 900.3(d) or paragraph (a)(8) of this section, unless otherwise directed by FDA in particular circumstances. At a minimum, such a plan shall provide for:

(A) Assessment of overall clinical image QA activities of the facility;

(B) Review of facility documentation to determine if appropriate mammography reports are sent to patients and physicians as required;

(C) Selection of a sample of clinical images for clinical image review by the accreditation body. Clinical images shall be selected in a manner specified by the accreditation body and approved by FDA that does not compromise care of the patient as a result of the absence of the selected images from the facility;

(D) Verification that the facility has a medical audit system in place and is correlating films and pathology reports for positive cases;

(E) Verification that personnel specified by the facility are the ones actually performing designated personnel functions;

(F) Verification that equipment specified by the facility is the equipment that is actually being used to perform designated equipment functions;

(G) Verification that a consumer complaint mechanism is in place and that the facility is following its procedures; and

(H) Review of all factors related to previously identified concerns or concerns identified during that visit.

(2) Clinical image review for random sample of facilities. (i) Sample size. In addition to conducting clinical image reviews for accreditation and reaccreditation for all facilities, the accreditation body shall conduct clinical image reviews annually for a randomly selected sample as specified by FDA, but to include at least 3 percent of the facilities the body accredits. Accreditation bodies may count toward this random sample requirement all facilities selected randomly for the onsite visits described in paragraph (f)(1)(i)(A) of this section. Accreditation bodies shall not count toward the random sample requirement any facilities described in paragraph (f)(1)(i)(B) of this section that were selected for a visit because of previously identified concerns.

(ii) Random clinical image review. In performing clinical image reviews of the random sample of facilities, accreditation bodies shall evaluate the same attributes as those in paragraph (c) of this section for review of clinical images for accreditation and reaccreditation.

(iii) Accreditation bodies should not schedule random clinical image reviews at facilities that have received notification of the need to begin the accreditation renewal process or that have completed the accreditation renewal process within the previous 6 months.

(iv) Selection of the random sample of clinical images for clinical image review by the accreditation body. Clinical images shall be selected in a manner, specified by the accreditation body and approved by FDA under § 900.3(d) or paragraph (a)(8) of this section, that does not compromise care of the patient as a result of the absence of the selected images from the facility.

(g) *Consumer complaint mechanism.* The accreditation body shall develop and administer a written and documented system, including timeframes, for collecting and resolving serious consumer complaints that could not be resolved at a facility. Such system shall have been approved by FDA in accordance with § 900.3(d) or paragraph (a)(8) of this section. Accordingly, all accreditation bodies shall:

(1) Provide a mechanism for all facilities it accredits to file serious unresolved complaints with the accreditation body;

(2) Maintain a record of every serious unresolved complaint received by the body on all facilities it accredits for a period of at least 3 years from the date of receipt of each such complaint;

(h) *Reporting and recordkeeping.* All reports to FDA specified in paragraphs (h)(1) through (h)(4) of this section shall be prepared and submitted in a format and medium prescribed by FDA and shall be submitted to a location and according to a schedule specified by FDA. The accreditation body shall:

(1) Collect and submit to FDA the information required by 42 U.S.C. 263b(d) for each facility when the facility is initially accredited and at least annually when updated, in a manner and at a time specified by FDA.

(2) Accept applications containing the information required in 42 U.S.C. 263b(c)(2) for provisional certificates and in § 900.11(b)(3) for extension of provisional certificates, on behalf of FDA, and notify FDA of the receipt of such information;

(3) Submit to FDA the name, identifying information, and other information relevant to 42 U.S.C. 263b and specified by FDA for any facility for which the accreditation body denies, suspends, or revokes accreditation, and the reason(s) for such action;

(4) Submit to FDA an annual report summarizing all serious complaints received during the previous calendar year, their resolution status, and any actions taken in response to them;

(5) Provide to FDA other information relevant to 42 U.S.C. 263b and required by FDA about any facility accredited or undergoing accreditation by the body.

(i) *Fees.* Fees charged to facilities for accreditation shall be reasonable. Costs of accreditation body activities that are not related to accreditation functions under 42 U.S.C. 263b are not

recoverable through fees established for accreditation.

(1) The accreditation body shall make public its fee structure, including those factors, if any, contributing to variations in fees for different facilities.

(2) At FDA's request, accreditation bodies shall provide financial records or other material to assist FDA in assessing the reasonableness of accreditation body fees. Such material shall be provided to FDA in a manner and time period specified by the agency.

§ 900.5 Evaluation.

FDA shall evaluate annually the performance of each accreditation body. Such evaluation shall include an assessment of the reports of FDA or State inspections of facilities accredited by the body as well as any additional information deemed relevant by FDA that has been provided by the accreditation body or other sources or has been required by FDA as part of its oversight initiatives. The evaluation shall include a determination of whether there are major deficiencies in the accreditation body's performance that, if not corrected, would warrant withdrawal of the approval of the accreditation body under the provisions of § 900.6.

§ 900.6 Withdrawal of approval.

If FDA determines, through the evaluation activities of § 900.5, or through other means, that an accreditation body is not in substantial compliance with this subpart, FDA may initiate the following actions:

(a) *Major deficiencies.* If FDA determines that an accreditation body has failed to perform a major accreditation function satisfactorily, has demonstrated willful disregard for public health, has violated the code of conduct, has committed fraud, or has submitted material false statements to the agency, FDA may withdraw its approval of that accreditation body.

(1) FDA shall notify the accreditation body of the agency's action and the grounds on which the approval was withdrawn.

(2) An accreditation body that has lost its approval shall notify facilities accredited or seeking accreditation by it that its approval has been withdrawn. Such notification shall be made within a time period and in a manner approved by FDA.

(b) *Minor deficiencies.* If FDA determines that an accreditation body has demonstrated deficiencies in performing accreditation functions and responsibilities that are less serious or more limited than the deficiencies in paragraph (a) of this section, FDA shall notify the body that it has a specified period of time to take particular corrective measures directed by FDA or to submit to FDA for approval the body's own plan of corrective action addressing the minor deficiencies. FDA may place the body on probationary status for a period of time determined by FDA, or may withdraw approval of the body as an accreditation body if corrective action is not taken.

(1) If FDA places an accreditation body on probationary status, the body shall notify all facilities accredited or seeking accreditation by it of its probationary status within a time period and in a manner approved by FDA.

(2) Probationary status shall remain in effect until such time as the body can demonstrate to the satisfaction of FDA that it has successfully implemented or is implementing the corrective action plan within the established schedule, and that the corrective actions have substantially eliminated all identified problems.

(3) If FDA determines that an accreditation body that has been placed on probationary status is not implementing corrective actions satisfactorily or within the established schedule, FDA may withdraw approval of the accreditation body. The accreditation body shall notify all facilities accredited or seeking accreditation by it of its loss of FDA approval, within a time period and in a manner approved by FDA.

(c) *Reapplication by accreditation bodies that have had their approval withdrawn.* (1) A former accreditation body that has had its approval withdrawn may submit a new application for approval if the body can provide information to FDA to establish that the problems that were grounds for withdrawal of approval have been resolved.

(2) If FDA determines that the new application demonstrates that the body satisfactorily has addressed the causes of its previous unacceptable performance, FDA may reinstate approval of the accreditation body.

(3) FDA may request additional information or establish additional conditions that must be met by a former accreditation body before FDA approves the reapplication.

(4) FDA may refuse to accept an application from a former accreditation body whose approval was withdrawn because of fraud or willful disregard of public health.

§ 900.7 Hearings.

(a) Opportunities to challenge final adverse actions taken by FDA regarding approval or reapproval of accreditation bodies, withdrawal of approval of accreditation bodies, or rejection of a proposed fee for accreditation shall be communicated through notices of opportunity for informal hearings in accordance with part 16 of this chapter.

(b) A facility that has been denied accreditation is entitled to an appeals process from the accreditation body. The appeals process shall be specified in writing by the accreditation body and shall have been approved by FDA in accordance with § 900.3(d) or § 900.4(a)(8).

(c) A facility that cannot achieve satisfactory resolution of an adverse accreditation decision through the accreditation body's appeals process may appeal to FDA for reconsideration in accordance with § 900.15.

§§ 900.8—900.9 [Reserved]

Subpart B—Quality Standards and Certification

§ 900.10 Applicability.

The provisions of subpart B are applicable to all facilities under the regulatory jurisdiction of the United States that provide mammography services, with the exception of the Department of Veterans Affairs.

§ 900.11 Requirements for certification.

(a) *General.* After October 1, 1994, a certificate issued by FDA is required for lawful operation of all mammography facilities subject to the provisions of this subpart. To obtain a certificate from FDA, facilities are required to meet the quality standards in § 900.12 and to be accredited by an approved accreditation body or other entity as designated by FDA.

(b) *Application.* (1) *Certificates.* (i) In order to qualify for a certificate, a facility must apply to an FDA-approved accreditation body, or to another entity designated by FDA. The facility shall submit to such body or entity the information required in 42 U.S.C. 263b(d)(1).

(ii) Following the agency's receipt of the accreditation body's decision to accredit a facility, or an equivalent decision by another entity designated by FDA, the agency may issue a certificate to the facility, or renew an existing certificate, if the agency determines that the facility has satisfied the requirements for certification or recertification.

(2) *Provisional certificates.* (i) A new facility beginning operation after October 1, 1994, is eligible to apply for a provisional certificate. The provisional certificate will enable the facility to perform mammography and to obtain

the clinical images needed to complete the accreditation process. To apply for and receive a provisional certificate, a facility must meet the requirements of 42 U.S.C. 263b(c)(2) and submit the necessary information to an approved accreditation body or other entity designated by FDA.

(ii) Following the agency's receipt of the accreditation body's decision that a facility has submitted the required information, FDA may issue a provisional certificate to a facility upon determination that the facility has satisfied the requirements of § 900.11(b)(2)(i). A provisional certificate shall be effective for up to 6 months from the date of issuance. A provisional certificate cannot be renewed, but a facility may apply for a 90-day extension of the provisional certificate.

(3) *Extension of provisional certificate.* (i) To apply for a 90-day extension to a provisional certificate, a facility shall submit to its accreditation body, or other entity designated by FDA, a statement of what the facility is doing to obtain certification and evidence that there would be a significant adverse impact on access to mammography in the geographic area served if such facility did not obtain an extension.

(ii) The accreditation body shall forward the request, with its recommendation, to FDA within 2 business days after receipt.

(iii) FDA may issue a 90-day extension for a provisional certificate upon determination that the extension meets the criteria set forth in 42 U.S.C. 263b(c)(2).

(iv) There can be no renewal of a provisional certificate beyond the 90-day extension.

(c) *Reinstatement policy.* A previously certified facility that has allowed its certificate to expire, that has been refused a renewal of its certificate by FDA, or that has had its certificate suspended or revoked by FDA, may apply to have the certificate reinstated so that the facility may be considered to be a new facility and thereby be eligible for a provisional certificate.

(1) Unless prohibited from reinstatement under § 900.11(c)(4), a facility applying for reinstatement shall:

(i) Contact an FDA-approved accreditation body or other entity designated by FDA to determine the requirements for reapplication for accreditation;

(ii) Fully document its history as a previously provisionally certified or certified mammography facility, including the following information:

(A) Name and address of the facility under which it was previously provisionally certified or certified;

(B) Name of previous owner/lessor;

(C) FDA facility identification number assigned to the facility under its previous certification; and

(D) Expiration date of the most recent FDA provisional certificate or certificate; and

(iii) Justify application for reinstatement of accreditation by submitting to the accreditation body or other entity designated by FDA, a corrective action plan that details how the facility has corrected deficiencies that contributed to the lapse of, denial of renewal, or revocation of its certificate.

(2) FDA may issue a provisional certificate to the facility if:

(i) The accreditation body or other entity designated by FDA notifies the agency that the facility has adequately corrected, or is in the process of correcting, pertinent deficiencies; and

(ii) FDA determines that the facility has taken sufficient corrective action since the lapse of, denial of renewal, or revocation of its previous certificate.

(3) After receiving the provisional certificate, the facility may lawfully resume performing mammography services while completing the requirements for certification.

(4) If a facility's certificate was revoked on the basis of an act described in 41 U.S.C. 263b(i)(1), no person who owned or operated that facility at the time the act occurred may own or operate a mammography facility within 2 years of the date of revocation.

§ 900.12 Quality standards.

(a) *Personnel.* The following requirements apply to all personnel involved in any aspect of mammography, including the production, processing, and interpretation of mammograms and related quality assurance activities:

(1) Interpreting physicians. All physicians interpreting mammograms shall meet the following qualifications:

(i) Initial qualifications. Unless the exemption in paragraph (a)(1)(iii)(A) of this section applies, before beginning to interpret mammograms independently, the interpreting physician shall:

(A) Be licensed to practice medicine in a State;

(B)(*1*) Be certified in an appropriate specialty area by a body determined by FDA to have procedures and requirements adequate to ensure that physicians certified by the body are competent to interpret radiological procedures, including mammography; or

(*2*) Have had at least 3 months of documented formal training in the interpretation of mammograms and in topics related to mammography. The training shall include instruction in radiation physics, including radiation physics specific to mammography, radiation effects, and radiation protection. The mammographic interpretation component shall be under the direct supervision of a physician who meets the requirements of paragraph (a)(1) of this section;

(C) Have a minimum of 60 hours of documented medical education in mammography, which shall include: Instruction in the interpretation of mammograms and education in basic breast anatomy, pathology, physiology, technical aspects of mammography, and quality assurance and quality control in mammography. All 60 of these hours shall be category I and at least 15 of the category I hours shall have been acquired within the 3 years immediately prior to the date that the physician qualifies as an interpreting physician. Hours spent in residency specifically devoted to mammography will be considered as equivalent to Category I continuing medical education credits and will be accepted if documented in writing by the appropriate representative of the training institution; and

(D) Unless the exemption in paragraph (a)(1)(iii)(B) of this section applies, have interpreted or multi-read at least 240 mammographic examinations within the 6-month period immediately prior to the date that the physician qualifies as an interpreting physician. This interpretation or multi-reading shall be under the direct supervision of an interpreting physician.

(ii) Continuing experience and education. All interpreting physicians shall maintain their qualifications by meeting the following requirements:

(A) Following the second anniversary date of the end of the calendar quarter in which the requirements of paragraph (a)(1)(i) of this section were completed, the interpreting physician shall have interpreted or multi-read at least 960 mammographic examinations during the 24 months immediately preceding the date of the facility's annual MQSA inspection or the last day of the calendar quarter preceding the inspection or any date in-between the two. The facility will choose one of these dates to determine the 24-month period.

(B) Following the third anniversary date of the end of the calendar quarter in which the requirements of paragraph (a)(1)(i) of this section were completed,

the interpreting physician shall have taught or completed at least 15 category I continuing medical education units in mammography during the 36 months immediately preceding the date of the facility's annual MQSA inspection or the last day of the calendar quarter preceding the inspection or any date in between the two. The facility will choose one of these dates to determine the 36-month period. This training shall include at least six category I continuing medical education credits in each mammographic modality used by the interpreting physician in his or her practice; and

(C) Before an interpreting physician may begin independently interpreting mammograms produced by a new mammographic modality, that is, a mammographic modality in which the physician has not previously been trained, the interpreting physician shall have at least 8 hours of training in the new mammographic modality.

(D) Units earned through teaching a specific course can be counted only once towards the 15 required by paragraph (a)(1)(ii)(B) of this section, even if the course is taught multiple times during the previous 36 months.

(iii) Exemptions. (A) Those physicians who qualified as interpreting physicians under paragraph (a)(1) of this section of FDA's interim regulations prior to April 28, 1999, are considered to have met the initial requirements of paragraph (a)(1)(i) of this section. They may continue to interpret mammograms provided they continue to meet the licensure requirement of paragraph (a)(1)(i)(A) of this section and the continuing experience and education requirements of paragraph (a)(1)(ii) of this section.

(B) Physicians who have interpreted or multi-read at least 240 mammographic examinations under the direct supervision of an interpreting physician in any 6-month period during the last 2 years of a diagnostic radiology residency and who become appropriately board certified at the first allowable time, as defined by an eligible certifying body, are otherwise exempt from paragraph (a)(1)(i)(D) of this section.

(iv) Reestablishing qualifications. Interpreting physicians who fail to maintain the required continuing experience or continuing education requirements shall reestablish their qualifications before resuming the independent interpretation of mammograms, as follows:

(A) Interpreting physicians who fail to meet the continuing experience requirements of paragraph (a)(1)(ii)(A) of this section shall:

(*1*) Interpret or multi-read at least 240 mammographic examinations under the direct supervision of an interpreting physician, or

(*2*) Interpret or multi-read a sufficient number of mammographic examinations, under the direct supervision of an interpreting physician, to bring the physician's total up to 960 examinations for the prior 24 months, whichever is less.

(*3*) The interpretations required under paragraph (a)(1)(iv)(A)(*1*) or (a)(1)(iv)(A)(*2*) of this section shall be done within the 6 months immediately prior to resuming independent interpretation.

(B) Interpreting physicians who fail to meet the continuing education requirements of paragraph (a)(1)(ii)(B) of this section shall obtain a sufficient number of additional category I continuing medical education credits in mammography to bring their total up to the required 15 credits in the previous 36 months before resuming independent interpretation.

(2) Radiologic technologists. All mammographic examinations shall be performed by radiologic technologists who meet the following general requirements, mammography requirements, and continuing education and experience requirements:

(i) General requirements. (A) Be licensed to perform general radiographic procedures in a State; or

(B) Have general certification from one of the bodies determined by FDA to have procedures and requirements adequate to ensure that radiologic technologists certified by the body are competent to perform radiologic examinations; and

(ii) Mammography requirements. Have, prior to April 28, 1999, qualified as a radiologic technologist under paragraph (a)(2) of this section or completed at least 40 contact hours of documented training specific to mammography under the supervision of a qualified instructor. The hours of documented training shall include, but not necessarily be limited to:

(A) Training in breast anatomy and physiology, positioning and compression, quality assurance/quality control techniques, imaging of patients with breast implants;

(B) The performance of a minimum of 25 examinations under the direct supervision of an individual qualified under paragraph (a)(2) of this section; and

(C) At least 8 hours of training in each mammography modality to be used by the technologist in performing mammography exams; and

(iii) Continuing education requirements. (A) Following the third anniversary date of the end of the calendar quarter in which the requirements of paragraphs (a)(2)(i) and (a)(2)(ii) of this section were completed, the radiologic technologist shall have taught or completed at least 15 continuing education units in mammography during the 36 months immediately preceding the date of the facility's annual MQSA inspection or the last day of the calendar quarter preceding the inspection or any date in between the two. The facility will choose one of these dates to determine the 36-month period.

(B) Units earned through teaching a specific course can be counted only once towards the 15 required in paragraph (a)(2)(iii)(A) of this section, even if the course is taught multiple times during the previous 36 months.

(C) At least six of the continuing education units required in paragraph (a)(2)(iii)(A) of this section shall be related to each mammographic modality used by the technologist.

(D) Requalification. Radiologic technologists who fail to meet the continuing education requirements of paragraph (a)(2)(iii)(A) of this section shall obtain a sufficient number of continuing education units in mammography to bring their total up to at least 15 in the previous 3 years, at least 6 of which shall be related to each modality used by the technologist in mammography. The technologist may not resume performing unsupervised mammography examinations until the continuing education requirements are completed.

(E) Before a radiologic technologist may begin independently performing mammographic examinations using a mammographic modality other than one of those for which the technologist received training under paragraph (a)(2)(ii)(C) of this section, the technologist shall have at least 8 hours of continuing education units in the new modality.

(iv) Continuing experience requirements. (A) Following the second anniversary date of the end of the calendar quarter in which the requirements of paragraphs (a)(2)(i) and (a)(2)(ii) of this section were completed or of October 28, 1997, whichever is later, the radiologic technologist shall have performed a minimum of 200 mammography examinations during the 24 months immediately preceding the date of the facility's annual MQSA inspection or the last day of the calendar quarter or any date in between the two. The facility will choose one of

these dates to determine the 24-month period.

(B) Requalification. Radiologic technologists who fail to meet the continuing experience requirements of paragraph (a)(2)(iv)(A) of this section shall perform a minimum of 25 mammography examinations under the direct supervision of a qualified radiologic technologist, before resuming the performance of unsupervised mammography examinations.

(3) *Medical physicists.* All medical physicists conducting surveys of mammography facilities and providing oversight of the facility quality assurance program under paragraph (e) of this section shall meet the following:

(i) Initial qualifications. (A) Be State licensed or approved or have certification in an appropriate specialty area by one of the bodies determined by FDA to have procedures and requirements to ensure that medical physicists certified by the body are competent to perform physics survey; and

(B)(*1*) Have a masters degree or higher in a physical science from an accredited institution, with no less than 20 semester hours or equivalent (e.g., 30 quarter hours) of college undergraduate or graduate level physics;

(*2*) Have 20 contact hours of documented specialized training in conducting surveys of mammography facilities; and

(*3*) Have the experience of conducting surveys of at least 1 mammography facility and a total of at least 10 mammography units. No more than one survey of a specific unit within a period of 60 days can be counted towards the total mammography unit survey requirement. After April 22, 1999, experience conducting surveys must be acquired under the direct supervision of a medical physicist who meets all the requirements of paragraphs (a)(3)(i) and (a)(3)(iii) of this section; or

(ii) Alternative initial qualifications. (A) Have qualified as a medical physicist under paragraph (a)(3) of this section of FDA's interim regulations and retained that qualification by maintenance of the active status of any licensure, approval, or certification required under the interim regulations; and

(B) Prior to the April 22, 1999, have:

(*1*) A bachelor's degree or higher in a physical science from an accredited institution with no less than 10 semester hours or equivalent of college undergraduate or graduate level physics,

(*2*) Forty contact hours of documented specialized training in conducting surveys of mammography facilities and,

(*3*) Have the experience of conducting surveys of at least 1 mammography facility and a total of at least 20 mammography units. No more than one survey of a specific unit within a period of 60 days can be counted towards the total mammography unit survey requirement. The training and experience requirements must be met after fulfilling the degree requirement.

(iii) Continuing qualifications. (A) Continuing education. Following the third anniversary date of the end of the calendar quarter in which the requirements of paragraph (a)(3)(i) or (a)(3)(ii) of this section were completed, the medical physicist shall have taught or completed at least 15 continuing education units in mammography during the 36 months immediately preceding the date of the facility's annual inspection or the last day of the calendar quarter preceding the inspection or any date in between the two. The facility shall choose one of these dates to determine the 36-month period. This continuing education shall include hours of training appropriate to each mammographic modality evaluated by the medical physicist during his or her surveys or oversight of quality assurance programs. Units earned through teaching a specific course can be counted only once towards the required 15 units in a 36-month period, even if the course is taught multiple times during the 36 months.

(B) Continuing experience. Following the second anniversary date of the end of the calendar quarter in which the requirements of paragraph (a)(3)(i) or (a)(3)(ii) of this section were completed or of October 28, 1997, whichever is later, the medical physicist shall have surveyed at least two mammography facilities and a total of at least six mammography units during the 24 months immediately preceding the date of the facility's annual MQSA inspection or the last day of the calendar quarter or any date in-between the two. The facility shall choose one of these dates to determine the 24-month period. No more than one survey of a specific facility within a 10-month period on a specific unit within a period of 60 days can be counted towards the total mammography unit survey requirement.

(C) Before a medical physicist may begin independently performing mammographic surveys of a new mammographic modality, that is, a mammographic modality other than one for which the physicist received training to qualify under paragraph (a)(3)(i) or (a)(3)(ii) of this section, the physicist must receive at least 8 hours of training in surveying units of the new mammographic modality.

(iv) Reestablishing qualifications. Medical physicists who fail to maintain the required continuing qualifications of paragraph (a)(3)(iii) of this section may not perform the MQSA surveys without the supervision of a qualified medical physicist. Before independently surveying another facility, medical physicists must reestablish their qualifications, as follows:

(A) Medical physicists who fail to meet the continuing educational requirements of paragraph (a)(3)(iii)(A) of this section shall obtain a sufficient number of continuing education units to bring their total units up to the required 15 in the previous 3 years.

(B) Medical physicists who fail to meet the continuing experience requirement of paragraph (a)(3)(iii)(B) of this section shall complete a sufficient number of surveys under the direct supervision of a medical physicist who meets the qualifications of paragraphs (a)(3)(i) and (a)(3)(iii) of this section to bring their total surveys up to the required two facilities and six units in the previous 24 months. No more than one survey of a specific unit within a period of 60 days can be counted towards the total mammography unit survey requirement.

(4) *Retention of personnel records.* Facilities shall maintain records to document the qualifications of all personnel who worked at the facility as interpreting physicians, radiologic technologists, or medical physicists. These records must be available for review by the MQSA inspectors. Records of personnel no longer employed by the facility should not be discarded until the next annual inspection has been completed and FDA has determined that the facility is in compliance with the MQSA personnel requirements.

(b) *Equipment.* Regulations published under §§ 1020.30, 1020.31, and 900.12(e) of this chapter that are relevant to equipment performance should also be consulted for a more complete understanding of the equipment performance requirements.

(1) *Prohibited equipment.* Radiographic equipment designed for general purpose or special nonmammography procedures shall not be used for mammography. This prohibition includes systems that have been modified or equipped with special attachments for mammography. This requirement supersedes the implied acceptance of such systems in § 1020.31(f)(3) of this chapter.

(2) *General.* All radiographic equipment used for mammography shall

be specifically designed for mammography and shall be certified pursuant to § 1010.2 of this chapter as meeting the applicable requirements of §§ 1020.30 and 1020.31 of this chapter in effect at the date of manufacture.

(3) *Motion of tube-image receptor assembly.* (i) The assembly shall be capable of being fixed in any position where it is designed to operate. Once fixed in any such position, it shall not undergo unintended motion.

(ii) The mechanism ensuring compliance with paragraph (b)(3)(i) of this section shall not fail in the event of power interruption.

(4) *Image receptor sizes.* (i) Systems using screen-film image receptors shall provide, at a minimum, for operation with image receptors of 18 x 24 centimeters (cm) and 24 x 30 cm.

(ii) Systems using screen-film image receptors shall be equipped with moving grids matched to all image receptor sizes provided.

(iii) Systems used for magnification procedures shall be capable of operation with the grid removed from between the source and image receptor.

(5) *Beam limitation and light fields.* (i) All systems shall have beam-limiting devices that allow the useful beam to extend to or beyond the chest wall edge of the image receptor.

(ii) For any mammography system with a light beam that passes through the X-ray beam-limiting device, the light shall provide an average illumination of not less than 160 lux (15 foot candles) at 100 cm or the maximum source-image receptor distance (SID), whichever is less.

(6) *Magnification.* (i) Systems used to perform noninterventional problem solving procedures shall have radiographic magnification capability available for use by the operator.

(ii) Systems used for magnification procedures shall provide, at a minimum, at least one magnification value within the range of 1.4 to 2.0.

(7) *Focal spot selection.* (i) When more than one focal spot is provided, the system shall indicate, prior to exposure, which focal spot is selected.

(ii) When more than one target material is provided, the system shall indicate, prior to exposure, the preselected target material.

(iii) When the target material and/or focal spot is selected by a system algorithm that is based on the exposure or on a test exposure, the system shall display, after the exposure, the target material and/or focal spot actually used during the exposure.

(8) *Compression.* All mammography systems shall incorporate a compression device.

(i) Application of compression. Effective October 28, 2002, each system shall provide:

(A) An initial power-driven compression activated by hands-free controls operable from both sides of the patient; and

(B) Fine adjustment compression controls operable from both sides of the patient.

(ii) Compression paddle. (A) Systems shall be equipped with different sized compression paddles that match the sizes of all full-field image receptors provided for the system. Compression paddles for special purposes, including those smaller than the full size of the image receptor (for ''spot compression'') may be provided. Such compression paddles for special purposes are not subject to the requirements of paragraphs (b)(8)(ii)(D) and (b)(8)(ii)(E) of this section.

(B) Except as provided in paragraph (b)(8)(ii)(C) of this section, the compression paddle shall be flat and parallel to the breast support table and shall not deflect from parallel by more than 1.0 cm at any point on the surface of the compression paddle when compression is applied.

(C) Equipment intended by the manufacturer's design to not be flat and parallel to the breast support table during compression shall meet the manufacturer's design specifications and maintenance requirements.

(D) The chest wall edge of the compression paddle shall be straight and parallel to the edge of the image receptor.

(E) The chest wall edge may be bent upward to allow for patient comfort but shall not appear on the image.

(9) *Technique factor selection and display.* (i) Manual selection of milliampere seconds (mA's) or at least one of its component parts (milliapere (mA) and/or time) shall be available.

(ii) The technique factors (peak tube potential in kilovolt (kV) and either tube current in mA and exposure time in seconds or the product of tube current and exposure time in mA's) to be used during an exposure shall be indicated before the exposure begins, except when automatic exposure controls (AEC) are used, in which case the technique factors that are set prior to the exposure shall be indicated.

(iii) Following AEC mode use, the system shall indicate the actual kilovoltage peak (kVp) and mA's used during the exposure. The mA's may be displayed as mA and time.

(10) *Automatic exposure control.* (i) Each screen-film system shall provide an AEC mode that is operable in all combinations of equipment configuration provided, e.g., grid, nongrid; magnification, nonmagnification; and various target-filter combinations.

(ii) The positioning or selection of the detector shall permit flexibility in the placement of the detector under the target tissue.

(A) The size and available positions of the detector shall be clearly indicated at the X-ray input surface of the breast compression paddle.

(B) The selected position of the detector shall be clearly indicated.

(iii) The system shall provide means for the operator to vary the selected optical density from the normal (zero) setting.

(11) *X-ray film.* The facility shall use X-ray film for mammography that has been designated by the film manufacturer as appropriate for mammography.

(12) *Intensifying screens.* The facility shall use intensifying screens for mammography that have been designated by the screen manufacturer as appropriate for mammography and shall use film that is matched to the screen's spectral output as specified by the manufacturer.

(13) *Film processing solutions.* For processing mammography films, the facility shall use chemical solutions that are capable of developing the films used by the facility in a manner equivalent to the minimum requirements specified by the film manufacturer.

(14) *Lighting.* The facility shall make special lights for film illumination, i.e., hot-lights, capable of producing light levels greater than that provided by the view box, available to the interpreting physicians.

(15) *Film masking devices.* Facilities shall ensure that film masking devices that can limit the illuminated area to a region equal to or smaller than the exposed portion of the film are available to all interpreting physicians interpreting for the facility.

(c) *Medical records and mammography reports*—(1) *Contents and terminology.* Each facility shall prepare a written report of the results of each mammography examination performed under its certificate. The mammography report shall include the following information:

(i) The name of the patient and an additional patient identifier;

(ii) Date of examination;

(iii) The name of the interpreting physician who interpreted the mammogram;

(iv) Overall final assessment of findings, classified in one of the following categories:

(A) ''Negative:'' Nothing to comment upon (if the interpreting physician is aware of clinical findings or symptoms, despite the negative assessment, these shall be explained);

(B) ''Benign:'' Also a negative assessment;

(C) ''Probably Benign:'' Finding(s) has a high probability of being benign;

(D) ''Suspicious:'' Finding(s) without all the characteristic morphology of breast cancer but indicating a definite probability of being malignant;

(E) ''Highly suggestive of malignancy:'' Finding(s) has a high probability of being malignant;

(v) In cases where no final assessment category can be assigned due to incomplete work-up, ''Incomplete: Need additional imaging evaluation'' shall be assigned as an assessment and reasons why no assessment can be made shall be stated by the interpreting physician; and

(vi) Recommendations made to the health care provider about what additional actions, if any, should be taken. All clinical questions raised by the referring health care provider shall be addressed in the report to the extent possible, even if the assessment is negative or benign.

(2) *Communication of mammography results to the patient.* Each facility shall maintain a system to ensure that the results of each mammographic examination are communicated to the patient in a timely manner. If assessments are ''Suspicious'' or ''Highly suggestive of malignancy'' and the patient has not named a health care provider, the facility shall make reasonable attempts to ensure that the results are communicated to the patient as soon as possible.

(i) As soon as possible, but no later than 30 days from the date of the mammography examination, patients who do not name a health care provider to receive the mammography report shall be sent the report described in paragraph (c)(1) of this section, in addition to a written notification of results in lay terms.

(ii) Each facility that accepts patients who do not have a primary care provider shall maintain a system for referring such patients to a health care provider when clinically indicated.

(3) *Communication of mammography results to health care providers.* When the patient has a referring health care provider or the patient has named a health care provider, the facility shall:

(i) Provide a written report of the mammography examination, including the items listed in paragraph (c)(1) of this section, to that health care provider as soon as possible, but no later than 30 days from the date of the mammography examination; and

(ii) If the assessment is ''Suspicious'' or ''Highly suggestive of malignancy,'' make reasonable attempts to communicate with the health care provider as soon as possible, or if the health care provider is unavailable, to a responsible designee of the health care provider.

(4) *Recordkeeping.* Each facility that performs mammograms: (i) Shall (except as provided in paragraph (c)(3)(ii) of this section) maintain mammography films and reports in a permanent medical record of the patient for a period of not less than 5 years, or not less than 10 years if no additional mammograms of the patient are performed at the facility, or a longer period if mandated by State or local law; and

(ii) Shall upon request or on behalf of, by the patient, permanently or temporarily transfer the original mammograms and copies of the patient's reports to a medical institution, or to a physician or health care provider of the patient, or to the patient directly;

(iii) Any fee charged to the patients for providing the services in paragraph (c)(4)(ii) of this section shall not exceed the documented costs associated with this service.

(5) *Mammographic image identification.* Each mammographic image shall have the following information indicated on it in a permanent, legible, and unambiguous manner and placed so as not to obscure anatomic structures:

(i) Name of patient and an additional patient identifier.

(ii) Date of examination.

(iii) View and laterality. This information shall be placed on the image in a position near the axilla. Standardized codes specified by the accreditation body and approved by FDA in accordance with § 900.3(b) or § 900.4(a)(8) shall be used to identify view and laterality.

(iv) Facility name and location. At a minimum, the location shall include the city, State, and zip code of the facility.

(v) Technologist identification.

(vi) Cassette/screen identification.

(vii) Mammography unit identification, if there is more than one unit in the facility.

(d) *Quality assurance—general.* Each facility shall establish and maintain a quality assurance program to ensure the safety, reliability, clarity, and accuracy of mammography services performed at the facility.

(1) *Responsible individuals.* Responsibility for the quality assurance program and for each of its elements shall be assigned to individuals who are qualified for their assignments and who shall be allowed adequate time to perform these duties.

(i) Lead interpreting physician. The facility shall identify a lead interpreting physician who shall have the general responsibility of ensuring that the quality assurance program meets all requirements of paragraphs (d) through (f) of this section. No other individual shall be assigned or shall retain responsibility for quality assurance tasks unless the lead interpreting physician has determined that the individual's qualifications for, and performance of, the assignment are adequate.

(ii) Interpreting physicians. All interpreting physicians interpreting mammograms for the facility shall:

(A) Follow the facility procedures for corrective action when the images they are asked to interpret are of poor quality, and

(B) Participate in the facility's medical outcomes audit program.

(iii) Medical physicist. Each facility shall have the services of a medical physicist available to survey mammography equipment and oversee the equipment-related quality assurance practices of the facility. At a minimum, the medical physicist(s) shall be responsible for performing the surveys and mammography equipment evaluations and providing the facility with the reports described in paragraphs (e)(9) and (e)(10) of this section.

(iv) Quality control technologist. Responsibility for all individual tasks within the quality assurance program not assigned to the lead interpreting physician or the medical physicist shall be assigned to a quality control technologist(s). The tasks are to be performed by the quality control technologist or by other personnel qualified to perform the tasks. When other personnel are utilized for these tasks, the quality control technologist shall ensure that the tasks are completed in such a way as to meet the requirements of paragraph (e) of this section.

(2) *Quality assurance records.* The lead interpreting physician, quality control technologist, and medical physicist shall ensure that records concerning employee qualifications to meet assigned quality assurance tasks, mammography technique and procedures, quality control (including monitoring data, problems detected by analysis of that data, corrective actions, and the effectiveness of the corrective actions), safety, and protection are properly maintained and updated. These quality control records shall be

kept for each test specified in paragraphs (e) and (f) of this section until the next annual inspection has been completed and FDA has determined that the facility is in compliance with the quality assurance requirements or until the test has been performed two additional times at the required frequency, whichever is longer.

(e) *Quality assurance—equipment*—(1) *Daily quality control tests.* Film processors used to develop mammograms shall be adjusted and maintained to meet the technical development specifications for the mammography film in use. A processor performance test shall be performed on each day that examinations are performed before any clinical films are processed that day. The test shall include an assessment of base plus fog density, mid-density, and density difference, using the mammography film used clinically at the facility.

(i) The base plus fog density shall be within + 0.03 of the established operating level.

(ii) The mid-density shall be within ± 0.15 of the established operating level.

(iii) The density difference shall be within ± 0.15 of the established operating level.

(2) *Weekly quality control tests.* Facilities with screen-film systems shall perform an image quality evaluation test, using an FDA-approved phantom, at least weekly.

(i) The optical density of the film at the center of an image of a standard FDA-accepted phantom shall be at least 1.20 when exposed under a typical clinical condition.

(ii) The optical density of the film at the center of the phantom image shall not change by more than ± 0.20 from the established operating level.

(iii) The phantom image shall achieve at least the minimum score established by the accreditation body and accepted by FDA in accordance with § 900.3(d) or § 900.4(a)(8).

(iv) The density difference between the background of the phantom and an added test object, used to assess image contrast, shall be measured and shall not vary by more than ± 0.05 from the established operating level.

(3) *Quarterly quality control tests.* Facilities with screen-film systems shall perform the following quality control tests at least quarterly:

(i) Fixer retention in film. The residual fixer shall be no more than 5 micrograms per square cm.

(ii) Repeat analysis. If the total repeat or reject rate changes from the previously determined rate by more than 2.0 percent of the total films included in the analysis, the reason(s) for the change shall be determined. Any corrective actions shall be recorded and the results of these corrective actions shall be assessed.

(4) *Semiannual quality control tests.* Facilities with screen-film systems shall perform the following quality control tests at least semiannually:

(i) Darkroom fog. The optical density attributable to darkroom fog shall not exceed 0.05 when a mammography film of the type used in the facility, which has a mid-density of no less than 1.2 OD, is exposed to typical darkroom conditions for 2 minutes while such film is placed on the counter top emulsion side up. If the darkroom has a safelight used for mammography film, it shall be on during this test.

(ii) Screen-film contact. Testing for screen-film contact shall be conducted using 40 mesh copper screen. All cassettes used in the facility for mammography shall be tested.

(iii) Compression device performance. (A) A compression force of at least 111 newtons (25 pounds) shall be provided.

(B) Effective October 28, 2002, the maximum compression force for the initial power drive shall be between 111 newtons (25 pounds) and 209 newtons (47 pounds).

(5) Annual quality control tests. Facilities with screen-film systems shall perform the following quality control tests at least annually:

(i) Automatic exposure control performance. (A) The AEC shall be capable of maintaining film optical density within ± 0.30 of the mean optical density when thickness of a homogeneous material is varied over a range of 2 to 6 cm and the kVp is varied appropriately for such thicknesses over the kVp range used clinically in the facility. If this requirement cannot be met, a technique chart shall be developed showing appropriate techniques (kVp and density control settings) for different breast thicknesses and compositions that must be used so that optical densities within ± 0.30 of the average under phototimed conditions can be produced.

(B) After October 28, 2002, the AEC shall be capable of maintaining film optical density (OD) within ± 0.15 of the mean optical density when thickness of a homogeneous material is varied over a range of 2 to 6 cm and the kVp is varied appropriately for such thicknesses over the kVp range used clinically in the facility.

(C) The optical density of the film in the center of the phantom image shall not be less than 1.20.

(ii) Kilovoltage peak (kVp) accuracy and reproducibility. (A) The kVp shall be accurate within ± 5 percent of the indicated or selected kVp at:

(*1*) The lowest clinical kVp that can be measured by a kVp test device;

(*2*) The most commonly used clinical kVp;

(*3*) The highest available clinical kVp, and

(B) At the most commonly used clinical settings of kVp, the coefficient of variation of reproducibility of the kVp shall be equal to or less than 0.02.

(iii) Focal spot condition. Until October 28, 2002, focal spot condition shall be evaluated either by determining system resolution or by measuring focal spot dimensions. After October 28, 2002, facilities shall evaluate focal spot condition only by determining the system resolution.

(A) System Resolution. (*1*) Each X-ray system used for mammography, in combination with the mammography screen-film combination used in the facility, shall provide a minimum resolution of 11 Cycles/millimeters (mm) (line-pairs/mm) when a high contrast resolution bar test pattern is oriented with the bars perpendicular to the anode-cathode axis, and a minimum resolution of 13 line-pairs/mm when the bars are parallel to that axis.

(*2*) The bar pattern shall be placed 4.5 cm above the breast support surface, centered with respect to the chest wall edge of the image receptor, and with the edge of the pattern within 1 cm of the chest wall edge of the image receptor.

(*3*) When more than one target material is provided, the measurement in paragraph (e)(5)(iii)(A) of this section shall be made using the appropriate focal spot for each target material.

(*4*) When more than one SID is provided, the test shall be performed at SID most commonly used clinically.

(*5*) Test kVp shall be set at the value used clinically by the facility for a standard breast and shall be performed in the AEC mode, if available. If necessary, a suitable absorber may be placed in the beam to increase exposure times. The screen-film cassette combination used by the facility shall be used to test for this requirement and shall be placed in the normal location used for clinical procedures.

(B) Focal spot dimensions. Measured values of the focal spot length (dimension parallel to the anode cathode axis) and width (dimension perpendicular to the anode cathode axis) shall be within the tolerance limits specified in Table 1.

TABLE 1

Focal Spot Tolerance Limit		
Nominal Focal Spot Size (mm)	Maximum Measured Dimensions	
	Width(mm)	Length(mm)
0.10	0.15	0.15
0.15	0.23	0.23
0.20	0.30	0.30
0.30	0.45	0.65
0.40	0.60	0.85
0.60	0.90	1.30

(iv) Beam quality and half-value layer (HVL). The HVL shall meet the specifications of § 1020.30(m)(1) of this chapter for the minimum HVL. These values, extrapolated to the mammographic range, are shown in Table 2. Values not shown in Table 2 may be determined by linear interpolation or extrapolation.

TABLE 2

X-ray Tube Voltage (kilovolt peak) and Minimum HVL		
Designed Operating Range (kV)	Measured Operating Voltage (kV)	Minimum HVL (millimeters of aluminum)
Below 50	20	0.20
	25	0.25
	30	0.30

(v) Breast entrance air kerma and AEC reproducibility. The coefficient of variation for both air kerma and mA's shall not exceed 0.05.

(vi) Dosimetry. The average glandular dose delivered during a single cranio-caudal view of an FDA-accepted phantom simulating a standard breast shall not exceed 3.0 milligray (mGy) (0.3 rad) per exposure. The dose shall be determined with technique factors and conditions used clinically for a standard breast.

(vii) X-ray field/light field/image receptor/compression paddle alignment. (A) All systems shall have beam-limiting devices that allow the useful X-ray beam to extend to or beyond the edges of the image receptor but by no more than 2 percent of the SID at the chest wall side.

(B) If a light field that passes through the X-ray beam limitation device is provided, it shall be aligned with the X-ray field so that the total of any misalignment of the edges of the light field and the X-ray field along either the length or the width of the visually defined field at the plane of the breast support surface shall not exceed 2 percent of the SID.

(C) The chest wall edge of the compression paddle shall not extend beyond the chest wall edge of the image receptor by more than one percent of the SID when tested with the compression paddle placed above the breast support surface at a distance equivalent to standard breast thickness. The shadow of the vertical edge of the compression paddle shall not be visible on the image.

(viii) Uniformity of screen speed. Uniformity of screen speed of all the cassettes in the facility shall be tested and the difference between the maximum and minimum optical densities shall not exceed 0.30. Screen artifacts shall also be evaluated during this test.

(ix) System artifacts. System artifacts shall be evaluated with a high-grade, defect-free sheet of homogeneous material large enough to cover the mammography cassette and shall be performed for all cassette sizes used in the facility using a grid appropriate for the cassette size being tested. System artifacts shall also be evaluated for all available focal spot sizes and target filter combinations used clinically.

(x) Radiation output. (A) The system shall be capable of producing a minimum output of 4.5 mGy air kerma per second (513 milli Roentgen (mR) per second) when operating at 28 kVp in the standard mammography (moly/moly) mode at any SID where the system is designed to operate and when measured by a detector with its center located 4.5 cm above the breast support surface with the compression paddle in place between the source and the detector. After October 28, 2002, the system, under the same measuring conditions shall be capable of producing a minimum output of 7.0 mGy air kerma per second (800 mR per second) when operating at 28 kVp in the standard (moly/moly) mammography mode at any SID where the system is designed to operate.

(B) The system shall be capable of maintaining the required minimum radiation output averaged over a 3.0 second period.

(xi) Decompression. If the system is equipped with a provision for automatic decompression after completion of an exposure or interruption of power to the system, the system shall be tested to confirm that it provides:

(A) An override capability to allow maintenance of compression;

(B) A continuous display of the override status; and

(C) A manual emergency compression release that can be activated in the event of power or automatic release failure.

(6) *Quality control tests—other modalities.* For systems with image receptor modalities other than screen-film, the quality assurance program shall be substantially the same as the quality assurance program recommended by the image receptor manufacturer, except that the maximum allowable dose shall not exceed the maximum allowable dose for screen-film systems in paragraph (e)(5)(vi) of this section.

(7) *Mobile Units.* The facility shall verify that mammography units used to produce mammograms at more than one location meet the requirements in paragraphs (e)(1) through (e)(6) of this section. In addition, at each examination location, before any

examinations are conducted, the facility shall verify satisfactory performance of such units using a test method that establishes the adequacy of the image quality produced by the unit.

(8) *Use of test results.* (i) After completion of the tests specified in paragraphs (e)(1) through (e)(7) of this section, the facility shall compare the test results to the corresponding specified action limits; or, for nonscreen-film modalities, to the manufacturer's recommended action limits; or, for post-move, preexamination testing of mobile units, to the limits established in the test method used by the facility.

(ii) If the test results fall outside of the action limits, the source of the problem shall be identified and corrective actions shall be taken:

(A) Before any further examinations are performed or any films are processed using the component of the mammography system that failed the test, if the failed test was that described in paragraphs (e)(1), (e)(2), (e)(4)(ii), (e)(4)(iii), (e)(5)(i), (e)(5)(iii), (e)(5)(v), (e)(5)(vi), (e)(6), or (e)(7) of this section;

(B) Within 30 days of the test date for all other tests described in paragraph (e) of this section.

(9) *Surveys.* (i) At least once a year, each facility shall undergo a survey by a medical physicist or by an individual under the direct supervision of a medical physicist. At a minimum, this survey shall include the performance of tests to ensure that the facility meets the quality assurance requirements of the annual tests described in paragraphs (e)(5) and (e)(6) of this section and the weekly phantom image quality test described in paragraph (e)(2) of this section.

(ii) The results of all tests conducted by the facility in accordance with paragraphs (e)(1) through (e)(7) of this section, as well as written documentation of any corrective actions taken and their results, shall be evaluated for adequacy by the medical physicist performing the survey.

(iii) The medical physicist shall prepare a survey report that includes a summary of this review and recommendations for necessary improvements.

(iv) The survey report shall be sent to the facility within 30 days of the date of the survey.

(v) The survey report shall be dated and signed by the medical physicist performing or supervising the survey. If the survey was performed entirely or in part by another individual under the direct supervision of the medical physicist, that individual and the part of the survey that individual performed shall also be identified in the survey report.

(10) *Mammography equipment evaluations.* Additional evaluations of mammography units or image processors shall be conducted whenever a new unit or processor is installed, a unit or processor is dissembled and reassembled at the same or a new location, or major components of a mammography unit or processor equipment are changed or repaired. These evaluations shall be used to determine whether the new or changed equipment meets the requirements of applicable standards in paragraphs (b) and (e) of this section. All problems shall be corrected before the new or changed equipment is put into service for examinations or film processing. The mammography equipment evaluation shall be performed by a medical physicist or by an individual under the direct supervision of a medical physicist.

(11) *Facility cleanliness.* (i) The facility shall establish and implement adequate protocols for maintaining darkroom, screen, and view box cleanliness.

(ii) The facility shall document that all cleaning procedures are performed at the frequencies specified in the protocols.

(12) *Calibration of air kerma measuring instruments.* Instruments used by medical physicists in their annual survey to measure the air kerma or air kerma rate from a mammography unit shall be calibrated at least once every 2 years and each time the instrument is repaired. The instrument calibration must be traceable to a national standard and calibrated with an accuracy of ± 6 percent (95 percent confidence level) in the mammography energy range.

(13) *Infection control.* Facilities shall establish and comply with a system specifying procedures to be followed by the facility for cleaning and disinfecting mammography equipment after contact with blood or other potentially infectious materials. This system shall specify the methods for documenting facility compliance with the infection control procedures established and shall:

(i) Comply with all applicable Federal, State, and local regulations pertaining to infection control; and

(ii) Comply with the manufacturer's recommended procedures for the cleaning and disinfection of the mammography equipment used in the facility; or

(iii) If adequate manufacturer's recommendations are not available, comply with generally accepted guidance on infection control, until such recommendations become available.

(f) *Quality assurance-mammography medical outcomes audit.* Each facility shall establish and maintain a mammography medical outcomes audit program to followup positive mammographic assessments and to correlate pathology results with the interpreting physician's findings. This program shall be designed to ensure the reliability, clarity, and accuracy of the interpretation of mammograms.

(1) *General requirements.* Each facility shall establish a system to collect and review outcome data for all mammograms performed, including followup on the disposition of all positive mammograms and correlation of pathology results with the interpreting physician's mammography report. Analysis of these outcome data shall be made individually and collectively for all interpreting physicians at the facility. In addition, any cases of breast cancer among women imaged at the facility that subsequently become known to the facility shall prompt the facility to initiate followup on surgical and/or pathology results and review of the mammograms taken prior to the diagnosis of a malignancy.

(2) *Frequency of audit analysis.* The facility's first audit analysis shall be initiated no later than 12 months after the date the facility becomes certified, or 12 months after April 28, 1999, whichever date is the latest. This audit analysis shall be completed within an additional 12 months to permit completion of diagnostic procedures and data collection. Subsequent audit analyses will be conducted at least once every 12 months.

(3) *Reviewing interpreting physician.* Each facility shall designate at least one interpreting physician to review the medical outcomes audit data at least once every 12 months. This individual shall record the dates of the audit period(s) and shall be responsible for analyzing results based on this audit. This individual shall also be responsible for documenting the results, notifying other interpreting physicians of their results and the facility aggregate results. If followup actions are taken, the reviewing interpreting physician shall also be responsible for documenting the nature of the followup.

(g) *Mammographic procedure and techniques for mammography of patients with breast implants.* (1) Each facility shall have a procedure to inquire whether or not the patient has breast implants prior to the actual mammographic exam.

(2) Except where contraindicated, or unless modified by a physician's directions, patients with breast implants undergoing mammography shall have mammographic views to maximize the visualization of breast tissue.

(h) *Consumer complaint mechanism*. Each facility shall:

(1) Establish a written and documented system for collecting and resolving consumer complaints;

(2) Maintain a record of each serious complaint received by the facility for at least 3 years from the date the complaint was received;

(3) Provide the consumer with adequate directions for filing serious complaints with the facility's accreditation body if the facility is unable to resolve a serious complaint to the consumer's satisfaction;

(4) Report unresolved serious complaints to the accreditation body in a manner and timeframe specified by the accreditation body.

(i) *Clinical image quality*. Clinical images produced by any certified facility must continue to comply with the standards for clinical image quality established by that facility's accreditation body.

(j) *Additional mammography review and patient notification*. (1) If FDA believes that mammography quality at a facility has been compromised and may present a serious risk to human health, the facility shall provide clinical images and other relevant information, as specified by FDA, for review by the accreditation body or other entity designated by FDA. This additional mammography review will help the agency to determine whether the facility is in compliance with this section and, if not, whether there is a need to notify affected patients, their physicians, or the public that the reliability, clarity, and accuracy of interpretation of mammograms has been compromised.

(2) If FDA determines that any activity related to the provision of mammography at a facility may present a serious risk to human health such that patient notification is necessary, the facility shall notify patients or their designees, their physicians, or the public of action that may be taken to minimize the effects of the risk. Such notification shall occur within a timeframe and in a manner specified by FDA.

§ 900.13 Revocation of accreditation and revocation ofaccreditation body approval.

(a) *FDA action following revocation of accreditation*. If a facility's accreditation is revoked by an accreditation body, the agency may conduct an investigation into the reasons for the revocation. Following such investigation, the agency may determine that the facility's certificate shall no longer be in effect or the agency may take whatever other action or combination of actions will best protect the public health, including the establishment and implementation of a corrective plan of action that will permit the certificate to continue in effect while the facility seeks reaccreditation. A facility whose certificate is no longer in effect because it has lost its accreditation may not practice mammography.

(b) *Withdrawal of FDA approval of an accreditation body*. (1) If FDA withdraws approval of an accreditation body under § 900.6, the certificates of facilities previously accredited by such body shall remain in effect for up to 1 year from the date of the withdrawal of approval, unless FDA determines, in order to protect human health or because the accreditation body fraudulently accredited facilities, that the certificates of some or all of the facilities should be revoked or suspended or that a shorter time period should be established for the certificates to remain in effect.

(2) After 1 year from the date of withdrawal of approval of an accreditation body, or within any shorter period of time established by the agency, the affected facilities must obtain accreditation from another accreditation body, or from another entity designated by FDA.

§ 900.14 Suspension or revocation of certificates.

(a) Except as provided in paragraph (b) of this section, FDA may suspend or revoke a certificate if FDA finds, after providing the owner or operator of the facility with notice and opportunity for an informal hearing in accordance with part 16 of this chapter, that the owner, operator, or any employee of the facility:

(1) Has been guilty of misrepresentation in obtaining the certificate;

(2) Has failed to comply with the standards of § 900.12;

(3) Has failed to comply with reasonable requests of the agency or the accreditation body for records, information, reports, or materials that FDA believes are necessary to determine the continued eligibility of the facility for a certificate or continued compliance with the standards of § 900.12;

(4) Has refused a reasonable request of a duly designated FDA inspector, State inspector, or accreditation body representative for permission to inspect the facility or the operations and pertinent records of the facility;

(5) Has violated or aided and abetted in the violation of any provision of or regulation promulgated pursuant to 42 U.S.C. 263b; or

(6) Has failed to comply with prior sanctions imposed by the agency under 42 U.S.C. 263b(h).

(b) FDA may suspend the certificate of a facility before holding a hearing if FDA makes a finding described in paragraph (a) of this section and also determines that;

(1) The failure to comply with required standards presents a serious risk to human health;

(2) The refusal to permit inspection makes immediate suspension necessary; or

(3) There is reason to believe that the violation or aiding and abetting of the violation was intentional or associated with fraud.

(c) If FDA suspends a certificate in accordance with paragraph (b) of this section:

(1) The agency shall provide the facility with an opportunity for an informal hearing under part 16 of this chapter not later than 60 days from the effective date of this suspension;

(2) The suspension shall remain in effect until the agency determines that:

(i) Allegations of violations or misconduct were not substantiated;

(ii) Violations of required standards have been corrected to the agency's satisfaction; or

(iii) The facility's certificate is revoked in accordance with paragraph (d) of this section;

(d) After providing a hearing in accordance with paragraph (c)(1) of this section, the agency may revoke the facility's certificate if the agency determines that the facility:

(1) Is unwilling or unable to correct violations that were the basis for suspension; or

(2) Has engaged in fraudulent activity to obtain or continue certification.

§ 900.15 Appeals of adverse accreditation or reaccreditation decisions that preclude certification or recertification.

(a) The appeals procedures described in this section are available only for adverse accreditation or reaccreditation decisions that preclude certification or recertification by FDA. Agency decisions to suspend or revoke certificates that are already in effect will be handled in accordance with § 900.14.

(b) Upon learning that a facility has failed to become accredited or reaccredited, FDA will notify the facility that the agency is unable to certify that facility without proof of accreditation.

(c) A facility that has been denied accreditation or reaccreditation is

entitled to an appeals process from the accreditation body, in accordance with § 900.7. A facility must avail itself of the accreditation body's appeal process before requesting reconsideration from FDA.

(d) A facility that cannot achieve satisfactory resolution of an adverse accreditation decision through the accreditation body's appeal process is entitled to further appeal in accordance with procedures set forth in this section and in regulations published in 42 CFR part 498.

(1) References to the Health Care Financing Administration (HCFA) in 42 CFR part 498 should be read as the Division of Mammography Quality and Radiation Programs (DMQRP), Center for Devices and Radiological Health, Food and Drug Administration.

(2) References to the Appeals Council of the Social Security Administration in 42 CFR part 498 should be read as references to the Departmental Appeals Board.

(3) In accordance with the procedures set forth in subpart B of 42 CFR part 498, a facility that has been denied accreditation following appeal to the accreditation body may request reconsideration of that adverse decision from DMQRP.

(i) A facility must request reconsideration by DMQRP within 60 days of the accreditation body's adverse appeals decision, at the following address: Division of Mammography Quality and Radiation Programs (HFZ–240), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, Attn: Facility Accreditation Review Committee.

(ii) The request for reconsideration shall include three copies of the following records:

(A) The accreditation body's original denial of accreditation.

(B) All information the facility submitted to the accreditation body as part of the appeals process;

(C) A copy of the accreditation body's adverse appeals decision; and

(D) A statement of the basis for the facility's disagreement with the accreditation body's decision.

(iii) DMQRP will conduct its reconsideration in accordance with the procedures set forth in subpart B of 42 CFR part 498.

(4) A facility that is dissatisfied with DMQRP's decision following reconsideration is entitled to a formal hearing in accordance with procedures set forth in subpart D of 42 CFR part 498.

(5) Either the facility or FDA may request review of the hearing officer's decision. Such review will be conducted by the Departmental Appeals Board in accordance with subpart E of 42 CFR part 498.

(6) A facility cannot perform mammography services while an adverse accreditation decision is being appealed.

§ 900.16 Appeals of denials of certification.

(a) The appeals procedures described in this section are available only to facilities that are denied certification by FDA after they have been accredited by an approved accreditation body. Appeals for facilities that have failed to become accredited are governed by the procedures set forth in § 900.15.

(b) FDA may deny the application if the agency has reason to believe that:

(1) The facility will not be operated in accordance with standards established under § 900.12;

(2) The facility will not permit inspections or provide access to records or information in a timely fashion; or

(3) The facility has been guilty of misrepresentation in obtaining the accreditation.

(c)(1) If FDA denies an application for certification by a faciity that has received accreditation from an approved accreditation body, FDA shall provide the facility with a statement of the grounds on which the denial is based.

(2) A facility that has been denied accreditation may request reconsideration and appeal of FDA's determination in accordance with the applicable provisions of § 900.15(d).

§ 900.17 [Reserved]

§ 900.18 Alternative requirements for § 900.12 quality standards.

(a) *Criteria for approval of alternative standards.* Upon application by a qualified party as defined in paragraph (b) of this section, FDA may approve an alternative to a quality standard under § 900.12, when the agency determines that:

(1) The proposed alternative standard will be at least as effective in assuring quality mammography as the standard it proposes to replace, and

(2) The proposed alternative:

(i) Is too limited in its applicability to justify an amendment to the standard; or

(ii) Offers an expected benefit to human health that is so great that the time required for amending the standard would present an unjustifiable risk to the human health; and

(3) The granting of the alternative is in keeping with the purposes of 42 U.S.C. 263b.

(b) *Applicants for alternatives.* (1) Mammography facilities and accreditation bodies may apply for alternatives to the quality standards of § 900.12.

(2) Federal agencies and State governments that are not accreditation bodies may apply for alternatives to the standards of § 900.12(a).

(3) Manufacturers and assemblers of equipment used for mammography may apply for alternatives to the standards of § 900.12(b) and (e).

(c) *Applications for approval of an alternative standard.* An application for approval of an alternative standard or for an amendment or extension of the alternative standard shall be submitted in an original and two copies to the Director, Division of Mammography Quality and Radiation Programs (HFZ–240), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. The application for approval of an alternative standard shall include the following information:

(1) Identification of the original standard for which the alternative standard is being proposed and an explanation of why the applicant is proposing the alternative;

(2) A description of the manner in which the alternative is proposed to deviate from the original standard;

(3) A description, supported by data, of the advantages to be derived from such deviation;

(4) An explanation, supported by data, of how such a deviation would ensure equal or greater quality of production, processing, or interpretation of mammograms than the original standard;

(5) The suggested period of time that the proposed alternative standard would be in effect; and

(6) Such other information required by the Director to evaluate and act on the application.

(d) *Ruling on applications.* (1) FDA may approve or deny, in whole or in part, a request for approval of an alternative standard or any amendment or extension thereof, and shall inform the applicant in writing of this action. The written notice shall state the manner in which the requested alternative standard differs from the agency standard and a summary of the reasons for approval or denial of the request. If the request is approved, the written notice shall also include the effective date and the termination date of the approval and a summary of the limitations and conditions attached to the approval and any other information that may be relevant to the approved request. Each approved alternative standard shall be assigned an identifying number.

(2) Notice of an approved request for an alternative standard or any amendment or extension thereof shall be placed in the public docket file in the Dockets Management Branch and may also be in the form of a notice published in the **Federal Register**. The notice shall state the name of the applicant, a description of the published agency standard, and a description of the approved alternative standard, including limitations and conditions attached to the approval of the alternative standard.

(3) Summaries of the approval of alternative standards, including information on their nature and number, shall be provided to the National Mammography Quality Assurance Advisory Committee.

(4) All applications for approval of alternative standards and for amendments and extensions thereof and all correspondence (including written notices of approval) on these applications shall be available for public disclosure in the Dockets Management Branch, excluding patient identifiers and confidential commercial information.

(e) *Amendment or extension of an alternative standard.* An application for amending or extending approval of an alternative standard shall include the following information:

(1) The approval number and the expiration date of the alternative standard;

(2) The amendment or extension requested and the basis for the amendment or extension; and

(3) An explanation, supported by data, of how such an amendment or extension would ensure equal or greater quality of production, processing, or interpretation of mammograms than the original standard.

(f) *Applicability of the alternative standards.* (1) Except as provided in paragraphs (f)(2) and (f)(3) of this section, any approval of an alternative standard, amendment, or extension may be implemented only by the entity to which it was granted and under the terms under which it was granted. Other entities interested in similar or identical approvals must file their own application following the procedures of paragraph (c) of this section.

(2) When an alternative standard is approved for a manufacturer of equipment, any facility using that equipment will also be covered by the alternative standard.

(3) The agency may extend the alternative standard to other entities when FDA determines that expansion of the approval of the alternative standard would be an effective means of promoting the acceptance of measures to improve the quality of mammography. All such determinations will be publicized by appropriate means.

(g) *Withdrawal of approval of alternative requirements.* FDA shall amend or withdraw approval of an alternative standard whenever the agency determines that this action is necessary to protect the human health or otherwise is justified by § 900.12. Such action will become effective on the date specified in the written notice of the action sent to the applicant, except that it will become effective immediately upon notification of the applicant when FDA determines that such action is necessary to prevent an imminent health hazard.

Dated: November 3, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–29596 Filed 11-6-97; 1:07 pm]

BILLING CODE 4160–01–F

federal register

Monday
November 10, 1997

Part V

Department of Transportation

Federal Transit Administration

Environmental Impact Statement; Crossroads Arena Project/Buffalo Inner Harbor Development Project; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement; Crossroads Arena Project/Buffalo Inner Harbor Development Project Buffalo, New York

AGENCY: Federal Transit Administration.

ACTION: Notice of intent to prepare an Environmental Impact Statement for the Crossroads Arena Project/Buffalo Inner Harbor Development Project.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, as implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508) and Federal Transit Administration (FTA) regulations under 23 CFR part 771, the FTA and the Niagara Frontier Transportation Authority (NFTA) intends to prepare an environmental impact statement (EIS) to study the reconfiguration and redevelopment of a portion of the Buffalo Inner Harbor located in the City of Buffalo, New York. The proposed project would be financed through funding from the Intermodal Surface Transportation Efficiency Act (ISTEA), the New York State Thruway Authority, the City of Buffalo and Erie County. The project is being administered by the Empire State Development Corporation (ESDC) in cooperation with NFTA.

I. Project Description

The proposed action (Inner Harbor Development Project) consists of reconfiguration and redeveloping approximately 6 acres of land in downtown Buffalo, located along the Buffalo River near the southern terminus of the Niagara Frontier Transportation Authority's (NFTA's) light rail rapid transit (LRRT) system at the foot of Main Street. A conceptual plan for redevelopment of the project site was prepared by the City of Buffalo in 1996 and sets the basis for the project. The principal elements of this plan included the construction of a new Naval and Military Museum, which currently occupies a portion of the project site; the reconfiguration of the Buffalo River shoreline to create two new inlets with direct access to Main Street to accommodate existing naval vessels that are part of the museum's collection, transient boats, water taxis, and tour boats; a visitor's center; a waterfront promenade to provide continuous pedestrian/bicycle access; a new or enhanced intermodal LRRT station to serve the project area; and the creation of Greenway Plaza, a new public space serving as a hub for all bicycle and pedestrian trail systems, with areas for new development of commercial/entertainment facilities.

The Inner Harbor Development Project is intended to enhance public access to the water's edge; enhance ridership on the LRRT system; and encourage intermodal opportunities between waterborne, transit, automobile, pedestrian and bicycle route systems. Additionally, the project is also expected to facilitate and promote private investment by further capitalizing on intermodal opportunities offered in the project area.

The EIS will analyze reasonable alternatives that will assist in achieving the objectives of the Inner Harbor Development Project. Three alternatives will be formulated through a series of workshops with major stakeholders, agencies, and the general public. Although still being formulated, the alternatives will include consideration of a new/enhanced intermodal LRRT station; reconfiguration of the Buffalo River shoreline to increase access; identification of new private development sites in the project area; and establishment of new pedestrian/bicycle/automobile circulation routes through the project area. In addition, the EIS will assess the No-Action alternative to serve as a basis for comparison with the other alternatives and proposed action.

The EIS will evaluate all potential significant social, economic, and environmental effects of the alternatives. These would include issues involving land use/zoning/development policies; coastal zone management policies and navigable waterways; coordination with other projects planned in the study area and cumulative impacts from these projects; traffic, bicycle, and pedestrian circulation; transit ridership; parking; historic/archaeological resources and parklands; aesthetics; water quality; air quality; hazardous materials; and effects to minority and low income populations in accordance with federal guidelines concerning environmental justice. Both positive and negative impacts will be evaluated for the construction period and for the long-term period of operation. Significant potential adverse impacts resulting from analysis of the proposed action and alternatives will be discussed in terms of avoidance measures or minimized through the implementation of mitigation measures, where reasonable and appropriate.

II. Scoping Process/Public Scoping Meeting

The FTA is initiating a scoping process for the purpose of determining the scope of issues to be addressed in the EIS. All interested individuals and organizations as well as Federal, state, and local agencies, are invited to participate in identifying any significant social, economic, and environmental concerns related to the Inner Harbor Development Project. A draft Scoping Document describing the purpose of the project and impact issues is being mailed to affected Federal, State and local agencies as well as interested parties. Copies of the draft Scoping Document may be obtained by contacting Ms. Ruta Dzenis, Project Director, Empire State Development Corporation at (716) 856–8111. A Public Scoping Meeting concerning the Inner Harbor Development Project will be held on: November 24, 1997, 6:30 p.m., Buffalo and Erie County Public Library, Lafayette Square, Main Auditorium (Clinton Street Entrance), Buffalo, New York 14203.

Following a presentation on the project, comments on the scope of the EIS will be received and transcribed at this meeting.

Scoping comments may be submitted at the public scoping meeting and/ or submitted in writing at the address listed below. It is important that interested parties and Federal, State, and local agencies take this opportunity to identify environmental concerns that should be addressed in the EIS. Further, because the preliminary design components of the Inner Harbor Development Project are currently being formulated and refined, the scoping process offers an opportunity to incorporate public environmental concerns into the urban design and engineering processes of the project.

Written comments on the scope of alternatives and impacts to be considered must be received by 5:00 pm January 16, 1998. Written comments should clearly describe the specific social, economic, and environmental issues and concerns that the commentor believes that the EIS should address. Written comments should be sent to: Ms. Ruta Dzenis, Project Director, Empire State Development Corporation, Western New York Region, 420 Main Street, Suite 717 Liberty Building, Buffalo, New York 14202.

III. FTA and State Procedures

The EIS process will be conducted in accordance with NEPA, CEQ, and FTA regulations under 23 CFR part 771. Following the completion of the scoping

process, a draft EIS will be prepared and made available for public review. Following a 45-day public comment period and public hearing on the draft EIS, a final EIS will be prepared with appropriate revisions and additions responding to all substantive comments received. The final EIS will serve as the basis for a Record of Decision issued on the proposed action.

Because the proposed action also includes actions/funding by New York State, county and local agencies, it is required to be assessed in accordance with the New York State Environmental Quality Review Act (SEQRA). ESDC will serve as the lead agency for SEQRA documentation. The content and format of the EIS will be designed to also serve as the SEQRA documentation for the action. All time frames, public notices, public hearings, and comment periods will be coordinated in accordance with both NEPA and SEQRA requirements.

IV. Contacts

For further information on this project, please contact: Anthony G. Carr, Director, Office of Planning and Program Development, Federal Transit Administration at (212) 264–8162.

Issued on November 7, 1997.

Thomas J. Ryan,

Regional Administrator.

[FR Doc. 97–29831 Filed 11–7–97; 10:53 a.m.]

BILLING CODE 4910–57–P

Reader Aids

Federal Register

Vol. 62, No. 217

Monday, November 10, 1997

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202–523–5227**

E-mail **info@fedreg.nara.gov**

Laws

For additional information **523–5227**

Presidential Documents

Executive orders and proclamations **523–5227**

The United States Government Manual **523–5227**

Other Services

Electronic and on-line services (voice) **523–4534**

Privacy Act Compilation **523–3187**

TDD for the hearing impaired **523–5229**

ELECTRONIC BULLETIN BOARD

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

FAX-ON-DEMAND

You may access our Fax-On-Demand service with a fax machine. There is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list is updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, NW., Suite 700. The Fax-On-Demand telephone number is: **301–713–6905**

FEDERAL REGISTER PAGES AND DATES, NOVEMBER

59275–59558 3
59599–59772 4
59773–59990 5
59991–60154 6
60155–60450 7
60451–60636 8

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7046 59559
7047 59773
7048 60153

Executive Orders:
13067 59989

5 CFR

1201 59991
1209 59992

Proposed Rules:
532 59300
630 59301

7 CFR

3 60451
29 60155
920 60156
922 60158
923 60158
924 60158

8 CFR

213a 60122
214 60122
299 60122

9 CFR

92 60161
93 60161
94 60161
95 60161
96 60161
97 60161
98 60161
130 60161

Proposed Rules:
304 59304
308 59304
310 ..... 59304, 59305
320 59304
327 59304
381 ..... 59304, 59305
416 59304
417 59304

10 CFR

13 59275
32 59275
50 59275
51 59275
55 59275
60 59275
72 59275
110 59275
431 59978

11 CFR

Proposed Rules:
100 60047

12 CFR

204 59775
325 60161
614 59779
619 59779

Proposed Rules:
3 59944
208 59944
225 59944
325 59944
567 59944

14 CFR

25 59561
39 ..... 59277, 59280, 59565, 59566, 59780, 59781, 59993, 60161, 60451
71 ..... 59783, 60455
73 60456
255 59784

Proposed Rules:
39 ..... 59310, 59826, 59827, 59829, 59830, 60047, 60049, 60183, 60184, 60186, 60188, 60189, 60191, 60193,
71 ..... 60051, 60315, 60460, 60461, 60462
73 60463
255 ..... 59313, 60195

15 CFR

Proposed Rules:
303 59829
960 59317

16 CFR

1615 60163
1616 60163

17 CFR

Proposed Rules:
3 59624
32 59624
33 59624

18 CFR

4 59802
375 59802

19 CFR

101 60164
122 60164

20 CFR

416 59812

21 CFR

173 59281
16 60614
900 60614

Proposed Rules:
514 59830

600 59386
606 59386

24 CFR

203 60124
206 60124

26 CFR

1 60165
Proposed Rules:
1 60196

29 CFR

2204 59568
4001 60426
4006 60426
4022 60426
4041 60426
4050 60426

30 CFR

870 60138
914 59569
938 60169
Proposed Rules:
707 59639
874 59639

32 CFR

311 59578

33 CFR

100 ..... 60177, 60178
165 60178
Proposed Rules:
100 60197

37 CFR

Proposed Rules:
2 59640
3 59640

38 CFR

21 59579
Proposed Rules:
21 60464

39 CFR

111 60180

40 CFR

52 ..... 59284, 59995, 59996
58 59813
80 ..... 59998, 60132
81 60001
260 59287
721 59579
Proposed Rules:
52 ..... 59331, 60052, 60318
58 59840
63 60566
80 60052
141 ..... 59388, 59486
142 ..... 59388, 59486
260 59332
268 60465
300 ..... 60058, 60199

41 CFR

105–60 60014

42 CFR

424 59818

43 CFR

11 60457
1860 59820
3710 59821
Proposed Rules:
4700 60467

44 CFR

64 59290

46 CFR

Proposed Rules:
10 60122
15 60122

47 CFR

1 ..... 59822, 60025
21 60025
25 59293
42 59583
61 59583
64 60034
73 59605
74 60025
Proposed Rules:
20 60199
90 60199
36 59842

48 CFR

Proposed Rules:
225 59641
252 59641

49 CFR

199 59297
385 60035

50 CFR

17 59605
679 ..... 59298, 59623, 60182
Proposed Rules:
17 59334
222 59335
600 59386
679 ..... 59844, 60060

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT NOVEMBER 10, 1997

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Tobacco inspection:

Rework definition; published 11-7-97

AGRICULTURE DEPARTMENT

Agricultural commodities; commercial sales financing; published 10-10-97

Federal claims collection:

Administrative offset; published 11-10-97

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Consumer products; energy conservation program:

Furnaces and boilers; test procedures; published 10-14-97

Furnaces/boilers, vented home heating equipment, and pool heaters; test procedures; published 5-12-97

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Louisiana; published 10-10-97

Maryland; published 10-9-97

Missouri; published 10-9-97

South Carolina; published 9-11-97

Water pollution control:

Water quality standards—

Idaho human health criteria for arsenic; withdrawn; published 10-9-97

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

Minnesota et al.; published 10-3-97

Mississippi; published 10-3-97

Missouri; published 10-3-97

Texas et al.; published 10-3-97

FEDERAL RESERVE SYSTEM

Securities credit transactions:

OTC margin stocks and foreign stocks lists (Regulations G, T, U, and X); published 10-27-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicaid:

Personal care services coverage; published 9-11-97

INTERIOR DEPARTMENT

Natural resource damage assessments; correction; published 11-10-97

SECURITIES AND EXCHANGE COMMISSION

Investment companies:

Open-end management investment companies—

Multiple classes and series investment companies; allocation methods expanded and shareholder voting rights clarified; published 10-3-97

TREASURY DEPARTMENT

Customs Service

Organization and functions; field organization, ports of entry, etc.:

Orlando-Sanford Airport, FL; port of entry; published 7-11-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Dairy products: grading, inspection, and standards:

Fee increases; comments due by 11-17-97; published 10-16-97

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Interstate transportation of animals and animal products (quarantine):

Brucellosis in cattle and bison—

State and area classifications; comments due by 11-17-97; published 9-16-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Magnuson Act provisions

Observer health and safety; comments due by 11-21-97; published 10-28-97

Northeastern United States fisheries—

New England Fishery Management Council; hearings; comments due by 11-17-97; published 10-15-97

Summer flounder, scup, and Black Sea bass; comments due by 11-17-97; published 10-20-97

Marine mammals:

Endangered fish or wildlife—

North Atlantic right whale protection; comments due by 11-18-97; published 11-3-97

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Freedom of Information Act; implementation; comments due by 11-20-97; published 10-21-97

ENVIRONMENTAL PROTECTION AGENCY

Air pollution, hazardous; national emission standards:

Steel pickling facilities; comments due by 11-17-97; published 9-18-97

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

New Mexico; comments due by 11-20-97; published 10-21-97

New Mexico et al.; comments due by 11-20-97; published 10-21-97

Air quality implementation plans; approval and promulgation; various States:

Pennsylvania; comments due by 11-18-97; published 9-23-97

Texas; comments due by 11-17-97; published 10-17-97

Virginia; comments due by 11-20-97; published 10-21-97

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

Florida; comments due by 11-17-97; published 10-3-97

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Public and Indian Housing:

Reasonable revitalization potential assessment of public housing required by law; comments due by 11-21-97; published 9-22-97

INTERIOR DEPARTMENT

Fish and Wildlife Service

Hunting and fishing:

Refuge-specific regulations; comments due by 11-17-97; published 10-16-97

MERIT SYSTEMS PROTECTION BOARD

Practices and procedures:

Original jurisdiction cases; delegation of authority, etc.; comments due by 11-17-97; published 9-16-97

SOCIAL SECURITY ADMINISTRATION

Social security benefits and supplemental security income:

Federal old age, survivors and disability insurance—

Circuit court law; application; comments due by 11-17-97; published 9-18-97

STATE DEPARTMENT

Freedom of Information Act; implementation:

Information and records availability; time limits for responding to and consideration of requests for expedited processing; comments due by 11-17-97; published 9-17-97

TRANSPORTATION DEPARTMENT

Coast Guard

Merchant marine officers and seamen:

Tankermen and persons in charge of dangerous liquids and liquefied gases transfers; qualifications—

Compliance date delayed and comment request; comments due by 11-17-97; published 9-17-97

Ports and waterways safety:

Mississippi River and Mississippi River Gulf Outlet; port access routes; comments due by 11-19-97; published 8-21-97

TRANSPORTATION DEPARTMENT

Computer reservation systems, carrier owned

Expiration date extension; comments due by 11-18-97; published 11-3-97

Truth in airfares; comments due by 11-17-97; published 9-16-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air traffic operating and flight rules, etc.:

Anchorage, AK; terminal area description revised; comments due by 11-17-97; published 10-1-97

Airworthiness directives:

Airbus; comments due by 11-17-97; published 10-17-97

Boeing; comments due by 11-17-97; published 9-17-97

CFM International; comments due by 11-18-97; published 9-19-97

Fokker; comments due by 11-20-97; published 10-21-97

Short Brothers plc; comments due by 11-17-97; published 10-17-97

Sikorsky; comments due by 11-17-97; published 9-18-97

Class D airspace; comments due by 11-17-97; published 10-17-97

Class E airspace; comments due by 11-17-97; published 10-17-97

TREASURY DEPARTMENT

Comptroller of the Currency

Fees assessment; national and District of Columbia banks; comments due by 11-20-97; published 10-21-97

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Farming business, property produced; cross-reference; comments due by 11-20-97; published 8-22-97

Qualified nonrecourse financing; comments due by 11-19-97; published 8-13-97

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A "●" precedes each entry that is now available on-line through the Government Printing Office's *GPO Access* **service at http://www.access.gpo.gov/nara/cfr. For information about** *GPO Access* **call 1-888-293-6498 (toll free).**

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $951.00 domestic, $237.75 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, Master Card, or Discover). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at **(202) 512–1800** from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to **(202) 512-2250**.

Title	Stock Number	Price	Revision Date
●**1, 2 (2** Reserved)	(869–032–00001–8)	$5.00	Feb. 1, 1997
●**3** (1996 Compilation and Parts 100 and 101)	(869–032–00002–6)	20.00	[1] Jan. 1, 1997
●**4**	(869–032–00003–4)	7.00	Jan. 1, 1997
5 Parts:			
●1–699	(869–032–00004–2)	34.00	Jan. 1, 1997
●700–1199	(869–032–00005–1)	26.00	Jan. 1, 1997
●1200–End, 6 (6 Reserved)	(869–032–00006–9)	33.00	Jan. 1, 1997
7 Parts:			
●0–26	(869–032–00007–7)	26.00	Jan. 1, 1997
●27–52	(869–032–00008–5)	30.00	Jan. 1, 1997
●53–209	(869–032–00009–3)	22.00	Jan. 1, 1997
●210–299	(869–032–00010–7)	44.00	Jan. 1, 1997
●300–399	(869–032–00011–5)	22.00	Jan. 1, 1997
●400–699	(869–032–00012–3)	28.00	Jan. 1, 1997
●700–899	(869–032–00013–1)	31.00	Jan. 1, 1997
●900–999	(869–032–00014–0)	40.00	Jan. 1, 1997
●1000–1199	(869–032–00015–8)	45.00	Jan. 1, 1997
●1200–1499	(869–032–00016–6)	33.00	Jan. 1, 1997
●1500–1899	(869–032–00017–4)	53.00	Jan. 1, 1997
●1900–1939	(869–032–00018–2)	19.00	Jan. 1, 1997
●1940–1949	(869–032–00019–1)	40.00	Jan. 1, 1997
●1950–1999	(869–032–00020–4)	42.00	Jan. 1, 1997
●2000–End	(869–032–00021–2)	20.00	Jan. 1, 1997
●**8**	(869–032–00022–1)	30.00	Jan. 1, 1997
9 Parts:			
●1–199	(869–032–00023–9)	39.00	Jan. 1, 1997
●200–End	(869–032–00024–7)	33.00	Jan. 1, 1997
10 Parts:			
●0–50	(869–032–00025–5)	39.00	Jan. 1, 1997
●51–199	(869–032–00026–3)	31.00	Jan. 1, 1997
●200–499	(869–032–00027–1)	30.00	Jan. 1, 1997
●500–End	(869–032–00028–0)	42.00	Jan. 1, 1997
●**11**	(869–032–00029–8)	20.00	Jan. 1, 1997
12 Parts:			
●1–199	(869–032–00030–1)	16.00	Jan. 1, 1997
●200–219	(869–032–00031–0)	20.00	Jan. 1, 1997
●220–299	(869–032–00032–8)	34.00	Jan. 1, 1997
●300–499	(869–032–00033–6)	27.00	Jan. 1, 1997
●500–599	(869–032–00034–4)	24.00	Jan. 1, 1997
●600–End	(869–032–00035–2)	40.00	Jan. 1, 1997
●**13**	(869–032–00036–1)	23.00	Jan. 1, 1997
14 Parts:			
●1–59	(869–032–00037–9)	44.00	Jan. 1, 1997
●60–139	(869–032–00038–7)	38.00	Jan. 1, 1997
140–199	(869–032–00039–5)	16.00	Jan. 1, 1997
●200–1199	(869–032–00040–9)	30.00	Jan. 1, 1997
●1200–End	(869–032–00041–7)	21.00	Jan. 1, 1997
15 Parts:			
0–299	(869–032–00042–5)	21.00	Jan. 1, 1997
●300–799	(869–032–00043–3)	32.00	Jan. 1, 1997
●800–End	(869–032–00044–1)	22.00	Jan. 1, 1997
16 Parts:			
●0–999	(869–032–00045–0)	30.00	Jan. 1, 1997
●1000–End	(869–032–00046–8)	34.00	Jan. 1, 1997
17 Parts:			
●1–199	(869–032–00048–4)	21.00	Apr. 1, 1997
●200–239	(869–032–00049–2)	32.00	Apr. 1, 1997
●240–End	(869–032–00050–6)	40.00	Apr. 1, 1997
18 Parts:			
●1–399	(869–032–00051–4)	46.00	Apr. 1, 1997
●400–End	(869–032–00052–2)	14.00	Apr. 1, 1997
19 Parts:			
●1–140	(869–032–00053–1)	33.00	Apr. 1, 1997
●141–199	(869–032–00054–9)	30.00	Apr. 1, 1997
●200–End	(869–032–00055–7)	16.00	Apr. 1, 1997
20 Parts:			
●1–399	(869–032–00056–5)	26.00	Apr. 1, 1997
●400–499	(869–032–00057–3)	46.00	Apr. 1, 1997
●500–End	(869–032–00058–1)	42.00	Apr. 1, 1997
21 Parts:			
●1–99	(869–032–00059–0)	21.00	Apr. 1, 1997
●100–169	(869–032–00060–3)	27.00	Apr. 1, 1997
●170–199	(869–032–00061–1)	28.00	Apr. 1, 1997
●200–299	(869–032–00062–0)	9.00	Apr. 1, 1997
●300–499	(869–032–00063–8)	50.00	Apr. 1, 1997
●500–599	(869–032–00064–6)	28.00	Apr. 1, 1997
●600–799	(869–032–00065–4)	9.00	Apr. 1, 1997
●800–1299	(869–032–00066–2)	31.00	Apr. 1, 1997
●1300–End	(869–032–00067–1)	13.00	Apr. 1, 1997
22 Parts:			
1–299	(869–032–00068–9)	42.00	Apr. 1, 1997
●300–End	(869–032–00069–7)	31.00	Apr. 1, 1997
●**23**	(869–032–00070–1)	26.00	Apr. 1, 1997
24 Parts:			
●0–199	(869–032–00071–9)	32.00	Apr. 1, 1997
200–499	(869–032–00072–7)	29.00	Apr. 1, 1997
500–699	(869–032–00073–5)	18.00	Apr. 1, 1997
●700–1699	(869–032–00074–3)	42.00	Apr.1, 1997
●1700–End	(869–032–00075–1)	18.00	Apr. 1, 1997
●**25**	(869–032–00076–0)	42.00	Apr. 1, 1997
26 Parts:			
●§§ 1.0-1–1.60	(869–032–00077–8)	21.00	Apr. 1, 1997
●§§ 1.61–1.169	(869–032–00078–6)	44.00	Apr. 1, 1997
●§§ 1.170–1.300	(869–032–00079–4)	31.00	Apr. 1, 1997
●§§ 1.301–1.400	(869–032–00080–8)	22.00	Apr. 1, 1997
●§§ 1.401–1.440	(869–032–00081–6)	39.00	Apr. 1, 1997
●§§ 1.441-1.500	(869-032-00082-4)	22.00	Apr. 1, 1997
●§§ 1.501–1.640	(869–032–00083–2)	28.00	Apr. 1, 1997
●§§ 1.641–1.850	(869–032–00084–1)	33.00	Apr. 1, 1997
●§§ 1.851–1.907	(869–032–00085–9)	34.00	Apr. 1, 1997
●§§ 1.908–1.1000	(869–032–00086–7)	34.00	Apr. 1, 1997
●§§ 1.1001–1.1400	(869–032–00087–5)	35.00	Apr. 1, 1997
●§§ 1.1401–End	(869–032–00088–3)	45.00	Apr. 1, 1997
●2–29	(869–032–00089–1)	36.00	Apr. 1, 1997
30–39	(869–032–00090–5)	25.00	Apr. 1, 1997
●40–49	(869–032–00091–3)	17.00	Apr. 1, 1997
●50–299	(869–032–00092–1)	18.00	Apr. 1, 1997
300–499	(869–032–00093–0)	33.00	Apr. 1, 1997
500–599	(869–032–00094–8)	6.00	[4] Apr. 1, 1990
●600–End	(869–032–00095–3)	9.50	Apr. 1, 1997
27 Parts:			
1–199	(869–032–00096–4)	48.00	Apr. 1, 1997

Title	Stock Number	Price	Revision Date
200–End	(869–032–00097–2)	17.00	Apr. 1, 1997
28 Parts:			
1-42	(869–032–00098–1)	36.00	July 1, 1997
●43-end	(869-032-00099-9)	30.00	July 1, 1997
29 Parts:			
●0–99	(869–032–00100–5)	27.00	July 1, 1997
●100–499	(869–032–00101–4)	12.00	July 1, 1997
●500–899	(869–032–00102–2)	41.00	July 1, 1997
●900–1899	(869–032–00103–1)	21.00	July 1, 1997
●1900–1910 (§§ 1900 to 1910.999)	(869–032–00104–9)	43.00	July 1, 1997
1910 (§§ 1910.1000 to end)	(869–032–00105–7)	29.00	July 1, 1997
●1911–1925	(869–032–00106–5)	19.00	July 1, 1997
*1926	(869–032–00107–3)	31.00	July 1, 1997
●1927–End	(869–032–00108–1)	40.00	July 1, 1997
30 Parts:			
●1–199	(869–032–00109–0)	33.00	July 1, 1997
200–699	(869–032–00110–3)	28.00	July 1, 1997
●700–End	(869–032–00111–1)	32.00	July 1, 1997
31 Parts:			
●0–199	(869–032–00112–0)	20.00	July 1, 1997
*200–End	(869–032–00113–8)	42.00	July 1, 1997
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–032–00114–6)	42.00	July 1, 1997
●191–399	(869–032–00115–4)	51.00	July 1, 1997
●400–629	(869–032–00116–2)	33.00	July 1, 1997
●630–699	(869–032–00117–1)	22.00	July 1, 1997
●700–799	(869–032–00118–9)	28.00	July 1, 1997
●800–End	(869–032–00119–7)	27.00	July 1, 1997
33 Parts:			
1–124	(869–032–00120–1)	27.00	July 1, 1997
125–199	(869–032–00121–9)	36.00	July 1, 1997
*●200–End	(869–032–00122–7)	31.00	July 1, 1997
34 Parts:			
●1–299	(869–032–00123–5)	28.00	July 1, 1997
●300–399	(869–032–00124–3)	27.00	July 1, 1997
●400–End	(869–032–00125–1)	44.00	July 1, 1997
35	(869–032–00126–0)	15.00	July 1, 1997
36 Parts			
●1–199	(869–032–00127–8)	20.00	July 1, 1997
200–299	(869–032–00128–6)	21.00	July 1, 1997
300–End	(869–032–00129–4)	34.00	July 1, 1997
●37	(869–032–00130–8)	27.00	July 1, 1997
38 Parts:			
*0–17	(869–032–00131–6)	34.00	July 1, 1997
●18–End	(869–032–00132–4)	38.00	July 1, 1997
***39**	(869–032–00133–2)	23.00	July 1, 1997
40 Parts:			
●1–49	(869–032–00134–1)	31.00	July 1, 1997
●1–51	(869–028–00141–6)	50.00	July 1, 1996
●52	(869–028–00142–4)	51.00	July 1, 1996
●53–59	(869–028–00143–2)	14.00	July 1, 1996
60	(869–028–00144–1)	47.00	July 1, 1996
●61–62	(869–032–00140–5)	19.00	July 1, 1997
63–71	(869–032–00141–3)	57.00	July 1, 1997
●72–80	(869–028–00146–7)	34.00	July 1, 1996
●81–85	(869–032–00143–0)	32.00	July 1, 1997
*86	(869–032–00144–8)	50.00	July 1, 1997
●87-135	(869–032–00145–6)	40.00	July 1, 1997
●136–149	(869–032–00146–4)	35.00	July 1, 1997
*●150–189	(869–032–00147–2)	32.00	July 1, 1997
●190–259	(869–028–00152–1)	22.00	July 1, 1996
260–265	(869–032–00149–9)	29.00	July 1, 1997
●260–299	(869–028–00153–0)	53.00	July 1, 1996
●300–399	(869–032–00151–1)	27.00	July 1, 1997
●400–424	(869–032–00152–9)	33.00	[6] July 1, 1996
●425–699	(869–032–00153–7)	40.00	July 1, 1997
●700–789	(869–028–00157–2)	33.00	July 1, 1996
●790–End	(869–032–00155–3)	19.00	July 1, 1997
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
●1–100	(869–032–00156–1)	14.00	July 1, 1997
*101	(869–032–00157–0)	36.00	July 1, 1997
102–200	(869–032–00158–8)	17.00	July 1, 1997
201–End	(869–032–00159–6)	15.00	July 1, 1997
42 Parts:			
●1–399	(869–028–00163–7)	32.00	Oct. 1, 1996
●400–429	(869–028–00164–5)	34.00	Oct. 1, 1996
●430–End	(869–028–00165–3)	44.00	Oct. 1, 1996
43 Parts:			
●1–999	(869–028–00166–1)	30.00	Oct. 1, 1996
●1000–end	(869–028–00167–0)	45.00	Oct. 1, 1996
●44	(869–028–00168–8)	31.00	Oct. 1, 1996
45 Parts:			
●1–199	(869–028–00169–6)	28.00	Oct. 1, 1996
●200–499	(869–028–00170–0)	14.00	[5] Oct. 1, 1995
●500–1199	(869–028–00171–8)	30.00	Oct. 1, 1996
●1200–End	(869–028–00172–6)	36.00	Oct. 1, 1996
46 Parts:			
●1–40	(869–028–00173–4)	26.00	Oct. 1, 1996
●41–69	(869–028–00174–2)	21.00	Oct. 1, 1996
●70–89	(869–028–00175–1)	11.00	Oct. 1, 1996
●90–139	(869–028–00176–9)	26.00	Oct. 1, 1996
●140–155	(869–028–00177–7)	15.00	Oct. 1, 1996
●156–165	(869–028–00178–5)	20.00	Oct. 1, 1996
●166–199	(869–028–00179–3)	22.00	Oct. 1, 1996
●200–499	(869–028–00180–7)	21.00	Oct. 1, 1996
●500–End	(869–028–00181–5)	17.00	Oct. 1, 1996
47 Parts:			
●0–19	(869–028–00182–3)	35.00	Oct. 1, 1996
●20–39	(869–028–00183–1)	26.00	Oct. 1, 1996
●40–69	(869–028–00184–0)	18.00	Oct. 1, 1996
●70–79	(869–028–00185–8)	33.00	Oct. 1, 1996
●80–End	(869–028–00186–6)	39.00	Oct. 1, 1996
48 Chapters:			
●1 (Parts 1–51)	(869–028–00187–4)	45.00	Oct. 1, 1996
●1 (Parts 52–99)	(869–028–00188–2)	29.00	Oct. 1, 1996
●2 (Parts 201–251)	(869–028–00189–1)	22.00	Oct. 1, 1996
●2 (Parts 252–299)	(869–028–00190–4)	16.00	Oct. 1, 1996
●3–6	(869–028–00191–2)	30.00	Oct. 1, 1996
●7–14	(869–028–00192–1)	29.00	Oct. 1, 1996
●15–28	(869–028–00193–9)	38.00	Oct. 1, 1996
●29–End	(869–028–00194–7)	25.00	Oct. 1, 1996
49 Parts:			
●1–99	(869–028–00195–5)	32.00	Oct. 1, 1996
●100–185	(869–028–00196–3)	50.00	Oct. 1, 1996
●186–199	(869–028–00197–1)	14.00	Oct. 1, 1996
●200–399	(869–028–00198–0)	39.00	Oct. 1, 1996
●400–999	(869–028–00199–8)	49.00	Oct. 1, 1996
●1000–1199	(869–028–00200–5)	23.00	Oct. 1, 1996
●1200–End	(869–028–00201–3)	15.00	Oct. 1, 1996
50 Parts:			
●1–199	(869–028–00202–1)	34.00	Oct. 1, 1996
●200–599	(869–028–00203–0)	22.00	Oct. 1, 1996
●600–End	(869–028–00204–8)	26.00	Oct. 1, 1996
CFR Index and Findings Aids	(869–032–00047–6)	45.00	Jan. 1, 1997

Title	Stock Number	Price	Revision Date
Complete 1997 CFR set		951.00	1997
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1997
Individual copies		1.00	1997
Complete set (one-time mailing)		264.00	1996
Complete set (one-time mailing)		264.00	1995

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.