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Rules and Regulations

Federal Register
Vol. 63, No. 208
Wednesday, October 28, 1998

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–281–AD; Amendment 39–10859; AD 98–22–12]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This action requires repetitive detailed visual inspections to detect cracked, corroded, or stained collar fittings on both inboard trailing edge flaps; and follow-on corrective actions, if necessary. This amendment is prompted by a report indicating that a collar fitting suffered a complete fracture as a result of stress corrosion cracking. The actions specified in this AD are intended to prevent separation of the inboard trailing edge flap from the airplane due to fractured collar fittings.

DATES: Effective November 12, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 12, 1998.

Comments for inclusion in the Rules Docket must be received on or before December 28, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–281–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patrick Safarian, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2775; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report indicating that an operator has found two collar fittings cracked or fractured on an inboard trailing edge flap of a Boeing Model 767 series airplane. The affected airplane was over 13 years old and had accumulated 28,300 total flight cycles at the time the failure was discovered. These collar fittings are designed to attach the flap to the flap actuation linkage. A fractured collar fitting could cause the inboard end of the flap to become unrestrained, which in turn could lead to a separation of the entire inboard trailing edge flap. Investigation has revealed that the cracking initiated at corrosion pits on the internal splines of the collar fitting; the cracking thereafter propagated due to stress corrosion cracking until complete failure of the collar fitting occurred.

Fractured collar fittings, if not detected and corrected, could result in a separation of the inboard trailing edge flap and a consequent reduction in the controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–57A0066, Revision 1, dated August 6, 1998, which describes procedures for repetitive detailed visual inspections to detect cracking, corrosion, or staining of the collar fittings on the inboard trailing edge flap; and follow-on corrective actions, if necessary. The follow-on corrective actions include replacing any collar fitting that is found to be cracked and repairing any collar fitting that is found to be corroded.

Explanation of the Requirement of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent separation of the inboard trailing edge flap from the airplane due to fractured collar fittings. This AD requires accomplishment of the actions specified in the Boeing alert service bulletin described previously, except as discussed below.

Differences Between the Rule and the Relevant Service Information

Operators should note that, although the alert service bulletin specifies that the manufacturer may be contacted for to obtain instructions for certain repair conditions, this rule requires that the repairs be accomplished in accordance with a method approved by the FAA.

Operators should also note that although the alert service bulletin specifies that certain repetitive detailed visual inspection intervals are to be 30 days long, this rule allows these intervals to be extended to 45 days. The longer interval provides an acceptable level of safety.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before

the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–281–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–22–12 Boeing: Amendment 39–10859. Docket 98–NM–281–AD.

Applicability: Model 767 series airplanes, line numbers 1 through 721 inclusive, certificated in any category.

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

To prevent separation of the inboard trailing edge flap from the airplane due to fractured collar fittings, accomplish the following:

(a) Within 8 years since the date of manufacture of the airplane, or within 90 days after the effective date of this AD, whichever occurs later, perform a detailed visual inspection of the collar fittings of both inboard trailing edge flaps to detect cracks, corrosion, or staining, in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–57A0066, Revision 1, dated August 6, 1998.

(1) If no cracked, corroded, or stained collar fitting is found, repeat the detailed visual inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 120 days.

(2) If any cracked collar fitting is found, prior to further flight, install a new collar fitting in accordance with Part 2 of the Accomplishment Instructions of the alert service bulletin.

(3) If any corroded collar fitting is found, prior to further flight, repair the corrosion in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(4) If any stained collar fitting is found, accomplish the requirements of paragraphs (a)(4)(i) and (a)(4)(ii) of this AD at the compliance times specified.

(i) Repeat the detailed visual inspections required by paragraph (a) of this AD thereafter at intervals not to exceed 45 days; and

(ii) Within 18 months after finding the stained collar fitting, accomplish Part 2 of Accomplishment Instructions of the alert service bulletin. If any corroded collar fitting is found, prior to further flight, repair the corrosion in accordance with a method approved by the Manager, Seattle ACO.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

(c) 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.

(d) The inspections and installation shall be done in accordance with Boeing Alert Service Bulletin 767–57A0066, Revision 1, dated August 6, 1998. 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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 12, 1998.

Issued in Renton, Washington, on October 21, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–28669 Filed 10–27–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–132–AD; Amendment 39–10860; AD 98–22–13]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, and –40 Series Airplanes; and C–9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, and –40 series airplanes; and certain C–9 (military) series airplanes. This amendment requires modifying the piping of the potable water system. This amendment is prompted by reports of ice forming on the control cables in the wheel well of the left main landing gear due to the freezing and rupturing of undrained potable water pipes. The actions specified by this AD are intended to prevent such ice formation, which could render the slat, aileron, and spoiler flight controls inoperative, and consequently could result in reduced controllability of the airplane.

DATES: Effective December 2, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 2, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Albert Lam, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5346; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC–9–10, –20, –30, and –40 series airplanes; and all C–9 (military) series airplanes; was published in the **Federal Register** on September 15, 1997 (62 FR 48189). That action proposed to require modifying the piping of the potable water system.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed rule.

Request To Revise Applicability

One commenter requests that the applicability of the proposed AD be revised. The commenter states that the AD should exclude airplanes on which the pressurized potable water system has been deactivated. In support of this request, the commenter states that airplanes that do not use a pressurized potable water system do not have exposure to the unsafe condition identified in the proposed AD. The commenter adds that the effectivity of McDonnell Douglas DC–9 Service Bulletin 38–27, Revision 1, dated May 16, 1978, which is referenced as the appropriate source of service information in the proposed AD, is limited to airplanes incorporating a pressurized potable water system.

The FAA concurs partially, acknowledging that some operators may have deactivated an affected potable water system or may be using a gravity feed system installed on top of the lavatory. However, the intent of this AD is to prevent freezing water from forming ice on the control cable in the wheel well due to water line breakage over the center wing box area. Therefore, this AD applies to airplanes on which potable water piping systems (either pressurized or unpressurized) are installed over the center wing box area. The applicability of the final rule has been revised accordingly.

Although modification of the potable water system is required only for airplanes having activated systems, the FAA has determined that the applicability cannot exclude airplanes on which the system has been deactivated, in the event a deactivated system may be subsequently reactivated. However, the final rule has been revised to add a new paragraph (b) to clarify that airplanes are exempt from the modification requirement for any period during which the system is deactivated.

Request To Revise Specifications of Modification Requirement

One commenter requests that the proposed AD be revised to allow the use of parts other than those specified in the AD. Specifically, the commenter requests that the proposed AD additionally allow the use of hardware that is structurally equivalent to that specified in McDonnell Douglas DC–9 Service Bulletin 38–27, Revision 1, dated May 16, 1978 (the source of service information cited in this AD for accomplishment of the required actions). Further, the commenter requests that the proposed AD allow the use of 1.5-inch-diameter ABS pipe as an alternative to the currently required 1.25-inch-diameter aluminum tube for the shroud. The commenter states that, on some of its airplanes, it already has installed a shroud and hardware that are ''equivalent'' to the parts specified by the proposed AD, although the part numbers are different.

The FAA does not concur with the commenter's request. The FAA considers it inappropriate to include in an AD various provisions that are applicable to a single operator's unique use of affected airplanes. However, paragraph (c) of this AD contains a provision for requesting approval of an alternative method of compliance to address these types of unique circumstances.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 570 airplanes of the affected design in the worldwide fleet. The FAA estimates that 316 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $4,000 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is

estimated to be $1,643,200, or $5,200 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that 219 U.S.-registered airplanes are in compliance in accordance with the requirements of this AD. Therefore, the future economic cost impact of this rule on U.S. operators is now $504,400.

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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–22–13 McDonnell Douglas: Amendment 39–10860. Docket 97–NM–132–AD.

Applicability: Model DC–9–10, –20, –30, and –40 series airplanes, and C–9 (military) series airplanes; having a pressurized or unpressurized potable water piping system installed over the center wing box; certificated in any category.

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

To prevent ice from forming on the control cables in the wheel well of the left main landing gear, which could render the slat, aileron, and spoiler flight controls inoperative, and consequently could result in reduced controllability of the airplane, accomplish the following:

(a) Except as provided by paragraph (b) of this AD: Within 18 months after the effective date of this AD, modify the piping of the potable water system in accordance with McDonnell Douglas DC–9 Service Bulletin 38–27, Revision 1, dated May 16, 1978.

(b) For any period during which the potable water piping system is deactivated, the actions specified in paragraph (a) of this AD are not required.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

(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) The actions shall be done in accordance with McDonnell Douglas Service Bulletin 38–27, Revision 1, dated May 16, 1978. 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 The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 2, 1998.

Issued in Renton, Washington, on October 21, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–28664 Filed 10–27–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–184–AD; Amendment 39–10856; AD 98–22–09]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dassault Model Falcon 2000 series airplanes, that requires modification of the front galley and rear lavatory water heaters. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the water heater control thermostat and the associated electrical relay, which could lead to overheating of the water and damage to the adjacent wiring, and consequent smoke and fumes in the passenger cabin and possible injury to the flight crew and passengers.

DATES: Effective December 2, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 2, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606.

This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dassault Model Falcon 2000 series airplanes was published in the **Federal Register** on August 26, 1998 (63 FR 45417). That action proposed to require modification of the front galley and rear lavatory water heaters.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 23 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required modification, and that the average labor rate is $60 per work hour. Required parts will cost approximately $240 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $8,280, or $360 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–22–09 Dassault Aviation: Amendment 39–10856. Docket 98–NM–184–AD.

Applicability: Model Falcon 2000 series airplanes equipped with BFGoodrich water heaters, part number (P/N) 8921082G2, or Dassault Aviation Falcon Jet P/N 770224–501; certificated in any category.

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

To prevent failure of the water heater control thermostat and the associated electrical relay, which could lead to overheating of the water and damage to the adjacent wiring, and consequent smoke and fumes in the passenger cabin and possible injury to the flight crew and passengers, accomplish the following:

(a) Within 7 months or 330 flight hours after the effective date of this AD, whichever occurs first, modify the water heaters for the front galley and rear lavatory, in accordance with the Accomplishment Instructions of Dassault Aviation Service Bulletin F2000–115 (F2000–38–4), dated December 17, 1997.

Note 2: The Dassault service bulletin references BFGoodrich Service Bulletin SB8921082G2–38–2, dated February 10, 1998, as an additional source of service information for accomplishment of the modification.

(b) As of the effective date of this AD, no person shall install on any airplane a BFGoodrich water heater having P/N 8921082G2 or a Dassault Aviation Falcon Jet water heater having P/N 770224–501.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(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) The modification shall be done in accordance with Dassault Aviation Service Bulletin F2000–115 (F2000–38–4), dated December 17, 1997. 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 Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 97–185–003(B)R1, dated November 19, 1997.

(f) This amendment becomes effective on December 2, 1998.

Issued in Renton, Washington, on October 19, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–28537 Filed 10–27–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–161–AD; Amendment 39–10855; AD 98–22–08]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model SN 601 (Corvette) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model SN 601 (Corvette) series airplanes, that requires repetitive inspections to detect discrepancies of the upper and lower reinforcement panels and panel fasteners of the wing roots; and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent debonding of the upper and lower reinforcement panels of the wing roots, which could result in reduced structural integrity of the wing.

DATES: Effective December 2, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 2, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model SN 601 (Corvette) series airplanes was published in the **Federal Register** on August 27, 1998 (63 FR 45775). That action proposed to require repetitive inspections to detect discrepancies of the upper and lower reinforcement panels and panel fasteners of the wing roots; and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 1 airplane of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on the single U.S. operator is estimated to be $120, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–22–08 Aerospatiale: Amendment 39–10855. Docket 98–NM–161–AD.

Applicability: Model SN 601 (Corvette) series airplanes on which Aerospatiale Modification 1049 has been installed, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise 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 (c) 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 accomplished previously.

To prevent debonding of the upper and lower reinforcement panels of the wing roots, which could result in reduced structural integrity of the wing, accomplish the following:

(a) For airplanes that have been modified in accordance with Aerospatiale Corvette Service Bulletin 57–25, dated November 21, 1990: Within 8,300 flight cycles after installation of the modification, or within 100 flight cycles after the effective date of this AD, whichever occurs later, perform a sonic resonance inspection to detect debonding of the upper and lower

reinforcement panels of the wing roots and a visual inspection to detect fatigue damage of the panel fasteners, in accordance with the Accomplishment Instructions of Aerospatiale Corvette Service Bulletin 57–24, Revision 1, dated May 30, 1994.

(1) If no panel debonding or fastener damage is found, repeat the sonic resonance inspection and the visual inspection thereafter at intervals not to exceed 1,000 flight cycles.

(2) If any panel debonding or fastener damage is found, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, or the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France (or its delegated agent).

(b) For airplanes that have not been modified in accordance with Aerospatiale Corvette Service Bulletin 57–25, dated November 21, 1990: Prior to the accumulation of 8,200 total flight cycles, or within 100 flight cycles after the effective date of this AD, whichever occurs later, perform a sonic resonance inspection to detect debonding of the upper and lower reinforcement panels of the wing roots, and a visual inspection to detect fatigue damage of the panel fasteners, in accordance with the Accomplishment Instructions of Aerospatiale Corvette Service Bulletin 57–24, Revision 1, dated May 30, 1994.

(1) For any reinforcement panel on which no debonding or fastener damage is found, repeat the sonic resonance inspection and the visual inspection thereafter at intervals not to exceed 2,500 flight cycles or three years, whichever occurs first.

(2) For any reinforcement panel on which debonding is detected, and the total debonded area is less than or equal to 45% of the total area, and no contiguous debonded area on the panel is greater than 5% of the total area of the panel, repeat the sonic resonance inspection and the visual inspection thereafter at the interval specified in paragraph (b)(2)(i), (b)(2)(ii), or (b)(2)(iii), as applicable, of this AD.

(i) If the total debonded area on the panel is less than or equal to 10% of the total area, repeat the inspections of that panel thereafter at intervals not to exceed 2,500 flight cycles or 3 years, whichever occurs first.

(ii) If the total debonded area on the panel is greater than 10% and less than or equal to 30% of the total area, repeat the inspections of that panel thereafter at intervals not to exceed 2,000 flight cycles or 3 years, whichever occurs first.

(iii) If the total debonded area of the panel is greater than 30% and less than or equal to 45% of the total area, repeat the inspections of that panel thereafter at intervals not to exceed 1,000 flight cycles or 2 years, whichever occurs first.

(3) For any reinforcement panel on which debonding is detected, and the total debonded area of the panel is greater than 45% of the total area, or if any single debonded area on any single panel is greater than 5% of the total area of that panel, or if any panel fastener damage is detected, accomplish the actions specified in paragraphs (b)(3)(i) and (b)(3)(ii) of this AD.

(i) Prior to further flight, inspect the skin to determine the level of corrosion relative to the skin thickness in accordance with a method approved by either the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

(A) If the depth of corrosion of the skin is less than or equal to 10% of the skin thickness, remove and replace the panel and treat the skin for corrosion, in accordance with the Accomplishment Instructions of Aerospatiale Corvette Service Bulletin 57–25, dated November 21, 1990.

(B) If the depth of corrosion of the skin exceeds 10% of the skin thickness, repair in accordance with a method approved by the Manager, International Branch, ANM–116, or in accordance with a method approved by the DGAC (or its delegated agent).

(ii) For airplanes on which the actions of paragraph (b)(3)(i)(A) of this AD have been accomplished: Within 8,300 flight cycles after accomplishment of paragraph (b)(3)(i)(A) of this AD, perform a sonic resonance inspection to detect debonding of the panel and a visual inspection to detect fatigue damage of the panel fasteners, in accordance with the Accomplishment Instructions of Aerospatiale Corvette Service Bulletin 57–24, Revision 1, dated May 30, 1994.

(A) If no debonding or fastener damage is found, repeat the inspection thereafter at intervals not to exceed 1,000 flight cycles.

(B) If any debonding or fastener damage is detected, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, or in accordance with a method approved by the DGAC (or its delegated agent).

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(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) Except as provided by paragraphs (a)(2), (b)(3)(i), (b)(3)(i)(B), and (b)(3)(ii)(B) of this AD, the actions shall be done in accordance with Aerospatiale Corvette Service Bulletin 57–25, dated November 21, 1990, and Aerospatiale Corvette Service Bulletin 57–24, Revision 1, dated May 30, 1994. 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 Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 91–045–010(B)R1, dated August 3, 1994.

(f) This amendment becomes effective on December 2, 1998.

Issued in Renton, Washington, on October 19, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–28536 Filed 10–27–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–52–AD; Amendment 39–10853; AD 98–22–06]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–6, –45, –50, –80A, and –80C2 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to General Electric Company CF6–6, –45, –50, –80A, and –80C2 series turbofan engines. This action requires, prior to further flight, an ultrasonic immersion inspection for cracks in stage 1 fan disks, and, if necessary, replacement with serviceable parts. This amendment is prompted by reports of cracked fan disks found during routine shop inspections on fan disks manufactured between late 1984/early 1985. The actions specified in this AD are intended to prevent fan disk failure due to cracks, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Effective November 23, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 23, 1998.

Comments for inclusion in the Rules Docket must be received on or before December 28, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–52–AD, 12 New England Executive Park,

Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.dot.gov''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, OH 45215; telephone (513) 672–8400, fax (513) 672–8422. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7192, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received reports of three stage 1 fan disks installed on General Electric Company (GE) CF6 series turbofan engines found cracked during routine shop inspections. The investigation revealed that these fan disks contained titanium impurities including hard alpha or other high density inclusions that can be introduced during the manufacturing process. Fatigue cracks can originate in the area of inclusions and propagate in service to disk failure. These fan disks were manufactured from ''older material,'' defined as triple melt titanium alloys made prior to late 1984/early 1985, when significant titanium melting, forging, and inspection process improvements were introduced. Approximately 90 fan disks manufactured from the older material remain unaccounted for at this time and may be introduced into service or be in service. Previous recommendations for immersion ultrasonic inspection by the manufacturer to the operators (via service bulletins, wires, etc.) have failed to identify the location or status of these disks. This condition, if not corrected, could result in fan disk failure due to cracks, which could result in an uncontained engine failure and damage to the aircraft.

The FAA has reviewed and approved the technical contents of the following GE Alert Service Bulletins (ASBs), that describe procedures for ultrasonic immersion inspection for cracks: CF6–6 ASB 72–A996, Revision 4, dated June 9, 1998, CF6–50 ASB 72–A988, Revision 6, dated August 25, 1998, CF6–80A ASB 72–A565, Revision 5, dated June 9, 1998, and CF6–80C2 ASB 72–A478, Revision 4, dated June 9, 1998.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD is being issued to prevent fan disk failure. This AD requires, prior to further flight, an ultrasonic immersion inspection for cracks in stage 1 fan disks, and, if necessary, replacement with serviceable parts. The actions are required to be accomplished in accordance with the ASBs described previously.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–52–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–22–06 General Electric Company: Amendment 39–10853. Docket 98–ANE–52–AD.

Applicability: General Electric Company (GE) CF6–6, –45, –50, –80A, and –80C2 series turbofan engines, with stage 1 fan disks installed, identified by serial numbers (S/Ns) in the following GE Alert Service Bulletins (ASBs): CF6–6 ASB 72–A996, Revision 4, dated June 9, 1998; CF6–50 ASB 72–A988, Revision 6, dated August 25, 1998; CF6–80A ASB 72–A565, Revision 5, dated June 9, 1998; and CF6–80C2 ASB 72–A478, Revision 4, dated June 9, 1998. These engines are

installed on but not limited to Boeing 747 and 767, Airbus A300 and A310, McDonnell Douglas DC–10 and McDonnell Douglas MD–11 series aircraft.

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

To prevent fan disk failure due to cracks, which could result in an uncontained engine failure and damage to the aircraft , accomplish the following:

(a) Prior to further flight, perform an ultrasonic immersion inspection for cracks of affected stage 1 fan disks, and, if necessary, replace with serviceable parts, as follows:

(1) For GE CF6–6 series engines, in accordance with GE CF6–6 ASB 72–A996, Revision 4, dated June 9, 1998.

(2) For GE CF6–45 and –50 series engines, in accordance with GE CF6–50 ASB 72–A988, Revision 6, dated August 25, 1998.

(3) For GE CF6–80A series engines, in accordance with CF6–80A ASB 72–A565, Revision 5, dated June 9, 1998.

(4) For GE CF6–80C2 series engines, in accordance with CF6–80C2 ASB 72–A478, Revision 4, dated June 9, 1998.

(5) Remove from service cracked fan disks and replace with serviceable parts.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

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

(c) 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 aircraft to a location where the requirements of this AD can be accomplished.

(d) The actions required by this AD shall be done in accordance with the following GE ASBs:

Document No.	Pages	Revision	Date
CF6–6 ASB 72–A996 ..... Total pages: 13	1–13	4	June 9, 1998.
CF6–50 ASB 72–A988 ..... Total pages: 13	1–13	6	August 25, 1998.
CF6–80A ASB 72–A565 ..... Total pages: 13	1–13	5	June 9, 1998.
CF6–80C2 ASB 72–A478 ..... Total pages: 13.	1–13	4	June 9, 1998.

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 General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, OH 45215; telephone (513) 672–8400, fax (513) 672–8422. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 23, 1998.

Issued in Burlington, Massachusetts, on October 19, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–28535 Filed 10–27–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–44]

Remove Class D Airspace; Fort Leavenworth, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action will remove the Class D airspace area at Fort Leavenworth, KS. The Control Tower at Fort Leavenworth, Sherman Army Airfield, KS, has been closed and will not be operational in the foreseeable future. The intended effect of this rule removes the Class D surface area.

DATES: This direct final rule is effective on 0901 UTC, January 28, 1999.

Comments for inclusion in the Rules Docket must be received on or before November 17, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–44, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed below.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The Control Tower at Fort Leavenworth, Sherman Army Air Field, KS, has been closed and will not be operational in the foreseeable future. The Department of the Army has requested the Class D airspace area be removed.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of

the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ACE–44.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' when Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 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 Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class D airspace

* * * * *

ACE KS D Fort Leavenworth, KS [Removed]

* * * * *

Issued in Kansas City, MO, on September 18, 1998.

Jack L. Skelton,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–26295 Filed 10–27–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–50]

Establishment of Class E Airspace; Longville, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Longville, MN. A Nondirectional Beacon (NDB) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 31 has been developed for Longville 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 creates controlled airspace for Longville Municipal Airport.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

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:

History

On Friday, August 14, 1998, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Longville, MN (63 FR 43651). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

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. 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 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Longville, MN, to accommodate aircraft executing

the proposed NDB Rwy 31 SIAP at Longville Municipal Airport by creating controlled airspace for the airport. The area will be depicted on appropriate aeronautical charts.

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 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

AGL MN E5 Longville, MN [New]

Longville Municipal Airport, MN
(Lat. 46°59′30″ N, long. 94°12′01″ W)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of Longville Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on October 13, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–28829 Filed 10–27–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–48]

Modification of Class E Airspace; Grand Rapids, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Grand Rapids, MN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 16, and a VHF Omnidirectional Range (VOR) or GPS SIAP to Rwy 34, Amendment (Amdt) 10, have been developed for Grand Rapids/Itasca County, Gordon Newstrom Field Airport. Controlled airspace extending upward from the surface is needed to contain aircraft executing the approaches. This action modifies the existing surface area by adding an extension, and increases the radius of the existing controlled airspace for this airport.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

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:

History

On Tuesday, August 11, 1998 the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Grand Rapids, MN (63 FR 42772). The proposal was to expand the surface area and add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

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. 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 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Grand Rapids, MN, to accommodate aircraft executing the proposed GPS Rwy 16 SIAP and VOR or GPS Rwy 34 SIAP, Amdt 10, at Grand Rapids/Itasca County, Gordon Newstrom Field Airport by adding an extension to the existing surface area and increasing the radius the existing controlled airspace for the airport. The area will be depicted on appropriate aeronautical charts.

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 7400.9F, Airspace

Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

AGL MN E2 Grand Rapids, MN [Revised]

Grand Rapids/Itasca County, Gordon Newstrom Field Airport, MN
(Lat. 47°12′40″ N., long. 93°30′35″ W.)
Grand Rapids VOR/DME
(Lat. 47°09′49″ N., long. 93°29′19″ W.)

Within a 4.4-mile radius of Grand Rapids/Itasca County, Gordon Newstrom Field Airport, and that airspace extending from the surface within 2.4 miles each side of the Grand Rapids VOR 160° radial, extending from the 4.4-mile radius to 7.0 miles southeast of the VOR/DME. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airman. The effective date and time will thereafter be continuously 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 MN E5 Grand Rapids, MN [Revised]

Grand Rapids/Itasca County, Gordon Newstrom Field Airport, MN
(Lat. 47°12′40″ N., long. 93°30′35″ W.)
Grand Rapids VOR/DME
(Lat. 47°09′49″ N., long. 93°29′19″ W.)

That airspace extending upward from 700 feet above the surface within an 6.8-mile radius of the Grand Rapids/Itasca County, Gordon Newstrom Field Airport, and 4.4 miles each side of the Grand Rapids VOR 161° radial, extending from the 6.8-mile radius to 7.0 miles southeast of the VOR/DME.

* * * * *

Issued in Des Plaines, Illinois, on October 13, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–28830 Filed 10–27–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–23]

Establish Class E Airspace; Guthrie, IA

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule.

SUMMARY: This action establishes the Class E airspace area at Guthrie, IA. The development of Global Positioning System (GPS) Runway (RWY) 36 and Nondirectional Radio Beacon (NDB) RWY 18 Standard Instrument Approach Procedures (SIAPs) have made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet Above Ground Level (AGL) for Instrument Flight Rules (IFR) operations at Guthrie County Regional Airport, Guthrie, IA.

EFFECTIVE DATE: 0901 UTC December 3, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 E. 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On July 28, 1998, a proposal to amend part 71 of the Federal Regulations (14 CFR part 71) to establish Class E airspace area at Guthrie, IA, was published in the **Federal Register** (63 FR 40228). This proposal was to establish controlled airspace extending upward from 700 feet AGL. The intended effect of the proposal was to provide adequate Class E airspace to contain aircraft executing GPS RWY 36 and NDB RWY 18 SIAPs at Guthrie County Regional Airport, Guthrie, IA.

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.

The Rule

This amendment to part 71 of the Federal Regulations (14 CFR part 71) establishes the Class E airspace area at Guthrie, IA.

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

Aviation, 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 Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

ACE IA E5 Guthrie, IA [New]

Guthrie County Regional Airport, IA
(Lat. 41°41′16″N., long. 94°25′07″W.)
Guthrie Center NDB
(Lat. 41°40′55″N., long. 94°26′00″W.)

That airspace extending upward from 700 fee above the surface within a 6.4-mile radius of the Guthrie County Regional Airport, and within 2.5 miles each side of the 350° bearing from the Guthrie Center NDB extending from the 6.4-mile radius to 7 miles north of the airport.

* * * * *

Issued in Kansas City, MO on September 17, 1998.

Jack L. Skelton,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–26299 Filed 10–27–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 622

[Docket No. 980608151–8255–02; I.D. 122497B]

RIN 0648–AK43

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Golden Crab Fishery of the South Atlantic Region; Gear and Vessel Management Measures

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement a regulatory amendment prepared by the South Atlantic Fishery Management Council (Council) in accordance with framework procedures for adjusting management measures of the Fishery Management Plan for the Golden Crab Fishery of the South Atlantic Region (FMP). For the golden crab fishery in the South Atlantic exclusive economic zone (EEZ), the regulatory amendment revises the vessel size limitations applicable when a vessel permit is transferred to another vessel and extends through December 31, 2000, the authorization to use wire cable for a mainline attached to a golden crab trap. In addition, NMFS is removing from the regulations the eligibility criteria and procedures for obtaining initial commercial vessel permits in the South Atlantic golden crab fishery. Such criteria and procedures are no longer applicable. NMFS is also revising the list of control numbers applicable to Title 50 of the Code of Federal Regulations to reflect removal of the eligibility criteria and procedures for obtaining initial commercial vessel permits for this fishery. The intended effects of this rule are to allow for additional evaluation of cable used as mainlines for traps, to provide greater flexibility for fishermen to fish with vessels of different lengths without adversely affecting the FMP's cap on fishing effort, and to simplify the regulations.

DATES: This rule is effective October 28, 1998.

FOR FURTHER INFORMATION CONTACT: Peter Eldridge, 727-570-5305.

SUPPLEMENTARY INFORMATION: The golden crab fishery in the EEZ of the South Atlantic is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The Council proposed adjusted management measures (a regulatory amendment) for the South Atlantic golden crab fishery. The Council submitted this regulatory amendment to NMFS for its review, approval, and implementation. These measures were developed and submitted to NMFS under the FMP's framework procedure for adjustments in gear regulations and permit requirements. Additional background for these measures and for measures proposed by NMFS to simplify the regulations was published in the preamble to the proposed rule (63 FR 34842, June 26, 1998) and is not repeated here.

Comments and Responses

Two comments on the proposed rule were received from the Council.

Comment: The Council requested that wire cable be allowed to be used for a main line in the golden crab fishery through December 31, 2000, rather than through January 31, 1999, as proposed. The Council concluded that this additional time was needed to collect sufficient data to evaluate properly the use of wire cable in the fishery. In its comment, the Council noted that the opportunity for public comment on this issue was provided at the June 1998 Council meeting; however, no public comment was received.

Response: NMFS concurs and has modified § 622.40(d)(2)(ii) of this final rule accordingly.

Comment: The Council noted that § 622.40(d)(2)(ii) of the proposed rule included the outdated phrase, ''except that wire cable is allowed for a buoy line through January 31, 1998.'' The Council recommended deletion of that phrase.

Response: NMFS concurs and has modified § 622.40(d)(2)(ii) of this final rule accordingly.

Changes From the Proposed Rule

In response to public comment noted above, in § 622.40(d)(2)(ii), the phrase, ''for a buoy line through January 31, 1998, and'' has been removed, and ''January 31, 1999'' has been revised to read ''December 31, 2000.''

NMFS also is making a technical amendment, which was not included in the proposed rule. In 15 CFR 902.1(b), in the listing of sections in title 50 of the CFR where information collection requirements are located, the entry ''622.17'' and the entry for the corresponding OMB control number, ''–0205,'' are removed. These removals correspond with the removal from the regulations of the eligibility criteria and procedures for obtaining initial commercial vessel permits in this fishery.

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries (AA), NOAA, the authority to sign material for publication in the **Federal Register**.

Classification

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce, based on the Council's regulatory impact review (RIR) that assesses the economic impacts of the management measures in this rule on fishery participants, certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

This final rule relieves a restriction regarding use of wire cable for main line and a restriction related to vessel transfer. Both of these provisions provide greater flexibility to fishery participants in terms of their prosecution of the fishery. Accordingly, the AA finds that these reasons constitute good cause, under 5 U.S.C. 553(d)(3), to waive the 30-day delay in the effectiveness of this rule.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 622

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

Dated: October 22, 1998.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902 and 50 CFR part 622 are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

§ 902.1 [Amended]

2. In § 902.1, paragraph (b) table, under 50 CFR, in the left column, the entry ''622.17'' is removed and the corresponding entry in the right column, ''–0205'', is also removed.

50 CFR Chapter VI

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

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

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

4. In § 622.4, paragraph (a)(2)(x) is added to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(x) For a person aboard a vessel to fish for golden crab in the South Atlantic EEZ, possess golden crab in or from the South Atlantic EEZ, off-load golden crab from the South Atlantic EEZ, or sell golden crab in or from the South Atlantic EEZ, a commercial vessel permit for golden crab must be issued to the vessel and must be on board. It is a rebuttable presumption that a golden crab on board a vessel in the South Atlantic or off-loaded from a vessel in a port adjoining the South Atlantic was harvested from the South Atlantic EEZ. See § 622.17 for limitations on the use, transfer, and renewal of a commercial vessel permit for golden crab.

* * * * *

§ 622.5 [Amended]

5. In § 622.5, in paragraph (a)(1)(v), the reference to ''§ 622.17(a)'' is removed and ''§ 622.4(a)(2)(x)'' is added in its place.

§ 622.6 [Amended]

6. In § 622.6, in paragraph (a)(1)(i) introductory text, the phrase ''or § 622.17'' is removed.

§ 622.7 [Amended]

7. In § 622.7, in paragraph (a), the phrase ''or § 622.17'' is removed, in paragraph (b), the phrase ''or in § 622.17,'' is removed, in paragraph (c), the phrase ''or § 622.17(g)'' is removed, and in paragraph (z), the reference to ''§ 622.17(h)'' is removed and ''§ 622.17(b)'' is added in its place.

§ 622.8 [Amended]

8. In § 622.8, in paragraph (a), the reference to ''§ 622.17(a)'' is removed and ''§ 622.4(a)(2)(x)'' is added in its place.

9. Section 622.17 is revised to read as follows:

§ 622.17 South Atlantic golden crab controlled access.

(a) *General.* In accordance with the procedures specified in the Fishery Management Plan for the Golden Crab Fishery of the South Atlantic Region, initial vessel permits have been issued for the fishery. No additional permits may be issued.

(b) *Fishing zones.* (1) The South Atlantic EEZ is divided into three fishing zones for golden crab. A permitted vessel may fish for golden crab only in the zone shown on its permit. A vessel may possess golden crab only in that zone, except that other zones may be transited if the vessel notifies NMFS, Office of Enforcement, Southeast Region, St. Petersburg, FL, by telephone (813–570–5344) in advance and does not fish in an unpermitted zone. The designated fishing zones are as follows:

(i) Northern zone—the South Atlantic EEZ north of 28° N. lat.

(ii) Middle zone—the South Atlantic EEZ from 25° N. lat. to 28° N. lat.

(iii) Southern zone—the South Atlantic EEZ south of 25° N. lat.

(2) An owner of a permitted vessel may request that NMFS change the zone specified on a permit from the middle or southern zone to the northern zone. A request for such change and the existing permit must be submitted from an owner of a permitted vessel to the RD.

(c) *Transfer.* (1) An owner of a vessel with a valid golden crab permit may request that NMFS transfer the permit to another vessel by returning the existing permit(s) to the RD with an application for a permit for the replacement vessel.

(2) To obtain a commercial vessel permit via transfer, the owner of the replacement vessel must submit to the RD a valid permit for a vessel with a documented length overall, or permits for vessels with documented aggregate lengths overall, of at least 90 percent of the documented length overall of the replacement vessel.

(3) In addition to the provisions of paragraph (c)(2) of this section, the owner of a permitted vessel who has requested that NMFS transfer that permit to a smaller vessel (i.e., downsized) may subsequently request NMFS transfer that permit to a vessel of a length calculated from the length of the permitted vessel immediately prior to downsizing.

(d) *Renewal.* In addition to the procedures and requirements of § 622.4(h) for commercial vessel permit renewals, for a golden crab permit to be renewed, the SRD must have received reports for the permitted vessel, as required by § 622.5(a)(1)(v), documenting that at least 5,000 lb (2,268 kg) of golden crab were landed from the South Atlantic EEZ by the permitted vessel during at least one of the two 12-month periods immediately prior to the expiration date of the vessel permit.

§ 622.31 [Amended]

10. In § 622.31, in paragraph (a) the phrase ''or 622.17'' is removed.

§ 622.35 [Amended]

11. In § 622.35, in paragraph (f), the reference to ''§ 622.17(h)'' is removed and ''§ 622.17(b)'' is added in its place.

12. In § 622.40, in paragraph (c)(3)(ii), the reference to ''§ 622.17(h)'' is removed and ''§ 622.17(b)'' is added in its place, and paragraph (d)(2)(ii) is revised to read as follows:

§ 622.40 Limitations on traps and pots.

* * * * *

(d) * * *

(2) * * *

(ii) Rope is the only material allowed to be used for a buoy line or mainline attached to a golden crab trap, except that wire cable is allowed for a mainline through December 31, 2000.

§ 622.45 [Amended]

13. In § 622.45, in paragraph (f)(2), the reference to ''§ 622.17(a)'' is removed and ''§ 622.4(a)(2)(x)'' is added in its place.

[FR Doc. 98–28862 Filed 10–27–98; 8:45 am]

BILLING CODE 3510–22–F

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

RIN 0960–AE30

Application of State Law in Determining Child Relationship

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: These final regulations revise our rules on determining whether a natural child has inheritance rights under appropriate State law and therefore may be entitled to Social

Security benefits as the child of an insured worker. Specifically, they revise our rules to explain which version of State law we will apply, depending on whether the insured is living or deceased, how we will apply State law requirements on time limits for determining inheritance rights, and how we will apply State law requirements for a court determination of paternity. They also clarify our current rule on determining an applicant's status as a legally adopted child of an insured individual.

EFFECTIVE DATE: These regulations are effective November 27, 1998.

FOR FURTHER INFORMATION CONTACT: Lois Berg, Legal Assistant, Office of Process and Innovation Management, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1713 or TTY (410) 966–5609. For information on eligibility, claiming benefits, or coverage of earnings, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION:

Time for Determining Relationship of Natural Child

Section 216(h)(2)(A) of the Social Security Act (the Act) states in part that in determining whether an applicant is the child of a deceased insured individual, the Commissioner of Social Security (the Commissioner) shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which the insured individual was domiciled at the time of his or her death.

A child of a valid marriage has inheritance rights under the laws of all States. When determining the relationship of a child born out of wedlock to a deceased insured person under section 216(h)(2)(A), we have always looked to the law that was in effect in the insured's State of domicile at the time he or she died. Some Federal courts have also interpreted the provision this way. See Schaefer on behalf of *Schaefer* v. *Heckler,* 792 F.2d 81 (7th Cir. 1986); *Ramon* v. *Califano,* 493 F. Supp. 158 (W.D. Tex. 1980); and *Allen* v. *Califano,* 452 F. Supp. 205 (D. Md. 1978).

Other courts have adopted different interpretations. For example, in *Owens* v. *Schweiker,* 692 F.2d 80 (9th Cir. 1982), the court held that section 216(h)(2)(A) should be read to require the use of the State law of domicile that was in effect at the time of our determination on the child's claim. We, therefore, published a final rule (49 FR 21512) on May 22, 1984, amending § 404.354 of our regulations to clarify and reinforce our policy on applying State inheritance laws. However, after we amended our regulations, we also published Acquiescence Ruling (AR) 86–17(9) to clarify that we would apply the *Owens* decision to claims of children residing in the 9th Circuit. (We are publishing a notice today to rescind AR 86–17(9) effective with the effective date of these final regulations.)

Still other courts have held that the relevant law is the law in force at the time the child applies for benefits (see Cox on behalf of *Cox* v. *Schweiker, 684 F.2d 310 (5th Cir. 1982); and Hart by and through Morse* v. *Bowen,* 802 F.2d 1334 (11th Cir. 1986)).

Recognizing that the language in section 216(h)(2)(A) could be viewed as ambiguous and has not been interpreted the same by all courts, we are amending our policy as stated in § 404.354(b). We believe that a policy that permits us to apply any of several potentially applicable State inheritance laws would best effectuate Congress' intent with regard to serving the interests of a surviving child born out of wedlock. Therefore, when the insured is deceased, we will determine the status of such a child by applying the State inheritance law that is in effect when we adjudicate the child's claim for benefits. If the child does not have inheritance rights under that version of State law, we will apply the State law that was in effect when the insured died, or any version of State law in effect from the time the child first could be entitled to benefits based on his or her application until the time we make our final decision on the claim, whichever version is more beneficial to the child.

We also explain in these final regulations how we will determine which law was in effect as of the date of death. First we will look to the inheritance law that was in effect on the date of the insured's death. Then, if a law enacted after the insured's death is retroactive to the date of his or her death, we will apply that law. However, if a law in effect at the time of death was later declared unconstitutional, we will apply the State law which superseded the unconstitutional law.

Regarding the child of a living insured worker, our rule in § 404.354(b) provided that the Commissioner will apply the inheritance law that was in effect when the child's claim was filed. We are amending §§ 404.354 and 404.355 to clarify that we will look to the versions of State inheritance laws that were in effect from the first month for which the child could be entitled to benefits up to and including the time of our final decision and we will apply the version most beneficial to the child.

State Law Time Limits

As previously stated, section 216(h)(2)(A) of the Act provides that, in determining whether an applicant is the child of a deceased insured individual, the Commissioner shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which the insured individual was domiciled at the time of his or her death. That section further states that an applicant who, according to such law, would have the same status relative to taking intestate personal property as a child or parent shall be deemed such respective child or parent.

Many State laws impose time limits within which someone must act to establish paternity for purposes of intestate succession. Such time limits are intended to provide for an orderly and expeditious settlement of estates. Since this is not the purpose of Social Security benefits for children, we provide in these final regulations that we will not apply a State's time limits within which a child's relationship must be established when we determine the child's status under section 216(h)(2)(A). Not applying time limits is consistent with our belief that such a policy on applying State inheritance laws will best serve the interests of the children Congress sought to protect when it enacted section 216(h)(2)(A) of the Act.

Court Order Requirements

Some State laws require a court determination of paternity for a child born out of wedlock to have inheritance rights. In determining a child's status under section 216(h)(2)(A), our policy has been to require that a claimant submit a court determination of paternity if one is required under State inheritance law. However, we are revising this policy by stating in these rules that, regarding a State that requires a court determination of paternity, we will use the standard of proof that the State court would use as the basis for such a determination, but we will not actually require a determination by a State court. Of course, if a State court with jurisdiction over the matter declares that a child can take a child's share of an insured individual's estate under intestate inheritance laws, or if a State court determines a child's paternity and such determination would prevail in that State's intestacy proceedings, SSA could generally rely on such State court findings. So, while we will not require an applicant to

obtain a State court's determination, we will be guided by such determination that an applicant has obtained, subject to the prerequisites stated in Social Security Ruling 83–37c for accepting State court determinations. Those prerequisites are: (1) an issue in a claim for Social Security benefits previously has been determined by a State court of competent jurisdiction; (2) this issue was genuinely contested before the State court by parties with opposing interests; (3) the issue falls within the general category of domestic relations law; and (4) the resolution by the State trial court is consistent with the law enunciated by the highest court in the State.

If we evaluate paternity by using the same standards that the appropriate State court would use if the issue were properly before it, we believe we will satisfy the intent of section 216(h)(2)(A) that we apply ''such law as would be applied'' by the State court to determine inheritance rights. We believe that the requirement of section 216(h)(2)(A) to apply State law will be satisfied if we apply the same substantive standard as a State court would apply to determine paternity.

Legally Adopted Child

The provisions for paying benefits to children of an insured individual were added to the Act by the Social Security Act Amendments of 1939 (Public Law 76–379). Our policy for determining whether an applicant qualifies as the ''child'' of an insured individual has always been that we apply State law on inheritance rights to determine the status under the Act of a natural child, i.e., biological child, and State law on adoption to determine the status of a child legally adopted by the insured. To avoid any uncertainty about our policy, we are amending our regulations to state more clearly how we determine a child's status as an individual's natural child or adopted child.

Section 202(d)(1) of the Act provides for benefits to a child as defined in section 216(e) of the Act. Section 216(e) states, in part, that the term ''child'' means the child or legally adopted child of an individual. Section 216(e) further states the requirements for a person to be deemed the legally adopted child of a deceased individual. Section 216(e) thus distinguishes between a natural child and an adopted child.

Further, section 216(h)(2)(A) provides that the status of an applicant for benefits as a child (as opposed to a legally adopted child, a stepchild, or other type of individual who can qualify under section 216(e) of the Act as a ''child'' for purposes of section 202(d) of the Act) is determined by applying the law on devolution of intestate personal property that would be applied by the courts in the State of the insured individual's domicile. This is a test for the status of a natural child.

The legislative history of sections 216(e) and 216(h)(2)(A) shows that Congress intended us to use section 216(h)(2)(A) to determine the status of natural children. Section 209(k), enacted in 1939, provided the first definition of ''child'' by stating in part that the term means the child of an individual, the stepchild of an individual, and a child legally adopted by an individual before the adopting individual attained age 60 and prior to the beginning of the twelfth month before the month in which he or she died. Section 209(m), also enacted in 1939, contained language that is the same as the present section 216(h)(2)(A) and described how we determine whether an applicant is the child of the insured individual.

Then in 1946, Congress amended section 209(k) to allow some children adopted by individuals aged 60 or older to receive benefits. Congress' explanation of the amended section 209(k) was that under existing provisions of the Act, a stepchild or an adopted child is not a ''child'' for benefit purposes unless certain conditions are met. H.R. Rep. No. 2526, 79th Cong., 2d Sess. 26 (1946); S. Rep. No. 1862, 79th Cong., 2d Sess. 34 (1946). Thus, since the first provision for paying benefits to children of an insured worker, there has been a clearly defined distinction between natural children and adopted children and clearly defined conditions for determining the status of an adopted child, which conditions are not affected by section 216(h)(2)(A).

Along with the structure of the Act and the legislative history of provisions defining ''child,'' we have consistently interpreted the State intestacy law provisions of section 216(h)(2)(A) as not applying to children legally adopted by the insured individual. Our first regulation on the status of a child was published in 1940. That regulation defined a ''child'' as a son or daughter (by blood) of a wage earner and then went on to define ''adopted children.'' 5 FR 1880 (May 21, 1940). We have maintained that position from the first regulation to the present. In the present § 404.354, we state that a child may be related to the insured as a natural child, legally adopted child, stepchild, grandchild, stepgrandchild, or equitably adopted child. In § 404.355, we explain the conditions for eligibility as a natural child, which include applying State inheritance law, and in § 404.356 we state the requirement for eligibility as a legally adopted child.

In these final regulations, we are amending § 404.356 to explicitly provide that we will determine an applicant's status as a legally adopted child by applying the adoption laws of the State or foreign country where the adoption took place.

Addition of Northern Mariana Islands

Further, we are adding the Northern Mariana Islands to the names of entities whose laws we will use to determine a child's relationship to the insured individual, depending on his or her permanent home.

Comments on Notice of Proposed Rulemaking (NPRM)

On January 30, 1997, we published proposed rules in the **Federal Register** at 62 FR 4494 and provided a 60-day period for interested individuals to comment. We received three letters with comments. One commenter said the proposed regulations' use of the law most beneficial to the interests of the child is a positive change which is consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193). Following are summaries of the other two comments and our responses to them.

Comment: One commenter suggested that a mechanism be implemented whereby SSA would notify the State Child Support Enforcement agency of all paternity determinations we make.

Response: A determination of paternity made by SSA is not the equivalent of an administrative order of paternity required by the States. Paternity determinations made by SSA are used only for SSA purposes.

Comment: One commenter was concerned that proposed § 404.355 might be interpreted such that a child born out of wedlock for whom paternity was not established while the insured was alive would not qualify as the child of the insured. The commenter suggested that we add clarifying language to § 404.355(a)(3) to address this issue.

Response: We have revised § 404.355(a) to clarify that paragraphs 1 through 4 are alternative means of establishing a child's status under the Act. As revised, subsection (a) provides that a child may be eligible for benefits as the insured's natural child if the child qualifies under *any* of the four paragraphs.

After considering the comments on the proposed regulations, we have revised § 404.355(a), as discussed in the response to the public comment. We

have also revised paragraph (b)(3) of § 404.355 to clarify the rule on selecting the State law that we apply in determining the relationship between a child and an insured individual when the insured is alive at the time the child applies for benefits on the insured's earnings record. As revised, paragraph (b)(3) provides that we determine the State where the insured individual had his or her permanent home when the child applies for child's insurance benefits, and we apply the law of that State. In addition, we have made several minor, nonsubstantive revisions to the rules. With these exceptions, we are publishing the proposed regulations unchanged as final regulations.

Regulatory Procedures

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Executive Order 12866

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

Paperwork Reduction Act

These final regulations impose no additional reporting or recordkeeping requirements necessitating clearance by OMB.

List of Subjects in 20 CFR Part 404

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

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security-Disability Insurance; 96.002 Social Security-Retirement Insurance; 96.004 Social Security-Survivors Insurance)

Dated: October 20, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set out in the preamble, we are amending subpart D of part 404 of chapter III of title 20 of the Code of Federal Regulations as set forth below.

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

Subpart D—[Amended]

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

Authority: Secs. 202, 203(a) and (b), 205(a), 216, 223, 225, 228(a)–(e), and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403(a) and (b), 405(a), 416, 423, 425, 428(a)–(e), and 902(a)(5)).

2. Section 404.354 is revised to read as follows:

§ 404.354 Your relationship to the insured.

You may be related to the insured person in one of several ways and be entitled to benefits as his or her child, i.e., as a natural child, legally adopted child, stepchild, grandchild, stepgrandchild, or equitably adopted child. For details on how we determine your relationship to the insured person, see §§ 404.355 through 404.359.

3. Section 404.355 is revised to read as follows:

§ 404.355 Who is the insured's natural child?

(a) *Eligibility as a natural child.* You may be eligible for benefits as the insured's natural child if any of the following conditions is met:

(1) You could inherit the insured's personal property as his or her natural child under State inheritance laws, as described in paragraph (b) of this section.

(2) You are the insured's natural child and the insured and your mother or father went through a ceremony which would have resulted in a valid marriage between them except for a ''legal impediment'' as described in § 404.346(a).

(3) You are the insured's natural child and your mother or father has not married the insured, but the insured has either acknowledged in writing that you are his or her child, been decreed by a court to be your father or mother, or been ordered by a court to contribute to your support because you are his or her child. If the insured is deceased, the acknowledgment, court decree, or court order must have been made or issued before his or her death. To determine whether the conditions of entitlement are met throughout the first month as stated in § 404.352(a), the written acknowledgment, court decree, or court order will be considered to have occurred on the first day of the month in which it actually occurred.

(4) Your mother or father has not married the insured but you have evidence other than the evidence described in paragraph (a)(3) of this section to show that the insured is your natural father or mother. Additionally, you must have evidence to show that the insured was either living with you or contributing to your support at the time you applied for benefits. If the insured is not alive at the time of your application, you must have evidence to show that the insured was either living with you or contributing to your support when he or she died. See § 404.366 for an explanation of the terms ''living with'' and ''contributions for support.''

(b) *Use of State Laws*—(1) *General.* To decide whether you have inheritance rights as the natural child of the insured, we use the law on inheritance rights that the State courts would use to decide whether you could inherit a child's share of the insured's personal property if the insured were to die without leaving a will. If the insured is living, we look to the laws of the State where the insured has his or her permanent home when you apply for benefits. If the insured is deceased, we look to the laws of the State where the insured had his or her permanent home when he or she died. If the insured's permanent home is not or was not in one of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Northern Mariana Islands, we will look to the laws of the District of Columbia. For a definition of permanent home, see § 404.303. For a further discussion of the State laws we use to determine whether you qualify as the insured's natural child, see paragraphs (b)(3) and (b)(4) of this section. If these laws would permit you to inherit the insured's personal property as his or her child, we will consider you the child of the insured.

(2) *Standards.* We will not apply any State inheritance law requirement that an action to establish paternity must be taken within a specified period of time measured from the worker's death or the child's birth, or that an action to establish paternity must have been started or completed before the worker's death. If applicable State inheritance law requires a court determination of paternity, we will not require that you obtain such a determination but will decide your paternity by using the standard of proof that the State court would use as the basis for a determination of paternity.

(3) *Insured is living.* If the insured is living, we apply the law of the State where the insured has his or her permanent home when you file your application for benefits. We apply the version of State law in effect when we make our final decision on your

application for benefits. If you do not qualify as a child of the insured under that version of State law, we look at all versions of State law that were in effect from the first month for which you could be entitled to benefits up until the time of our final decision and apply the version of State law that is most beneficial to you.

(4) *Insured is deceased.* If the insured is deceased, we apply the law of the State where the insured had his or her permanent home when he or she died. We apply the version of State law in effect when we make our final decision on your application for benefits. If you do not qualify as a child of the insured under that version of State law, we will apply the version of State law that was in effect at the time the insured died, or any version of State law in effect from the first month for which you could be entitled to benefits up until our final decision on your application. We will apply whichever version is most beneficial to you. We use the following rules to determine the law in effect as of the date of death:

(i) If a State inheritance law enacted after the insured's death indicates that the law would be retroactive to the time of death, we will apply that law; or

(ii) If the inheritance law in effect at the time of the insured's death was later declared unconstitutional, we will apply the State law which superseded the unconstitutional law.

4. Section 404.356 is amended by adding a sentence at the end to read as follows:

§ 404.356 Who is the insured's legally adopted child?

* * * We apply the adoption laws of the State or foreign country where the adoption took place, not the State inheritance laws described in § 404.355, to determine whether you are the insured's legally adopted child.

[FR Doc. 98–28707 Filed 10–27–98; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 97N–0524]

Food Labeling: Warning and Notice Statement; Labeling of Juice Products; Technical Scientific Workshops; Requests for Additional Time to Achieve the Pathogen Reduction Standard

AGENCY: Food and Drug Administration, HHS.

ACTION: Technical scientific workshops; requests for additional time to achieve the pathogen reduction standard; rule related.

SUMMARY: The Food and Drug Administration (FDA) is announcing two technical scientific workshops to discuss and clarify issues related to the implementation of the agency's rule requiring a warning statement for certain juice products. In particular, the workshops will address the pathogen reduction interventions that have been developed for citrus juice production and the methods for measuring and validating such systems. FDA is also announcing a process by which individual manufacturers of citrus juices may request additional time, beyond the current compliance date of November 5, 1998, to implement a validated system of control measures that achieves the required reduction in pathogenic microorganisms. Manufacturers who implement such control measures will not be required to use the warning statement on their juice products. These actions are being taken in response to requests from several fresh citrus juice manufacturers that have indicated they want to implement improved controls but need additional time to do so.

DATES: The technical scientific workshops will be held on November 12, 1998, and on November 19, 1998. Both workshops will be from 8:30 a.m. to 5:30 p.m. Registration for the workshops will be provided on a first come, first served basis and must be received by November 6, 1998.

Individual fresh citrus juice producers may request additional time to comply with the pathogen reduction standard in § 101.17(g)(7)(i) (21 CFR 101.17(g)(7)(i)) until December 19, 1998. For requests for additional time, see the FDA District Directors listed under the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: The technical scientific workshops will be held at the following locations:

The November 12, 1998, workshop will be held at the Citrus Research and Education Center, University of Florida, Lake Alfred, FL 33850, 941–956–1151 and

the November 19, 1998, workshop will be held at the FDA District Office, 19900 MacArthur Blvd., suite 300, Irvine, CA 90015–2486, 949–252–7592.

For requests for additional time, see the FDA District Directors listed under the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

To register for a technical workshop, please contact Catherine M. DeRoever, Center for Food Safety and Applied Nutrition (CFSAN) (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''. Registration information (including name, title, firm name, address, telephone and fax numbers) must be received no later than November 6, 1998.

For information on requests for additional time to achieve the pathogen reduction standard, please contact, as listed in the **SUPPLEMENTARY INFORMATION** section of this document, the Director of the FDA District Office in which the firm is located.

If you need special accommodations due to a disability, please contact Catherine M. DeRoever at the previous address at least 7 days in advance.

Interested persons should note that additional information regarding the technical scientific workshops, making requests for additional time and other relevant information will be posted on CFSAN's web site, ''www.cfsan.fda.gov,'' as it becomes available. Accordingly, such persons may wish to visit that web site on a regular basis until the workshop convenes.

SUPPLEMENTARY INFORMATION: Requests by individual citrus firms for additional time to implement control measures and validate that the process achieves the pathogen reduction in § 101.17(g)(7)(i) should be addressed to the Director of the FDA District in which the firm is located. For firms in Florida, Texas, Arizona, and California the addresses are:

Douglas Tolen, District Director, FDA Florida District Office, 7200 Lake Ellenor Dr., suite 120, Orlando, FL 32809, 407–475–4700;

Joseph Baca, District Director, FDA Dallas District Office, 3310 Live Oak St., Dallas, TX 75204, 214–655–5315; or

Elaine C. Messa, District Director, FDA Los Angeles District Office, 19900 MacArthur Blvd., suite 300, Irvine, CA 92612–2445, 949–798–7714.

In the **Federal Register** of July 8, 1998 (63 FR 37030), FDA published a final regulation that requires a warning statement on fruit and vegetable juice products that have not been processed to prevent, reduce, or eliminate pathogenic microorganisms that may be present in such juices. The regulation provides that the warning statement requirement does not apply to a juice that has been processed in a manner that will produce, at a minimum, a reduction in the pertinent microorganism of at least a 5-log magnitude (i.e., 100,000 fold). In the preamble to the proposed rule (63 FR 20486, April 24, 1998), FDA recognized that pasteurization is a process that can produce the 5-log reduction. The agency also noted that manufacturers may be able to use other technologies and practices, individually or in combination (such as a combination of eliminating use of drops, brushing, washing and using sanitizers) to achieve the 5-log reduction, provided that the manufacturer's process is validated to achieve the 5-log reduction in the target microorganism.

In the preamble to the final regulation, FDA stated its expectation that citrus juice processors should be able to achieve and validate a 5-log reduction without pasteurization (63 FR 37030 at 37042). FDA also indicated that it would be willing to meet with manufacturers or groups of manufacturers to discuss and evaluate their proposed processes. In addition, FDA stated that in order to help processors meet the pathogen reduction standard, the agency would make available, in accordance with 21 CFR part 20 of its regulations, information received by the agency regarding processes that have been validated to achieve a 5-log reduction.

FDA has received requests from several manufacturers of fresh citrus juice for 18-additional months beyond the November 5, 1998, compliance date for the warning statement requirement to permit such firms to develop and to validate procedures that will achieve the 5-log reduction in citrus juices. In discussions with the agency, there was evidence of widespread confusion among juice manufacturers as to how FDA expects the 5-log reduction to be achieved.

Upon consideration of the fresh citrus juice manufacturers' request and in light of other information before the agency regarding progress made by some citrus juice manufacturers in identifying effective mechanisms for pathogen reduction, FDA has developed a two-part strategy to respond to these requests. First, FDA will sponsor two technical scientific workshops for the citrus juice industry, open to the public, on November 12 and November 19, l998. Each workshop will include a discussion of the control measures of which FDA is aware that are being used for citrus juice production and of the methods for measuring and validating the effectiveness of the measures in reducing pathogens. FDA believes that these workshops will provide an opportunity for industry representatives and other members of the public to share information regarding control measures that are believed to achieve the 5-log reduction. Participants are requested to bring to the workshop at least 150 copies of any written or published materials they wish to distribute at the workshop. Agency experts will be available to answer technical questions.

Second, as noted, several firms have requested that FDA extend the final rule's compliance date for citrus juices to permit those firms additional time to develop and validate intervention measures that achieve the 5-log pathogen reduction standard. FDA believes that a formal extension of the rule's compliance date is not feasible in the current circumstances because such extension would arguably require notice and comment rulemaking. Nevertheless, FDA believes that under certain conditions (which are enumerated as follows), it would be an appropriate exercise of the agency's enforcement discretion to suspend enforcement of the final rule for a limited period of time. In particular, FDA will consider such an exercise of its enforcement discretion for those citrus juice producers who no later than December 19, 1998, request such consideration and who make the following commitments in writing:

(1) The firm agrees to use the time period between November 4, 1998, and July 8, 1999, to develop, adapt, and validate procedures that are sufficient to achieve a 5-log reduction in the pertinent microorganism; and,

(2) The firm agrees to establish interim protection measures in the form of a system that applies hazard analysis and critical control point (HACCP) principles. This interim system will include, at a minimum, good manufacturing practices and specific control measures such as chemical washing and brushing of the fruit, sanitizing, culling of damaged fruit, and utilization of only those types of fruit with skins that are sufficiently smooth and durable to be cleanable and to remain intact after cleaning; and,

(3) The firm agrees to comply with the provisions of the warning label regulation (§ 101.17 (g)) no later than July 8, 1999. As a result of this commitment, the firm will use the warning label on its products beginning July 8, 1999, if it has been unable to implement validated control measures that achieve the 5-log reduction.

FDA believes that this two-part strategy is reasonable and will provide appropriate public health protection. As noted in the warning statement rulemaking, because the warning statement provides consumers with important information about the risk of foodborne illness, the warning requirement contributes to public health protection in that it allows consumers to make informed purchase decisions. In FDA's view, this warning statement requirement is primarily an interim step designed to reduce the risk of fresh juice consumption pending completion of a final HACCP rule and its implementation. However, because the warning statement requirement may nevertheless allow contaminated juice products to reach the marketplace, FDA does not expect the statement to be as effective in protecting consumers as would a validated 5-log reduction program. FDA believes it is appropriate to consider exercising its enforcement discretion where, as a result of such exercise, the agency can provide an incentive for citrus juice processing firms to produce safe juice earlier than such firms would otherwise do.

Because of the relationship between particular provisions in the warning statement regulation and the HACCP proposal, FDA is announcing its intention to reopen the comment period on the juice HACCP proposal (63 FR 20450) entitled ''Hazard Analysis and Critical Control Point (HACCP); Procedures for the Safe and Sanitary Processing and Importing of Juice.'' This reopening will allow information and data presented at the workshop to be included in the record of the HACCP rulemaking. A **Federal Register** document announcing the reopening of the juice HACCP proposal comment period will be published at a later date.

Transcripts of the workshops will be prepared. Copies of the transcripts 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 meetings at a cost of 10 cents per page.

Dated: October 23, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–28901 Filed 10–23–98; 3:47 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 97F–0388]

Food Additives Permitted For Direct Addition to Food For Human Consumption; Polydextrose

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to permit aqueous transition metal catalytic hydrogenation in the production of polydextrose and to adopt the specifications for polydextrose of the Food Chemicals Codex, 4th ed., 1996. This action is in response to a petition filed by Cultor Food Science, Inc.

DATES: This regulation is effective October 28, 1998; written objections and requests for a hearing by November 27, 1998. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C 552(a) and 1 CFR part 51 of certain publications in § 172.841(b) (21 CFR 172.841(b), October 28, 1998.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Rosalie M. Angeles, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3107.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 25, 1997 (62 FR 50387), FDA announced that a food additive petition (FAP 7A4556) had been filed by Cultor Food Science, Inc., 205 East 42d St., New York, NY 10017, proposing that § 172.841 *Polydextrose* (21 CFR 172.841) be amended to permit aqueous transition metal catalytic hydrogenation in the production of polydextrose and to adopt the specifications for polydextrose of the Food Chemicals Codex, 4th ed., 1996, pp. 297–300.

The proposed optional transition metal catalytic hydrogenation step in the production of polydextrose yields a partially reduced form of polydextrose in which the glucose moiety of glucose-terminated polydextrose polymers and the residual glucose monomers are converted to sorbitol moieties. The petitioner submitted data demonstrating that this partially reduced form of polydextrose is functionally equivalent to the currently regulated polydextrose and that no new chemical species are formed as a result of the proposed hydrogenation step. These data also show that the components of polydextrose produced by the proposed hydrogenation step are the same as the compounds of the currently regulated polydextrose and that only the relative amounts of sorbitol-terminated polydextrose and of free sorbitol are changed. The proposed adoption of the specifications for polydextrose in the Food Chemicals Codex, 4th ed., will allow the partially reduced form of polydextrose, with increased residual free sorbitol, to meet the specifications for polydextrose.

No new uses and no changes in current use levels of polydextrose are proposed in the petition. Polydextrose produced by the proposed hydrogenation step is expected to be used as a replacement for the currently regulated polydextrose. Therefore, FDA concludes that there will be no increase in dietary exposure to polydextrose from the promulgation of this amendment to the regulation (Ref. 1).

Based on its evaluation of the data in the petition and other relevant material in its files, FDA concludes that the reduced form of polydextrose produced by the proposed optional hydrogenation step is safe, that it will achieve its intended technical effect, and that therefore, the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before November 27, 1998, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Reference

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

1. Memorandum dated September 27, 1997, from M. DiNovi, Division of Product Manufacture and Use, FDA, to R. M. Angeles, Division of Product Policy, FDA.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner

of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 348, 371, 379e.

2. Section 172.841 is amended by revising paragraphs (a)(2) and (b) to read as follows:

§ 172.841 Polydextrose.

* * * * *

(a) * * *

(2) Polydextrose may be partially neutralized with potassium hydroxide, or partially reduced by transition metal catalytic hydrogenation in aqueous solution.

(b) The additive meets the specifications of the ''Food Chemicals Codex,'' 4th ed. (1996), pp. 297–300, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

* * * * *

Dated: October 18, 1998.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–28780 Filed 10–27–98; 8:45 am]

BILLING CODE 4160–01–F

POSTAL SERVICE

39 CFR Part 111

[Docket No. R97–1]

Amendments to the Rate, Fee, and Classification Changes and the Domestic Mail Manual Implementation Standards

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule sets forth revised rates, fees, and mail preparation standards for In-County Periodicals automation mail, Destination Delivery Unit Parcel Post, and Library Mail adopted by the Postal Service in the October 5, 1998, Decision of the Governors of the Postal Service in Postal Rate Commission Docket No. R97–1. It also contains corrections and additions to the implementation standards in the final rule published in the **Federal Register** on Tuesday, July 14, 1998 (63 FR 37946).

EFFECTIVE DATE: This final rule is effective at 12:01 a.m. on January 10, 1999.

FOR FURTHER INFORMATION CONTACT: Lynn M. Martin, 202–268–6351.

SUPPLEMENTARY INFORMATION: In their Decision on June 29, 1998, in Docket No. R97–1, the Governors of the Postal Service returned three matters to the Postal Rate Commission for reconsideration. On September 24, 1998, the Commission issued its further Recommended Decision on those matters. The Governors approved the rate and classification changes included within the further Recommended Decision on October 5, 1998, and the Board set the implementation date for these changes as January 10, 1999, to coincide with the other changes from Docket No. R97–1 being implemented on that date. The categories affected by these changes are In-County Periodicals automation mail, Destination Delivery Unit Parcel Post, and Library Mail.

This rule contains the Domestic Mail Manual changes adopted by the Postal Service to implement the Governors' October 5, 1998, decision. This rule also contains clarifications, corrections, and additions to the final rule published in the **Federal Register** on July 14, 1998 (63 FR 37946) that contained Domestic Mail Manual changes adopted by the Postal Service to implement the June 29, 1998, Decision of the Governors of the Postal Service in Postal Rate Commission Docket No R97–1. Part A of this rule contains revisions to portions of the July 14, 1998, **Federal Register** that did not contain Domestic Mail Manual language. Part B describes the changes to the Domestic Mail Manual. Part C contains the revisions to the Domestic Mail Manual. The DMM amendments and revisions published in this rule reflect renumbering of the DMM based on revisions published subsequent to the July 14 final rule. The revised DMM standards will take effect on January 10, 1999.

A. Corrections to the Federal Register

In the **Federal Register** issue of July 14, 1998 (63 FR 37946) on page 37950, third column, under 5a, delete the third sentence and replace it with the following: ''Nonprofit ECR pound rates will decrease. Nonprofit subclass pound rates will increase.''

In the **Federal Register** issue of July 14, 1998 (63 FR 37946) on page 38033, third column, delete the last sentence and replace it with the following: ''An appropriate amendment to 39 CFR 111.3 will be published to reflect these changes.''

B. Domestic Mail Manual Amendments and Revisions

1. C010.1.3 is amended to reflect the new oversized Parcel Post dimensions.

2. C050.5.0 is amended to clarify that merchandise samples prepared with detached address labels are considered irregular parcels only if they are not letter-size and are not flat-size. This means that merchandise samples that are letter-size or flat-size as defined in C050 will not be subject to the residual shape surcharge.

3. D100.2.1 is amended to change the phrase ''single-piece rate Priority Mail'' to ''Priority Mail.''

4. D100.2.6 is amended to change the phrase ''single-piece rate Priority Mail'' to ''Priority Mail.''

5. E630.2.5 concerning eligibility of Bound Printed Matter for the barcoded discount is revised to remove references to 5-digit bundles when preparing Presorted Bound Printed Matter under the sortation requirements for machinable parcels. This section is further corrected to refer to 5-digit bundles under the provisions for preparing bedloaded bundles, and to clarify that such 5-digit bundles may qualify for the barcoded discount. Other sortation levels of bedloaded bundles will not qualify for the barcoded discount.

6. The requirements for eligibility of Special Standard Mail for barcoded discounts are moved from E630.4.7 to E630.3.1.

7. E630.5.1 is revised to add requirements for eligibility of Library Mail for Presorted 5-digit rates and Presorted BMC rates. The requirements for eligibility of Library Mail for barcoded discounts are moved from E630.5.8 to E630.5.1. E630.5.3, which specified that mailings of 1,000 or more identical weight pieces of single-piece rate Library Mail must be presorted, is deleted. Single-piece rate Library Mail mailings of 1,000 or more identical-weight pieces will no longer be required to be presorted. E630.5.4 through E630.5.7 is renumbered as E630.5.3 through E630.5.6.

8. Former E630.6.0, Bulk Parcel Post, is renumbered as E630.7.0.

9. E630.6.0 is added for the eligibility requirements for presorted Library Mail rates.

10. E652.3.2c is added to include information previously located in P750.2.12 that requires a mailer of a Parcel Post mailing that contains pieces eligible for more than one destination entry discount to physically separate pieces into groups by destination entry discount at the time of verification.

11. E651.3.3 and E652.3.4c are amended to specify that mailers must contact a destination delivery unit (DDU) by telephone at least 24 hours in advance to make an appointment for a drop shipment. The language indicating that mailers desiring electronic confirmation of DDU mail entry must also schedule a DDU appointment through the district control center is deleted because electronic confirmation will not be available for all DDUs on January 10, 1999. It is expected that all DDUs will become part of the electronic appointment system (DSAS) by the summer of 1999 when the system will become web-based. Between January 10, 1999, and the implementation of the web-based system, mailers desiring appointments with electronic confirmation at those DDUs that are currently on the electronic system may continue to use DSAS for those DDU drop shipment appointments. However mailers scheduling DDU appointments using DSAS must also telephone the DDU at least 24 hours in advance to confirm the drop shipment.

12. Amendments are made to Exhibits E652.5.0, E652.6.0, and E652.7.0.

13. M012.3.5 is added to reflect the requirement for a ''Presorted'' marking in addition to the ''Library Mail'' or ''Library Rate'' marking when mailing at presorted Library Mail rates.

14. Exhibit M03.1.3, 3-Digit Content Identifier Numbers, is amended to add use of the content identifier numbers currently assigned for use with sacks of presorted Special Standard with presorted Library Mail.

15. M033.1.7 is revised to note that origin/entry 3-digit/scheme tray and sack preparation is applicable to all mail except flat-size Periodicals. DMM M033.1.8 is added to describe mandatory/optional preparation of origin/entry SCF sacks for flat-size Periodicals.

16. The heading of M045.4.3 is amended to show pallet presort levels for presorted Library Mail.

17. M630.5.0 is revised to add provisions for marking and presorting mail to qualify for presorted Library Mail rates. These marking and sortation requirements are similar to those for presorted Special Standard Mail.

18. Exhibit P710.3.3b, Rate Category Abbreviations Standard Mail (A), is amended to delete the code and rate category description ''SP Single-Piece Rate (when fewer than 200 pieces accompany automation rate mail)'' that appears at the bottom of this exhibit.

19. P750.2.13 is revised for clarity and simplicity. Information concerning separation of Parcel Post destination entry discount mail at the time of verification previously contained in this section is moved to E652.3.2c.

20. R200.2.2 is amended to reflect revised Periodicals In-County automation per-piece rates.

21. R600.5.4 is amended to reflect revised Parcel Post destination delivery unit (DDU) rates.

22. R600.6.0 is amended to delete former section 6.1a and to renumber 6.1b as 6.1. Renumbered R600.6.1 is further corrected by deleting footnote 1 and renumbering footnote 2 as footnote 1.

23. R600.7.0 is amended to include Library Mail. The separate rate chart for single-piece Library Mail in R600.8.0 is deleted. Former R600.9.0 is renumbered R600.8.0 and new R600.8.1e is added for the $100 annual fee for mailing presorted Library Mail.

C. Domestic Mail Manual Revisions

List of Subjects in 39 CFR Part 111

Postal Service.

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

PART 111—[AMENDED]

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

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

2. Revise the following sections of the Domestic Mail Manual as follows:

C Characteristics and Content

C010 General Mailability Standards

1.0 MINIMUM AND MAXIMUM DIMENSIONS

* * * * *

1.3 Maximum

[Revise 1.3 to read as follows:]

No mailpiece may weigh more than 70 pounds. Except for Parcel Post (see C600), no mailpiece may measure more than 108 inches in length and girth combined. Parcel Post pieces measuring over 108 inches in combined length and girth, but not more than 130 inches in combined length and girth, are mailable at the applicable oversized rate. Length is the distance of the longest dimension as determined by 1.1, and girth is the distance around the thickest part.

* * * * *

C050 Mail Processing Categories

* * * * *

5.0 IRREGULAR PARCEL (NONMACHINABLE)

[Amend 5.0 by adding ''and are not letter-size or flat-size'' to the second sentence to read as follows.]

An irregular parcel is a parcel not meeting the dimensional criteria in 4.1. This processing category also includes parcels that cannot be processed by BMC parcel sorters, including rolls and tubes up to 26 inches long; merchandise samples that are not individually addressed and are not letter-size or flat-size; unwrapped, paper-wrapped, or sleeve-wrapped articles that are not letter-size or flat-size; and articles enclosed in envelopes that are not letter-size, flat-size, or machinable parcels.

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C810 Letters and Cards

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2.0 DIMENSIONS

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2.3 Maximum Weight

[Amend 2.3 by replacing the word ''nonautomation'' with the word ''Presorted'' in 2.3a.]

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D Deposit, Collection, and Delivery

* * * * *

D100 First-Class Mail

* * * * *

2.0 MAIL DEPOSIT

2.1 Single-Piece and Card Rates

[Amend the first sentence of 2.1 by changing the phrase ''single-piece rate Priority Mail'' to ''Priority Mail.'']

* * * * *

2.6 Restriction

[Amend 2.6 by deleting the term ''single-piece rate'' in the first sentence.]

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E Eligibility

* * * * *

E600 Standard Mail

* * * * *

E630 Standard Mail (B)

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2.0 BOUND PRINTED MATTER

* * * * *

[Revise 2.5 to read as follows:]

2.5 Barcoded Discount

The barcoded discount applies to machinable parcels (C050) bearing a correct, readable barcode under C850 for the ZIP Code shown in the delivery address that are part of a mailing of at least 50 Bound Printed Matter pieces, and are mailed at the single-piece rates, or under the following conditions, mailed at the presorted rates. Presorted Bound Printed Matter that is prepared under the machinable parcel preparation standards in M045 and M630 is eligible for the barcoded discount. Bedloaded bundles of presorted Bound Printed Matter (that are required to be prepared under the sortation standards for flats and irregular parcels) are not eligible for barcoded discounts, with the exception that 5-digit bedloaded bundles are eligible for the barcoded discount. Carrier route Bound Printed Matter is not eligible for the barcoded discount.

* * * * *

3.0 SPECIAL STANDARD MAIL

[Amend 3.1 by inserting new 3.1d to read as follows.]

3.1 Qualification

Special Standard Mail is Standard Mail matter meeting the standards in E611, E613, and those below. Special Standard Mail rates are based on the weight of the piece, without regard to zone. The rate categories and discounts are as follows:

* * * * *

d. Barcoded Discount. The barcoded discount applies to machinable parcels (C050) mailed at single-piece rates and Presorted Special Standard Mail BMC rates that bear a correct, readable barcode under C850 for the ZIP Code shown in the delivery address and that are part of a mailing of at least 50 pieces of Special Standard Mail. The discount does not apply to pieces mailed at the presorted Special Standard mail 5-digit rates.

* * * * *

4.0 PRESORTED SPECIAL STANDARD MAIL

* * * * *

[Delete E630.4.7.]

5.0 LIBRARY MAIL

5.1 Qualification

[Revise 5.1 to read as follows:]

Library Mail is Standard Mail matter meeting the standards in E611, E613, and those below. Library Mail rates are based on the weight of the piece, without regard to zone. The rate categories and discounts are as follows:

a. Single-Piece Rate. The single-piece rate applies to Library Mail not mailed at a 5-digit or BMC rate.

b. Presorted 5-Digit Rate. The 5-digit rate applies to Presorted Library Mail mailings of at least 500 pieces and meeting the other requirements of 6.0 and that are prepared and presorted to 5-digit destination ZIP Codes as specified in M630 or M041 and M045.

c. Presorted BMC Rate. The BMC rate applies to Presorted Library Mail mailings of at least 500 pieces and meeting the other requirements of 6.0 and that are prepared and presorted to destination bulk mail centers as specified in M630 or M041 and M045.

d. Barcoded Discount. The barcoded discount applies to machinable parcels (C050) mailed at single-piece rates and Presorted Library Mail BMC rates that bear a correct, readable barcode under C850 for the ZIP Code shown in the delivery address and that are part of a mailing of at least 50 pieces of Library Mail. The discount does not apply to pieces mailed at the Presorted Library Mail 5-digit rates.

* * * * *

[Delete E630.5.3. Redesignate former E630.5.4 through 5.7 as E630.5.3 through E630.5.6 respectively. Delete former E630.5.8. Redesignate former E630.6.0 as E 630.7.0. Insert new E630.6.0 to read as follows:]

6.0 PRESORTED LIBRARY MAIL

6.1 Basic Information

The Presorted Library Mail rates apply to Library Mail matter mailed in minimum quantities at a place and time designated by the postmaster, subject to the preparation standards in M630. The size and content of each piece in the mailing does not need to be identical. Nonidentical pieces may be merged, sorted together, and presented as a single mailing either with postage paid with a permit imprint if authorized by the RCSC serving the post office of mailing, or with the correct postage affixed to each piece in the mailing.

6.2 Mailing Fee

A mailing fee must be paid once each 12-month period at each post office of mailing by or for any person who mails at the Presorted Library Mail rates. The fee may be paid in advance only for the next year and only during the last 30 days of the current service period. The fee charged is that in effect on the date of payment.

6.3 One Presort Level

A Presorted Library Mail mailing receives only one level of presort rate. The mailer may, however, prepare two separate mailings in order to use both levels of presort rates and claim them on the same postage statement. Library Mail pieces that do not qualify for a presort rate must be presented separately from any presorted rate mailings, but may be claimed on the same postage statement as a 5-digit rate and BMC presort rate mailing.

6.4 Definitions

For this standard:

a. Full sack means either at least eight pieces or a quantity of pieces equaling at least 1,000 cubic inches of volume or weighing from 20 to 70 pounds.

b. Substantially full sack means either at least four pieces or a quantity of pieces equaling at least 1,000 cubic inches of volume or weighing from 20 to 70 pounds.

6.5 5-Digit Rate

To qualify for the Presorted Library Mail 5-digit rate, a piece must be in a mailing of at least 500 pieces receiving identical service, prepared and sorted either under M630 to full 5-digit sacks or under M041 and M045 to 5-digit pallets. These conditions also apply:

a. Mailings of at least 500 nonmachinable outside parcels may qualify for the Presorted Library Mail 5-digit rate if prepared to preserve sortation by 5-digit ZIP Code as prescribed by the mailing office postmaster. The postmaster may require a 24-hour notice before the mailing is presented.

b. Mailings prepared as palletized packages must consist of 5-digit packages each containing at least eight pieces, or a quantity of pieces equaling 1,000 cubic inches of volume or weighing 20 pounds. No package may exceed 40 pounds. If there is more than 20 pounds of mail to a 5-digit destination, the mailer must prepare the minimum number of packages that do not exceed 40 pounds each. If the pieces are machinable parcels under C050, the pieces must be placed directly on a 5-digit pallet without packaging.

6.6 BMC Rate

To qualify for the Presorted Library Mail BMC rate, a piece must be in a mailing of at least 500 pieces receiving identical service, prepared and sorted either under M630 to full or substantially full bulk mail center (BMC) sacks or under M041 and M045 to BMC pallets. These conditions also apply:

a. Mailings of at least 500 nonmachinable outside parcels may qualify for the Presorted Library Mail BMC rate if prepared to preserve sortation by BMC as prescribed by the mailing office postmaster. The postmaster may require a 24-hour notice before the mailing is presented.

b. Mailings prepared as palletized packages must consist of BMC packages each containing at least eight pieces, or a quantity of pieces equaling 1,000 cubic inches of volume or weighing 20 pounds. No package may exceed 40 pounds. If there is more than 20 pounds of mail to a BMC destination, the mailer must prepare the minimum number of packages that do not exceed 40 pounds each. If the pieces are machinable parcels under C050, the pieces must be placed directly on a BMC pallet without packaging.

* * * * *

E650 Destination Entry

E651 Regular, Nonprofit, and Enhanced Carrier Route Standard Mail

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3.0 DEPOSIT

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3.3 Advance Scheduling

[Amend 3.3 by revising scheduling for DDU deposit to read as follows:]

Except under 4.0, a mailer must schedule deposit of destination rate mailings at least 24 hours in advance by contacting the proper district or BMC control center or destination delivery unit. Appointments at delivery units must be made by calling the delivery unit at least 24 hours in advance. Appointments for ASFs, SCFs, or for any multistop loads must be made through the USPS district control center. Appointments for BMC loads must be scheduled by the proper BMC control center. When contacting the USPS to make an appointment or as soon as available, the mailer must provide the following information:

a. Mailer's name and address and the name and telephone number of the mailer's agent or local contact.

b. Name of what is being mailed, number of mailings, volume of mail, how prepared and whether containerized (e.g., pallets).

c. Where and how mailing was (or must be) verified.

d. Method of postage payment.

e. Requested date and destination facility for mailing.

f. Vehicle identification number, size, and type.

* * * * *

E652 Parcel Post

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3.0 DEPOSIT

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3.2 Presentation

[Renumber E652.3.2c through f as E652.3.2d through g, respectively. Insert new E652.3.2c to read as follows:]

Destination entry rate mailings must be verified under a plant-verified drop shipment authorization by a detached mail unit (DMU) in the mailer's plant or at the origin post office business mail entry unit (BMEU) serving the mailer's plant. They also may be deposited for verification at a BMEU located at a destination BMC, destination sectional center facility, or other designated destination postal facility. Only plant-verified drop shipments may be deposited at a destination delivery unit not co-located with a post office or other postal facility having a BMEU. When presented to the USPS, destination entry mailings must meet the following requirements:

* * * * *

c. When a mailer claims more than one destination entry discount for a mailing to be deposited at the same postal facility, the mail eligible for each destination entry discount must be physically separated at the time of verification.

* * * * *

3.4 Appointments

[Amend 3.4 by revising 3.4c to change and update appointment procedures as follows:]

Appointments must be made for destination entry rate mail as follows:

* * * * *

c. For deposit of DDU mailings, an appointment must be made by contacting the DDU at least 24 hours in advance. If the appointment must be canceled, a mailer must notify the DDU at least a day in advance of a scheduled appointment. Recurring (standing) appointments will be allowed if shipment frequency is weekly or more often.

* * * * *

Exhibit E652.5.0, BMC Deposit of DSCF Rate Pallets

[Amend Exhibit E652.5.0, by revising the entries for the Chicago and Des Moines BMCs to read as follows:]

BMC	Destination ZIP code
* *	* * * *
CHICAGO ...	53140–44. 53401–08. 60016–17, 19, 25, 53, 56, 68, 70, 76–77. 60103, 05–07, 20–23, 31, 60–65, 76. 60409, 11–12, 15, 22, 25, 30–33, 35–36, 38–41, 46, 53–58, 62, 64–65, 67, 73, 77–78, 82, 90. 60504–05, 15–17, 21–23, 25–26, 40, 42, 63–68, 98. 60601, 05, 08–60, 67, 81, 90, 93–94. 60714. 60803–05.
* *	* * *
Des Moines	None.
* *	* * *

Exhibit E652.6.0, Delivery Facility Exceptions to the ''Majority of City Carriers'' Rule

[Amend Exhibit E652.6.0 by revising the facility name under KANSAS for ZIP Code 66619 from ''Hicrest'' to ''Pauline Station.'']

* * * * *

Exhibit E652.7.0, Delivery Facilities Different Than Those in the Drop Shipment Product

[Amend Exhibit E652.7.0 by adding the ZIP Code 10069 under New York—Central Parcel Post Facility, and adding the following new ZIP Codes and DDU locations under New York:

ZIP codes served	Destination delivery unit location
* * * * * * *	
New York	
* * * * * * *	
10002–07, 09–14, 16, 19, 20, 23–25, 36, 38, 41, 69	New York—Central Parcel Post Facility, 341 9th Avenue, New York, NY 10199–9991.
10103–07, 10, 49, 58	

ZIP codes served	Destination delivery unit location
10210, 56–60, 65, 70, 71, 79, 80–82, 85, 86, 92.	
* * * * * * *	
10453	Bronx: Highbridge Station, 1315 Inwood Avenue, Bronx, NY 10452–9998.
10458	Bronx: Tremont Station, 575 E Tremont Avenue, Bronx, NY 10457–9998.
* * * * * * *	
13088	Bayberry Station: 7608 Oswego Road, Bayberry Plaza, Liverpool, NY 13090.
* * * * * * *	

* * * * *

M Mail Preparation and Sortation

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M012 Markings and Endorsements

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3.0 PLACEMENT OF MARKINGS—STANDARD MAIL (B)

* * * * *

[Insert new 3.5 to read as follows:]

3.5 Other Library Mail Markings

The required marking ''Presorted'' or ''PRSRT'' for presorted Library Mail may be placed in the location specified in 3.1. Alternatively, it may be placed in the address area on the line directly above or two lines above the address if the marking appears alone (no other information appears on that line).

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M030 Containers

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M032 Barcoded Labels

1.0 BASIC STANDARDS—TRAY AND SACK LABELS

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Exhibit 1.3 3-Digit Content Identifier Numbers

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[Amend Exhibit 1.3a, Standard Mail (B), by changing the heading ''Presorted Special Standard Flats—5-Digit and BMC'' to ''Presorted Special Standard and Presorted Library Mail Flats—5-Digit and BMC.'']

[Amend Exhibit 1.3a, Standard Mail (B), by changing the heading ''Presorted Special Standard Irregular Parcels— 5-Digit and BMC'' to ''Presorted Special Standard and Presorted Library Mail Irregular Parcels—5-Digit and BMC.'']

[Amend Exhibit 1.3a, Standard Mail (B), by changing the heading ''Presorted Special Standard Machinable Parcels—5-Digit and BMC'' to ''Presorted Special Standard and Presorted Library Mail Machinable Parcels—5-Digit and BMC.'']

* * * * *

M033 Sacks and Trays

1.0 BASIC STANDARDS

* * * * *

1.7 Origin/Entry 3-Digit/Scheme Trays and Sacks

[Revise 1.7 to read as follows:]

Except for flat-size Periodicals under 1.8, after all required carrier route, 5-digit, 3-digit (and, for automation letters, 3-digit scheme) sacks or trays are prepared, a 3-digit tray or sack (or if applicable, 3-digit scheme tray) must be prepared to contain any remaining mail for each 3-digit (or 3-digit scheme) area serviced by the SCF (mail processing plant) serving the post office where the mail is verified, and may be prepared for each 3-digit (or 3-digit scheme) area served by the SCF/plant where mail is entered (if that is different from the SCF/plant serving the post office where the mail is verified, e.g., a PVDS deposit site). In all cases, only one less-than-full sack or tray may be prepared for each 3-digit (or 3-digit scheme) area.

[Add new 1.8 to read as follows:]

1.8 Periodicals Flats Origin/Entry SCF Sacks

For flat-size periodicals, after all required carrier route, 5-digit, 3-digit, and SCF sacks are prepared, an SCF sack must be prepared to contain any remaining 5-digit and 3-digit packages for the 3-digit ZIP Code area(s) served by the SCF serving the post office where the mail is verified, and may be prepared for the area served by the SCF/plant where mail is entered (if that is different from the SCF/plant serving the post office where the mail is verified, e.g., a PVDS deposit site). In all cases, only one less-than-full sack may be prepared for each SCF area.

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M045 Palletized Mailings

* * * * *

4.0 PALLET PRESORT AND LABELING

[Amend the heading of 4.3 by adding ''Library Mail'' to read ''Presorted Special Standard and Library Mail.'']

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M630 Standard Mail (B)

* * * * *

5.0 LIBRARY MAIL

5.1 Basic Standards

[Revise 5.1 to read as follows:]

There are no preparation standards for single-piece Library Mail. Presorted Library Mail must be prepared under 5.4, 5.5 and 5.6, unless palletized under M041 and M045 and E630.5. Mailings of nonmachinable (outside) pieces eligible for the presort rates must be prepared to preserve the required presort as instructed by the mailing office postmaster.

5.2 Marking

[Amend 5.2 by adding markings for presorted Library Mail to read as follows:]

Each piece claimed at Library Mail rates must be marked ''Library Rate'' or ''Library Mail'' under M012. Each piece claimed at presorted Library Mail rates also must be marked ''Presorted'' or ''PRSRT'' under M012. Pieces not marked as required are treated as single-piece Parcel Post, subject to additional postage as necessary.

5.3 Documentation

[Amend 5.3 to read as follows:]

A complete, signed postage statement, using the correct USPS form or an approved facsimile, must accompany each mailing at other than single-piece rates.

[Insert new 5.4 through 5.6 to add preparation requirements for presorted Library Mail to read as follows:]

5.4 Sack Preparation (5-Digit Rate)

Sack size, preparation sequence, and labeling: 5-digit (only); required (minimum of eight pieces/20 pounds/1,000 cubic inches, smaller volume not permitted); for Line 1 use 5-digit ZIP Code destination of pieces, preceded for military mail by the prefixes under M031.

5.5 Sack Preparation (BMC Rate)

Sack size, preparation sequence, and Line 1 labeling: destination BMC (only); required (minimum of four pieces/20 pounds/1,000 cubic inches, smaller volume not permitted); for Line 1, use L601.

5.6 Sack Line 2

Line 2:

a. 5-digit: ''STD FLTS 5D NON BC,'' or ''STD B IRREG 5D,'' or ''STD B MACH 5D,'' as applicable.
b. BMC ''STD FLTS BMC NON BC,'' or ''STD B IRREG BMC,'' or ''STD B MACH BMC,'' as applicable.
c. Any line 2 processing code required by the labeling list must be right-justified.

* * * * *

P Postage and Payment Methods

* * * * *

P700 Special Postage Payment Systems

P710 Manifest Mailing System (MMS)

* * * * *

3.0 KEYLINE

* * * * *

3.3 Rate Category Abbreviations

* * * * *

Exhibit 3.3b—Rate Category Abbreviations—Standard Mail (A)

[Amend Exhibit 3.3b, by deleting the code and rate category description ''SP Single-Piece Rate (when fewer than 200 pieces accompany automation rate mail)'' that appears at the bottom of the exhibit.]

* * * * *

P750 Plant-Verified Drop Shipment (PVDS)

* * * * *

2.0 PROGRAM PARTICIPATION

* * * * *

2.13 Separation of PVDS Mailings

[Revise 2.13 to read as follows:]

When a vehicle contains more than one PVDS for a single destination facility, the shipments must be separated to allow reconciliation with each accompanying Form 8125 and 8125–C. When a vehicle contains shipments for multiple destination facilities, the shipment for each destination must be physically separated. Where applicable, a single Form 8125 that identifies all the mail for a single facility must be prepared for a shipment of copalletized or combined mailings.

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R Rates and Fees

* * * * *

R200 Periodicals

2.0 PREFERRED—IN-COUNTY

* * * * *

2.2 Piece Rates

[Amend 2.2 by revising the automation rates to read as follows:]

Per addressed piece:

Presort level	Nonautomation	Automation [1]	
		Letter-size	Flat-size
Basic	$0.095	$0.046	$0.065
3-Digit	0.088	0.044	0.062
5-Digit	0.080	0.041	0.058
Carrier Route	0.043	.....	.....
High Density	0.029	.....	.....
Saturation	0.025	.....	.....

[1] Lower maximum weight limits apply: letter-size at 3 ounces (or 3.3103 ounces for heavy letters); flat-size at 16 ounces (FSM 881) and 6 pounds (FSM 1,000).

* * * * *

R600 Standard Mail

* * * * *

5.0 PARCEL POST STANDARD MAIL (B)

* * * * *

5.4 Destination Entry Parcel Post (DDU/DSCF/DBMC)

[Amend 5.4 by revising DDU rates to read as follows:]

Destination facility ZIP Codes only, discount included:

Weight not over (pounds)	DDU [1 2]	DSCF [1 2]	DBMC zone [1 2 3]			
			1 and 2	3	4	5
2	$1.21	$1.67	$2.23	$2.40	$2.40	$2.40
3	1.26	1.78	2.40	2.86	2.87	2.89
4	1.32	1.91	2.58	3.17	3.18	3.94
5	1.37	2.02	2.74	3.45	3.48	4.40
6	1.41	2.12	2.88	3.73	3.75	4.83
7	1.45	2.21	3.02	3.97	4.00	5.22
8	1.50	2.30	3.15	4.19	4.23	5.60
9	1.55	2.40	3.28	4.37	4.46	5.95
10	1.59	2.48	3.40	4.51	4.68	6.29
11	1.63	2.56	3.51	4.67	4.87	6.59
12	1.67	2.64	3.62	4.81	5.07	6.89
13	1.72	2.72	3.73	4.93	5.25	7.16
14	1.74	2.78	3.82	5.08	5.43	7.42
15	1.78	2.84	3.91	5.20	5.59	7.67
16	1.82	2.92	4.01	5.32	5.75	7.91

Weight not over (pounds)	DDU [1 2]	DSCF [1 2]	DBMC zone [1 2 3]			
			1 and 2	3	4	5
17	1.85	2.98	4.09	5.43	5.91	8.13
18	1.90	3.04	4.18	5.54	6.05	8.35
19	1.92	3.10	4.26	5.64	6.19	8.55
20	1.96	3.16	4.34	5.75	6.34	8.74
21	1.99	3.22	4.42	5.85	6.47	8.94
22	2.02	3.27	4.49	5.94	6.60	9.12
23	2.06	3.32	4.56	6.05	6.73	9.30
24	2.08	3.38	4.63	6.14	6.84	9.46
25	2.12	3.43	4.70	6.21	6.96	9.62
26	2.15	3.47	4.76	6.31	7.07	9.78
27	2.19	3.53	4.83	6.38	7.18	9.92
28	2.21	3.57	4.89	6.47	7.29	10.07
29	2.25	3.63	4.96	6.57	7.40	10.21
30	2.27	3.67	5.01	6.63	7.49	10.35
31	2.31	3.72	5.08	6.70	7.59	10.48
32	2.33	3.76	5.13	6.79	7.69	10.61
33	2.36	3.81	5.19	6.85	7.79	10.73
34	2.40	3.86	5.25	6.92	7.87	10.84
35	2.43	3.90	5.31	6.99	7.97	10.96
36	2.46	3.94	5.36	7.05	8.06	11.08
37	2.47	3.97	5.40	7.11	8.14	11.19
38	2.51	4.02	5.46	7.19	8.22	11.29
39	2.54	4.06	5.51	7.24	8.31	11.39
40	2.57	4.10	5.56	7.31	8.38	11.50
41	2.60	4.14	5.61	7.38	8.47	11.59
42	2.62	4.17	5.65	7.44	8.54	11.68
43	2.65	4.22	5.71	7.49	8.62	11.79
44	2.67	4.26	5.75	7.54	8.70	11.87
45	2.70	4.29	5.79	7.61	8.76	11.96
46	2.74	4.34	5.85	7.67	8.84	12.04
47	2.77	4.37	5.89	7.72	8.90	12.13
48	2.79	4.40	5.93	7.77	8.98	12.22
49	2.82	4.45	5.98	7.83	9.04	12.29
50	2.84	4.48	6.02	7.88	9.11	12.38
51	2.87	4.51	6.06	7.93	9.17	12.45
52	2.90	4.55	6.11	8.00	9.24	12.52
53	2.92	4.58	6.14	8.05	9.30	12.60
54	2.94	4.61	6.18	8.09	9.36	12.67
55	2.98	4.65	6.23	8.13	9.42	12.74
56	3.01	4.69	6.27	8.19	9.49	12.80
57	3.03	4.71	6.30	8.24	9.54	12.88
58	3.07	4.76	6.35	8.28	9.59	12.94
59	3.07	4.78	6.38	8.33	9.66	13.01
60	3.10	4.82	6.42	8.39	9.71	13.07
61	3.13	4.85	6.46	8.42	9.77	13.14
62	3.16	4.88	6.50	8.46	9.82	13.19
63	3.18	4.91	6.53	8.52	9.88	13.25
64	3.21	4.94	6.57	8.55	9.93	13.31
65	3.24	4.98	6.61	8.61	9.98	13.37
66	3.27	5.01	6.65	8.66	10.04	13.43
67	3.29	5.04	6.68	8.70	10.09	13.48
68	3.31	5.07	6.71	8.74	10.14	13.54
69	3.34	5.10	6.75	8.76	10.19	13.59
70	3.38	5.14	6.79	8.83	10.24	13.64
Oversized	8.69	11.99	15.43	22.73	28.00	28.00

[1] Parcels that weigh less than 15 pounds but measure more than 84 inches (but not more than 108 inches) in combined length and girth are charged the applicable rate for a 15-pound parcel.

[2] Pieces that measure more than 108 inches (but not more than 130 inches) in combined length and girth pay the oversized rate, regardless of the actual weight of the piece.

[3] For barcoded discount, deduct $0.03 per piece (machinable parcels only). Barcoded discount is not available for DDU and DSCF rates and DBMC mail entered at an ASF. Barcoded discount is available for Parcel Post at the Phoenix, AZ, ASF.

6.0 BOUND PRINTED MATTER STANDARD MAIL (B)

6.1 Single-Piece Rate

[Amend 6.1 by deleting section 6.1a. Redesignate 6.1b as 6.1. In redesignated 6.1, delete footnote 1 and redesignate footnote 2 as footnote 1.]

* * * * *

6.2 Presorted Rate

[Amend 6.2 by revising the column heading ''Weight Not Over (pounds)'' to read ''Weight (pounds)'' in 6.2b.]

* * * * *

7.0 SPECIAL STANDARD MAIL AND LIBRARY MAIL

Weight not over (pounds)	Single-piece [1]	5-digit	BMC [1]
1	$1.13	$0.64	$0.95
2	1.58	1.09	1.40
3	2.03	1.54	1.85
4	2.48	1.99	2.30
5	2.93	2.44	2.75
6	3.38	2.89	3.20
7	3.83	3.34	3.65
8	4.11	3.62	3.93
9	4.39	3.90	4.21
10	4.67	4.18	4.49
11	4.95	4.46	4.77
12	5.23	4.74	5.05
13	5.51	5.02	5.33
14	5.79	5.30	5.61
15	6.07	5.58	5.89
16	6.35	5.86	6.17
17	6.63	6.14	6.45
18	6.91	6.42	6.73
19	7.19	6.70	7.01
20	7.47	6.98	7.29
21	7.75	7.26	7.57
22	8.03	7.54	7.85
23	8.31	7.82	8.13
24	8.59	8.10	8.41
25	8.87	8.38	8.69
26	9.15	8.66	8.97
27	9.43	8.94	9.25
28	9.71	9.22	9.53
29	9.99	9.50	9.81
30	10.27	9.78	10.09
31	10.55	10.06	10.37
32	10.83	10.34	10.65
33	11.11	10.62	10.93
34	11.39	10.90	11.21
35	11.67	11.18	11.49
36	11.95	11.46	11.77
37	12.23	11.74	12.05
38	12.51	12.02	12.33
39	12.79	12.30	12.61
40	13.07	12.58	12.89
41	13.35	12.86	13.17
42	13.63	13.14	13.45
43	13.91	13.42	13.73
44	14.19	13.70	14.01
45	14.47	13.98	14.29
46	14.75	14.26	14.57
47	15.03	14.54	14.85
48	15.31	14.82	15.13
49	15.59	15.10	15.41
50	15.87	15.38	15.69
51	16.15	15.66	15.97
52	16.43	15.94	16.25
53	16.71	16.22	16.53
54	16.99	16.50	16.81
55	17.27	16.78	17.09
56	17.55	17.06	17.37
57	17.83	17.34	17.65
58	18.11	17.62	17.93
59	18.39	17.90	18.21
60	18.67	18.18	18.49
61	18.95	18.46	18.77
62	19.23	18.74	19.05
63	19.51	19.02	19.33
64	19.79	19.30	19.61

Weight not over (pounds)	Single-piece [1]	5-digit	BMC [1]
65	20.07	19.58	19.89
66	20.35	19.86	20.17
67	20.63	20.14	20.45
68	20.91	20.42	20.73
69	21.19	20.70	21.01
70	21.47	20.98	21.29

[1] For barcoded discount, deduct $0.03 per piece (machinable parcels only). Barcoded discount is not available for parcels mailed at the 5-digit rate.

[Delete current 8.0 and renumber current 9.0 as 8.0.]

8.0 FEES

8.1 Mailing

[Add new 8.1e as follows:]

Fee, as appropriate, per 12-month period:

* * * * *

e. Presorted Library Mail: $100.00.

* * * * *

An appropriate amendment to 39 CFR 111.3 will be published to reflect these changes.

Neva R. Watson,

Attorney, Office of Legal Policy.

[FR Doc. 98–28802 Filed 10–27–98; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6178–3]

Arizona: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Arizona has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. The Environmental Protection Agency (EPA) has completed its review of Arizona's application and has made a decision, subject to public review and comment, that Arizona's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Arizona's hazardous waste program revisions. Arizona's application for program revision is available for public review and comment.

DATES: Final authorization for Arizona is effective December 28, 1998 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Arizona's program revision application must be received by the close of business November 27, 1998.

ADDRESSES: Copies of Arizona's program revision application are available during the business hours of 9:00 a.m. to 5:00 p.m. at the following addresses for inspection and copying:

Arizona Department of Environmental Quality, 3033 N. Central Avenue, Phoenix, AZ 85012, Contact: Russell F. Rhoades, Director, Phone: 602/207–4211 or 1–800–234–5677.

U.S. EPA Region IX Library-Information Center, 75 Hawthorne Street, San Francisco, CA 94105, Phone: 415/744–1510.

Written comments should be sent to: Jean Killpack, U.S. EPA Region IX (WST–3), 75 Hawthorne Street, San Francisco, CA 94105, Phone: 415/744–2033.

FOR FURTHER INFORMATION CONTACT: Jean Killpack , U.S. EPA Region IX (WST–3), 75 Hawthorne Street, San Francisco, CA 94105 Phone: 415–744–2033.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act (''RCRA'' or ''the Act''), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260–266, 268, 124, 270 and 279.

B. Arizona

Arizona received final authorization for the base program on November 20, 1985. Arizona has since received final authorization for revisions to its hazardous waste program on August 6, 1991, July 13, 1992, and November 23, 1992, October 27, 1993, June 12, 1995, and May 6, 1997. These revisions include substantially all the Federal RCRA implementing regulations published in the **Federal Register** through July 1, 1995. On April 20, 1998, Arizona submitted an application for additional revision approvals. Today, Arizona is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Arizona's application, and has made an immediate final decision that Arizona's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to approve final authorization for Arizona's hazardous waste program revisions. The public may submit written comments on EPA's immediate final decision up until November 27, 1998. Copies of Arizona's applications for program revision are available for inspection and copying at the locations indicated in the ''Addresses'' section of this notice.

Approval of Arizona's program revisions is effective in 60 days unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to the comment which either affirms that the immediate final decision takes effect or reverses the decision.

Arizona is applying for authorization for changes and additions to the Federal RCRA implementing regulations that occurred between July 1, 1995 and July 1, 1996 and three that were promulgated after July 1, 1996, consisting of the following Federal hazardous waste regulations:

Federal Requirements:	
Criteria for Classification of Solid Waste Disposal Facilities and Practices; Identification and Listing of Hazardous Waste; Requirements for (HSWA) Authorization of state Hazardous Waste Programs (61 FR 34252, July 1, 1996)	
Identification and Listing of Hazardous Waste; Amendments to Definition of Solid Waste (Non-HSWA) (61 FR 13103, March 26, 1996)	
State Analog:	
Arizona Revised Statutes (ARS) 49–922.A&B; Arizona Administrative Code (AAC)R18-8–261.A,B, G & H..	ARS 49–922.A&B; AAC R18–8-261.A&B
Hazardous Waste Management; Liquids in Landfills (HSWA)(60 FR 35703, July 11, 1995).	ARS 49–922.A&B; AAC R18–8-264.A, R18–8–265.A
Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers (HSWA) (61 FR 59932, November 25, 1996).	ARS 49–922.A&B; AAC R18–8-261.A&B, R–18–8–262.A&B, R18-8–264.A, R18–8–265.A
RCRA Expanded Public Participation (Non-HSWA) (60 FR 63417, July 11, 1996).	ARS 49–922.A&B; AAC R–18–8-271.A, R18–8–271.A
Land Disposal Restrictions Phase III-Decharacterized Wastewaters, Carbamate Waste, and Spent Potliners (HSWA) (61 FR 15566, April 8, 1996; 61 FR 15660, April 8, 1996; 61 FR 19177, April 30, 1996; 61 FR 33680, June 28, 1996; 61 FR 36419, July 10, 1996; 61 FR43924, August 26, 1996; 62 FR 7502, February 19, 1997.	ARS 49–922.A&B; AAC R18–8–268

The State is responsible for issuing, denying, modifying, reissuing and terminating permits for all hazardous waste treatment, storage and disposal facilities in a manner consistent with all Federal requirements for which Arizona is authorized. Arizona is not being authorized to operate any portion of the hazardous waste program on Indian lands.

C. Decision

I conclude that Arizona's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Arizona is granted final authorization to operate its hazardous waste program as revised.

Arizona is now responsible for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984) (''HSWA''). Arizona also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

D. Administrative Requirements

Unfunded Mandates Reform Act

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.

EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the Arizona program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact

on a substantial number of small entities.

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the regulatory requirements under the existing State laws that are now being authorized by EPA. The EPA's authorization does not impose any significant additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Compliance with Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. The State administers its hazardous waste program voluntarily, and any duties on other State, local or tribal governmental entities arise from that program, not from today's action. Accordingly, the requirements of Executive Order 12875 do not apply to this rule.

Compliance With Executive Order 13045

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks,'' applies to any rule that: (1) the Office of Management and Budget determines is ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

Compliance With Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This rule is not subject to E.O. 13084 because it does not significantly or uniquely affects the communities of Indian tribal governments. Arizona is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in the Indian country within the State.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub L. No. 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involved technical standards. Therefore, EPA did

not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and record keeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: August 30, 1998.

Felicia Marcus,

Regional Administrator.

[FR Doc. 98–28870 Filed 10–27–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6181–1]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of deletion of the Operable Unit 2 of the South Andover Salvage Yards Superfund site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Operable Unit 2 of the South Andover Salvage Yards Superfund Site in Minnesota from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. This action is being taken by EPA and the State of Minnesota, because it has been determined that Responsible Parties have implemented all appropriate response actions required for this particular operable unit. Moreover, EPA and the State of Minnesota have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: October 28, 1998.

FOR FURTHER INFORMATION CONTACT: John O'Grady at (312) 886–1477 (SR–6J), Remedial Project Manager or Gladys Beard at (312) 886–7253, Associate Remedial Project Manager, Superfund Division, U.S. EPA—Region V, 77 West Jackson Blvd., Chicago, IL 60604. Information on the site is available at the local information repository located at: Andover City Hall, 1685 N. W. Crosstown Blvd., Andover, MN 55303. Requests for comprehensive copies of documents should be directed formally to the Regional Docket Office. The contact for the Regional Docket Office is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

SUPPLEMENTARY INFORMATION: The portion of the site to be deleted from the NPL is: Operable Unit 2 of the South Andover Salvage Yards located in Andover, Minnesota. A Notice of Intent to Delete for this portion of the site was published September 15, 1998 (63 FR 178). The closing date for comments on the Notice of Intent to Delete was October 14, 1998. EPA received no comments and therefore no Responsiveness Summary was prepared.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site or portion of a site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: October 19, 1998.

David Ullrich,

Acting Regional Administrator, Region V.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the Site ''South Andover Site, Andover, Minnesota.''

[FR Doc. 98–28868 Filed 10–27–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–130, RM–8751]

Radio Broadcasting Services; Ottumwa, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 224C3 for Channel 224C2 at Ottumwa, Iowa, and modifies the license of Station KTWA, Ottumwa, Iowa, to specify operation on Channel 224C2. *See* 62 FR 27710, May 21, 1997; The reference coordinates for Channel 224C2 at Ottumwa, Iowa, are 41–01–11 and 92–27–33. With this action, the proceeding is terminated.

EFFECTIVE DATE: December 1, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 97–130, adopted October 7, 1998, and released October 16, 1998. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3805, 1231 M Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channel 224C3 and adding Channel 224C2 at Ottumwa.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–28772 Filed 10–27–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–139; RM–9312]

Radio Broadcasting Services; King Salmon, AK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 221A to King Salmon, Alaska, as that community's first local aural transmission service in response to a petition filed on behalf of Zimin Broadcasting Corp. *See* 53 FR 41766, August 5, 1998. With this action, the proceeding is terminated.

DATES: Effective November 30, 1998. A filing window for Channel 221A at King Salmon, Alaska, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. General questions related to the application filing process should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–139, adopted October 7, 1998, and released October 16, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alaska, is amended by adding King Salmon, Channel 221A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–28775 Filed 10–27–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–243; RM–9194]

Radio Broadcasting Services; Belzoni and Tchula, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a request by Team Broadcasting Company, permittee of Station WGNG(FM), Channel 292A, Belzoni, Mississippi, this document substitutes Channel 292C3 for Channel 292A at Belzoni, reallots Channel 292C3 to Tchula, Mississippi, and modifies the license for Station WGNG(FM) accordingly, pursuant to the provisions of Sections 1.420(g) and (i) of the Commission's Rules. *See* 62 FR 66324, December 18, 1997. Coordinates used for Channel 292C3 at Tchula are 33–09–43 NL and 90–12–34 WL. With this action, the proceeding is terminated.

EFFECTIVE DATE: November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–243, adopted October 7, 1998, and released October 16, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi is amended by removing Channel 292A at Belzoni and by adding Tchula, Channel 292C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–28776 Filed 10–27–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–7; RM–8947]

Radio Broadcasting Services; Chehalis, WA and Tillamook, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of C. C. Broadcasting Company, allots Channel 282A at Chehalis, Washington, as the community's first local commercial FM transmission service (RM–8947). See 62 FR 3653, January 24, 1997. We also deny the one-step upgrade application (BPH–970224IC) filed by Oregon Eagle, Inc., requesting the substitution of Channel 282C1 for Channel 281C3 at Tillamook, Oregon, and the modification of Station KTIL–FM's license accordingly. Channel 282A can be allotted at Chehalis in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.4 kilometers (0.9 miles) south to avoid a short-spacing to the licensed site of Station KAFE(FM), Channel 282C, Bellingham, Washington. The coordinates for Channel 282A at Chehalis are North Latitude 46–38–57 and West Longitude 122–57–58. Since Chehalis is located within 320 kilometers (200 miles) of the U.S.-

Canadian border, concurrence of the Canadian government has been obtained. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 30, 1998. A filing window for Channel 282A at Chehalis, Washington, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–7, adopted October 7, 1998, and released October 16, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: Sections 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Chehalis, Channel 282A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–28777 Filed 10–27–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–295]

Organization and Delegation of Powers and Duties; Delegation to the Federal Railroad Administrator

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary is delegating his authority to the Federal Railroad Administrator under section 322 to Title 23 of the United States Code. Section 322, titled the Magnetic Levitation Transportation Technology Deployment Program, was added by section 1218 of the Transportation Equity Act for the 21st Century, Public Law 105–178 (June 9, 1998). Section 322 provides a total of $55 million for Fiscal Years 1999 through 2001 for preconstruction planning activities, final design, engineering, and construction activities for maglev deployment; $15 million is available in Fiscal Year 1999 and $40 million for Fiscal Years 2000 and 2001. Also, section 322 authorizes—but does not appropriate—additional Federal funds of $950 million for final design and construction of the most promising project. The authority of the Secretary in section 322 to make financial assistance available to states through the establishment of eligibility criteria, solicitation of applications, and the selection of projects for funding should be delegated to the Federal Railroad Administrator because FRA has the expertise and staff to carry out this program in accordance with the statutory requirements.

EFFECTIVE DATE: October 28, 1998.

FOR FURTHER INFORMATION CONTACT: Gareth W. Rosenau, Office of Chief Counsel (RCC–20), Federal Railroad Administration, 400 Seventh Street, SW. (Stop 10), Washington, DC 20590. Phone: (202) 493–6054.

SUPPLEMENTARY INFORMATION: Since this amendment relates to departmental organization, procedure and practice, notice and comment on it are unnecessary under 5 U.S.C. 553(b). Further, since the amendment expedites the Federal Railroad Administration's ability to meet the statutory deadlines of the Magnetic Levitation Transportation Technology Deployment Program, the Secretary finds good cause under 5 U.S.C. 553(d)(3) for the final rule to be effective on the date of publication in the **Federal Register**.

List of Subjects in 49 CFR Part 1

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

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended, effective upon publication, to read as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; Public Law 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. In § 1.49 (*Delegations to Federal Railroad Administrator*), the following section (kk) is added at the end thereof.

§ 1.49 Delegations to the Federal Railroad Administration.

* * * * *

(kk) Carry out the functions and exercise the authority vested in the Secretary by 23 U.S.C. 322, titled the Magnetic Levitation Transportation Technology Deployment Program.

Issued in Washington, DC, this 21st day of October, 1998.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 98–28821 Filed 10–27–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE36

Endangered and Threatened Wildlife and Plants; Endangered Status for Three Aquatic Snails, and Threatened Status for Three Aquatic Snails in the Mobile River Basin of Alabama

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines the cylindrical lioplax (*Lioplax cyclostomaformis*), flat pebblesnail (*Lepyrium showalteri*), and plicate rocksnail (*Leptoxis plicata*) to be endangered species; and the painted rocksnail (*Leptoxis taeniata*), round rocksnail (*Leptoxis ampla*), and lacy elimia (*Elimia crenatella*) to be threatened species under the authority of the Endangered Species Act of 1973, as amended (Act). These aquatic snails are found in localized portions of the Black Warrior, Cahaba, Alabama, and Coosa rivers or their tributaries in central Alabama. Impoundment and water quality degradation have eliminated the six snails from 90 percent or more of their historic habitat. Surviving populations are currently threatened by pollutants such as sediments and nutrients that wash into streams from the land surface. This action implements the protection of the Act for these six snail species.

DATES: This rule is effective November 27, 1998.

ADDRESSES: The complete file for this rule is available for inspection, by

appointment, during normal business hours at the Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Hartfield (see **ADDRESSES** section), 601/965–4900, extension 25.

SUPPLEMENTARY INFORMATION:

Background

The Mobile River Basin (Basin) historically supported the greatest diversity of freshwater snail species in the world (Bogan *et al.* 1995), including six genera and over 100 species that were endemic to the Basin. During the past few decades, publications in the scientific literature have primarily dealt with the apparent decimation of this fauna following the construction of dams within the Basin and the inundation of extensive shoal (a shallow place in a body of water) habitats by impounded waters (Goodrich 1944, Athearn 1970, Heard 1970, Stein 1976, Palmer 1986, Garner 1990).

In 1990, the Service initiated a status review of the endemic freshwater snails of the Basin. An extensive literature survey identified sources of information on taxonomy, distribution, ecology, and status of the fauna and was used to assemble a checklist of the Basin's snails and their distributions (Bogan 1992). Field surveys and collections were made for snails and other freshwater mollusks throughout the Basin (Bogan and Pierson, 1993a,b; McGregor *et al.* 1996; Service Field Records, Jackson, Mississippi 1989–1996; Bogan *in litt.* 1995; M. Pierson Field Records, Calera, Alabama, *in litt.* 1993–1994; J. Garner, Alabama Department of Conservation, pers. comm. 1996; J. Johnson, Auburn University, *in litt.* 1996).

Bogan *et al.* (1995) summarized the results of their efforts noting the apparent extinction of numerous snail species in the Coosa and Cahaba River drainages, and the imperiled state of many other aquatic snails in the Basin.

The taxonomy used in this final rule follows Burch (1989), which relies almost exclusively on shell morphology. Many of the Basin's freshwater snail species, particularly in the family Pleuroceridae, are known to exhibit marked clinal variation (gradual change in characters of a species that manifests itself along a geographic gradient) in shell form, some of which has been described as environmentally induced (e.g., Goodrich 1934, 1937). Four of the six species considered in this final rule belong to the family Pleuroceridae and their relationships to each other, as well as to other Pleuroceridae, are poorly understood. In order to better document taxonomic relationships among these snails, a genetic study was conducted during the status review of a select group of the Basin's Pleuroceridae (Lydeard *et al.* 1997). The four snails within this family considered herein (lacy elimia, round rocksnail, plicate rocksnail, and painted rocksnail) were included in the genetic study. This study supported their current taxonomic status (Lydeard *et al.* 1997).

The cylindrical lioplax (*Lioplax cyclostomaformis* (Lea 1841)) is a gill-breathing snail in the family Viviparidae. The shell is elongate, reaching about 28 millimeters (mm) (1.1 inches (in)) in length. Shell color is light to dark olivaceous-green externally, and bluish inside of the aperture (shell opening). The cylindrical lioplax is distinguished from other viviparid (eggs hatch internally and the young are born as juveniles) snails in the Basin by the number of whorls, and differences in size, sculpture, microsculpture, and spire angle. No other species of lioplax snails are known to occur in the Mobile Basin (see Clench and Turner 1955 for a more detailed description).

Habitat for the cylindrical lioplax is unusual for the genus, as well as for other genera of viviparid snails. It lives in mud under large rocks in rapid currents over stream and river shoals. Other lioplax species are usually found in exposed situations or in mud or muddy sand along the margins of rivers. Little is known of the biology or life history of the cylindrical lioplax. It is believed to brood its young and filter-feed, as do other members of the Viviparidae. Life spans have been reported from 3 to 11 years in various species of Viviparidae (Heller 1990).

Collection records for the cylindrical lioplax exist from the Alabama River (Dallas County, Alabama), Black Warrior River (Jefferson County, Alabama) and tributaries (Prairie Creek, Marengo County, Alabama; Valley Creek, Jefferson County, Alabama), Coosa River (Shelby, Elmore counties, Alabama) and tributaries (Oothcalooga Creek, Bartow County, Georgia; Coahulla Creek, Whitfield County, Georgia; Armuchee Creek, Floyd County, Georgia; Little Wills Creek, Etowah County, Alabama; Choccolocco Creek, Talladega County, Alabama; Yellowleaf Creek, Shelby County, Alabama), and the Cahaba River (Bibb, Shelby counties, Alabama) and its tributary, Little Cahaba River (Jefferson County, Alabama) (Clench and Turner 1955). A single collection of this species has also been reported from the Tensas River, Madison Parish, Louisiana (Clench 1962), however, there are no previous or subsequent records outside of the Alabama-Coosa system, and searches of the Tensas River in Louisiana by Service biologists (1995) and others (Vidrine 1996) have found no evidence of the species or its typical habitat.

The cylindrical lioplax is currently known only from approximately 24 kilometers (km) (15 miles (mi)) of the Cahaba River above the Fall Line in Shelby and Bibb counties, Alabama (Bogan and Pierson 1993b). Survey efforts by Davis (1974) failed to locate this snail in the Coosa or Alabama rivers, and more recent survey efforts have also failed to relocate the species at historic localities in the Alabama, Black Warrior, Little Cahaba, and Coosa rivers and their tributaries (Bogan and Pierson 1993a, 1993b; M. Pierson *in litt.* 1993, 1994; Service Field Records 1991, 1992, 1993).

The flat pebblesnail (*Lepyrium showalteri* (Lea 1861)) is a small snail in the family Hydrobiidae; however, the species has a large and distinct shell, relative to other hydrobiid species. This snail's shell is also distinguished by its depressed spire and expanded, flattened body whorl. The shells are ovate in outline, flattened, and grow to 3.5 to 4.4 mm (0.1–0.2 in) high and 4 to 5 mm (0.2 in) wide. The umbilical area is imperforate (no opening), and there are 2 to 3 whorls which rapidly expand. The anatomy of this species has been described in detail by Thompson (1984). The flat pebblesnail is found attached to clean, smooth stones in rapid currents of river shoals. Eggs are laid singly in capsules on hard surfaces (Thompson 1984). Little else is known of the natural history of this species.

The flat pebblesnail was historically known from the mainstem Coosa River in Shelby and Talladega counties, the Cahaba River in Bibb and Dallas counties, and Little Cahaba River in Bibb County, Alabama (Thompson 1984). The flat pebblesnail has not been found in the Coosa River portion of its range since the construction of Lay and Logan Martin Dams, and recent survey efforts have failed to locate any surviving populations outside of the Cahaba River drainage (Bogan and Pierson, 1993a,b; McGregor *et al.* 1996; Service Field Records, Jackson, Mississippi 1989–1996; Bogan *in litt.* 1995; M. Pierson Field Records, Calera, Alabama, *in litt.* 1993–1994; J. Garner pers. comm. 1996; J. Johnson *in litt.* 1996). The flat pebblesnail is currently known from one site on the Little Cahaba River, Bibb County, and from a single shoal series on the Cahaba River above the Fall Line, Shelby County, Alabama (Bogan and Pierson 1993b).

The lacy elimia (*Elimia crenatella* (Lea 1860)) is a small species in the family Pleuroceridae. Growing to about 1.1 centimeters (cm) (0.4 in) in length, the shell is conic in shape, strongly striate, and often folded in the upper whorls. Shell color is dark brown to black, often purple in the aperture, and without banding. The aperture is small and ovate. The lacy elimia is easily distinguished from other elimia species by a combination of characters (i.e., size, ornamentation, color).

In a recent genetic sequence study of the 16S rRNA gene, the lacy elimia was found to be very similar to the compact elimia (*Elimia showalteri*) (Lydeard *et al.* 1997). Despite their apparent close genetic relationship, the authors made no suggestion that the two species represented a single species. Upon review of Lydeard *et al.* (1997), Dillon (College of Charleston, Charleston, South Carolina, *in litt.* 1997) suggested that additional genetic studies were needed to demonstrate the genetic uniqueness of the lacy elimia. However, the Lydeard *et al.* (1997) genetic study addressed only one small genetic character of the genome (entire genetic make-up of an individual) of these species, and other characters strongly support the taxonomic status of the lacy elimia. The two species are allopatric (do not overlap in distribution—the compact elimia occurs in the Cahaba River, whereas the lacy elimia was found in the Coosa River and tributaries), and are strikingly different in size, appearance, and behavior. The compact elimia has a large, robust, smooth shell boldly colored brown and/or green, whereas the lacy elimia has a small, delicate, darkly colored, and ornamented shell. The lacy elimia is one of the few elimia snails in the Basin that does not exhibit clinal variation (Goodrich 1936). In addition, compact elimia are found grazing individually throughout shoal habitats, whereas the lacy elimia is usually found in tight clusters or colonies on larger rocks within a shoal (P. Hartfield, Jackson, MS, pers. obsv.). Allopatry, morphology, and behavior are strong characters supporting species specific status of the lacy elimia.

Elimia snails are gill breathing snails that typically inhabit highly oxygenated waters on rock shoals and gravel bars. Most species graze on periphyton growing on benthic (bottom) substrates. Individual snails are either male or female. Eggs are laid in early spring and hatch in about 2 weeks. Snails apparently become sexually mature in their first year, but, in some species, females may not lay until their second year. Some elimia may live as long as 5 years (Dillon 1988).

The lacy elimia was historically abundant in the Coosa River main stem from St. Clair to Chilton County, Alabama, and was also known in several Coosa River tributaries—Big Will's Creek, DeKalb County; Kelley's Creek, St. Clair County; and Choccolocco and Tallaseehatchee creeks, Talladega County, Alabama (Goodrich 1936). The lacy elimia has not been recently located at any historic collection site. However, as a result of the recent survey efforts, previously unreported populations were discovered in three Coosa River tributaries—Cheaha, Emauhee, and Weewoka creeks, Talladega County, Alabama (Bogan and Pierson 1993a). The species is locally abundant in the lower reaches of Cheaha Creek. This stream originates within the Talladega National Forest; however, no specimens of the lacy elimia have been collected on Forest Service lands. The species has also been found at single sites in Emauhee and Weewoka creeks, where specimens are rare, and difficult to locate.

The painted rocksnail (*Leptoxis taeniata* (Conrad 1834)) is a small to medium snail about 19 mm (0.8 in) in length, and subglobose to oval in shape. The aperture is broadly ovate, and rounded anteriorly. Coloration varies from yellowish to olive-brown, and usually with four dark bands. Some shells may not have bands and some have the bands broken into squares or oblongs (see Goodrich 1922 for a detailed description). All of the rocksnails that historically inhabited the Basin had broadly rounded apertures, oval shaped shells, and variable coloration. Although the various species were distinguished by relative sizes, coloration patterns, and ornamentation, identification could be confusing. However, the painted rocksnail is the only known survivor of the 15 rocksnail species that were historically known from the Coosa River drainage.

Rocksnails are gill breathing snails found attached to cobble, gravel, or other hard substrates in the strong currents of riffles (a shallow area in a streambed that causes ripples in the water) and shoals. Adult rocksnails move very little, and females probably glue their eggs to stones in the same habitat (Goodrich 1922). Heller (1990) reported a short life span (less than 2 years) in a Tennessee River rocksnail. Longevity in the painted and the Basin's other rocksnails is unknown.

The painted rocksnail had the largest range of any rocksnail in the Mobile River Basin (Goodrich 1922). It was historically known from the Coosa River and tributaries from the northeastern corner of St. Clair County, Alabama, downstream into the mainstem of the Alabama River to Claiborne, Monroe County, Alabama, and the Cahaba River below the Fall Line in Perry and Dallas counties, Alabama (Goodrich 1922, Burch 1989). Surveys by Service biologists and others (Bogan and Pierson 1993a, 1993b; M. Pierson, *in litt.* 1993) in the Cahaba River, unimpounded portions of the Alabama River, and a number of free-flowing Coosa River tributaries have located only three localized Coosa River drainage populations.

The painted rocksnail is currently known from the lower reaches of three Coosa River tributaries—Choccolocco Creek, Talladega County; Buxahatchee Creek, Shelby County (Bogan and Pierson 1993a); and Ohatchee Creek, Calhoun County, Alabama (Pierson *in litt.* 1993).

The round rocksnail (*Leptoxis ampla* (Anthony 1855)) grows to about 20 mm (0.8 in) in length. The shell is subglobose, with an ovately rounded aperture. The body whorl is shouldered at the suture, and may be ornamented with folds or plicae. Color may be yellow, dark brown, or olive green, usually with four entire or broken bands (Goodrich 1922). Round rocksnails inhabit riffles and shoals over gravel, cobble, or other rocky substrates.

Lydeard *et al.* (1997) found slight differences in DNA sequencing between the painted rocksnail and the round rocksnail, and considered them to be sister species. Following analysis by allozyme electrophoresis on these same species, Dillon (*in litt.* 1997) speculated that the two species represented isolated populations belonging to a single species. The two species are geographically separated, with the painted rocksnail inhabiting Coosa River tributaries, while the round rocksnail is the only surviving rocksnail species in the Cahaba River drainage. Both species are currently recognized by the malacological community (*e.g.*, Burch 1989; Turgeon *et al.* 1988, revision in review), and are treated as distinct in this final rule.

The round rocksnail was historically found in the Cahaba River, and its tributary, Little Cahaba River, Bibb County, Alabama; and the Coosa River, Elmore County, and tributaries—Canoe Creek and Kelly's Creek, St. Clair County; Ohatchee Creek, Calhoun County; Yellowleaf Creek, Shelby County; and Waxahatchee Creek, Shelby/Chilton counties, Alabama (Goodrich 1922).

The round rocksnail is currently known from a shoal series in the Cahaba

River, Bibb and Shelby counties, Alabama, and from the lower reach of the Little Cahaba River, and the lower reaches of Shade and Six-mile creeks in Bibb County, Alabama (Bogan and Pierson 1993b).

The plicate rocksnail (*Leptoxis plicata* (Conrad, 1834)) grows to about 20 mm (0.8 in) in length. Shells are subglobose with broadly rounded apertures. The body whorl may be ornamented with strong folds or plicae. Shell color is usually brown, occasionally green, and often with four equidistant color bands. The columella (central column or axis) is smooth, rounded, and typically pigmented in the upper half. The aperture is usually bluish-white, occasionally pink or white. The operculum (plate that closes the shell when the snail is retracted) is dark red, and moderately thick (Goodrich 1922). Although morphologically similar to the Basin's other three surviving rocksnail species, the plicate rocksnail is genetically distinct (Lydeard *et al.* 1997, Dillon *in litt.* 1997).

The plicate rocksnail historically occurred in the Black Warrior River and its tributary, the Little Warrior River, and the Tombigbee River (Goodrich 1922). Status survey efforts found populations of plicate rocksnails only in an approximately 88km (55 mi) reach of the Locust Fork of the Black Warrior River, Jefferson and Blount counties, Alabama (Service Field Records, Jackson, Mississippi 1991, 1992; Malcolm Pierson, Calera, Alabama, Field Notes 1993). Surveys during 1996 and 1997 indicate that the snail has recently disappeared from the upstream two-third portion of that habitat and now appears restricted to an approximately 32 km (20 mi) reach in Jefferson County (Garner *in litt.* 1998).

Previous Federal Action

The six aquatic snails were identified as Category 2 species in notices of review published in the **Federal Register** on November 21, 1991 (56 FR 58804), and November 15, 1994 (59 FR 58982). At that time, a Category 2 species was one that was being considered for possible addition to the Federal List of Endangered and Threatened Wildlife, but for which conclusive data on biological vulnerability and threat were not available to support a proposed rule. Designation of Category 2 species was discontinued in the February 28, 1996, Notice of Review (61 FR 7596). The six snails considered in this final rule were approved as Candidate species by the Service on November 9, 1995, and identified as Candidates in the 1996 Notice of Review (61 FR 7601). A Candidate species is defined as a species for which the Service has on file sufficient information on biological vulnerability and threats to support issuance of a proposed rule.

A status review summary, that included these six snails, was mailed on August 23, 1994 (62 letters), to appropriate species authorities, State and Federal agencies, private organizations, and interested individuals. A cover letter provided notification that a status review was in progress by the Service, stated that the species appeared to qualify for listing under the Act, and requested a review of the status review summary for accuracy regarding taxonomy, distribution, threats, and status. Three species authorities responded by telephone concurring with the status reviews. No other comments were received as a result of this notification.

An updated status report, along with a review request, was mailed on March 11, 1997 (157 letters), following elevation of the snails to Candidate status. One snail authority concurred with the status review analysis; however, he recommended additional genetic studies on the lacy elimia (see ''Background'' section above). Two other snail authorities responded concurring with the analysis, as well as the taxonomic treatment of the six species.

On September 5, 1995, the Service received two petitions, dated August 31, 1995, from a coalition of environmental organizations (Coosa-Tallapoosa Project, Biodiversity Legal Foundation, and Alabama Wilderness Alliance) represented by Mr. Ray Vaughan. The petitioners requested the Service to list the plicate rocksnail as endangered and to designate critical habitat for this species. The second petition requested the Service to list the lacy elimia as a threatened species and to designate critical habitat.

Section 4 (b)(3)(A) of the Act and implementing regulations at 50 CFR 424.14 require that, to the extent practicable, the Service make a finding of substantiality on any petition within 90 days of its receipt, and publish a notice of its finding in the **Federal Register**. If a substantial 90-day finding is made, the Service is required, to the extent practicable, within 12 months of receipt of the petition, to make a finding as to whether the action requested in the petition is: (a) Not warranted; (b) warranted; or (c) warranted but precluded. Because of reductions in funding and the lasting effects of a congressionally imposed listing moratorium from April 10, 1995, to April 26, 1996, the Service's listing program was essentially shut down and the Service was precluded from processing petitions and developing proposed rules from October 1, 1995, through April 26, 1996. When the moratorium was lifted and funds were appropriated for the administration of the listing program, the Service was faced with a significant backlog of listing activities. Petitions and other listing actions were processed according to the listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). The guidance clarified the order in which the Service processed listing actions during fiscal year 1997. The guidance called for giving highest priority (Tier 1) to handling emergency situations and second highest priority (Tier 2) to resolving the status of outstanding proposed listings. Third priority (Tier 3) was given to resolving the conservation status of Candidate species and processing administrative findings on petitions to add species to the lists or reclassify threatened species to endangered status. The processing of these two petitions and the proposed rule fell under Tier 3. A proposal to list three aquatic snails as endangered, and three aquatic snails as threatened was published in the **Federal Register** (62 FR 54020) on October 17, 1997. The proposal constituted the 90-day and 12-month finding on the petitioned actions. The processing of this final rule conforms with the Service's final listing priority guidance for fiscal years 1998 and 1999 published in the **Federal Register** on May 8, 1998 (63 FR 25502). The guidance calls for giving highest priority (Tier 1) to handling emergency situations, second highest priority (Tier 2) to resolving the listing status of outstanding proposed listings, resolving the conservation status of candidate species, processing administrative findings on petitions, and processing a limited number of delistings and reclassifications, and third priority (Tier 3) to processing proposed and final designations of critical habitat. The processing of this final rule falls under Tier 2. The Southeast Region has no pending Tier 1 actions.

Summary of Comments and Recommendations

In the October 17, 1997, proposed rule (62 FR 54020) and associated notifications, all interested parties were requested to submit factual information that might assist the Service in determining whether these taxa warrant listing. Direct notification of the proposal was made to 205 institutions and individuals, including State and Federal agencies, county governments,

scientific organizations, and other interested parties. Newspaper legal notices announcing the proposal and inviting public comment were published in *The Birmingham News, Daily Home, Montgomery Advertiser,* and *Anniston Star.* The comment period closed on December 16, 1997. During the initial comment period, a public hearing was requested by Gorham & Waldrep, a legal firm representing The Birmingham Water Works Board. The public comment period was reopened on December 19, 1997 (62 FR 66583), and extended until January 23, 1998, to accommodate the public hearing. The Service notified by letter appropriate State and Federal agencies, county governments, scientific organizations, and other interested parties of the public hearing and the reopening of the comment period. In addition, newspaper notices announcing the public hearing and reopening of the comment period were published in *The Birmingham News, Anniston Daily Star, Montgomery Advertiser,* and *Daily Home.* The hearing was held at the Dwight Beeson Hall Auditorium on the campus of Samford University in Birmingham, Alabama, on January 13, 1998, with 23 people in attendance. Oral comments were received from six individuals, four in support of the proposed action, and two requesting clarification of language in the proposal.

During the comment periods, the Service received over 200 cards and letters concerning the proposal. Most individuals expressed support for the proposed listing; however, one individual expressed concern over the listing of the plicate rocksnail, another individual supported preservation of the species but opposed the listing on constitutional grounds, and several individuals expressed concern over specific statements within the proposal.

Written comments and oral statements presented at the public hearing and received during the comment periods are either incorporated into the appropriate section of this rule, or are addressed in the following summary. Comments of a similar nature or point are grouped into a number of general issues. These issues and the Service's response to each are discussed below:

Issue 1: The Service lacks authority to regulate these species under the Commerce Clause of Article I, Section 8 of the United States Constitution.

Response: On June 22, 1998, the Supreme Court, without comment, rejected the argument that using the Act to protect species that live only in one State goes beyond Congress' authority to regulate interstate commerce. This decision upholds a decision made by the United States Court of Appeals for the District of Columbia Circuit (National Association of Homebuilders vs. Babbitt, 97–1451) that regulation under the Act is within Congress' Commerce Clause power and that loss of animal diversity has a substantial effect on interstate commerce. Thus, although these six snails are found only within the State of Alabama, the Service's application of the Act to list these species is constitutional.

Issue 2: Emergency listing is appropriate for the cylindrical lioplax, flat pebblesnail, and the plicate rocksnail.

Response: Emergency listing is appropriate only in cases where imminent threats to a species have been identified requiring the immediate protection of the Act for the species. As noted in the proposed rule, nonpoint source pollution is the primary threat to all known populations of these six species. The deleterious effects of nonpoint source pollution on these snails are gradual and cumulative, and cannot be easily eliminated or specifically identified. Federal and State agencies are currently working with the Service in attempts to identify and address similar problems of nonpoint source pollutants on other listed species within the Mobile River Basin. Emergency listing would not accelerate this process.

Issue 3: Endangered status is more appropriate for the lacy elimia and round rocksnail.

Response: There are three known populations of the lacy elimia, and four known populations of the round rocksnail. The primary threat to populations of both species is from nonpoint source pollution. This is an insidious but unpredictable threat, and no two of the distinct populations of these species are likely to be faced with identical impacts from stormwater runoff since they all occupy distinct watersheds. Although both species have declined significantly in overall range, one or more populations of each species is currently vigorous, with high numbers of individuals and strong recruitment. Therefore, the Service believes that threatened status is appropriate for these species. If conditions should deteriorate in the future, the status of one or both species could be elevated to endangered.

Issue 4: Critical habitat should be designated for all six species because the Alabama Department of Environmental Management (ADEM) would have to maintain and protect designated critical habitat as an existing use under Federal and State water quality regulations. The U.S. Environmental Protection Agency (EPA) commented that it does not have the authority to require water use classifications higher than the minimum goal of Fish and Wildlife or Swimmable, and suggested that designation of critical habitat might encourage the State to elevate the use classifications of streams where the snails occur to higher levels.

Response: As discussed in the proposed rule and in this final rule (see ''Critical Habitat'' section), critical habitat designation, by definition, directly affects only Federal actions. The presence of listed species is already an existing use of a water body which ADEM, under authority delegated by EPA, is responsible to maintain. ADEM has been informed of the location of the six species, and the threats confronting them. Therefore, critical habitat designation will have no effect on ADEM's responsibilities to maintain State water quality that do not already accrue from the listing. The Service, through coordination and cooperation with the EPA and ADEM, will continue to define water quality impacts and work to revise State and Federal water quality standards and stream use classifications where appropriate.

Issue 5: The Service should not construe its mandate to designate critical habitat as narrowly as was done in the proposed rule, i.e., there are benefits to critical habitat designation beyond the section 7 consultation process. The prior controversy surrounding the proposed listing of the Alabama sturgeon should not be a factor in determining critical habitat for the snails.

Response: The Service recognized and discussed benefits that might accrue from identifying stream and river reaches currently unoccupied by these species as critical habitat. However, because stream and river habitats change rapidly in response to watershed land use, and it is difficult to project watershed conditions and stream habitat values into the future, the Service is working through a dynamic process with State and other Federal agencies and private parties. In a cooperative relationship, these entities periodically survey, assess, and protect habitat, as well as potential habitat, for listed aquatic species and species of concern within the Mobile River Basin. Additionally, the Service believes that any benefits that might be derived from designation of critical habitat for these species would be outweighed by increasing the threat of vandalism that might result from such a designation. The proposed listing and designation of

critical habitat for the Alabama sturgeon was used as an example of increased potential for vandalism that can result from proposed designation of critical habitat. Other examples can also be given; however, the Alabama sturgeon inhabits the same drainage basin as these snails, and reflects the public mood within the basin.

Issue 6: EPA requested clarification regarding the potential that these snails may be more susceptible to common pollutants than organisms currently used in bioassays. EPA provided a table demonstrating that at least nine species of snails have been used for bioassays in the development of criterion for arsenic, copper, lead, mercury, ammonia, aluminum, as well as several other chemicals, and showing them less sensitive than other species, e.g., guppy, crayfish, bluegill, etc.

Response: None of the six snails addressed herein have been used for bioassays. Of the nine snail species referenced in the table provided by EPA, all are widespread, most occur far north of the Mobile River Basin, and only one is closely related to any of the six species considered herein. The liver elimia, *Elimia livescens,* is within the same genus as the lacy elimia, but is a widely distributed and locally abundant species in the Great Lakes and its drainages. The other species that have been used for bioassays included five pulmonate (lung breathing and include land and freshwater snails) snails, which are often considered tolerant species, two hydrobiid (small aquatic snail in Hydrobiidae family) species, and one viviparid species. The high tolerance demonstrated by the snails in the data provided by EPA supports the Service's assertion that current standards must be assumed protective until further evidence proves otherwise. The Service and EPA are working to identify appropriate surrogates for listed species for use in bioassays.

Issue 7: Dams and impoundment may not be the primary cause of decline of the six snail species. The plicate rocksnail has continued to decline in the unimpounded Locust Fork, suggesting that nonpoint source pollution, or other factors not addressed in the proposed rule, such as flood scour, loss of food source, water temperature changes, etc., represent the primary threats to this species. Dams can increase habitat suitability for aquatic snails by providing flood flow control, flow augmentation, and retention of sediments and toxins.

Response: Dams and impounded waters have long been recognized as a cause of decline, extirpation, and extinction of aquatic snails in the Basin (see discussion under Factor A in the ''Summary of Factors Affecting the Species'' section). Pollution, particularly nonpoint source pollution, is the primary threat to surviving populations of the six species in unimpounded stream and river habitats. Flood scour was not addressed in the proposed rule, and may have been, and continue to be a factor in the decline of the species. However, all six species inhabit the most dynamic portions of the stream channel and are well adapted to strong flows.

The Service agrees that there are situations in which dams can serve to moderate or augment flows, and retain sediments and contaminants. However, it must also be recognized that none of the six snail species addressed in this rule survive in tailwaters below any of the many dams constructed within their historic ranges.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the cylindrical lioplax (*Lioplax cyclostomaformis*), flat pebblesnail (*Lepyrium showalteri*), and plicate rocksnail (*Leptoxis plicata*) should be classified as endangered species, and the painted rocksnail (*Leptoxis taeniata*), round rocksnail (*Leptoxis ampla*), and lacy elimia (*Elimia crenatella*) should be classified as threatened species. Procedures found at section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the cylindrical lioplax, flat pebblesnail, plicate rocksnail, painted rocksnail, round rocksnail, and lacy elimia are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The cylindrical lioplax, flat pebblesnail, lacy elimia, round rocksnail, painted rocksnail, and plicate rocksnail have all disappeared from more than 90 percent of their historic ranges. All of these snails were historically, and continue to be, strongly associated with river or stream habitats characterized by flowing currents, and hard, clean bottoms (e.g., bedrock, boulder, gravel) (Goodrich 1922, 1936; Clench and Turner 1955). The curtailment of habitat and range for these six species in the Basin's larger rivers (Coosa, Alabama, Tombigbee, and Black Warrior) is primarily due to extensive construction of dams and the inundation of the snail's shoal habitats by impounded waters. Thirty dams have changed this system from a continuum of free-flowing riverine habitats into a series of impoundments connected by short, free-flowing reaches. On the Alabama River, there are 3 dams (built between 1968–1971); the Black Warrior has 5 (1915–1959); the Coosa 10 (1914–1966), and the Tombigbee 12 (1954–1979). Dams impound approximately 1,650 km (1,022 mi) of river channel in the Basin.

These six snail species have disappeared from all portions of their historic habitats that have been impounded by dams. As noted earlier, they are all associated with fast currents over clean, hard bottom materials. Dams change such areas by eliminating or reducing currents, and allowing sediments to accumulate on inundated channel habitats. Impounded waters also experience changes in water chemistry which could affect survival or reproduction of riverine snails. For example, many reservoirs in the Basin currently experience eutrophic (enrichment of a water body with nutrients) conditions, including chronically low dissolved oxygen levels (Alabama Department of Environmental Management (ADEM) 1994, 1996). Such physical and chemical changes can affect feeding, respiration, and reproduction of these riffle and shoal snail species.

A site on the Locust Fork River is being considered for the construction of a water supply impoundment, however, no formal proposal has been made and no permits have been issued (C. Waldrep, Gorham & Waldrep, P.C., Montgomery, Alabama, *in litt.* 1995; G. Hanson, Birmingham Water Works Board, *in litt.* 1998). Plicate rocksnails occurred in riffle and shoal habitats above and below the reservoir site in 1994. In 1996, plicate rocksnails could not be relocated in the portion of the river to be flooded by the reservoir; however, they were confirmed to continue to survive in an approximately 32 km (20 mi) reach of river below the potential dam site, which would be subject to impacts from construction activities and post-construction changes in water quality (Garner *in litt.* 1998).

In addition to directly altering snail habitats, dams and their impounded waters also formed barriers to the movement of snails that continued to live below dams or in unimpounded tributaries. It is suspected that many such isolated colonies gradually disappear as a result of local water and habitat quality changes. Unable to emigrate (move out of the area), the

isolated snail populations are vulnerable to local discharges as well as any detrimental land surface runoff within their watersheds. Although many watershed impacts have been temporary, eventually improving or even disappearing with the advent of new technology, management practices, or laws, dams and their impounded waters prevent natural recolonization by snail populations surviving elsewhere.

Prior to the passage of the Clean Water Act and the adoption of State water quality criteria, water pollution may have been a significant factor in the disappearance of snail populations from unimpounded tributaries of the Basin's impounded mainstem rivers. For example, Hurd (1974) noted the extirpation of freshwater mussel communities from several Coosa River tributaries, including the Conasauga River below Dalton, Georgia, the Chatooga River, and Tallaseehatchee Creek, apparently as a result of textile and carpet mill waste discharges. He also attributed the disappearance of the mussel fauna from the Etowah River, Talladega and Swamp creeks, and from many of the lower tributaries of the Coosa River, to organic pollution and siltation.

Short-term and long-term impacts of point and nonpoint source water and habitat degradation continue to be a primary concern for the survival of all these snails, compounded by their isolation and localization. Point source discharges and land surface runoff (nonpoint pollution) can cause nutrification, decreased dissolved oxygen concentration, increased acidity and conductivity, and other changes in water chemistry that are likely to seriously impact aquatic snails. Point sources of water quality degradation include municipal and industrial effluents.

Nonpoint source pollution from land surface runoff can originate from virtually all land use activities, and may include sediments, fertilizers, herbicides, pesticides, animal wastes, septic tank and gray water leakage, and oils and greases (ADEM 1996). During many recent surveys for these snails, sediment deposition and nutrient enrichment of stream reaches was noted as being associated with the absence of snails from historic collection localities (Bogan and Pierson 1993a, 1993b; Hartfield 1991; Service Field Observations 1992–1994, Jackson Field Office, MS).

Excessive sediments are believed to impact riverine snails requiring clean, hard shoal stream and river bottoms, by making the habitat unsuitable for feeding or reproduction. Similar impacts resulting from sediments have been noted for many other components of aquatic communities. For example, sediments have been shown to abrade and/or suffocate periphyton (organisms attached to underwater surfaces, upon which snails may feed); affect respiration, growth, reproductive success, and behavior of aquatic insects and mussels; and affect fish growth, survival, and reproduction (Waters 1995).

Sediment is the most abundant pollutant produced in the Basin (ADEM 1989). Potential sediment sources within a watershed include virtually all activities that disturb the land surface, and all localities currently occupied by these snails are affected to varying degrees by sedimentation. The amount and impact of sedimentation on snail habitats may be locally correlated with the land use practice. For example, the use of agriculture, forestry, and construction Best Management Practices can reduce sediment amounts and impacts.

Land surface runoff contributes the majority of human-induced nutrients to water bodies throughout the country (Louisiana Department of Environmental Quality 1995). Excessive nutrient input (from fertilizers, sewage waste, animal manure, etc.) can result in periodic low dissolved oxygen levels that are detrimental to aquatic species (Hynes 1970). Nutrients also promote heavy algal growth that may cover and eliminate clean rock or gravel habitats of shoal dwelling snails. Nutrient and sediment pollution may have synergistic effects (a condition in which the toxic effect of two or more pollutants is much greater than the sum of the effects of the pollutants when operating individually) on freshwater snails and their habitats, as has been suggested for aquatic insects (Waters 1995).

The cylindrical lioplax, flat pebblesnail, and the round rocksnail currently survive in localized reaches of the Cahaba River drainage. Water quality studies in the upper Cahaba River drainage by the Geological Survey of Alabama (Shepard *et al.* 1996) found that discharges from 34 waste water treatment plants (WWTPs) in the upper drainage have contributed to water quality impairment. This was reflected by low levels of dissolved oxygen downstream of Birmingham; ammonia and chlorination by-products in excess of recommended water quality criteria; and eutrophication due to excessive levels of phosphorus and nitrogen. The study noted that these problems are chronic and have been a factor in a loss of mollusk and fish diversity throughout the drainage. Their results indicate that the upper Cahaba River drainage is primarily impacted by nonpoint runoff and WWTPs through physical habitat destruction by sedimentation, and chronic stress from exposure to toxics and low dissolved oxygen. The middle Cahaba River is primarily impacted by eutrophication and associated affects.

The lacy elimia is now restricted to three small stream channels in Talladega County, Alabama—Cheaha, Emauhee, and Weewoka creeks (Coosa River drainage). The painted rocksnail currently survives in localized reaches of three other Coosa River tributaries, Choccolocco, Buxahatchee, and Ohatchee creeks. The plicate rocksnail inhabits a single short reach of the Locust Fork River in Jefferson County, Alabama (Black Warrior River drainage). All of these streams are variously impacted by sediments and nutrients from a variety of upstream rural, suburban, and/or urban sources. The streams are all small to moderate in size and volumes of flow, and their water and habitat quality can be rapidly affected by local and offsite pollution sources.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The six aquatic snail species are currently not of commercial value, and overutilization has not been a problem. However, as their rarity becomes known, they may become more attractive to collectors. Unregulated collecting by private and institutional collectors poses a threat. The cylindrical lioplax, flat pebblesnail, plicate rocksnail, painted rocksnail, round rocksnail, and lacy elimia inhabit shallow, fast-flowing waters of shoals and riffles. Because of their occurrence and exposure in such areas, they are readily vulnerable to overcollecting and/or vandalism. In these areas, the snails are also exposed to crushing by recreational activities such as canoeing, wading, swimming, or fishing; however, normal recreational activities are not believed to be a factor in their decline.

C. *Disease or predation.* Aquatic snails are consumed by various vertebrate predators, including fishes, mammals, and possibly birds. Predation by naturally occurring predators is a normal aspect of the population dynamics of a species and is not considered a threat to these species. However, the potential now exists for black carp (*Mylopharyngodon piceus*), a nonselective molluskivore recently introduced into waters of the United States, to eventually enter the Mobile River Basin. Exotic black carp recently escaped to the Osage River in Missouri when hatchery ponds were flooded during a 1994 spring flood of the river

(LMRCC newsletter, 1994). The extent of stocking black carp for snail control in aquaculture ponds within the Basin is unknown; however, black carp are currently cultured and sold within the State of Mississippi (D. Reike, Mississippi Department of Wildlife, Fisheries, and Parks, 1997).

D. *The inadequacy of existing regulatory mechanisms.* Although the negative effects of point source discharges on aquatic communities have probably been reduced over time by compliance with State and Federal regulations pertaining to water quality, there is currently no information on the sensitivity of the Mobile River Basin snail fauna to common industrial and municipal pollutants. Current State and Federal regulations regarding such discharges are assumed to be protective; however, these snails may be more susceptible to some pollutants than test organisms currently used in bioassays. A lack of adequate research and data currently may prevent existing authorities, such as the Clean Water Act (CWA), administered by EPA and the Army Corps of Engineers (Corps), from being fully utilized. The Service is currently working with EPA to develop a Memorandum of Agreement that will address how EPA and the Service will interact relative to CWA water quality criteria and standards within the Service's Southeast Region.

Lacking State or Federal recognition, these snails are not currently given any special consideration under other environmental laws when project impacts are reviewed.

E. *Other natural or manmade factors affecting its continued existence.* The narrow distribution of extant populations of all six snail species and the nature of their habitats (i.e., small to moderate sized streams) renders them vulnerable to a natural catastrophic event (e.g., flood, drought).

Habitat fragmentation and population isolation are a significant threat to the continued survival of the lacy elimia and painted rocksnail. The known populations of these two species are isolated by extensive areas of impoundment, and there is little, if any, possibility of genetic exchange between them. Over time, this isolation may result in genetic drift, with each population becoming unique and vulnerable to environmental disturbance.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on these evaluations, the preferred action is to list the cylindrical lioplax, flat pebblesnail, and plicate rocksnail as endangered; and the painted rocksnail, round rocksnail, and lacy elimia as threatened. All of these species have been rendered vulnerable due to significant loss of habitat and severe range restriction.

The cylindrical lioplax is confined in distribution to a short reach of the Cahaba River. The flat pebblesnail currently survives in localized portions of the Cahaba River and the Little Cahaba River. Both species are vulnerable to extinction by their confined ranges, and current impacts from water quality degradation in the Cahaba River drainage. The single known population of the plicate rocksnail has experienced a significant reduction in range within the past 2 years, apparently due to pollution of its habitat from nonpoint sources. Habitat that was, until recently, occupied by the species is within a potential site for reservoir construction. Endangered status is appropriate for these three species due to their single populations, restricted numbers within these populations, existing threats to their occupied habitats, and in the case of the plicate rocksnail, an ongoing decline in range.

The lacy elimia, painted rocksnail, and round rocksnail are each currently known from three distinct drainage localities. Extant populations and colonies of these three species are localized, isolated, and are vulnerable to water quality degradation, future human activities that would degrade their habitats, and random catastrophic events. Threatened status is considered more appropriate for these species due to the larger number of populations or colonies, and the less immediate nature of these threats.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring the species to the point at which the measures provided pursuant to the Act are no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (ii) such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not presently prudent for any of these six aquatic snails.

Critical habitat designation, by definition, directly affects only Federal agency actions. Since these snail species are aquatic throughout their life cycles, Federal actions that might affect these species and their habitats include those with impacts on stream channel geometry, bottom substrate composition, water quantity and quality, and stormwater runoff. Such activities would be subject to review under section 7(a)(2) of the Act, whether or not critical habitat was designated. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. The cylindrical lioplax, flat pebblesnail and plicate rocksnail have become so restricted in distribution that any significant adverse modification or destruction of their occupied habitats would likely jeopardize their continued existence. The round rocksnail, painted rocksnail, and lacy elimia are not as restricted in distribution as the other three snails, none the less, projects found to cause a significant adverse modification or destruction of their occupied habitats would also likely jeopardize their continued existence. This would also hold true as the species recovers and its numbers increase. Therefore, habitat protection for these six species can be accomplished through the section 7 jeopardy standard and there is no benefit in designating currently occupied habitat of these species as critical habitat.

Recovery of these species will require the identification of unoccupied stream and river reaches appropriate for reintroduction. Critical habitat designation of unoccupied stream and river reaches might benefit these species by alerting permitting agencies to

potential sites for reintroduction and allow them the opportunity to evaluate projects which may affect these areas. The Service is currently working with the State and other Federal agencies to periodically survey and assess habitat potential of stream and river reaches for listed and candidate aquatic species within the Mobile River basin. This process provides up to date information on instream habitat conditions in response to land use changes within watersheds. Information generated from surveys and assessments is disseminated through Service coordination with other agencies. The Service will continue to work with State and Federal agencies, as well as private property owners and other affected parties, through the recovery process to identify stream reaches and potential sites for reintroduction of these species. Thus, any benefit that might be provided by designation of unoccupied habitat as critical will be accomplished more effectively with the current coordination process and is preferable for aquatic habitats which change rapidly in response to watershed land use practices. In addition, the Service believes that any potential benefits to critical habitat designation are outweighed by additional threats to the species that would result from such designation, as discussed below.

Though critical habitat designation directly affects only Federal agency actions, this process can arouse concern and resentment on the part of private landowners and other interested parties. The publication of critical habitat maps in the **Federal Register** and local newspapers, and other publicity or controversy accompanying critical habitat designation may increase the potential for vandalism as well as other collection threats (See Factor B under ''Summary of Factors Affecting the Species'' section). For example, on June 15, 1993, the Alabama sturgeon was proposed for endangered status with critical habitat (59 FR 33148). Proposed critical habitat included the lower portions of the Alabama, Cahaba, and Tombigbee rivers in south Alabama. The proposal generated thousands of comments with the primary concern that the actions would devastate the economy of the State of Alabama and severely impact adjoining States. There were reports from State conservation agents and other knowledgeable sources of rumors inciting the capture and destruction of Alabama sturgeon. A primary contributing factor to this controversy was the proposed designation of critical habitat for the sturgeon.

The six snail species addressed in this rule are especially vulnerable to vandalism. They all are found in shallow shoals or riffles in restricted stream and river segments. The flat pebblesnail, plicate rocksnail, round rocksnail, painted rocksnail, and lacy elimia attach to the surfaces of bedrock, cobble, or gravel, while the cylindrical lioplax is found under large boulders. The six species are relatively immobile and unable to escape collectors or vandals. They inhabit remote but easily accessed areas, and they are sensitive to a variety of easily obtained commercial chemicals and products. Because of these factors, vandalism or collecting could be undetectable and uncontrolled. For example, the plicate rocksnail recently disappeared from approximately 80 percent of its known occupied habitat. While the Service has been unable to determine the cause of this decline, the disappearance illustrates the vulnerability of this and the other snail species.

All known populations of these six snail species occur in streams flowing through private lands. The primary threat to all surviving populations appears to be pollutants in stormwater runoff that originate from private land activities (see Factor A). Therefore, the survival and recovery of these snails will be highly dependent on landowner cooperation in reducing land use impacts. Controversy resulting from critical habitat designation has been known to reduce private landowner cooperation in the management of species listed under the Act (e.g., spotted owl, golden cheeked warbler). The Alabama sturgeon experience suggests that critical habitat designation could affect landowner cooperation within watersheds occupied by these six snails.

Based on the above analysis, the Service has concluded critical habitat designation would provide little additional benefit for these species beyond those that would accrue from listing under the Act. The Service also concludes that any potential benefit from such a designation would be offset by an increased level of vulnerability to vandalism or collecting, and by a possible reduction in landowner cooperation to manage and recover these species. The designation of critical habitat for these six snail species is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal activities that could occur and impact these species include, but are not limited to, the carrying out or the issuance of permits for reservoir construction, stream alterations, discharges, wastewater facility development, water withdrawal projects, pesticide registration, mining, and road and bridge construction. Activities affecting water quality may also impact these species and are subject to the Corps and EPA's regulations and permit requirements under authority of the CWA and the National Pollutant Discharge Elimination System (NPDES). It has been the experience of the Service, however, that nearly all section 7 consultations have been resolved so that the species have been protected and the project objectives have been met. Other than a potential dam on the Locust Fork River, Jefferson and Blount counties, Alabama, no other Federal activities that may affect these species are currently known to be under consideration.

The Act and its implementing regulations found at 50 CFR 17.21 for endangered species, and 17.21 and 17.31 for threatened species, set forth a series of general prohibitions and exceptions that apply to all endangered or threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot,

wound, kill, trap, or collect, or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered or threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 for endangered species and 17.32 for threatened species. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness as to the effects of these listings on future and ongoing activities within a species' range.

Activities which the Service believes are unlikely to result in a violation of section 9 for these six snails are:

(1) Existing discharges into waters supporting these species, provided these activities are carried out in accordance with existing regulations and permit requirements (e.g., activities subject to sections 402, 404, and 405 of the Clean Water Act and discharges regulated under the NPDES.

(2) Actions that may affect these six snail species and are authorized, funded or carried out by a Federal agency when the action is conducted in accordance with any reasonable and prudent measures given by the Service in accordance with section 7 of the Act.

(3) Normal agricultural and silvicultural practices that are carried out in accordance with any existing regulations, permit requirements, and best management practices.

(4) Development and construction activities designed and implemented pursuant to Federal, State, and local water quality regulations.

(5) Existing recreational activities such as swimming, wading, canoeing, and fishing.

Activities that the Service believes could potentially result in ''take'' of these snails include:

(1) The unauthorized collection or capture of the species;

(2) Unauthorized destruction or alteration of the species habitat (e.g., instream dredging, channelization, discharge of fill material);

(3) Violation of any discharge or water withdrawal permit;

(4) Illegal discharge or dumping of toxic chemicals or other pollutants into waters supporting the species.

Other activities not identified above will be reviewed on a case-by-case basis to determine if a violation of section 9 of the Act may be likely to result from such activity. The Service does not consider these lists to be exhaustive and provides them as information to the public.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Jackson Field Office (see **ADDRESSES** section). Requests for copies of regulations regarding listed species and inquiries about prohibitions and permits should be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Boulevard, Atlanta, Georgia 30345 (Phone 404/679–7313; Fax 404/679–7081).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. 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 control number. For additional information concerning permit and associated requirements for endangered and threatened species, see 50 CFR 17.22 and 17.32, respectively.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Field Supervisor (see **ADDRESSES** section).

Author

The primary author of this final rule is Paul Hartfield (see **ADDRESSES** section)(601/965–4900, extension 25).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, the Service amends part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend section 17.11(h) by adding the following, in alphabetical order under SNAILS, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
SNAILS							
*	*	*	*	*	*	*	
Elimia, lacy	*Elimia crenatella*	U.S.A. (AL)	NA	T	651	NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
Lioplax, cylindrical ...	*Lioplax cyclostomaformis.*	U.S.A. (AL)	NA	E	651	NA	NA
*	*	*	*	*	*	*	
Pebblesnail, flat	*Lepyrium showalteri*	U.S.A. (AL)	NA	E	651	NA	NA
*	*	*	*	*	*	*	
Rocksnail, painted ...	Leptoxis taeniata	U.S.A. (AL)	NA	T	651	NA	NA
*	*	*	*	*	*	*	
Rocksnail, plicate	*Leptoxis plicata*	U.S.A. (AL)	NA	E	651	NA	NA
*	*	*	*	*	*	*	
Rocksnail, round	*Leptoxis ampla*	U.S.A. (AL)	NA	T	651	NA	NA
*	*	*	*	*	*	*	

Dated: October 16, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–28884 Filed 10–27–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[I.D. 102098A]

RIN 0648–AH97

Sea Turtle Conservation; Shrimp Trawling Requirements

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

ACTION: Notification of an exemption and request for comments.

SUMMARY: NMFS issues this rule to allow the use of limited tow times by shrimp trawlers in the inshore waters of Mississippi and in the inshore waters of Louisiana, north and east of the Mississippi River to its terminus at the South Pass, as an alternative to the requirement to use Turtle Excluder Devices (TEDs). This area was affected by Hurricane Georges on and about September 27 to 29, 1998. NMFS has been notified by the Director of the Mississippi Department of Marine Resources that large amounts of debris in Mississippi Sound in the aftermath of the hurricane are causing difficulty with the performance of TEDs. NMFS has been notified by the Secretary of the Louisiana Department of Wildlife and Fisheries that his department had received documentation that hurricane-related debris was interfering with TED performance in their shrimping grounds east of the river. NMFS will monitor the situation to ensure there is adequate protection for sea turtles in this area and to determine whether impacts from the hurricane continue to make TED use impracticable.

DATES: This rule is effective from October 23, 1998, through October 31, 1998, when tow times must be limited to no more than 55 minutes measured from the time trawl doors enter the water until they are retrieved from the water, and from November 1, 1998, until November 23, 1998, when tow times must be limited to no more than 75 minutes. Comments on this rule are requested, and must be received by November 23, 1998.

ADDRESSES: Comments on this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, 813–570–5312, or Barbara A. Schroeder, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

The incidental take of these species, as a result of shrimp trawling activities, have been documented in the Gulf of Mexico and along the Atlantic. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 227.72. Existing sea turtle conservation regulations (50 CFR part 227, subpart D) require most shrimp trawlers operating in the Gulf and Atlantic areas to have a NMFS-approved TED installed in each net rigged for fishing, year round.

The regulations provide for the use of limited tow times as an alternative to the use of TEDs for vessels with certain specified characteristics or under certain special circumstances. The provisions of 50 CFR 227.72 (e)(3)(ii) specify that the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), may authorize ''compliance with tow time restrictions as an alternative to the TED requirement, if [he] determines that the presence of algae, seaweed, debris or other special environmental conditions in a particular area makes trawling with TED-equipped nets impracticable.'' The provisions of 50 CFR 227.72(e)(3)(i) specify the maximum tow times that may be used when authorized as an alternative to the use of TEDs. The tow times may be no more than 55 minutes from April 1 through October 31 and no more than 75 minutes from November 1 through March 31. NMFS has selected these tow time limits to minimize the level of mortality of sea turtles that are captured by trawl nets that are not equipped with TEDs.

Recent Events

On September 27, Hurricane Georges made landfall on the Mississippi coast.

The hurricane remained stationary over the Mississippi coast for over 24 hours and deposited as much as 30 inches (76 cm) of rain on some areas. The combination of heavy rains and 10–12 foot (3.0 m–3.7 m) hurricane storm surge produced severe flooding in all three Mississippi coastal counties. The Director of the Mississippi Department of Marine Resources (Mississippi Director) sent an October 13 letter to the NMFS Southeast Regional Administrator stating, ''Most of the coastal rivers in Mississippi exceeded flood stage and deposited large amounts of debris into [Mississippi Sound], which has resulted in problems for shrimpers.'' He further stated that the ''debris...is having a negative impact on trawl and TED performance'' and that ''[w]hen TEDs become clogged they can no longer effectively exclude sea turtles, possibly increasing the chance of mortality to these endangered animals.'' His letter requested that NMFS use its authority to allow the use of 55–minute tow times as an alternative to TEDs for a 30-day period in Mississippi's inshore waters.

Flooding, high winds, and storm surge also affected areas in eastern Louisiana. The Secretary of the Louisiana Department of Wildlife and Fisheries (Louisiana Secretary) sent an October 20 letter to the NMFS Southeast Regional Administrator stating, ''We have acquired documentation that debris caused by Hurricane Georges is interfering with TED performance in [Louisiana waters east of the Mississippi River].'' His letter requested that an exemption from the required use of TEDs be granted immediately in the affected area.

Coastal areas of Alabama were also affected by Hurricane Georges. NMFS has already authorized the use of limited tow times, as an alternative to the required use of TEDs, in Alabama inshore waters (63 FR 55053; October 14, 1998).

Special Environmental Conditions

The Assistant Administrator finds that the impacts of Hurricane Georges have created special environmental conditions in some areas that may make trawling with TED-equipped nets impracticable. Therefore, the Assistant Administrator issues this rule to authorize the use of restricted tow times as an alternative to the use of TEDs in the inshore waters of Mississippi, and in the inshore waters of Louisiana, north and east of the Mississippi River to its terminus at South Pass. The States of Mississippi and Louisiana are continuing to monitor the situation and are cooperating with NMFS in determining the ongoing extent of the debris problem. Moreover, the Mississippi Director has stated that Marine Enforcement Division of the Mississippi Department of Wildlife, Fisheries, and Parks has agreed to assist with the enforcement of the restricted tow times, and the Louisiana Secretary has pledged that his department will enforce tow time restrictions for the duration of any exemption period. Ensuring compliance with tow time restrictions is critical to effective sea turtle protection, and the commitments from the Mississippi Director and the Louisiana Secretary to provide additional enforcement of the tow time restrictions is an important factor enabling NMFS to issue this authorization.

Continued Use of TEDs

NMFS encourages shrimp trawlers in Mississippi and Louisiana inshore waters who are authorized under this rule to use restricted tow times to continue to use TEDs if possible. NMFS studies have shown that the problem of clogging by seagrass, algae or by other debris is not unique to TED-equipped nets. When fishermen trawl in problem areas, they may experience clogging with or without TEDs. A particular concern of fishermen, however, is that clogging in a TED-equipped net may hold open the turtle escape opening and increase the risk of shrimp loss. On the other hand, TEDs also help exclude certain types of debris and allow shrimpers to conduct longer tows.

NMFS' gear experts provide several operational recommendations to fishermen to maximize the debris exclusion ability of TEDs that may allow some fishermen to continue using TEDs without resorting to restricted tow times. NMFS has had good experience with hard TEDs made of either solid rod or hollow pipe that incorporate a bent angle at the escape opening and recommends use of this type of TED, in a bottom-opening configuration, to help exclude debris. In addition, the installation angle of a hard TED in the trawl extension is an important performance element in excluding debris from the trawl. High installation angles can result in debris clogging the bars of the TED; NMFS recommends an installation angle of 45°, relative to the normal horizontal flow of water through the trawl, to optimize the TED's ability to exclude turtles and debris. Furthermore, the use of accelerator funnels, which are allowable modifications to hard TEDs, is not recommended in areas with heavy amounts of debris or vegetation. Lastly, the webbing flap that is usually installed to cover the turtle escape opening may be modified to help exclude debris quickly: the webbing flap can either be cut horizontally to shorten it so that it does not overlap the frame of the TED or be slit in a fore-and-aft direction to facilitate the exclusion of debris.

All of the preceding recommendations represent legal configurations of TEDs for shrimpers in the inshore areas of Mississippi and eastern Louisiana (not subject to special requirements effective in the Gulf Shrimp Fishery-Sea Turtle Conservation area). This rule authorizes the use of restricted tow times as an alternative to the required use of TEDs. This rule does not authorize any other departure from the TED requirements, including any illegal modifications to TEDs. In particular, if TEDs are installed in trawl nets, they may not be sewn shut.

Alternative to Required Use of TEDs

The authorization provided by this rule applies to all shrimp trawlers that would otherwise be required to use TEDs in accordance with the requirements of 50 CFR 227.72(e)(2) who are operating in all inshore waters of the State of Mississippi and in the inshore waters of the State of Louisiana, north and east of the Mississippi River to its terminus at South Pass, in areas which the states have opened to shrimping. ''Inshore waters'', as defined at 50 CFR 217.12, means the marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts, 1:80,000 scale) and as described in 33 CFR part 80. Instead of the required use of TEDs, shrimp trawlers may comply with the sea turtle conservation regulations by using restricted tow times. Through October 31, 1998, a shrimp trawler utilizing this authorization must limit tow times to no more than 55 minutes, measured from the time trawl doors enter the water until they are retrieved from the water. From November 1, 1998 until November 23, 1998, tow times must be limited to no more than 75 minutes measured from the time trawl doors enter the water until they are retrieved from the water.

Additional Conditions

NMFS expects that shrimp trawlers operating in Mississippi or eastern Louisiana inshore waters without TEDs in accordance with this authorization will retrieve debris that is caught in their nets and return it to shore for disposal or to other locations defined by

the Mississippi Director or the Louisiana Secretary, rather than simply disposing of the debris at sea. Proper disposal of debris should help the restoration of the shrimping grounds in the wake of the hurricane. Shrimp trawlers are reminded that regulations under 33 U.S.C. 1901 *et seq.* (Act to Prevent Pollution From Ships) may apply to disposal at sea.

Alternative to Required Use of TEDs; Termination

The Assistant Administrator, at any time, may modify the alternative conservation measures through publication in the **Federal Register**, if necessary to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the Assistant Administrator may modify the affected area or impose any necessary additional or more stringent measures, including more restrictive tow times or synchronized tow times, if the Assistant Administrator determines that the alternative authorized by this rule is not sufficiently protecting turtles, as evidenced by observed lethal takes of turtles aboard shrimp trawlers, elevated sea turtle strandings, or insufficient compliance with the authorized alternative. The Assistant Administrator may also terminate this authorization for these same reasons, or if compliance cannot be monitored effectively, or if conditions do not make trawling with TEDs impracticable. The Assistant Administrator may modify or terminate this authorization, as appropriate, at any time. A document will be published in the **Federal Register** announcing any additional sea turtle conservation measures or the termination of the tow time option in Mississippi inshore waters. This authorization will expire automatically on November 23, 1998, unless it is explicitly extended through another notification to be published in the **Federal Register**.

Classification

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

The AA has determined that this action is necessary to respond to an emergency situation to allow more efficient fishing for shrimp, while providing adequate protection for endangered and threatened sea turtles pursuant to the ESA and other applicable law.

Pursuant to section 553(b)(B) of the Administrative Procedures Act (APA), the Assistant Administrator finds that there is good cause to waive prior notice and opportunity to comment on this rule. It is impracticable, unnecessary, and contrary to the public interest to provide prior notice and opportunity for comment. The Assistant Administrator finds that an unusually large amount of debris exists in the aftermath of Hurricane George, creating special environmental conditions that may make trawling with TED-equipped nets impracticable. The Assistant Administrator has determined that the use of limited tow times for the described area and time would not result in a significant impact to sea turtles. Notice and comment are contrary to the public interest in this instance because providing notice and comment would prevent the agency from providing relief within the necessary timeframe. Furthermore, the public had notice and an opportunity to comment on 50 CFR 227.72(e)(3)(ii) when that regulation was finalized.

Pursuant to section 553(d)(1) of the APA, for the reasons cited above, and because this action relieves a restriction, this rule is effective immediately. As prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of 5 U.S.C. 601 *et. seq.* are inapplicable.

The Assistant Administrator prepared an Environmental Assessment (EA) for the final rule (57 FR 57348, December 4, 1992) requiring TED use in shrimp trawls and creating the regulatory framework for the issuance of actions such as this. Copies of the EA are available (see **ADDRESSES**).

Dated: October 22, 1998.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–28826 Filed 10–23–98; 3:31 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 971015246–7293–02; I.D. 102298A]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for New York

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

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the State of New York has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in New York for the remainder of calendar year 1998 unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise the State of New York that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in New York.

DATES: Effective 0001 hours October 27, 1998, through December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION:

Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The initial total commercial quota for summer flounder for the 1998 calendar year was set equal to 11,105,636 lb (5,037,432 kg) (62 FR 66304, December 18, 1997). The percent allocated to vessels landing summer flounder in New York is 7.64699 percent, or 849,680 lb (385,408 kg).

Section 648.100(e)(4) stipulates that any overages of commercial quota landed in any state be deducted from that state's annual quota for the following year. In calendar year 1997, a total of 815,741 lb (370,014 kg) were landed in New York, creating a 61,398 lb (27,850 kg) overage that was deducted from the amount allocated for landings in the state during 1998 (63 FR 23227, April 28, 1998). The resulting quota for New York is 788,282 lb (357,559 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish notification in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional

Administrator has determined, based upon dealer reports and other available information, that the State of New York has attained its quota for 1998.

The regulations at § 648.4(b) provide that, as a condition of the permit, Federal permit holders agree not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours October 27, 1998, further landings of summer flounder in New York by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 1998 calendar year unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective October 27, 1998, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in New York for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: October 22, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–28827 Filed 10–23–98; 3:31 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 208
Wednesday, October 28, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[TM–98–00–7]

RIN 0581–AA40

National Organic Program—Issue Papers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed Rule; request for comments on Issue Papers.

SUMMARY: Agricultural Marketing Service (AMS) is seeking comments on three papers that address certain issues raised in the comments received on the National Organic Program proposed rule published in the **Federal Register** on December 16, 1997. These issue papers which address livestock confinement, livestock health care, and certification termination, and comments received on them will be considered during the development of a revised National Organic Program proposed rule.

DATES: Comments must be submitted on or before December 14, 1998.

ADDRESSES: Interested persons are invited to submit written comments on these issues to: Eileen S. Stommes, Deputy Administrator, USDA-AMS-TM-NOP, Room 4007-S, AG Stop 0275, P.O. Box 96456, Washington, D.C. 20090–6456. Comments may also be sent by fax to (202) 690–4632 or via e-mail to: *NOPIssue Papers@usda.gov.* Additionally, USDA plans to accept comments via the National Organic Program home page at a future date. Notification of acceptance of comments by this form will occur through an additional **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: T. Keith Jones, Program Manager, USDA-AMS-TM-NOP, Room 2510-S, AG Stop 0275, P.O. Box 96456, Washington, D.C. 20090–6456. Phone (202) 720–3252.

SUPPLEMENTARY INFORMATION: AMS is seeking comments on three papers that address certain issues raised during the National Organic Program's proposed rule comment period. These issue papers which address livestock confinement, livestock health care, and certification termination, and comments received on them will be considered during the development of a revised National Organic Program proposed rule.

The issue papers are: Issue Paper 1. Livestock Confinement in Organic Production Systems; Issue Paper 2. The Use of Antibiotics and Parasiticides in Organic Livestock Production; and Issue Paper 3. Termination of Certification by Private Certifiers. These issue papers are being published in an effort to provide the opportunity for public input. USDA is committed to a process that is open to all interested parties.

All comments, whether mailed, faxed, or submitted via the Internet, will be available for viewing at the USDA–AMS, Transportation and Marketing Programs, Room 2945-South Building, 1400 Independence Ave., S.W., Washington, D.C., from 9:00 a.m. to 1:00 p.m., and from 2:00 p.m. to 4:30 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this proposal are requested to make an appointment in advance by calling Gayle Patterson at (202) 720–3252.

The issue papers are published below.

Issue Paper 1. Livestock Confinement in Organic Production Systems

1. Goal

USDA's goal is to establish clear, consistent regulations that stimulate the growth of the organic livestock sector, satisfy consumer expectations and allow organic livestock producers flexibility in making site-specific, real-time management decisions.

2. Issue

Commenters on USDA's proposed rule, published December 16, 1997 (62 FR 65850), assert that the language in the proposed rule,

> if necessary, livestock may be maintained under conditions that restrict the available space for movement or access to the outside,

section 205.15(b), creates a significant loophole for factory farming of livestock despite the other requirements for access to outdoors and space for movement. USDA believes that commenters are concerned that the term if necessary, could be broadly interpreted by public and private certifiers.

3. Background

The Organic Foods Production Act (7 U.S.C. 6501–6522) (OFPA) is silent on livestock confinement. In its proposed rule, USDA specifically requested public comment on the conditions under which animals may be maintained, specifically with regard to the available space for movement and access to the outdoors. Many commenters advocated USDA's adoption of the National Organic Standards Board (NOSB) recommendations on livestock production which recognize that proper livestock management may provide for times when livestock are confined. The NOSB said

> temporary indoor housing may be justified for: 1. inclement weather conditions; 2. health, care, safety and well-being of the livestock; and 3. protection of soil and water quality.

Therefore, commenters who support the NOSB recommendations appear to accept animal confinement as long as the criteria allowing confinement are clearly delineated.

In writing the proposed rule, USDA, like the NOSB, sought to balance animal health issues, such as prevention of exposure to disease and predators, with the concepts that organic management is soil-based, and that animals should be allowed access to the soil. USDA envisioned that the language of section 205.15(b) would allow the flexibility needed for producers to confine animals during critical periods such as farrowing.

In keeping with this intent, USDA chose the term if necessary to capture the spirit of the NOSB recommendation. The terms if necessary or justified, used respectively in the proposed rule and the NOSB recommendation, envisioned guidelines by which a producer or certifier would benchmark the management decision. USDA believed that such guidelines would be formulated during development of a program manual for the National Organic Program. USDA also concluded that the proposed livestock standards, when taken as a whole, serve as a delimiting mechanism to large-scale confined animal feeding operations.

Many commenters indicated opposition to factory farming of livestock. It is unclear how these commenters would define the term factory farming and whether those who oppose factory farming are concerned about animal space requirements, environmental issues, or a particular business structure. Like NOSB and USDA, they believe that routine, continuous confinement of livestock must be prohibited, but some commenters stated that the proposed livestock requirements, which required access to outdoors and space for movement, fall short of consumer expectations for the production of organically grown livestock. Therefore, a more detailed delineation of the criteria for appropriate confinement may be necessary to satisfy the concerns of these commenters.

4. Options

In response to these comments, USDA is considering the following options:

Option 1—Retain the Current Language but Elaborate on Its Intent

Pros: Consistent with NOSB recommendations;
Allows for producer/certifier flexibility;
Allows for various animal space requirements.
Cons: May not meet expectations of some commenters;
Compliance verification could be difficult.

Option 2—Establish Animal Space Requirements in Animal Feeding Operations

Pros: Addresses commenter concerns about animal space requirements.
Simplifies animal space verification.
Cons: An issue not addressed by NOSB or USDA;
Criteria for space requirements could be difficult to establish;
Further reduces producer/certifier flexibility.

Option 3—Establish Requirements for Access to Pasture.

Pros: Would satisfy commenter concerns;
Would address animal safety concerns;
Allows for various animal space requirements;
Cons: An issue not addressed by NOSB or USDA;
Compliance verification could be difficult;
May not be appropriate for all species of livestock;
Further reduces producer/certifier flexibility.

Option 4—Explore Feasibility of Allowing Livestock Products Labeled as Organic To Include Additional Label Claims, Such as Pasture-Raised, Free-Range or Never Confined in a Feedlot

Pros: Provides consumers with more product information;
Allows producers to market to a further defined niche.
Cons: Could cause consumer confusion;
Could devalue the term organic;
Limited verification for label claims.

USDA is interested in exploring other options. Additionally, we are seeking comments on the following questions: Should the rule ban confined animal feeding operations? Would requiring access to pasture satisfy commenters, including those who oppose factory farming? What economic impact would these options have on organic livestock producers? How would additional labeling claims affect the marketing of organic livestock products?

Would annual or semi-annual organic certification site visits be sufficient to ensure that routine, continuous confinement is not occurring? How should certifiers determine that confinement is being employed in accordance with the regulations?

How should access to pasture be defined? Should a species-by-species approach be taken? When permitted by regulation, should the duration and frequency of confinement be resolved on a case-by-case basis between certifier and producer?

Issue Paper 2.—The Use of Antibiotics and Parasiticides in Organic Livestock Production

1. Goal

USDA's goal is to establish clear, consistent regulations that stimulate the growth of the organic livestock sector, satisfy consumer expectations and allow organic livestock producers flexibility in making site-specific, real-time management decisions.

2. Issue

In its proposed rule published December 16, 1997 (62 FR 65850), USDA specifically requested public comment on the use of animal drugs in the production of organic livestock. Many commenters advocated the adoption of the National Organic Standards Board (NOSB) recommendations on both antibiotics and parasiticides. The NOSB recommendations prohibit the use of antibiotics and parasiticides in organic production except under certain clearly delineated animal health conditions.

Many other commenters go beyond the options proposed by USDA and the NOSB by advocating an absolute prohibition on the use of antibiotics in organic livestock production. Further, commenters who specifically mention the use of parasiticides as an area of concern assert that the language in the proposed rule defining the term routine use of parasiticides as administering a parasiticide to an animal without cause is inadequate. These commenters suggest that it would be too easy for producers to find cause to administer a parasiticide, and that they might therefore become reliant on parasiticides rather than on preventative measures. Some commenters would prefer a complete ban on the use of all animal medications, including antibiotics and parasiticides, in organic livestock production.

3. Background

The OFPA prohibits only the use of subtherapeutic doses of antibiotics and of synthetic internal parasiticides on a routine basis. Since young animals are especially vulnerable to disease, USDA believed there was sufficient justification for additional protection in the early days of life. To ensure the health of animals during critical periods, USDA also allowed the therapeutic use of antibiotics in dairy and breeder stock because of the animals' longevity and the potential for infections arising from pregnancy and delivery. USDA attempted to capture the statutory prohibition on routine use of parasiticides by defining such use as, administering a parasiticide to an animal without cause.

4. Options

In light of these comments, USDA is analyzing options to assist in determining the proper role for antibiotics and parasiticides in organic livestock production. Options under consideration, along with USDA's assessment of the pros and cons of each option, are listed below:

Option 1—Prohibit all use of antibiotics and parasiticides.

Pros: Consistent with many comments.
Cons: Animal health could be adversely affected, particularly that of young animals;
Inconsistent with NOSB recommendations;
Compliance verification could be difficult;
Could limit industry growth by preventing the production of some types of livestock in specific geographic areas.

Option 2—Prohibit the Use of All Animal Medications, Other Than Vaccinations, Including Antibiotics and Parasiticides.

Pros: Consistent with some comments.

Cons: Animal health could be adversely affected, particularly that of young animals;

Inconsistent with NOSB recommendations;

Compliance verification could be difficult;

Could limit industry growth by preventing the production of some types of livestock in specific geographic areas.

Option 3—Allow the Therapeutic Use of Antibiotics and the Non-Routine use of Parasiticides Under Specific Animal Health Conditions.

Pros: Consistent with NOSB recommendations;

Allows for the protection of animal health;

Animal production could be enhanced;

Provides producer/certifier flexibility to respond to rapidly changing animal health conditions.

Cons: Compliance verification could be difficult.

USDA is interested in exploring other options. Additionally, we are seeking comments on the following questions: What economic impact would the prohibition of all medication, including antibiotics and parasiticides, have on organic livestock producers?

Under what conditions, if any, could an animal for slaughter receive a synthetic internal parasiticide? An external parasiticide? What about breeding stock or dairy animals?

Should we make provisions for the use of synthetic parasiticides where other measures has proven ineffective?

Would annual or semi-annual organic certification site visits be sufficient to ensure that preventative measures are being carried out and that antibiotics and parasiticides are being administered in accordance with the Act and its regulations? When permitted by regulation, should the use of antibiotics and parasiticides be resolved on a case-by-case basis between certifier and producer?

Issue Paper 3. Termination of Certification by Private Certifiers

1. Goal

USDA's goal is to implement the Organic Foods Production Act (OFPA) at the local level, while utilizing, to the extent possible, the existing infrastructure of organic certification.

2. Issue

Many commenters on USDA's proposed rule, published December 16, 1997 (62 FR 65850), assert that the proposed process for termination of certification would be unduly bureaucratic and would complicate local certifiers' efforts to ensure the integrity of the organic label.

3. Background

In the proposed rule, USDA sought to balance the public policy goal of withdrawing certification from a farmer or handler who violates the Act against the constitutional protections afforded to entities certified under the OFPA. The National Organic Standards Board did not make any specific recommendation on this issue. Under the OFPA, accredited certifiers are agents of the Secretary in carrying out their responsibilities under the Act. Certifiers' authority is derived from their accreditation under the OFPA.

USDA, acting directly or through accredited certifiers, cannot suspend or revoke a certification once granted without providing due process of law, which requires providing an opportunity to be heard before the suspension or revocation of certification.

A certified entity must be afforded the opportunity for a hearing before certification can be suspended or revoked. Although private certifiers have expressed considerable dissatisfaction with this process, there is no legal mechanism to allow private certifiers to suspend or revoke certifications. Thus, section 205.219(b) of our proposed rule, stated that if a certifying agent had reason to believe that a certified operation had violated the Act, the certifying agent would recommend that USDA terminate certification. After review of the recommendation, the Administrator of the Agricultural Marketing Service could institute proceedings to terminate certification.

4. Options

USDA continues to review comments on this issue and to consider various alternatives that would achieve the objectives expressed in the comments. Options under consideration, along with USDA's assessment of the pros and cons of each option, are listed below. USDA welcomes alternative suggestions.

Option 1—Create a Uniform and Efficient Information System To Inform the Public of USDA Actions To Suspend or Revoke Certification

Pros: Would provide timely information concerning the compliance status of certified entities;

Provides necessary and timely information about the compliance status of a certified entity during the pendency of an enforcement action.

Cons: Does not fulfill commenters' desire for revocation authority at the certifier level;

Does not fulfill commenters' desire for immediate revocation, since certification would remain in full effect pending case resolution.

Option 2—Provide for an Expedited Process, Including Special Rules of Practice and Shortened Time Frames, To Review Certifier Recommendations and Make Determinations

Pros: Would provide due process;

Could result in quicker resolution of enforcement issues;

Might reduce enforcement costs for all parties to the dispute.

Cons: Does not fulfill commenters' desire for revocation authority at the certifier level;

Does not fulfill commenters' desire for immediate revocation, since certification would remain in full effect pending case resolution.

Option 3—Design an Informal Alternative Procedure To Resolve Enforcement Issues on an Expedited Basis Short of an Adjudicatory Hearing

Pros: Would provide due process;

Could result in quicker resolution of enforcement issues;

Might reduce enforcement costs for all parties to the dispute.

Cons: Does not fulfill commenters' desire for revocation authority at the certifier level;

Does not fulfill commenters' desire for immediate revocation, since certification would remain in full effect pending case resolution.

A 45-day comment period is provided for interested persons to provide comment. This period is deemed appropriate because any comments received will be considered in the development of a revised National Organic Program proposed rule.

Authority: 7 U.S.C. 6501–6522.

Dated: October 23, 1998.

Eileen S. Stommes,

Deputy Administrator Transportation and Marketing.

[FR Doc. 98–28880 Filed 10–23–98; 2:54 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[No. LS–98–005]

Amendment to the Beef Promotion and Research Rules and Regulations: Extension of Comment Period on Proposed Rule

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of comment period on the proposed rule to amend the Beef Promotion and Research Rules and Regulations.

SUMMARY: The Agricultural Marketing Service (AMS) is extending the public comment period from October 27, 1998, to November 27, 1998, on the proposed rule to amend the Beef Promotion and Research Rules and Regulations (Rules and Regulations) established under the Beef Promotion and Research Act of 1985 (Act) to clarify requirements for documenting cattle sales transactions for which no assessments are due. This proposed rule was published in the **Federal Register** on August 28, 1998.

DATES: Written comments must be received on or before November 27, 1998.

ADDRESSES: Send two copies of comments to Ralph L. Tapp; U.S. Department of Agriculture; Livestock and Seed Program, AMS; Marketing Programs Branch; STOP 0251, Room 2606-S; 1400 Independence Avenue, SW.; Washington, D.C. 20090–0251. Comments received may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. State that your comments refer to Docket No. LS–98–005.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, 202/720–1115.

SUPPLEMENTARY INFORMATION:

Purpose

A proposed rule was published in the **Federal Register** on August 28, 1998 (63 FR 45971). The purpose of the rule is to clarify the fact that persons selling cattle who are not classified as producers under the Act must file a Statement of Certification of Non-Producer Status form with the collecting person in a timely manner or otherwise an assessment is due under the Act.

Reason for Granting an Extension

The Livestock Marketing Association (LMA), a national trade organization representing 900 livestock auction and terminal markets and livestock dealers and order buyers has requested a 30 day extension of the comment period.

LMA has stated that it and other interested parties need more time to have a number of questions answered concerning the impact of the proposed rule on those it affects including producers, markets, dealers, feedlots, and brand inspectors.

LMA members collect about one-third of the total assessments paid by producers under the Act and therefore have a keen interest in any changes involving the collection process.

After careful consideration of the request submitted to the Agency, AMS has decided to grant an extension of the comment period for an additional 30 days, or until November 27, 1998. AMS believes this 30 day extension making a total comment period of 90 days provides a sufficient period of time for all interested persons to review the proposed rule and submit comments.

Accordingly, AMS is extending the comment period on the proposed rule until November 27, 1998.

Authority: 7 U.S.C. 2901 *et seq.*

Dated: October 23, 1998.

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 98–28971 Filed 10–26–98; 11:15 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 63

Notice of Availability of Staff Recommendations to the Commission: Draft Regulations for Disposal of High-Level Radioactive Wastes at a Proposed Geologic Repository at Yucca Mountain, Nevada

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of availability.

SUMMARY: The NRC is reissuing this notice due to an error in the website address which appeared in the version published October 14, 1998 (63 FR 55056). The NRC is making available NRC staff recommendations for draft regulations governing disposal of high-level radioactive wastes at a proposed geologic repository at Yucca Mountain, Nevada. The Commission is presently reviewing these staff recommendations, and has not yet approved publication of the recommended draft regulations as a proposed rule. The Commission is making the staff recommendations available now to enable all stakeholders to have preliminary access to the document. When the Commission has approved a proposed rule, it will be published in the **Federal Register** for formal public comment.

ADDRESSES: A copy of the staff recommendations can be obtained electronically at the NRC Technical Conference Forum Website under the topic ''Draft Proposed Rule for Disposal of High-Level Radioactive Wastes at a Proposed Geologic Repository at Yucca Mountain, Nevada'' at http://techconf.llnl.gov/cgi-bin/topics or from the NRC's Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC 20555; telephone 202–634–3273; fax 202–634–3343. To view the working paper at the Website, select ''Draft Proposed Rule for Disposal of High-Level Radioactive Waste at a Proposed Geologic Repository at Yucca Mountain, Nevada.''

Comments may be posted electronically on the NRC Technical Conference Forum Website mentioned above. Comments submitted electronically can also be viewed at that Website. Comments may also be mailed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Clark Prichard, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6203; e-mail cwp@nrc.gov.; or Timothy McCartin, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6681; e-mail tjm3@nrc.gov.

Dated at Rockville, Maryland this 21st day of October, 1998.

For the Nuclear Regulatory Commission.

Donald A. Cool,

Director, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 98–28814 Filed 10–27–98; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–42]

Proposed Amendment to Class E Airspace; Winchester, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Winchester, VA. The development of a new Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Winchester Regional Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before November 27, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 98–AEA–42, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

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, 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. 98–AEA–42.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the 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 the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 112–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Winchester, VA. A GPS RWY 14 SIAP has been developed for Winchester Regional Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operation at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, 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 would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have 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

In consideration of the foregoing, 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 Federal Aviation Administration Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, is proposed to be amended as follows:

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

* * * * *

AEA VA E5 Winchester, VA [Revised]

Winchester Regional Airport, VA
(Lat. 39°08′37″ N., long. 78°08′40″ W.)

That airspace extending upward from 700 feet above the surface within an 8.2-mile radius of Winchester Regional Airport.

* * * * *

Issued in Jamaica, New York, on October 19, 1998.

James K. Buckles,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–28831 Filed 10–27–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

Guidelines for the Imposition and Mitigation of Penalties for Violations of 19 U.S.C. 1592

19 CFR Part 171

RIN 1515–AC08

AGENCY: U. S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to revise Appendix B to Part 171 of the Customs Regulations, which sets forth the guidelines for remitting and

mitigating penalties relating to violations of section 592 of the Tariff Act of 1930, as amended. A violation of section 592 involves the entry or introduction or attempted entry or introduction of merchandise into the United States by fraud, gross negligence, or negligence. Many of the proposed changes to Appendix B reflect the Customs Modernization Act and its themes of ''informed compliance'' and ''shared responsibility.''

DATES: Comments must be received on or before December 28, 1998.

ADDRESSES: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Robert Pisani, Penalties Branch, (202) 927–1203.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, the President signed the North American Free Trade Agreement Implementation Act (Public Law 103–182). The Customs Modernization portion of this Act (Title VI), popularly known as the Customs Modernization Act or ''the Mod Act'', became effective when it was signed. The Mod Act emphasizes the themes of shared responsibility and informed compliance for Customs and the public.

Consistent with the Mod Act, Customs has initiated a thorough examination and review of its procedures and processes relating to importer compliance with Customs laws, regulations, and policies. In this review, the agency has considered a number of innovative approaches to improving the service it provides the importing public as well as new approaches to encourage compliance and address incidents of non-compliance.

With regard to compliance, Customs is dedicated to educating its personnel to improve agency selection of appropriate remedies to address incidents of non-compliance. In keeping with the Mod Act theme of informed compliance, Customs is also attempting to educate the importing public about its requirements, particularly in areas involving complex import transactions. A more informed public promotes an overall greater level of compliance than the threat of an occasional and often ineffective penalty. A significant aspect of this ''shared responsibility'' and ''informed compliance'' approach is reflected in the proposed revision of the guidelines for remitting and mitigating penalties relating to violations of § 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592) (hereinafter referred to as § 592). A violation of § 592 involves the entry or introduction or attempted entry or introduction of merchandise into the United States by fraud, gross negligence, or negligence. The guidelines for remitting and mitigating penalties relating to violations of § 592 appear as Appendix B to Part 171 of the Customs Regulations.

The full text of the proposed revised guidelines appears at the end of this document. It is preceded by a summary of the more significant proposed revisions to the guidelines. Much of the proposed revision of the penalty guidelines consists of a reorganization of the content of the current guidelines into a new format that is intended to more clearly identify important provisions which are contained in the present text.

Summary of Proposed Guidelines

After the introductory text, the proposed revised guidelines break current paragraph (A) into 2 paragraphs. Proposed paragraph (A) now discusses what constitutes § 592 violations and proposed paragraph (B) discusses what is meant by materiality.

Paragraph (A) now clarifies that placing merchandise in-bond is considered entering or introducing merchandise into the United States for purposes of § 592. The paragraph also makes it clear that if one unintentionally transmits a clerical error to Customs electronically, and that clerical error is transmitted repetitively by the electronic system, Customs will not consider repetitions of the non-intentional electronic transmission of the initial clerical error as constituting a pattern, unless Customs has drawn the error to the party's attention.

In the proposed new paragraph (B), defining materiality under § 592, that definition is expanded by providing that a document, statement, act, or omission is material if it significantly impairs Customs ability to collect and report accurate trade statistics, deceives the public as to the source, origin or quality of the merchandise, or constitutes an unfair trade practice in violation of federal law.

Proposed paragraph (C) now discusses the degrees of culpability under § 592. The degrees of culpability are currently discussed in paragraph (B).

A new paragraph (D) is proposed to be added to include terms used throughout the guidelines. Included in this paragraph are discussions of the terms: duty loss violations; non-duty loss violations; actual loss of duty; potential loss of duty; reasonable care; clerical error; and mistake of fact.

The proposed guidelines contain a new paragraph (E) that is intended to track the administrative penalty process in chronological order. It is a revision of current paragraph (C). It begins with the case initiation and proceeds to describe the considerations pertinent to the decision to issue a pre-penalty notice and how the different types of violations can produce different proposed claim amounts depending upon the level of culpability and the presence of mitigating and/or aggravating factors. The proposed guidelines now contain express guidance regarding statute of limitations considerations and Customs policy regarding waivers when the issuance of pre-penalty and penalty notices are involved.

Continuing in their chronological progression, the proposed guidelines next address steps to be taken when Customs decides whether to close a case or issue a penalty notice. Most of this material is presently contained in paragraph (C)(2) of the current guidelines. However, the proposed guidelines provide that penalty notices can indicate higher degrees of culpability and proposed penalty amounts than were contained in the original pre-penalty notice if less than 9 months remain before the expiration of the statute of limitations, and a waiver of the statute has not been received. The current guidelines provide that such increased penalty notices would only be issued if less than 3 months remained.

Paragraph (F) of the proposed guidelines covers the procedures that are to be followed and elements that Customs will consider as part of the case record for any mitigating and/or aggravating factors. The existing guidelines discuss mitigating factors in paragraph (F) and aggravating factors in paragraph (G). The new paragraph is arranged so the various types and degrees of violations are explained and respective mitigation considerations are explained. The paragraph also informs the reader who within Customs has the authority to cancel or remit penalty claims.

Paragraph (F)(2)(f) provides a discussion of prior disclosure and the reduced penalties based upon the different levels of culpability for a valid prior disclosure. Prior disclosure is discussed in paragraph (E) of the existing guidelines.

Paragraph (G) of the proposed guidelines discusses the factors that are considered by Customs in proposing a penalty or mitigating an assessed penalty claim. Among these factors are:

an error by Customs that contributed to the violation; the extent of cooperation by the violator with the investigation by Customs into the alleged violation; whether or not the violator takes immediate steps to remedy the situation that caused the violation; and the prior record of the violator in its dealings with Customs. This paragraph combines the factors currently located in paragraphs (F) and (H) of the existing guidelines. It was felt that a separate paragraph was no longer necessary for ''extraordinary'' factors such as the ability of Customs to obtain personal jurisdiction over the violator, the violator's financial status, and whether Customs had actual knowledge of repeated violations but failed to inform the violator thus depriving him of the opportunity to take corrective action. All these factors are now contained in the one paragraph, but additional factors may be considered in appropriate circumstances.

Paragraph (H) contains the factors that Customs believes are to be treated as aggravating factors when considering mitigation of proposed or assessed penalties. Most of these factors are currently contained in paragraph (G) of the existing guidelines. While the list of factors is not intended to be all-inclusive, two new factors have been added. They are: the discovery of evidence of a motive to evade a prohibition or restriction on the admissibility of merchandise, and failure to comply with a lawful demand for records or a Customs summons.

Paragraph (I) of the proposed guidelines addresses offers in compromise (settlement offers). This is a new element not contained in the existing guidelines. The paragraph instructs parties who wish to submit a civil offer in compromise pursuant to 19 U.S.C. 1617 to follow procedures outlined in § 161.5 of the Customs Regulations (19 CFR 161.5). The paragraph summarizes what steps will be taken by both parties once such an offer has been made.

Paragraph (J) of the proposed guidelines contains instructions to be followed in instances where Customs makes a demand for payment of actual loss of duties pursuant to § 592(d). This is a subject not addressed in the existing guidelines. The paragraph provides that Customs will follow the procedures set forth in § 162.79b of the Customs Regulations (19 CFR 162.79b) and states that no such demand will be issued unless the record establishes the presence of a violation of § 592(a). The paragraph states that, absent statute of limitations problems, Customs will endeavor to issue § 592(d) demands to concerned sureties and non-violator importers only after default by principals.

Paragraph (K) of the proposed guidelines addresses violations of § 592 by brokers. The existing guidelines discuss brokers in paragraph (I). The paragraph continues the present practice of applying the overall mitigation guidelines in instances of fraud or where the broker shares in the financial benefits of a violation. However, where there has been no fraud or sharing of the financial benefits, the proposal removes the dollar limitations contained in the present guidelines and instructs Customs to proceed against the broker under 19 U.S.C. 1641.

Paragraph (L) of the proposed guidelines covers arriving travelers and consists of a reordering of the current provisions of paragraph (J) of the present guidelines.

Paragraph (M) of the proposed guidelines refers Customs officers to other Federal agencies for recommendations in instances where violations of laws administered by other agencies are discovered. These provisions are the same as those contained in paragraph (K) of the existing guidelines.

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) that are timely submitted to Customs. All such comments received from the public pursuant to this notice of proposed rulemaking will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m., at the Regulations Branch, 1300 Pennsylvania Avenue, NW, 3rd Floor, Washington, D.C.

Regulatory Flexibility Act

Although comments have been solicited on this proposal, because the proposed amendment relates to rules of agency procedure and policy no notice of proposed rulemaking is required pursuant to 5 U.S.C. 553. For this reason the document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12866

Because the document is not regulatory in nature, but merely serves to inform the public about certain agency procedures and practices, the proposed amendment does not meet the criteria for a ''significant regulatory action'' under E.O. 12866.

Drafting Information: The principal author of this document was Peter T. Lynch, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 171

Customs duties and inspection, Law enforcement, Penalties, Seizures and forfeitures.

Proposed Amendment to the Regulations

It is proposed to amend Part 171 of the Customs Regulations (19 CFR part 171) as set forth below:

PART 171—FINES, PENALTIES, AND FORFEITURES

1. The general authority citation for Part 171 continues to read as follows:

Authority: 19 U.S.C. 66, 1592, 1618, 1624. The provisions of subpart C also issued under 22 U.S.C. 401; 46 U.S.C. App. 320 unless otherwise noted.

2. It is proposed to revise Appendix B to Part 171 to read as follows:

Appendix B to Part 171—Customs Regulations, Guidelines for the Imposition and Mitigation of Penalties for Violations of 19 U.S.C. 1592

A monetary penalty incurred under section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592; hereinafter referred to as section 592) may be remitted or mitigated under section 618 of the Tariff Act of 1930, as amended (19 U.S.C. 1618), if it is determined that there are mitigating circumstances to justify remission or mitigation. The guidelines below will be used by the Customs Service in arriving at a just and reasonable assessment and disposition of liabilities arising under section 592 within the stated limitations. It is intended that these guidelines shall be applied by Customs officers in pre-penalty proceedings and in determining the monetary penalty assessed in any penalty notice. The assessed penalty or penalty amount set forth in Customs administrative disposition determined in accordance with these guidelines does not limit the penalty amount which the Government may seek in bringing a civil enforcement action pursuant to section 592(e). It should be understood that any mitigated penalty is conditioned upon payment of any actual loss of duty as well as a release by the party that indicates that the mitigation

decision constitutes full accord and satisfaction. Further, mitigation decisions are not rulings within the meaning of part 177 of the Customs Regulations (19 CFR part 177). Lastly, these guidelines may supplement, and are not intended to preclude application of, any other special guidelines promulgated by Customs.

(A) Violations of Section 592

Without regard to whether the United States is or may be deprived of all or a portion of any lawful duty thereby, a violation of section 592 occurs when a person, through fraud, gross negligence, or negligence, enters, introduces, or attempts to enter or introduce any merchandise into the commerce of the United States by means of any document, written or oral statement, or act that is material and false, or any omission that is material; or when a person aids or abets any other person in the entry, introduction, or attempted entry or introduction of merchandise by such means. It should be noted that the language ''entry, introduction, or attempted entry or introduction'' encompasses placing merchandise in-bond (e.g., filing an immediate transportation application). There is no violation if the falsity or omission is due solely to clerical error or mistake of fact, unless the error or mistake is part of a pattern of negligent conduct. Also, the unintentional repetition by an electronic system of an initial clerical error generally shall not constitute a pattern of negligent conduct. Nevertheless, if Customs has drawn the party's attention to the unintentional repetition by an electronic system of an initial clerical error, subsequent failure to correct the error could constitute a violation of section 592. Also, the unintentional repetition of a clerical mistake over a significant period of time or involving many entries could indicate a pattern of negligent conduct and a failure to exercise reasonable care.

(B) Definition of Materiality Under Section 592.

A document, statement, act, or omission is material if it had the potential to influence or was capable of influencing agency action including, but not limited to a Customs action regarding: (1) determination of the classification, appraisement, or admissibility of merchandise (e.g., whether merchandise is prohibited or restricted); (2) determination of an importer's liability for duty (including marking, antidumping, and/or countervailing duty); (3) collection and reporting of accurate trade statistics; (4) determination as to the source, origin, or quality of merchandise; (5) determination of whether an unfair trade practice has been committed under the anti-dumping or countervailing duty laws or a similar statute; (6) determination of whether an unfair act has been committed involving patent, trademark, or copyright infringement; or (7) the determination of whether any other unfair trade practice has been committed in violation of federal law.

(C) Degrees of Culpability Under Section 592

The three degrees of culpability under section 592 for the purposes of administrative proceedings are:

(1) *Negligence.* A violation is determined to be negligent if it results from an act or acts (of commission or omission) done through either the failure to exercise the degree of reasonable care and competence expected from a person in the same circumstances either: (a) in ascertaining the facts or in drawing inferences therefrom, in ascertaining the offender's obligations under the statute; or (b) in communicating information in a manner so that it may be understood by the recipient. As a general rule, a violation is negligent if it results from failure to exercise reasonable care and competence: (a) to ensure that statements made and information provided in connection with the importation of merchandise are complete and accurate; or (b) to perform any material act required by statute or regulation.

(2) *Gross Negligence.* A violation is deemed to be grossly negligent if it results from an act or acts (of commission or omission) done with actual knowledge of or wanton disregard for the relevant facts and with indifference to or disregard for the offender's obligations under the statute.

(3) *Fraud.* A violation is determined to be fraudulent if a material false statement, omission, or act in connection with the transaction was committed (or omitted) knowingly, *i.e.,* was done voluntarily and intentionally, as established by clear and convincing evidence.

(D) Discussion of Additional Terms

(1) *Duty Loss Violations.* A section 592 duty loss violation involves those cases where there has been a loss of duty attributable to an alleged violation.

(2) *Non-duty Loss Violations.* A section 592 non-duty loss violation involves cases where the record indicates that an alleged violation is principally attributable to evasion of a prohibition, restriction, or other non-duty related consideration involving the importation of the merchandise.

(3) *Actual Loss of Duties.* An actual loss of duty occurs where there is a loss of duty including any marking, anti-dumping, or countervailing duties, or any tax and fee (e.g., merchandise processing and/or harbor maintenance fees) attributable to a liquidated Customs entry, and the merchandise covered by the entry has been entered or introduced (or attempted to be entered or introduced) in violation of section 592.

(4) *Potential Loss of Duties.* A potential loss of duty occurs where an entry remains unliquidated and there is a loss of duty, including any marking, anti-dumping or countervailing duties or any tax and fee (e.g., merchandise processing and/or harbor maintenance fees) attributable to a violation of section 592, but the violation was discovered prior to liquidation. In addition, a potential loss of duty exists where Customs discovers the violation and corrects the entry to reflect liquidation at the proper classification and value. In other words, the potential loss in such cases equals the amount of duty, tax and fee that would have occurred had Customs not discovered the violation prior to liquidation and taken steps to correct the entry.

(5) *Total Loss of Duty.* The total loss of duty is the sum of any actual and potential loss of duty attributable to alleged violations of section 592 in a particular case. Payment of any actual and/or potential loss of duty shall not affect or reduce the total loss of duty used for assessing penalties as set forth in these guidelines. The ''multiples'' set forth below in paragraph (F)(2) involving assessment and disposition of cases shall utilize the ''total loss of duty'' amount in arriving at the appropriate assessment or disposition.

(6) *Reasonable Care.* General Standard: Importers of record or their agents are required to exercise reasonable care in fulfilling their responsibilities involving entry of merchandise. These responsibilities include, but are not limited to: providing a classification and value for the merchandise; furnishing information sufficient to permit Customs to determine the final classification and valuation of merchandise; and taking measures that will lead to and assure the preparation of accurate documentation. Customs will consider an importer's failure to follow a binding Customs ruling a lack of reasonable care. In addition, unreasonable classification will be considered a lack of reasonable care (e.g., imported snow skis are classified as water skis). Failure

to exercise reasonable care in connection with the importation of merchandise may result in imposition of a section 592 penalty for fraud, gross negligence or negligence.

(7) *Clerical Error.* A clerical error is an error in the preparation, assembly or submission of import documentation or information provided to Customs that results from a mistake in arithmetic or transcription that is not part of a pattern of negligence. The mere non-intentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligence. Nevertheless, as stated earlier, if Customs has drawn a party's attention to the non-intentional repetition by an electronic system of an initial clerical error, subsequent failure to correct the error could constitute a violation of section 592. Also, the unintentional repetition of a clerical mistake over a significant period of time or involving many entries could indicate a pattern of negligent conduct and a failure to exercise reasonable care.

(8) *Mistake of Fact.* A mistake of fact is a false statement or omission that is based on a bona fide erroneous belief as to the facts, so long as the belief itself did not result from negligence in ascertaining the accuracy of the facts.

(E) Penalty Assessment

(1) *Case Initiation—Pre-penalty Notice.*

(a) *Generally.* As provided in section 162.77, Customs Regulations (19 CFR 162.77), if the appropriate Customs field officer has reasonable cause to believe that a violation of section 592 has occurred and determines that further proceedings are warranted, the Customs field officer shall issue to each person concerned a notice of intent to issue a claim for a monetary penalty (i.e., the ''pre-penalty notice''). In issuing such a pre-penalty notice, the Customs field officer shall make a tentative determination of the degree of culpability and the amount of the proposed claim. Payment of any actual and/or potential loss of duty shall not affect or reduce the total loss of duty used for assessing penalties as set forth in these guidelines. The ''multiples'' set forth in paragraphs (F)(2)(a)(i), (b)(i) and (c)(i) involving assessment and disposition of duty loss violation cases shall use the ''total loss of duty'' amount in arriving at the appropriate assessment or disposition. Further, where separate duty loss and non-duty loss violations occur on the same entry, it is within the Customs field officer's discretion to assess both duty loss and non-duty loss penalties, or only one of them. Where only one of the penalties is assessed, the Customs field officer has the discretion to select which penalty (duty loss or non-duty loss) shall be assessed. Also, where there is only one violation accompanied by an incidental or nominal loss of duties, the Customs field officer may assess a non-duty loss penalty where the incidental or nominal duty loss resulted from a separate non-duty loss violation. The Customs field officer shall propose a level of culpability in the pre-penalty notice that conforms to the level of culpability suggested by the evidence at the time of issuance. Moreover, the pre-penalty notice shall include a statement that it is Customs practice to base its actions on the earliest point in time that the statute of limitations may be asserted (i.e., the date of occurrence of the alleged violation) inasmuch as the final resolution of a case in court may be less than a finding of fraud. A pre-penalty notice that is issued to a party in a case where Customs determines a claimed prior disclosure is not valid—owing to the disclosing party's knowledge of the commencement of a formal investigation of a disclosed violation—shall include a copy of a written document that evidences the commencement of a formal investigation. In addition, a pre-penalty notice is not required if a violation involves a non-commercial importation or if the proposed claim does not exceed $1,000.

(b) Pre-penalty Notice—Proposed Claim amount.

(i) *Fraud.* In general, if a violation is determined to be the result of fraud, the proposed claim ordinarily will be assessed in an amount equal to the domestic value of the merchandise. Exceptions to assessing the penalty at the domestic value may be warranted in unusual circumstances such as a case where the domestic value of the merchandise is disproportionately high in comparison to the loss of duty attributable to an alleged violation (e.g., a total loss of duty of $10,000 involving 10 entries with a total domestic value of $2,000,000). Also, it is incumbent upon the appropriate Customs field officer to consider whether mitigating factors are present warranting a reduction in the customary domestic value assessment. In all 592 cases of this nature regardless of the dollar amount of the proposed claim, the Customs field officer shall obtain the approval of the Penalties Branch at Headquarters prior to issuance of a pre-penalty notice at an amount less than domestic value.

(ii) *Gross Negligence and Negligence.* In determining the amount of the proposed claim in cases involving gross negligence and negligence, the appropriate Customs field officer shall take into account the gravity of the offense, the amount of loss of duty, the extent of wrongdoing, mitigating or aggravating factors, and other factors bearing upon the seriousness of a violation, but in no case shall the assessed penalty exceed the statutory ceilings prescribed in section 592. In cases involving gross negligence and negligence, penalties equivalent to the ceilings stated in paragraphs (F)(2)(b) and (c) regarding disposition of cases may be appropriate in cases involving serious violations, e.g., violations involving a high loss of duty or significant evasion of import prohibitions or restrictions. A ''serious'' violation need not result in a loss of duty. The violation may be serious because it affects the admissibility of merchandise or the enforcement of other laws, as in the case of quota evasions, false statements made to conceal the dumping of merchandise, or violations of exclusionary orders of the International Trade Commission.

(c) *Technical Violations.* Violations where the loss of duty is nonexistent or minimal and/or that have an insignificant impact on enforcement of the laws of the United States may justify a proposed penalty in a fixed amount not related to the value of merchandise, but an amount believed sufficient to have a deterrent effect: e.g., violations involving the subsequent sale of merchandise or vehicles entered for personal use; violations involving failure to comply with declaration or entry requirements that do not change the admissibility or entry status of merchandise or its appraised value or classification; violations involving the illegal diversion to domestic use of instruments of international traffic; and local point-to-point traffic violations. Generally, a penalty in a fixed amount ranging from $1,000 to $2,000 is appropriate in cases where there are no prior violations of the same kind. However, fixed sums ranging from $2,000 to $10,000 may be appropriate in the case of multiple or repeated violations. Fixed sum penalty amounts are not subject to further mitigation and may not exceed the maximum amounts stated in section 592 and in these guidelines.

(d) *Statute of Limitations Considerations—Waivers.* Prior to issuance of any section 592 pre-penalty notice, the appropriate Customs field officer shall calculate the statute of limitations attributable to an alleged violation. Inasmuch as 592 cases are reviewed de novo by the Court of International Trade, the statute of limitations calculation in cases alleging fraud should assume a level of

culpability of gross negligence or negligence, i.e., ordinarily applying a shorter period of time for statute of limitations purposes. In accordance with section 162.78 of the Customs Regulations, if less than 1 year remains before the statute of limitations may be raised as a defense, a shortened response time may be specified in the notice—but in no case, less than 7 business days from the date of mailing. In cases of shortened response times, the Customs field officer should notify alleged violators by telephone and use all reasonable means (e.g., facsimile transmission of a copy of the notice) to expedite receipt of the notice by the alleged violators. Also in such cases, the appropriate Customs field officer should advise the alleged violator that additional time to respond to the pre-penalty notice will be granted only if an acceptable waiver of the statute of limitations is submitted to Customs. With regard to waivers of the statute of limitations, it is Customs practice to request waivers concurrently both from all potential alleged violators and their sureties.

(2) *Closure of Case or Issuance of Penalty Notice.*

(a) *Case Closure.* The appropriate Customs field officer may find, after consideration of the record in the case, including any pre-penalty response/oral presentation, that issuance of a penalty notice is not warranted. In such cases, the Customs field officer shall provide written notification to the alleged violator who received the subject pre-penalty notice that the case is closed.

(b) *Issuance of Penalty Notice.* In the event that circumstances warrant issuance of a notice of penalty pursuant to section 162.79 of the Customs Regulations, the appropriate Customs field officer shall give consideration to all available evidence with respect to the existence of material false statements or omissions (including evidence presented by an alleged violator), the degree of culpability, the existence of a prior disclosure, the seriousness of the violation, and the existence of mitigating or aggravating factors. In cases involving fraud, the penalty notice shall be in the amount of the domestic value of the merchandise unless a lesser amount is warranted as described in paragraph (E)(1)(b)(i). In general, the degree of culpability or proposed penalty amount stated in a pre-penalty notice shall not be increased in the penalty notice. If, subsequent to the issuance of a pre-penalty notice and upon further review of the record, the appropriate Customs field officer determines that a higher degree of culpability exists, the original pre-penalty notice should be rescinded and a new pre-penalty notice issued that indicates the higher degree of culpability and increased proposed penalty amount. However, if less than 9 months remain before expiration of the statute of limitations, and a waiver of the statute of limitations has not been provided to Customs by the party named in the pre-penalty notice, the higher degree of culpability and higher penalty amount may be indicated in the notice of penalty without rescinding the earlier pre-penalty notice. In such cases, the Customs field officer shall consider whether a lower degree of culpability is appropriate or whether to change the information contained in the pre-penalty notice.

(c) *Statute of Limitations Considerations.* Prior to issuance of any section 592 penalty notice, the appropriate Customs field officer again shall calculate the statute of limitations attributable to the alleged violation and request a waiver(s) of the statute, if necessary. In accordance with section 171.12 of the Customs Regulations, if less than 180 days remain before the statute of limitations may be raised as a defense, a shortened response time may be specified in the notice—but in no case less than 7 business days from the date of mailing. In such cases, the Customs field officer should notify an alleged violator by telephone and use all reasonable means (e.g., facsimile transmission of a copy) to expedite receipt of the penalty notice by the alleged violator. Also, in such cases, the Customs field officer should advise an alleged violator that, if an acceptable waiver of the statute of limitations is provided, additional time to respond to the penalty notice may be granted.

(F) Administrative Penalty Disposition

(1) *Generally.* It is the policy of the Department of the Treasury and the Customs Service to grant mitigation in appropriate circumstances. In certain cases, based upon criteria to be developed by Customs, mitigation may take an alternative form, whereby a violator may eliminate or reduce his or her section 592 penalty liability by taking action(s) to correct problems that caused the violation. In any case, in determining the administrative section 592 penalty disposition, the appropriate Customs field officer shall consider the entire case record—taking into account the presence of any mitigating or aggravating factors. All such factors should be set forth in the written administrative section 592 penalty decision. An administrative disposition is considered ''mitigated'' if the remission amount in the Customs decision is less than the amount stated as a penalty in the penalty notice. Once again, Customs emphasizes that any penalty liability which is mitigated is conditioned upon payment of any actual loss of duty in addition to that penalty. Finally, section 592 penalty dispositions in duty-loss and non-duty-loss cases will proceed in the manner set forth below.

(2) *Dispositions.*

(a) *Fraudulent Violation.* Penalty dispositions for a fraudulent violation shall be calculated as follows:

(i) *Duty Loss Violation.* An amount ranging from a minimum of 5 times the total loss of duty to a maximum of 8 times the total loss of duty—but in any such case the amount may not exceed the domestic value of the merchandise. A penalty disposition greater than 8 times the total loss of duty may be imposed in a case involving an egregious violation, or a public health and safety violation, or due to the presence of aggravating factors, but again, the amount may not exceed the domestic value of the merchandise.

(ii) *Non-Duty Loss Violation.* An amount ranging from a minimum of 50 percent of the dutiable value to a maximum of 80 percent of the dutiable value of the merchandise. A penalty disposition greater than 80 percent of the dutiable value may be imposed in a case involving an egregious violation, or a public health and safety violation, or due to the presence of aggravating factors, but the amount may not exceed the domestic value of the merchandise.

(b) *Grossly Negligent Violation.* Penalty dispositions for a grossly negligent violation shall be calculated as follows:

(i) *Duty Loss Violation.* An amount ranging from a minimum of 2.5 times the total loss of duty to a maximum of 4 times the total loss of duty—but in any such case, the amount may not exceed the domestic value of the merchandise.

(ii) *Non-Duty Loss Violation.* An amount ranging from a minimum of 25 percent of the dutiable value to a maximum of 40 percent of the dutiable value of the merchandise—but in any such case, the amount may not exceed the domestic value of the merchandise.

(c) *Negligent Violation.* Penalty dispositions for a negligent violation shall be calculated as follows:

(i) *Duty Loss Violation.* An amount ranging from a minimum of 0.5 times the total loss of duty to a maximum of 2 times the total loss of duty, but, in any such case, the amount may not exceed the domestic value of the merchandise.

(ii) Non-Duty Loss Violation. An amount ranging from a minimum of 5 percent of the dutiable value to a

maximum of 20 percent of the dutiable value of the merchandise, but, in any such case, the amount may not exceed the domestic value of the merchandise.

(d) *Authority to Cancel Claim.* Upon issuance of a penalty notice, Customs has set forth its formal monetary penalty claim. Except as provided under 19 CFR 171.31, in those section 592 cases within the administrative jurisdiction of the concerned Customs field office, the appropriate Customs field officer shall cancel any such formal claim whenever it is determined that an essential element of the alleged violation is not established by the agency record, including pre-penalty and penalty responses provided by the alleged violator. Except as provided under 19 CFR 171.31, in those section 592 cases within Customs Headquarters jurisdiction, the appropriate Customs field officer shall cancel any such formal claim whenever it is determined that an essential element of the alleged violation is not established by the agency record, and such cancellation action precedes the date of the Customs field officer's receipt of the alleged violator's petition responding to the penalty notice. On and after the date of Customs receipt of the petition responding to the penalty notice, jurisdiction over the action rests with Customs Headquarters including the authority to cancel the claim.

(e) *Remission of Claim.* If the Customs field officer believes that a claim for monetary penalty should be remitted for a reason not set forth in these guidelines, the Customs field officer should first seek approval from the Chief, Penalties Branch, Customs Service Headquarters.

(f) *Prior Disclosure Dispositions.* It is the policy of the Department of the Treasury and the Customs Service to encourage the submission of valid prior disclosures that comport with the laws, regulations, and policies governing this provision of section 592. Customs will determine the validity of the prior disclosure including whether or not the prior disclosure sets forth all the required elements of a violation of section 592. A valid prior disclosure warrants the imposition of the reduced Customs civil penalties set forth below:

(1) *Fraudulent Violation.*

(a) *Duty Loss Violation.* The claim for monetary penalty shall be equal to 100 percent of the total loss of duty (i.e., actual + potential) resulting from the violation.

(b) *Non-Duty Loss Violation.* The claim for monetary penalty shall be equal to 10 percent of the dutiable value of the merchandise in question.

(2) *Gross Negligence and Negligence Violation.*

(a) *Duty Loss Violation.* The claim for monetary penalty shall be equal to the interest on the actual loss of duty computed from the date of liquidation to the date of the party's tender of the actual loss of duty resulting from the violation. Customs notes that there is no monetary penalty in these cases if the duty loss is potential in nature.

(b) *Non-Duty Loss Violation.* There is no monetary penalty in such cases and any claim for monetary penalty which had been issued prior to the decision granting prior disclosure shall be remitted in full.

(G) Mitigating Factors

The following factors shall be considered in mitigation of the proposed or assessed penalty claim or the amount of the administrative penalty decision, provided that the case record sufficiently establishes their existence. The list is not all-inclusive.

(1) *Contributory Customs Error.* This factor includes misleading or erroneous advice given by a Customs official *in writing* to the alleged violator only if it appears that the alleged violator reasonably relied upon the information and the alleged violator fully and accurately informed Customs of all relevant facts. The concept of comparative negligence may be utilized in determining the weight to be assigned to this factor. If it is determined that the Customs error was the sole cause of the violation, the proposed or assessed penalty claim shall be canceled. If the Customs error contributed to the violation, but the violator also is culpable, the Customs error shall be considered as a mitigating factor.

(2) *Cooperation with the Investigation.* To obtain the benefits of this factor, the violator must exhibit extraordinary cooperation beyond that expected from a person under investigation for a Customs violation. Some examples of the cooperation contemplated include assisting Customs officers to an unusual degree in auditing the books and records of the violator (e.g., incurring extraordinary expenses in providing computer runs solely for submission to Customs to assist the agency in cases involving an unusually large number of entries and/or complex issues). Another example consists of assisting Customs in obtaining additional information relating to the subject violation or other violations. Merely providing the books and records of the violator should not be considered cooperation justifying mitigation inasmuch as Customs has the right to examine an importer's books and records pursuant to 19 U.S.C. 1508–1509.

(3) *Immediate Remedial Action.* This factor includes the payment of the actual loss of duty prior to the issuance of a penalty notice and within 30 days after Customs notifies the alleged violator of the actual loss of duties attributable to the alleged violation. In appropriate cases, where the violator provides evidence that immediately after learning of the violation, substantial remedial action was taken to correct organizational or procedural defects, immediate remedial action may be granted as a mitigating factor. Customs encourages immediate remedial action to ensure against future incidents of non-compliance.

(4) *Prior Good Record.* Prior good record is a factor only if the alleged violator is able to demonstrate a consistent pattern of importations without violation of section 592, or any other statute prohibiting false or fraudulent importation practices. This factor will not be considered in alleged fraudulent violations of section 592.

(5) *Inability to Pay the Customs Penalty.* The party claiming the existence of this factor must present documentary evidence in support thereof, including copies of income tax returns for the previous 3 years, and an audited financial statement for the most recent fiscal quarter. In certain cases, Customs may waive the production of an audited financial statement or may request alternative or additional financial data in order to facilitate an analysis of a claim of inability to pay (e.g., examination of the financial records of a foreign entity related to the U.S. company claiming inability to pay).

(6) *Customs Knowledge.* Additional relief in non-fraud cases (which also are not the subject of a criminal investigation) will be granted if it is determined that Customs had actual knowledge of a violation and, without justification, failed to inform the violator so that it could have taken earlier corrective action. In such cases, if a penalty is to be assessed involving repeated violations of the same kind, the maximum penalty amount for violations occurring after the date on which actual knowledge was obtained by Customs will be limited to two times the loss of duty in duty-loss cases or twenty percent of the dutiable value in non-duty-loss cases if the continuing violations were the result of gross negligence, or the lesser of one time the loss of duty in duty-loss cases or ten percent of dutiable value in non-duty-loss cases if the violations were the result of negligence. This factor shall not be applicable when a substantial

delay in the investigation is attributable to the alleged violator.

(H) Aggravating Factors

Certain factors may be determined to be aggravating factors in calculating the amount of the proposed or assessed penalty claim or the amount of the administrative penalty decision. The presence of one or more aggravating factors may not be used to raise the level of culpability attributable to the alleged violations, but may be utilized to offset the presence of mitigating factors. The following factors shall be considered ''aggravating factors,'' provided that the case record sufficiently establishes their existence. The list is not exclusive.

(1) Obstructing an investigation or audit,

(2) Withholding evidence,

(3) Providing misleading information concerning the violation,

(4) Prior substantive violations of section 592 for which a final administrative finding of culpability has been made,

(5) Textile imports that have been the subject of illegal transshipment, whether or not the merchandise bears false country of origin markings,

(6) Evidence of a motive to evade a prohibition or restriction on the admissibility of the merchandise (e.g., evading a quota restriction),

(7) Failure to comply with a lawful demand for records or a Customs summons.

(I) Offers in Compromise (''Settlement Offers'')

Parties who wish to submit a civil offer in compromise pursuant to title 19, United States Code, section 1617 (also known as a ''settlement offer'') in connection with any section 592 claim or potential section 592 claim should follow the procedures outlined in section 161.5 of the Customs Regulations (19 CFR 161.5). Settlement offers do not involve ''mitigation'' of a claim or potential claim, but rather ''compromise'' an action or potential action where Customs evaluation of potential litigation risks, or the alleged violator's financial position, justifies such a disposition. In any case where a portion of the offered amount represents a tender of unpaid duties, the offeror may designate the amount attributable to such duties in the written offer; otherwise the Customs letter of acceptance will so designate any such duty amount. The offered amount should be deposited at the Customs field office responsible for handling the section 592 claim or potential section 592 claim. The offered amount will be held in a suspense account pending acceptance or rejection of the offer in compromise. In the event the offer is rejected, the concerned Customs field office shall promptly initiate a refund of the money deposited in the suspense account to the offeror.

(J) Section 592(d) Demands

Section 592(d) demands for actual losses of duty ordinarily are issued in connection with a penalty action, or as a separate demand without an associated penalty action. In either case, information must be present establishing a violation of section 592(a). In those cases where the appropriate Customs field officer determines that issuance of a penalty under section 592 is not warranted (notwithstanding the presence of information establishing a violation of section 592(a)), but that circumstances do warrant issuance of a demand for payment of an actual loss of duty pursuant to section 592(d), the Customs field officer shall follow the procedures set forth in section 162.79b of the Customs Regulations (19 CFR 162.79b). Except in cases where less than one year remains before the statute of limitations may be raised as a defense, information copies of all section 592(d) demands should be sent to all concerned sureties and the importer of record if such party is not an alleged violator. Also, except in cases where less than one year remains before the statute of limitations may be raised as a defense, Customs will endeavor to issue all section 592(d) demands to concerned sureties and non-violator importers of record only after default by principals.

(K) Customs Brokers

If a customs broker commits a section 592 violation and the violation involves fraud, or the broker committed a grossly negligent or negligent violation and shared in the benefits of the violation to an extent over and above customary brokerage fees, the customs broker shall be subject to these guidelines. However, if the customs broker commits either a grossly negligent or negligent violation of section 592 (without sharing in the benefits of the violation as described above), the concerned Customs field officer shall proceed against the customs broker pursuant to the remedies provided under 19 U.S.C. 1641.

(L) Arriving Travelers

(1) *Liability.* Except as set forth below, proposed and assessed penalties for violations by an arriving traveler must be determined in accordance with these guidelines.

(2) *Limitations on Liability on Non-commercial Violations.* In the absence of a referral for criminal prosecution, monetary penalties assessed in the case of an alleged first-offense, non-commercial, fraudulent violation by an arriving traveler will generally be limited as follows:

(a) *Fraud—Duty-loss Violation.* An amount ranging from a minimum of three times the loss of duty to a maximum of five times the loss of duty, provided the loss of duty is also paid;

(b) *Fraud—Non-duty Loss Violation.* An amount ranging from a minimum of 30 percent of the dutiable value of the merchandise to a maximum of 50 percent of its dutiable value;

(c) *Gross Negligence—Duty Loss Violation.* An amount ranging from a minimum of 1.5 times the loss of duty to a maximum of 2.5 times the loss of duty provided the loss of duty is also paid;

(d) *Gross Negligence—Non-duty Loss Violation.* An amount ranging from a minimum of 15 percent of the dutiable value of the merchandise to a maximum of 25 percent of its dutiable value;

(e) *Negligence—Duty Loss Violation.* An amount ranging from a minimum of .25 times the loss of duty to a maximum of 1.25 times the loss of duty provided that the loss of duty is also paid;

(f) *Negligence—Non-duty Loss Violation.* An amount ranging from a minimum of 2.5 percent of the dutiable value of the merchandise to a maximum of 12.5 percent of its dutiable value;

(g) *Special Assessments/Dispositions.* No penalty action shall be initiated against an arriving traveller if the violation is not fraudulent or commercial, the loss of duty is $100.00 or less, and there are no other concurrent or prior violations of section 592 or other statutes prohibiting false or fraudulent importation practices. However, all lawful duties shall be collected. Also, no penalty cases shall be initiated against an arriving traveler if the violation is not fraudulent or commercial, there are no other concurrent or prior violations of section 592, and a penalty is not believed necessary to deter future violations or to serve a law enforcement purpose.

(M) Violations of Laws Administered by Other Federal Agencies

Violations of laws administered by other federal agencies (such as the Food and Drug Administration, Consumer Product Safety Commission, Foreign Assets Control, Agriculture, Fish and Wildlife) should be referred to the appropriate agency for its recommendation. Such recommendation, if promptly tendered, will be given due consideration, and may be followed provided the

recommendation would not result in a disposition inconsistent with these guidelines.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: August 3, 1998.

Dennis M. O'Connell.

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–28786 Filed 10–27–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–104641–97]

RIN 1545–AV48

Equity Options Without Standard Terms; Special Rules and Definitions; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations that provide guidance on the application of the rule governing qualified covered calls.

DATES: The public hearing originally scheduled for Wednesday, November 4, 1998, beginning at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 1092 of the Internal Revenue Code. A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** on Thursday, June 25, 1998 (63 FR 34616), announced that the public hearing would be held on Wednesday, November 4, 1998, beginning at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

The public hearing scheduled for Wednesday, November 4, 1998, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 98–28789 Filed 10–27–98; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[OPPTS–62156C; FRL–6041–1]

RIN 2070–AC63

Lead, Identification of Dangerous Levels of Lead; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA will hold a meeting to provide an opportunity for the public to provide additional comment on a proposed rule to establish standards for lead-based paint hazards in most pre-1978 housing and child-occupied facilities. The rule is being issued under authority of section 403 of the Toxic Substances Control Act (TSCA). The proposed rule would also establish, under authority of TSCA section 402, residential lead dust cleanup levels and amendments to dust and soil sampling requirements and, under authority of TSCA section 404, amendments to State and Tribal program authorization requirements.

DATES: The public meeting will take place from 1 p.m. to 5 p.m., and from 6 p.m to 9 p.m. on November 16, 1998.

ADDRESSES: The meeting will be held at the Grand Hyatt San Francisco, 345 Stockton Street, San Francisco, CA 94108.

FOR FURTHER INFORMATION CONTACT: *To register for time to present public comments, please contact:* National Lead Information Clearinghouse (NLIC), 1025 Connecticut Ave., Washington DC 20036–5405, telephone: 800–424–LEAD (5323). *For technical and policy questions contact:* Jonathan Jacobson, National Program Chemical Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260–3779, e-mail: jacobson.jonathan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 3, 1998 (63 FR 30302)(FRL–5791–9), EPA issued a proposed rule under Title IV of TSCA. Section 403 of TSCA (15 U.S.C. 2683) directs EPA to promulgate regulations identifying lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil. Section 402 of TSCA (15 U.S.C. 2682) directs EPA to promulgate regulations governing lead-based paint activities. Section 404 of TSCA (15 U.S.C. 2684) requires that any State that seeks to administer and enforce the requirements established by the Agency under section 402 of TSCA may submit to the Administrator a request for authorization of such a program.

In response to growing interest in the proposed rule, EPA published in the **Federal Register** of July 2, 1998 (63 FR 39262)(FRL–6017–4), an extension of the original deadline for submission of comments from September 1, 1998 to October 1, 1998. The Agency has now decided that it would like to provide members of the public the opportunity to present oral comments to Agency officials. Accordingly, EPA published in the **Federal Register** of October 1, 1998, (63 FR 52662)(FRL–6037–7), notice of a further extension of the comment period to November 30, 1998, to allow for this meeting. The purpose of this meeting is to enhance the discussion of the issues by enabling interested parties to hear each other's perspectives.

II. Meeting Process

EPA will hear oral comments on a first-come, first-served basis. Individuals are requested to limit their presentations to 10 minutes in order to allow as many persons as possible a fair chance to participate. Individuals interested in presenting comments at the meeting should register in advance by contacting the National Lead Information Clearinghouse at 1–800–424–LEAD (5323). Individuals should indicate whether they wish to speak at the afternoon or evening session. EPA requests that members of the public register by November 9, 1998, although persons may register to speak at the meeting. Persons who register to speak at the meeting will be accommodated on a time available basis. All statements will be made a part of the public record and will be considered in the development of the final rule.

III. Public Record

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPPTS–62156C, which does not contain any information claimed as Confidential Business Information (CBI), and is available for inspection from 12 noon to 4 p.m., Monday through Friday exculding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

List of Subjects in 40 CFR Part 745

Environmental protection, Hazardous substances, Lead-based paint, Lead poisoning, Reporting and recordkeeping requirements.

Dated: October 21, 1998.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 98–28867 Filed 10–27–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–187, RM–9371]

Radio Broadcasting Services; Des Moines, IA and Bennington, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition jointly filed by Triathlon Broadcasting of Omaha Licensee, Inc., licensee of Station KTNP, Bennington, NE, and Saga Communications of Iowa, Inc., licensee of Station KIOA–FM, Des Moines, IA, requesting (1) the substitution of Channel 227C3 for Channel 227A at Bennington and the modification of Station KTNP's license to specify the higher class channel and (2) the substitution of Channel 227C1 for Channel 227C at Des Moines and the modification of Station KIOA–FM's license to specify the lower class channel. Channel 227C1 can be allotted to Des Moines in compliance with the Commission's minimum distance separation requirements and utilized at Station KIOA–FM's licensed site, at coordinates 41–37–54 North Latitude and 93–27–24 West Longitude. Channel 227C3 can be allotted to Bennington with a site restriction of 15.2 kilometers (9.4 miles) east at coordinates 41–20–43 North Latitude and 95–58–33 West Longitude, to accommodate petitioners' desired transmitter site.

DATES: Comments must be filed on or before December 7, 1998, and reply comments on or before December 22, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Martin R. Leader, Colette M. Capretz, Fisher Wayland Cooper Leader & Zaragoza L.L.P., 2001 Pennsylvania Avenue, NW, Suite 400, Washington, DC 20006–1851, (Counsel to Triathlon Broadcasting of Omaha Licensee, Inc.); Gary S. Smithwick, Smithwick & Belendiuk, P.C., 1990 M Street, NW, Suite 510, Washington, D.C. 20036 (Counsel to Saga Communications of Iowa, Inc.)

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–187, adopted October 7, 1998, and released October 16, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–28773 Filed 10–27–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–188, RM–9346]

Radio Broadcasting Services; Paonia, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Angel T. Babudro, seeking the allotment of FM Channel 293A to Paonia, Colorado, as that community's first local commercial FM transmission service. Coordinates used for this proposal are 38–52–06 and 107–35–36.

DATES: Comments must be filed on or before December 7, 1998, and reply comments on or before December 22, 1998.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Angel T. Babudro, 302 Grand Avenue, P.O. Box 132, Paonia, CO 81428.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–188, adopted October 7, 1998, and released October 16, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–28774 Filed 10–27–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[NEW DOT Docket No. 98–4633]

RIN 2127–AH18

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration, (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Motor Vehicle Safety Standard (FMVSS) on lamps, reflective devices, and associated equipment includes a provision regulating headlamp concealment devices. In this document, NHTSA proposes to amend that FMVSS so that manufacturers of motor vehicles with headlamp concealment devices may choose between complying with that existing provision, or with a new provision incorporating by reference the United Nations Economic Commission for Europe's standard (ECE standard) on headlamp concealment devices. The agency tentatively concludes that the ECE standard is at least functionally equivalent (i.e., yields at least as much safety benefit or requires at least as much safety performance) to NHTSA's existing provision on headlamp concealment devices.

DATES: Comments must be received on or before December 28, 1998.

ADDRESSES: All comments should refer to the docket number and notice number in the heading of this notice and be submitted, preferably in ten copies, to: DOT Docket Management Facility, U.S. Department of Transportation, Room PL–01, 400 Seventh Street, SW, Washington, DC 20590–0001. The DOT docket is open to the public from 10 am to 5 pm, Mondays through Fridays.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

For technical issues: Mr. Patrick Boyd, Office of Crash Avoidance. Mr. Boyd's telephone number is: (202) 366–6346, and his FAX number is (202) 493–2739.

For legal issues: Ms. Dorothy Nakama, Office of the Chief Counsel. Ms. Nakama's telephone number is (202) 366–2992, and her FAX number is (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Background

The United States is a party to several international agreements, including the General Agreement on Tariffs and Trade. That agreement was most recently amended by the Uruguay Round Agreements. One of those agreements is the Agreement on Technical Barriers to Trade (TBT). The TBT Agreement seeks to avoid creating unnecessary obstacles to trade, while recognizing the right of signatory countries to establish and maintain technical regulations for the protection of human, animal and plant life and health and the environment.

Among other things, the TBT Agreement also provides that a party to the Agreement will consider accepting as equivalent the technical regulations of other party nations, provided they adequately fulfill the objectives of the party's existing domestic standards. On May 13, 1998, the National Highway Traffic Safety Administration (NHTSA) amended 49 CFR Part 553, *Rulemaking Procedures,* by adding a new Appendix B setting forth a statement of policy about the process that the agency will use to make potential findings of ''functional equivalence'' between Federal Motor Vehicle Safety Standards (FMVSSs) and the corresponding vehicle safety standards of other countries (63 FR 26508).

In a submission dated August 13, 1997, the American Automobile Manufacturers Association (AAMA) and the Association of International Automobile Manufacturers, Inc. (AIAM), petitioned the agency to amend several FMVSSs to permit vehicle manufacturers to choose to comply with either the existing requirements of those FMVSSs or the counterpart requirements of vehicle safety standards recognized in most European countries. These European standards take the form of European Union directives and are usually taken from a body of standards developed by the United Nations Economic Commission for Europe (UN/ECE). Of the several AAMA/AIAM petitions on functional equivalence, NHTSA believes the petition addressing headlamp concealment devices presents the easiest issues to resolve.

The first test used by NHTSA under Appendix B to determine functional equivalence is whether the requirements, test conditions, and test procedures appear to be the same or similar, with any differences being minor and lacking in safety consequences. NHTSA tentatively concludes that the European requirements for headlamp concealment devices pass this test. The fundamental performance requirements of the U.S. and European standards are the same. Further, assuming that the option of complying with the ECE requirements would be restricted, as proposed below, to manufacturers of vehicles equipped with headlamps that do not require the use of external aimers, the differences between the standards are minor and inconsequential to safety. These issues are further discussed below.

Fundamental Performance Requirements

FMVSS No. 108, *Lamps, reflective devices, and associated equipment,* at S12., Headlamp Concealment Devices, requires that, in normal operation, there be a single switch whose operation causes both the headlamps to illuminate and the headlamp concealment device to fully open in not more than 3 seconds, at any temperature within a range of −30 to +50 degrees Celsius. In ECE R.48.01, Paragraphs 5.14.3 and 5.14.5 set forth the same requirements.

Standard No. 108 also requires certain failsafe performance of headlamp concealment devices. In the event of a loss of power to a headlamp concealment device, an illuminated headlamp must stay in the fully open position. Also, in the event of a malfunction of a component that controls or conducts power for the actuation of the concealment device, it must be possible to open the concealment device without the use of tools and have it stay fully open until intentionally closed. Paragraph 5.14.2 of ECE R.48.01 requires the same failsafe performance.

Inconsequential Differences

Standard No. 108 also requires that a headlamp concealment device be installed so that the headlamp may be mounted, aimed and adjusted without removing any component of the device, other than components of the headlamp assembly. This requirement addresses a potential aiming problem that could affect safety. The external aimers, which are used for some kinds of U.S. headlamps and which attach to the headlamp lens, could potentially interfere with a component of the headlamp concealment device. If so, removal of the component could affect the accuracy of the aim. Alternatively, efforts to avoid the removal of components could result in improper shortcuts in aiming.

The ECE standard has no comparable aiming provision because vehicles in Europe do not use external aimers that could introduce an interference problem. Headlamps with the European beam pattern have always been visually

aimable on a screen because of sharp gradients which identify the beam position.

The ECE standard also has several provisions that do not have any parallel in S12. of Standard No. 108. The ECE standard prohibits the possibility of the driver being able to stop the movement of lighted headlamps before they reach the in-use position. It prohibits also the actuation of the headlamps until they reach the in-use position if there are intermediate positions in which illumination would result in glare to other drivers.

NHTSA also notes that the ECE standard does not have a phrase analogous to Standard No. 108's S12.3 and S12.5 ''except for malfunctions covered by S12.2,'' that make it clear S12.3 and S12.5 apply only to functioning systems. NHTSA would interpret the ECE standard alternative by limiting it to functioning systems only, and would not require systems with a failure mode to comply with performance requirements in addition to the failsafe performance requirements.

Finally, NHTSA notes a typographical error in Paragraph 5.14.5 of the ECE standard, that states: ''Then the concealment device has a temperature of −30 degrees Celsius to +50 degrees Celsius the headlamps must be capable of reaching the position of use within three seconds of initial operation of the control.'' Clearly, ''then'' should be ''when.'' NHTSA would interpret Paragraph 5.14.5 as beginning with ''When.''

NHTSA's Proposal

NHTSA tentatively concludes that paragraph 5.14 of ECE R.48.01 meets the Appendix B test set forth above and accordingly proposes to amend Standard No. 108 to permit manufacturers of motor vehicles with headlamp concealment devices to choose between complying with S12 of that standard, or with a new provision incorporating by reference paragraph 5.14 of ECE standard R. 48.01. This proposal to permit compliance with the ECE standard is limited to vehicles using either a new U.S. alternative beam pattern which allows European-style visual/optical aim or a headlamp with a built-in aimer (VHAD) that eliminates the need for external aimers. Therefore, there is no safety consequence to the lack of a provision in paragraph 5.14 addressing the interference problem that may be associated with the use of external aimers.

Vehicle Manufacturer's Certification

NHTSA notes that, when a safety standard provides manufacturers more than one compliance option, the agency needs to know which option has been selected in order to conduct a compliance test. Moreover, based on previous experience with enforcing standards that include compliance options, the agency is aware that a manufacturer confronted with an apparent noncompliance for the option it has selected (based on a compliance test) may respond by arguing that its vehicles comply with a different option for which the agency has not conducted a compliance test. This response creates obvious difficulties for the agency in managing its available resources for carrying out its enforcement responsibilities, e.g., the possible need to conduct multiple compliance tests for first one compliance option, then another, to determine whether there is a noncompliance.

Accordingly, under this proposed rule, prior to or at the time a manufacturer certifies that a vehicle with headlamp concealment devices meets all applicable FMVSSs (pursuant to 49 CFR Part 567, *Certification*), the manufacturer must decide whether it certifies that vehicle as meeting S12.1 through S12.5 or the ECE standard (that would be established in S12.6). The selected alternative need not be stated on the certification label. However, the manufacturer must advise the agency of its selection when asked by the agency to do so. The manufacturer's decision would be irrevocable.

NHTSA's Choice of European Standard to Reference

Most of the harmonized standards among the countries of the European Union (EU) were developed as ECE regulations and later adopted as EU directives. Consequently, the same standards are known under both ECE regulation numbers and EU directive numbers. The petitioner asked that both the ECE and EU numbers for the identical technical requirements be cited as alternatives to the requirements of Standard No. 108. However, NHTSA is proposing that only one reference to the European standard be cited to avoid confusion and to reduce the potential need for amendments to updated versions of European standards. We intend to cite the ECE regulation when possible because the ECE is a body in which the U.S. participates, and also its regulations may be adopted by countries outside of the European Union as well. The agency understands that it will not always be possible to cite an ECE standard because some EU directives with potential as functionally equivalent alternatives to Federal motor vehicle safety standards have no ECE counterpart.

Leadtime

NHTSA proposes that, if made final, the changes proposed in this NPRM take effect 60 days after the publication of the final rule, with manufacturers given the option to comply with (and certify to) the ECE standard for headlamp concealment devices, immediately.

Regulatory Impacts

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E. O. 12866, ''Regulatory Planning and Review.'' This action has been determined to be not ''significant'' under DOT's regulatory policies and procedures. If made final, this rule would have no substantive effect on manufacturers of motor vehicles that have headlamp concealment devices. The ECE standard on headlamp concealment devices proposed for inclusion in the Federal motor vehicle safety standards does not differ substantively from existing requirements. Vehicle manufacturers would not incur additional costs as a result of meeting any new requirements. The impacts of this action would be so minor that a full regulatory evaluation for this proposed rule has not been prepared.

B. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. The following is NHTSA's statement providing the factual basis for the certification. (5 U.S.C. § 605(b)).

The proposed rule would affect passenger car, light truck, and multipurpose passenger vehicle manufacturers that have headlamp concealment devices on the vehicles they manufacture. The Small Business Administration's size standards (13 CFR Part 121) are organized according to Standard Industrial Classification Codes (SIC). SIC Code 3711 ''Motor Vehicles and Passenger Car Bodies'' has a small business size standard of 1,000 employees or fewer.

The proposed rule would apply to the previously described vehicle manufacturers, regardless of their

volume of production. There would be no significant economic impact on any vehicle manufacturer because no manufacturer would be required to provide headlamp concealment devices. There would be no economic impact on manufacturers that already provide the devices because the devices meet the existing headlamp concealment device requirements in the FMVSSs, and NHTSA tentatively concludes that the ECE standard does not differ substantively from the FMVSSs. If made final, the rule would permit vehicle manufacturers a choice between certifying that the vehicle with a headlamp concealment device meets the old FMVSS or the incorporated ECE standard. NHTSA does not believe there would be a cost advantage to certifying to one standard over another.

C. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this proposed rule and determined that, if adopted as a final rule, it would not have a significant impact on the quality of the human environment.

D. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

E. Civil Justice Reform

This proposed rule would not have a retroactive effect. Under 49 U.S.C. Section 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. A procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards is set forth in 49 U.S.C. Section 30106. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this proposed rule would not have a $100 million effect, no Unfunded Mandates assessment has been prepared.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested, but not required, that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of a complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal 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. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, it is proposed that the Federal Motor Vehicle Safety Standards (49 CFR Part 571), be amended as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.108 would be amended by adding S12.6 and S12.7 to read as follows:

§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

S12.6 As an alternative to complying with the requirements of S12.1 through S12.5, a vehicle with headlamps incorporating VHAD or visual/optical aiming in accordance with paragraph S7 may meet the requirements for *Concealable lamps* in paragraph S5.14 of the following version of the Economic Commission for Europe Regulation 48: E/ECE/324—E/ECE/TRAN/505, Rev.1/Add.47/Rev.1, 22 March 1994, in the English language version.

S12.7 Manufacturers of vehicles with headlamps incorporating VHAD or visual/optical aiming shall elect to certify to S12.1 through S12.5 or to S12.6 prior to, or at the time of certification of the vehicle, pursuant to 49 CFR part 567. The selection is irrevocable.

Issued on: October 23, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–28817 Filed 10–27–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List the Junaluska Salamander as Endangered With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: The Fish and Wildlife Service (Service) announces a 90-day finding for a petition to list the Junaluska salamander (*Eurycea junaluska*) under the Endangered Species Act of 1973, as amended (Act). The Service finds that the petition presents substantial information indicating that listing this species may be warranted. A status review is initiated.

DATES: The finding announced in this document was made on October 8, 1998. To be considered in the 12-month finding for this petition, information and comments should be submitted to the Service by December 28, 1998.

ADDRESSES: Data, information, comments, or questions concerning this petition should be sent to the State Supervisor, U.S. Fish and Wildlife Service, Asheville Field Office, 160 Zillicoa Street, Asheville, North Carolina 28801. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. J. Allen Ratzlaff (see ''**ADDRESSES**'' section), telephone 828/258–3939, Ext. 229; facsimile 828/258–5330.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding as to whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to the Service at the time the finding is made. To the maximum extent practicable, the finding shall be made within 90 days following receipt of the petition and promptly published in the **Federal Register**. Following a positive finding, section 4(b)(3)(B) of the Act requires the Service to promptly commence a status review of the species.

The processing of this petition conforms with the Service's final listing priority guidance for fiscal years 1998 and 1999, published in the **Federal Register** on May 8, 1998 (63 FR 25502). The guidance calls for giving highest priority to handling emergency situations (Tier 1); second highest priority to resolving the listing status of outstanding proposed listings, resolving the conservation status of candidate species, processing administrative findings on petitions, and processing a limited number of delistings and reclassifications (Tier 2); and third priority to processing proposed and final designations of critical habitat (Tier 3). The processing of this petition falls under Tier 2.

The Service has made a 90-day finding on a petition to list the Junaluska salamander (*Eurycea junaluska*). The petition, dated March 30, 1998, was submitted by Mr. Ray Vaughan on behalf of Appalachian Voices and the Biodiversity Legal Foundation and was received by the Service on March 31, 1998. It requests the Service to list the Junaluska salamander as endangered and designate critical habitat under 16 U.S.C. § 1533(a)(3)(A) of the Endangered Species Act. The petition identifies timber harvesting, nonnative trout, exposure to acid-bearing rock, siltation, genetic drift, the inadequacy of current laws, and naturally occurring events as immediate threats to the species' continued existence.

The petitioners submitted claims that the Junaluska salamander is imperiled because, ''despite decades of searching, only six or seven populations have been found'' and ''even within those populations, adult individuals are extremely rare.'' Further elaborating on this point, the petitioners quote one source as stating, ''Trends of existing populations are not known; however, the rarity of existing populations suggests that most populations have suffered long-term declines.'' Some of the demographic problems associated with small population size are also cited as threats. The petitioners also identify ''stocked trout, timber harvesting, 'exposure to acid-bearing Anakeesta rock formations during road construction,' and other disturbances that dump silt into their stream habitat'' as threats to the species. The petitioners also claim that existing laws are inadequate to protect the species, specifically the U.S. Forest Service's (USFS) National Forest Management Act.

The Service concurs with the petitioners that this is a rare species, currently known from only six populations. However, rarity in itself is not a listing criterion (see section 4 of the Act). The petitioners assert that the rarity of adults is indicative of low recruitment into the population, citing one researcher as collecting only 50 adults in 10 years of field work. This may be true, but others have collected as many as 18 adults in a single night (W. Gutzke, University of Memphis, personal communication, 1998). The rarity of collected adults is possibly more a function of sampling.

One of the main reasons the petitioners cite for the need to list the Junaluska salamander is ''clearcuts and sediment from timber sales and road building operations of the U.S. Forest Service'' (specifically, a salvage sale in the Snowbird Creek drainage in Graham County, North Carolina). The circumstances regarding the proposed USFS salvage operation on Snowbird Creek have changed since the petition was written, and the mitigation efforts implemented to minimize impacts to the species, specifically sedimentation, may now nullify this sale as an example of the potential threats to the species and its habitat.

The Service recognizes the potential threat from the exposure of acid-bearing rock in watersheds that harbor the Junaluska salamander. Construction of the Cherohala Skyway from Robbinsville, North Carolina, to Tellico Plains, Tennessee, resulted in exposure of acid-bearing rock (Anakeesta) in the Santeetlah Creek drainage as well as portions of the Tellico River system in Tennessee. Acid-producing materials (usually rock containing pyritic sulfur in excess of 0.5 percent, with little or no alkaline materials) produce acidic leachate upon weathering. The acidic leachate may result in downstream pH values of ≤4.5. Excavation for road construction facilitates weathering by exposing additional rock surface area. The Federal Highway Administration (FHWA) has published guidelines for handling situations with acid-producing materials (FHWA 1989). However, it is not clear what effect some of the mitigation measures for handling acidic rock may ultimately have on aquatic life.

The Service agrees that the other threats listed by the petitioners (genetic drift, nonnative trout, and naturally occurring events [at least for individual populations]), along with several other factors (including nonpoint source pollution from other than USFS activities and competition with other salamander species) could potentially threaten this species.

The Service has reviewed the petition, its accompanying literature, and other literature and information in the Service's files. On the basis of the best scientific and commercial information available, the Service finds that the petition presents substantial information indicating that listing the Junaluska salamander may be warranted. The Service believes the petitioners have presented adequate information about the status, distribution, and abundance of the

Junaluska salamander and that they have addressed most of the potential threats to the species in North Carolina. However, the Service is in need of additional information to adequately assess the status of the species in Tennessee, to locate additional populations, and to identify those factors that may affect its persistence. Prior to receiving the subject petition, the Service had some knowledge of the status of the Junaluska salamander, principally in North Carolina. Consequently, the Service had initiated a status survey for the Tennessee portion of the species' range. In addition, the USFS is working with the Service and several other agencies and organizations to begin a multi-agency conservation agreement to minimize or eliminate the threats to the species in North Carolina.

The petitioners also requested that critical habitat be designated for the Junaluska salamander. If after completion of the status review the Service determines that the petition to list the Junaluska salamander as endangered is warranted, the issue of designating critical habitat would be addressed in the subsequent proposed rule.

References Cited

Bruce, R. C. 1982. Egg laying, larval periods, and metamorphosis of *Eurycea bislineata* and *E. junaluska* at Santeetlah Creek, North Carolina. Copeia 1982(4):755–762.

Bruce, R. C., and T. J. Ryan. 1995. Distribution and population status of the salamander, *Eurycea junaluska*. U.S. Forest Service Challenge Cost Share Report. No. 11–287. 84 pp.

Federal Highway Administration. 1989. Guidelines for handling excavated acid-producing materials. FHWA/DF/89001, March 1989.

Mittleman, M. B. 1949. American Caudata VI: the races of *Eurycea bislineata*. Proc. Biol. Soc. Wash. 62:89–96.

Ryan, T. J. 1998. Larval life history and abundance of a rare salamander, *Eurycea junaluska*. J. of Herpetology 32(1):10–17.

Sever, D. M. 1979. Male secondary sexual characters of the *Eurycea bislineata* (Amphibia, Urodela, Plethodontidae) complex in the Southern Appalachian Mountains. J. Herpetology 13:245–253.

_____. 1983. Observations on the distribution and reproduction of the salamander *Eurycea junaluska* in Tennessee. J. Tenn. Acad. Sci. 58:48–50.

Sever, D. M., H. A. Dundee, and C. D. Sullivan. 1976. A new *Eurycea* (Amphibia: Plethodontidae) from southwestern North Carolina. Herpetologica 32:26–29.

Author: The primary author of this document is Mr. J. Allen Ratzlaff (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: October 8, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–28882 Filed 10–27–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF29

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Armored Snail and Slender Campeloma

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list the armored snail (*Pyrgulopsis* (=*Marstonia*) *pachyta*) and slender campeloma (*Campeloma decampi*) as endangered species under the Endangered Species Act of 1973, as amended (Act). The armored snail is known only from Piney and Limestone creeks, Limestone County, Alabama, and the range of the slender campeloma has been reduced (Aquatic Resources Center (ARC) 1997) by at least three-quarters from its historical distribution and is now found only in Round Island, Piney, and Limestone creeks, Limestone County, Alabama. These species are in a particularly precarious position, being restricted to a few isolated sites along two or three short river reaches. Siltation and other pollutants from poor land-use practices, and waste discharges, are contributing to the general deterioration of water quality, likely impacting these species.

DATES: Comments from all interested parties must be received by December 28, 1998. Public hearing requests must be received by December 14, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the State Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. J. Allen Ratzlaff, at the above address (telephone 828/258–3939, Ext. 229; facsimile 828/258–5330).

SUPPLEMENTARY INFORMATION:

Background

The armored snail (*Marstonia pachyta*) was described by Thompson in 1977 and was later reassigned to the genus *Pyrgulopsis* by Hershler and Thompson (1987). The armored snail is a small, presumably annual, species (usually less than 4 millimeters (mm) (0.16 inch (in)) in length) (Thompson 1984). It is distinguished from other closely related species by the characteristics of both its verge (male reproductive organ) and shell. The armored snail has a small raised gland on the ventral surface of the verge (a trait common only with the beaverpond snail (*P. castor*) of this genus) and two small glands along the left margin of the apical (tip) lobe. The apical lobe is smaller than in most species of *Pyrgulopsis* (Thompson 1977). Garner (1993) noted some variation in verge characteristics (more developed apical lobes) but attributed the differences to temporal changes in verge morphology throughout the annual life cycle. The shell is easily identified by its ovate-conical shape, its pronounced thickness, and its complete peristome (edge of the opening). Other *Pyrgulopsis* species with ovate-conical shells have much thinner, almost transparent, shells, and the peristome is seldom complete across the parietal margin (area along the opening abutting the main body of the shell) of the aperture (opening) (Thompson 1977).

The armored snail occurs only in Piney and Limestone creeks, Limestone County, Alabama (Garner 1993, Hershler 1994, ARC 1997), and has never been noted outside this area. Piney Creek was a tributary to Limestone Creek prior to the construction of Wheeler Lake on the Tennessee River. Thus, the two populations of the armored snail are likely remnants of a once larger population. Armored snails are generally found among submerged tree roots and bryophytes (nonflowering plants comprising mosses and liverworts) along stream margins in areas of slow to moderate flow. Occasionally they are found in the submerged detritus (organic matter and rock fragments) along pool edges.

The armored snail is in a particularly precarious position, being restricted to a few isolated sites along two short river reaches. Inhabited sites appear to be rather small, covering only a few square meters.

The slender campeloma belongs to the ovoviviparous family Viviparidae. All species in this family give birth to

young crawling snails rather than laying eggs that hatch in an external environment. The sexes are separate in the Viviparidae, with males being distinguishable by their modified right tentacle that serves as a copulatory organ. This modified tentacle in males is shorter and thicker than the left tentacle or either of the bilaterally symmetrical tentacles of the females (Burch and Vail 1982).

Burch and Vail (1982) describe *Campeloma decampi* (''Currier'' Binney 1865) as follows: Shell medium to large but generally less than 35 mm (1.40 in) in length; shell without spiral nodules; outer margin of shell aperture not concave and its oblique angle to the shell axis not exaggerated; columellar margin of operculum (plate that closes the shell when the snail is retracted) not reflected inward; operculum entirely concentric, including its nucleus; whorls without spiral angles, ridges, or sulci (grooves); shells without spiral color bands; length of aperture noticeably greater than width; lateral and marginal teeth simple with very fine, difficult-to-distinguish cusps (points); shell narrow, relatively thin, generally with prominent raised spiral lines.

The slender campeloma can be easily distinguished from the sympatric (two or more closely related species occupying identical or overlapping territories) *Campeloma decisum* (a widespread and common species in northern Alabama) by the presence of fine sculpture in the form of faint striations and a relatively higher spire on the shell of *C. decampi*. Many *C. decampi* specimens have strongly developed ridges, referred to as axial growth ridges by Clench and Turner (1955). All whorls in juveniles and early whorls in adults are carinate (keel-shaped). The shell of *C. decisum* is smooth, without carination.

Campeloma decampi is typically found burrowing in soft sediment (sand and/or mud) or detritus. At no site does it appear abundant, and the spotty distribution appears consistent with other *Campeloma* species (Bovbjerg 1952, Medcof 1940, van der Schalie 1965). Several size classes were found in 1996, ranging from 5 mm to 31 mm in shell height, indicating reproducing populations (ARC 1997). The life history of *C. decampi* has not been studied. Based on other studies of species in the genus *Campeloma*, a genus exclusive to North America, a few generalities can be inferred. Van Cleave and Altringer (1937), in their study of *C. rufum* in Illinois, found gravid (pregnant) females year-round, peaking in May, with the most barren females found in June. Parturition (birth) was also most active in May but extended until September first. Chamberlain (1958) found similar results with *C. decisum* in North Carolina (parturition extending from mid-March until the end of June) as did Medcof (1940) in his study of *C. decisum* in Ontario (parturition extending from March to September). Van Cleave and Altringer (1937) and van der Schalie (1965), in their work with *C. ponderosum coarctatum*, both found females carrying young in their uterus over winter. Given the wide range of sizes found by ARC (1997), the timing of parturition and the ability of females to over-winter young in their uterus is likely similar for *C. decampi*. However, it should be noted that *C. rufum* and *C. decisum* are parthenogenic (production of young by females without fertilization by males), as several of the northern *Campeloma* species appear to be. The food habits of the slender campeloma are not known, but they likely feed on detritus.

The range given for *Campeloma decampi* in Burch (1989) is Jackson, Limestone, and Madison counties, Alabama. These counties all lie along the north side of the Tennessee River. However, the type locality (location where the specimen was collected and described) of *C. decampi* is Decatur, Alabama, in Morgan County, across the river from Limestone County (Clench 1962).

Clench and Turner (1955) identified museum specimens of *C. decampi* from several localities in northern Alabama. These sites were located primarily on stream impoundments and included Swan and Bass Lakes, Limestone County; Brim (=Braham) and Byrd Lakes, Madison County; and an unspecified locality in Jackson County. Surveys conducted in 1996 (ARC 1997) found no Swan Lake in North Alabama. A lake by that name was apparently located in Limestone County, across the river from Decatur, but was inundated by Wheeler Reservoir. This was likely the ''Decatur'' locality (type) mentioned in Clench (1962). Brim (=Braham) Lake was surveyed, but no *C. decampi* were found, though another viviparid (*Viviparus georgianus*) was abundant at the site. Byrd Spring, on Redstone Arsenal, was not accessible.

Based on the 1996 surveys (ARC 1997), the range of *Campeloma decampi* has been reduced by at least three-quarters from its historical distribution, and existing populations are now isolated by Wheeler Reservoir. The species is now in a particularly precarious position, being restricted to a few isolated sites along three short stream reaches—Limestone, Piney, and Round Island creeks.

Previous Federal Action

The armored snail was identified as a category 2 species in notices of review published in the **Federal Register** on January 6, 1989 (54 FR 554), November 21, 1991 (56 FR 58804), and November 15, 1994 (59 FR 58982). The slender campeloma was identified as a category 2 species in the notice of review published in the **Federal Register** on November 15, 1994 (59 FR 58982). At that time, a category 2 species was one that was being considered for possible addition to the Federal List of Endangered and Threatened Wildlife but for which conclusive data on biological vulnerability and threats were not available to support a proposed rule. Designation of category 2 status was discontinued in the February 28, 1996, notice of review (61 FR 7956). The two snails in this proposed rule were approved as candidate species on August 29, 1997, after publication of the 1996 notice of review. A candidate species is defined as a species for which the Service has on file sufficient information on biological vulnerability and threats to support issuance of a proposed rule.

On October 20, 1993, the Service notified (by mail, 34 letters) potentially affected Federal and State agencies and local governments, and interested individuals within the species' present range that a status review of the armored snail was being conducted. No objections to the potential listing of the armored snail were received. No notification was made concerning the slender campeloma because the ranges are so similar.

The processing of this proposed rule conforms with the Service's final listing priority guidance for fiscal years 1998 and 1999 published in the **Federal Register** on May 8, 1998 (63 FR 25502). The guidance calls for giving highest priority to handling emergency situations (Tier 1); second highest priority (Tier 2) to resolving the listing status of outstanding proposed listings, resolving the conservation status of candidate species, processing administrative findings on petitions, and processing a limited number of delistings and reclassifications; and third priority (Tier 3) to processing proposed and final designations of critical habitat. The processing of this proposed rule falls under tier 2.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to

implement the listing provisions of the Act set forth the procedures for adding species to the Federal list. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the armored snail (*Pyrgulopsis* (=*Marstonia*) *pachyta*) and slender campeloma (*Campeloma decampi*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The armored snail is known only from Limestone and Piney creeks, Limestone County, Alabama, and has never been noted outside this area. The slender campeloma is currently known from Round Island, Piney, and Limestone creeks, Limestone County, Alabama (a range reduction of about three-quarters from its historical distribution). Their extremely limited distribution, limited occupied habitat, and annual life cycle (in the case of the armored snail) make these species extremely vulnerable to extirpation. The annual life cycle of the armored snail increases its vulnerability to extirpation, because an event resulting in the extirpation or disruption of any portion of the life cycle could result in the loss of this snail. Threats to these species include siltation, direct loss of habitat, altered water chemistry, and chemical pollution.

Piney Creek was a tributary to Limestone Creek prior to the construction of Wheeler Lake on the Tennessee River. Thus, populations of both the armored snail and slender campeloma inhabiting these two creeks are likely remnants of once larger populations. In addition to directly altering snail habitat, dams and their impounded waters form barriers to the movement of snails. Sediment accumulation and changes in flow and water chemistry in impounded stream and river reaches reduce food and oxygen availability and eliminate essential breeding habitat for riverine snails. It is suspected that isolated colonies gradually disappear as a result of local water and habitat quality changes. Unable to emigrate (move to another area), isolated snail populations are vulnerable to local discharges in surface run-off within their watersheds. Although many watershed impacts have been temporary, eventually improving or even disappearing with the advent of new technology, practices, or laws, dams and their impoundments prevent natural recolonization by surviving snail populations.

Sedimentation of rivers and streams may affect the reproductive success of aquatic snails by eliminating breeding habitat and interfering with their feeding activity by reducing or eliminating periphyton (plankton which live attached to rooted aquatic plants) food sources. Sources of sediments likely affecting these species include channel modification, agriculture, cattle grazing, run-off from unpaved roads, and industrial and residential development.

Other types of water quality degradation from both point and nonpoint sources currently affect these species. Stream discharges from these sources may result in eutrophication, decreased dissolved oxygen concentration, increased acidity and conductivity, and other changes in water chemistry. Nutrients, usually phosphorus and nitrogen, may emanate from agricultural fields, residential lawns, livestock operations, and leaking septic tanks in levels that result in eutrophication and reduced oxygen levels in small streams. The Round Island, Limestone, and Piney Creek drainages are dominated by agricultural use, primarily cotton (a high pesticide use crop), which makes these creeks susceptible to pesticide contamination. Pesticide containers were found in Limestone and Piney creeks during site visits in 1997 (J. Allen Ratzlaff, personal observation). Timber harvesting for wood chip mills proposed for northeastern Alabama and southwestern Tennessee could also contribute to a deterioration of water quality.

Many bridge crossings occur within these species' range. Highway and bridge construction and widening could impact these species through sedimentation or the physical destruction of its habitat unless appropriate precautions are implemented.

Limestone Creek currently supports one endangered snail species, *Athearnia anthonyi* (Anthony's riversnail), and most of its mussel fauna has been extirpated (17 species), including five species currently listed as endangered. The specific reasons for the loss of these species are not known but are likely a combination of the above-listed impacts.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The two snail species addressed in this proposed rule are currently not of commercial value, and overutilization has not been a problem. However, as their rarity becomes known, they may become more attractive to collectors. Although scientific collecting is not presently identified as a threat, unregulated collecting by private and institutional collectors could pose a threat to these locally restricted populations.

C. *Disease or predation.* Diseases of aquatic snails are unknown. Although both the armored snail and slender campeloma are undoubtedly consumed by various vertebrate predators, including fishes, mammals, and possibly birds, predation by naturally occurring predators is a normal aspect of the population dynamics of a species and is not considered a threat to these species at this time.

Chamberlain (1958) found the uterus of some specimens of *Campeloma decisum* infected by the trematode *Leucochloridomorpha constantiae*, a black duck (*Anas rubripes*) parasite, with the snail evidently being an intermediate host. It is not known whether the slender campeloma is parasitized or to what degree any parasitism inhibits its life cycle.

D. *The inadequacy of existing regulatory mechanisms.* The State of Alabama's prohibitions against taking fish and wildlife for scientific purposes without State collecting permits provide some protection for these snails. However, these species are generally not protected from other threats. These snails are not given any special consideration under other environmental laws when project impacts are reviewed. Although the negative effects of point source discharges on aquatic communities have probably been reduced over time by compliance with State and Federal regulations pertaining to water quality, there is currently no information on the sensitivity of snail fauna to common industrial and municipal pollutants. Current State and Federal regulations regarding such discharges are assumed to be protective; however, these snails may be more susceptible to some pollutants than test organisms currently used in bioassays. A lack of adequate research and data currently may prevent existing authorities, such as the Clean Water Act (CWA), administered by EPA and the Army Corps of Engineers (Corps), from being fully utilized to protect these species. The Service is currently working with EPA to develop a Memorandum of Agreement that will address how EPA and the Service will interact relative to CWA water quality criteria and standards within the Service's Southeast Region.

E. *Other natural or manmade factors affecting its continued existence.* Both species inhabit short creek reaches; thus, they are vulnerable to extirpation from naturally occurring events such as toxic chemical spills. All three creeks are crossed by a number of roads, railroads, and power lines that pose additional direct threats (e.g., loss of riparian vegetation) and indirect threats

(potential toxic spills and run-off). Additionally, because these populations are isolated, their long-term genetic viability is questionable. Because all three creeks are isolated by an impoundment, recolonization of an extirpated population is not likely without human intervention.

Further, since most of Limestone Creek's mussel fauna has already been lost, this is a strong indicator of a severely impacted ecosystem that has undergone significant degradation. Because the life history and biology of these species are virtually unknown, it is likely they may continue to decline due to currently unrecognized impacts and stresses to their populations.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list the armored snail and slender campeloma as endangered. The armored snail is currently known only from Piney and Limestone creeks, Limestone County, Alabama, and the slender campeloma is known only from the aforementioned creeks and Round Island Creek, Limestone County, Alabama. These snails and their habitat have been and continue to be threatened. Their limited distribution also makes them vulnerable to toxic chemical spills. Because of their restricted distribution and vulnerability to extinction, endangered status is the most appropriate classification for these species.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (ii) such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not presently prudent for these two species.

Critical habitat designation, by definition, directly affects only Federal agency actions. Because these snails are aquatic throughout their life cycles, Federal actions that might affect these species and their habitats include those with impacts on stream channel geometry, bottom substrate composition, water quantity and quality, and storm-water run-off. Such activities would be subject to review under section 7(a)(2) of the Act regardless of whether critical habitat was designated. Section 7(a)(2) requires Federal agencies to ensure, in consultation with and with the assistance of the Service, that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or destroy or adversely modify its critical habitat, if any is designated. Also, section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. See ''Available Conservation Measures'' section for a further discussion of section 7. As part of the development of this proposed rule, Federal and State agencies were notified of the armored snail's general distribution (with the slender campeloma being similar, no specific notification was sent regarding it), and they were requested to provide data on proposed Federal actions that might adversely affect the species. No specific projects were identified. Should any future projects be proposed in areas inhabited by these snails, the involved Federal agency will already have the general distributional data needed to determine if the species may be impacted by their action, and more specific distributional information would be provided if needed.

Regulations promulgated for the implementation of section 7 of the Act provide for both a ''jeopardy'' standard and a ''destruction or adverse modification'' of critical habitat standard. Both standards are defined in very similar language. Due to the highly precarious status of the armored snail and slender campeloma, any significant adverse modification or destruction of these species' habitat also would likely jeopardize the species' continued existence, thereby triggering both standards. Therefore, no additional protection for the snails would accrue from a critical habitat designation that would not also occur from listing of the species. If listed, habitat protection for these snails will be accomplished through the section 7 ''jeopardy'' standard and the section 9 prohibitions against take.

Recovery of these species will require the identification of unoccupied creeks and creek reaches appropriate for reintroduction. Critical habitat designation of unoccupied creeks and creek reaches may benefit these species by alerting permitting agencies to areas considered crucial to these species and allowing them the opportunity to evaluate projects which may affect these areas. The Service will work with the State and other Federal agencies to periodically survey and assess habitat potential of creeks and creek reaches for listed and candidate aquatic species within the watersheds in and around Limestone County. This process will provide up to date information on instream habitat conditions in response to land use changes within watersheds. Information generated from surveys and assessments will be disseminated through Service coordination with other agencies. Should this rule become final, the Service will work with State and Federal agencies, as well as private property owners and other affected parties, through the recovery process to identify creek reaches and potential sites for reintroduction of these species. Thus, the benefit provided by designation of unoccupied habitat as critical habitat will be accomplished more effectively with this coordination process and is preferable for aquatic habitats which change rapidly in response to watershed land use practices. In addition, the Service believes that any potential benefits to critical habitat designation are outweighed by additional threats to the species that would result from such designation, as discussed below.

Though critical habitat designation directly affects only Federal agency actions, this process can arouse concern and resentment on the part of private landowners and other interested parties. The publication of critical habitat maps in the **Federal Register** and local newspapers and other publicity or controversy accompanying critical habitat designation may increase the potential for vandalism as well as

collection threats (See Factor B under ''Summary of Factors Affecting the Species''). For example, on June 15, 1993, the Alabama sturgeon was proposed for endangered status with critical habitat (50 CFR 33148). The proposal generated thousands of comments, with the primary concern being that the action would devastate the economy of the State of Alabama and severely impact adjoining States. There were reports from State conservation agents and other knowledgeable sources of rumors inciting the capture and destruction of Alabama sturgeon. A primary contributing factor to this controversy was the proposed designation of critical habitat for the sturgeon.

The two snail species addressed in this proposal are especially vulnerable to vandalism. They are found in very restricted segments of relatively short creek reaches. They are relatively immobile and unable to escape collectors or vandals. They inhabit easily accessible areas and are sensitive to a variety of readily available commercial chemicals and products. Because of these factors, vandalism or collecting would be difficult to detect and/or control. For example, another Alabama snail, the plicate rocksnail, recently disappeared from 80 percent of its known occupied habitat. Although the Service has been unable to determine the cause of this decline, this disappearance illustrates the vulnerability of this and other snail species.

All known populations of these two species occur in creeks flowing through private land. One of the primary threats to surviving populations appears to be run-off from private land activities (see Factor A). Therefore, the survival and recovery of these species will be highly dependent on landowner cooperation in reducing land-use impacts.

Controversy resulting from critical habitat designation has been known to reduce private landowner cooperation in the management of listed species under the Act (e.g., spotted owl, golden-cheeked warblers). The Alabama sturgeon experience suggests that critical habitat designation could affect landowner cooperation within the watersheds occupied by these two snails.

Based on the above analysis, the Service has concluded that a critical habitat designation would provide few additional benefits for these species beyond those that would occur from listing under the Act. The Service also concludes that any potential benefit from such a designation would be outweighed by an increased level of vulnerability to vandalism and collecting and could possibly cause landowners to be less willing to cooperate with the Service in the management and recovery of these species. The designation of critical habitat for these two snails is therefore not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Service notified Federal agencies that may have programs or projects affecting the armored snail. No notification was given about the slender campeloma because its range is so similar and because no controversy arose from the notification of the potential listing of the armored snail. No specific proposed Federal actions were identified that would likely affect the species. Federal activities that could occur and impact the species include, but are not limited to, the carrying out or the issuance of permits for reservoir construction, stream alterations, wastewater facility development, pesticide registration, and road and bridge construction. Activities affecting water quality may also impact these species and are subject to the Corps and EPA's regulations and permit requirements under authority of the CWA and the National Pollutant Discharge Elimination System (NPDES). It has been the Service's experience that nearly all section 7 consultations can be resolved so that the species is protected and the project objectives are met.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered or threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 for endangered species. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable, those activities that would or would not constitute a violation of section 9 of the Act if these species are listed. The intent of this policy is to increase public awareness of the effects of this proposed listing on proposed and ongoing activities within the species' range.

Activities that the Service believes are unlikely to result in a violation of section 9 for these two snails are:

(1) Existing discharges into waters supporting these species, provided these activities are carried out in accordance with existing regulations and permit requirements (e.g., activities subject to sections 402, 404, and 405 of the Clean Water Act and discharges regulated under the NPDES).

(2) Actions that may affect these two snail species and are authorized, funded

or carried out by a Federal agency when the action is conducted in accordance with any reasonable and prudent measures given by the Service in accordance with section 7 of the Act.

(3) Normal agricultural and silvicultural practices, including pesticide and herbicide use, that are carried out in accordance with any existing regulations, permit and label requirements, and best management practices.

(4) Development and construction activities designed and implemented pursuant to State and local water quality regulations.

(5) Existing recreational activities, such as swimming, wading, canoeing, and fishing.

Activities that the Service believes could result in ''take'' of these snails, if they should be listed, include:

(1) Unauthorized collection or capture of these species.

(2) Unauthorized destruction or alteration of the species' habitat (e.g., in-stream dredging, channelization, discharge of fill material).

(3) Violation of any discharge or water withdrawal permit.

(4) Illegal discharge or dumping of toxic chemicals or other pollutants into waters supporting these two species.

(5) Use of pesticides and herbicides in violation of label restrictions within the species' watersheds.

Other activities not identified above will be reviewed on a case-by-case basis to determine if a violation of section 9 of the Act may be likely to result from such activity should these snails be listed. The Service does not consider these lists to be exhaustive and provides them as information to the public.

Questions regarding whether specific activities may constitute a future violation of section 9 should these snails be listed should be directed to the Service's Asheville Field Office (see **ADDRESSES** section). Requests for copies of regulations regarding listed species and inquiries about prohibitions and permits should be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Boulevard, Atlanta, Georgia 30345 (telephone 404/679–7313; facsimile 404/679–7081).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the armored snail or slender campeloma;

(2) The location of any additional populations of the armored snail or slender campeloma and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of these species; and

(4) Current or planned activities in the subject area and their possible impacts on the armored snail or slender campeloma.

Final promulgation of the regulations on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to final regulations that differ from this proposal.

You may request a public hearing on this proposal. Your request for a hearing must be made in writing and filed within 45 days of the date of publication of this proposal in the **Federal Register**. Address your request to the State Supervisor (see **ADDRESSES** section).

Executive Order 12866

Executive Order 12866 requires agencies to write regulations that are easy to understand. We invite your comments on how to make this proposal easier to understand including answers to questions such as the following: (1) Is the discussion in the ''Supplementary Information'' section of the preamble helpful in understanding the proposal? (2) Does the proposal contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposal (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? What else could we do to make the proposal easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may also e-mail the comments to: Exsec@ios.doi.gov.

National Environmental Policy Act

The Service has determined that an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. 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 control number. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.22.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the State Supervisor (see **ADDRESSES** section).

Author: The primary author of this proposed rule is Mr. J. Allen Ratzlaff, (see **''ADDRESSES''** section) (828/258–3939, Ext. 229).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under SNAILS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
SNAILS							
*	*	*	*	*	*	*	
Campeloma, slender	*Campeloma decampi.*	U.S.A. (AL)	NA	E		NA	NA
*	*	*	*	*	*	*	
Snail, armored	*Pyrgulopsis* (=*Marstonia*) *pachyta.*	U.S.A. (AL)	NA	E		NA	NA
*	*	*	*	*	*	*	

Dated: October 16, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–28883 Filed 10–27–98; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 63, No. 208

Wednesday, October 28, 1998

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

Office of the Secretary

Commission on 21st Century Production Agriculture Meeting

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of meeting.

SUMMARY: The U.S. Department of Agriculture (USDA) has established the Commission on 21st Century Production Agriculture. In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (FACA), notice is hereby given of the third meeting of the Commission on 21st Century Production Agriculture. The purpose of this meeting is to review the report on the effects of the Federal Agricultural Improvement Act of 1996 and to plan Commission activities for 1999. This meeting will be open to the public.

PLACE, DATE AND TIME OF MEETING: The meeting will be held in Room 5140, South Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC 20250, from 8:30–5:00 EST on November 16, 1998, and 8:30 am 12 noon EST on November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Keith J. Collins (202–720–5955), Chief Economist, Room 112–A, Jamie L. Whitten Federal Building, 1400 Independence Avenue, SW., Washington, DC 20250–3810.

Dated: October 21, 1998.

Keith J. Collins,

Chief Economist.

[FR Doc. 98–28788 Filed 10–27–98; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Customer Service Comment Cards

AGENCY: Forest Service, USDA.

ACTION: Notice of information collection; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intent to establish a new information collection. The new collection is necessary to monitor customer satisfaction with existing Forest Service customer services, business practices, operations, and facilities, and to provide a means to address customer complaints.

DATES: Comments must be received in writing December 28, 1998.

ADDRESSES: Send written comments to Director, Office of Communications, 2 CEN AUD, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090, or e-mail comments to Barbara.Hunter/wo@fs.fed.us.

The public may inspect comments in the Office of the Director of Communications. To facilitate entrance into the building, visitors are encouraged to call ahead (202) 205–1273.

FOR FURTHER INFORMATION CONTACT: Barbara B. Hunter, Office of Communications, National Customer Service Team, telephone (202) 205–0979, or e-mail to Barbara.Hunter/wo@fs.fed.us.

Description of Information Collection

Title: ''Your Comments'' Customer Service Comment Card

OMB Number: New.

Expiration Date of Approval: New.

Type of Request: This is a new information collection that has not received approval from the Office of Management and Budget.

Abstract: Executive Order 12862, issued September 11, 1993, directed Federal agencies to change the way they do business, to reform their management practices, to provide service to the public that matches or exceeds the best service available in the private sector, and to establish and implement customer service standards to carry out the principles of the National Performance Review. In response to this order, the Forest Service established and implemented customer service standards and posted these standards at all Forest Service offices, work sites, and visitor centers. ''Your Comments'' Customer Service Comment Cards are voluntary customer surveys, which will be used to monitor customer perceptions of how well the Forest Service meets its posted customer service standards, as well as how Forest Service customers view the agency's business practices, operations, and facilities. The survey also will provide a means to learn about and address customer complaints.

Forest Service personnel will collect information everywhere the agency does business. Forest Service personnel will make customer service survey cards available to customers in person, by mail, and on the internet. The ''Your Comment'' Customer Service Cards will include the following survey statements that will be rated on a scale of 1 to 5, with 1 being ''Strongly agree'' and 5 being ''Not applicable.''

1. I received prompt courteous service.

2. I was provided the information or service I needed.

3. For my request or business, the procedure was clear and efficient.

4. I was satisfied with the facilities used.

Completion of this card will be voluntary. Customers will mail the cards back to the Chief of the Forest Service in Washington, DC, or send their responses electronically on the internet. The data from this information collection will be evaluated and included in reports to the National Partnership for Reinventing Government (formerly the National Performance Review), the Department of Agriculture, to agency officials, and to Forest Service customers. The ''Your Comment'' Customer Service Comment Cards and e-mail messages will be mailed back to Forest Service personnel in the respective field units where the customers were served, so that any complaints and suggestions may be used to improve services, business practices, operations, and facilities at the units. This will give Forest Service personnel an opportunity to respond to customers by phone, e-mail, or mail, when considered necessary and appropriate.

Estimate of Burden: 5 minutes.

Type of Respondents: Respondents will include anyone who visits or contacts one of the Forest Service offices, work sites, or visitor centers, either in person, by telephone or on the internet. This includes individuals and groups of varying ages and abilities, U.S. citizens and citizens from other countries, who visit or plan to visit

National Forest System lands, for recreation or educational purposes; special interest groups; local residents; and individuals conducting business with the Forest Service including, but—not limited to, grazing permittees, minerals, oil and gas permitees, land lessees, timber customers, other forest products customers, research scientists, special-use customers, educators, librarians, historians, writers, media contacts, moviemakers, law enforcement officers, fire fighters, representatives of other Federal, State, county, or local Government agencies, and foreign governments.

Estimated Number of Respondents: 20,500.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,708 hours per year.

Comment Is Invited

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

Use of Comment

All comments, including name and address when provided, will become a matter of public record. Comments received in response to this notice will be summarized and included in the request for Office of Management and Budget approval.

Dated: October 22, 1998.

Sandra H. Key,

Acting Associate Chief.

[FR Doc. 98–28822 Filed 10–27–98; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Intergovernmental Advisory Committee Subcommittee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernment Advisory Committee will meet on November 5, 1998, at the Embassy Suites Portland Downtown, 319 SW Pine Street, Portland, Oregon 97204–2726. The purpose of the meeting is to continue discussions on the implementation of the Northwest Forest Plan. The meeting will begin at 9:15 a.m. and continue until 3:00 p.m. Agenda items to be discussed include, but are not limited to: continued discussion of future agenda topics; review ongoing and potential activities for the coming year; and progress reports on effectiveness monitoring and information issues. The IAC meeting will be open to the public and is fully accessible for people with disabilities. Interpreters are available upon request in advance. Written comments may be submitted for the record at the meeting. Time will also be scheduled for oral public comments. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Don Knowles, Executive Director, Regional Ecosystem Office, 333 SW 1st Avenue, P.O. Box 3623, Portland, OR 97208 (Phone 503–808–2180).

Dated: October 21, 1998.

Donald R. Knowles,

Designated Federal Official.

[FR Doc. 98–28819 Filed 10–27–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Oregon Province Interagency Executive Committee (PIEC) Advisory Committee

AGECNY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Oregon PIEC Advisory Committee will meet on November 17, 1998 in Roseburg, Oregon at the Umpqua National Forest Supervisor's Office. The meeting will begin at 9:00 a.m and continue until 5:00 p.m. Agenda items to be covered include: (1) local issues presentation by management representatives of the Roseburg Bureau of Land Management and Umpqua National Forest; (2) Public comment; (3) Applegate Adaptive Management Area Guide; (4) Mining and riparian area conflicts; (5) Possibly a representative from the Regional Ecosystem Office will discuss Advisory Committee questions. All Province Advisory Committee meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Chuck Anderson, Province Advisory Committee Coordinator, USDA, Forest Service, Rogue River National Forest, 333 W. 8th Street, Medford, Oregon 97501, phone (541) 858–2322.

Dated: October 21, 1998.

Charles J. Anderson,

Acting Designated Federal Official.

[FR Doc. 98–28864 Filed 10–27–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to the Natural Resources Conservation Service's National Handbook of Conservation Practices

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

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practice for review and comment.

SUMMARY: Notice is hereby given of the intention of NRCS to issue a series of new or revised conservation practice standards in its National Handbook of Conservation Practices. These standards include ''Contour Buffer Strips'', ''Cross Wind Trap Strips'', ''Dry Hydrant'', ''Field Border'', ''Filter Strip'', ''Irrigation Water Management'', ''Residue Management, Mulch Till'', ''Residue Management, No Till and Strip Till'' ''Waste Utilization''. NRCS State Conservationist's who choose to adopt these practices for use within their state will incorporate them into Section IV of their Field Office Technical Guide (FOTG). These practices may be used in conservation systems that treat highly erodible land or on land determined to be wetland.

DATES: Comments will be received for a 60-day period commencing with this date of publication. This series of new or revised conservation practice standards will be adopted after the close of the 60 day period.

FOR FURTHER INFORMATION CONTACT: Single copies of these standards are available from NRCS–CED in Washington, DC. Submit individual inquires in writing to William Hughey, National Agricultural Engineer, Natural Resources Conservation Service, P.O. Box 2890, Room 6139–S, Washington, DC 20013–2890.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture

Improvement and Reform Act of 1996 requires the NRCS to make available for public review and comment proposed revisions to conservation practice standards used to carry out the highly erodible land and wetland provisions of the law. For the next 60 days, the NRCS will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

Pearlie S. Reed,

Chief, Natural Resources Conservation Service, Washington D.C.

[FR Doc. 98–28787 Filed 10–27–98; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Mining Specifications for Prime Farmland

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of proposed specifications with request for comments.

SUMMARY: The Natural Resources Conservation Service (NRCS) of the Department of Agriculture (USDA) is issuing proposed specifications for soil handling in relation to mining activities on prime farmland, as provided for in the Surface Mining Control and Reclamation Act of 1977 (SMCRA). SMCRA requires the Secretary of Agriculture to establish specifications for the removal, storage, replacement, and reconstruction of prime farmland soils. The Soil Conservation Service, now called the Natural Resources Conservation Service, first proposed these specifications on February 19, 1988 (53 FR 4989). NRCS has made revisions to the proposed specifications and now seeks additional public comment prior to issuance of final specifications.

DATES: Comments must be received by November 27, 1998.

ADDRESSES: Mail written comments to Gary Nordstrom, Director, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013. Submit electronic comments to gary.nordstrom@usda.gov

FOR FURTHER INFORMATION CONTACT: Gary Nordstrom, Director, Conservation Operations Division, Natural Resources Conservation Service, 202–720–1845.

SUPPLEMENTARY INFORMATION:

General Background on Proposed Specifications

Section 515(b)(7) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Public Law 95–87, 30 U.S.C., 1265(b)(7), authorizes the Secretary of Agriculture to establish specifications for soil removal, storage, replacement, and reconstruction for all prime farmlands, as identified in Section 507(b)(16) of the Act, 30 U.S.C. 1257(b)(16), to be mined and reclaimed. This authority is delegated to NRCS in 7 CFR 2.61(a)(22).

NRCS determined that national specifications for soil handling must allow for consideration of the wide diversity of soils, geology, climate, mining equipment, and crops in coal mining areas across the nation. These differences are recognized in the permanent program regulations published by the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, specifically in 30 CFR 823.4(a), which states that ''NRCS within each State shall establish specifications for prime farmland soil removal, storage, replacement, and reconstruction.''

Accordingly, NRCS developed the specifications set forth in this proposed notice to ensure that local and site-specific factors are considered. Within the individual States, each NRCS State Conservationist will maintain and make available a local version of these specifications that incorporates the general criteria set forth in these specifications and any modifications made for the respective State. To the fullest extent possible, the basic specifications and the applicable modifications for individual States reflect the latest scientific information and experience regarding reclamation techniques.

During the development of the proposed specifications, NRCS national office provided certain general guidelines to assist the NRCS State staffs in developing specifications at the local level. These guidelines were set out in the advance notice of the proposed rule published on August 26, 1985 (50 FR 34490). The first version of these proposed specifications was published on February 19, 1988 (53 FR 4989). The specifications in this notice reflect comments received as a result of the 1988 publication and includes technical revisions based on research results and improvements in technology which have occurred since the 1988 publication.

Although NRCS had originally intended to publish these specifications as a codified regulation under 7 CFR part 652, it has been determined that the guidance included within this notice is advisory in nature, not regulatory. Therefore, these specifications will not appear in the Code of Federal Regulations as a rule.

Discussion of the Proposed Specifications

The Soil Removal section provides guidance on the identification of prime farmland soils where a published survey is not available and outlines how a soil scientist should proceed with identifying and sampling the soils to be removed for later replacement and reconstruction. This section identifies needed documentation of field conditions, including rooting zones; surface relief; pre-mining drainage conditions (including subsurface); flood frequency; physical, chemical, and morphological soil properties of the soils to be removed; and the equipment and procedures to be used in soil removal. The soil removal specifications address the handling of the various soil horizons encountered on prime farmland and the procedures to be followed if substitute materials are to be used. NRCS recognizes that compaction of prime farmland soils during removal and reconstruction is a significant factor in prime farmland reclamation and, therefore, the specifications include guidance to avoid compaction problems.

In the Soil Stockpiling section, NRCS recognizes that stockpiling of soil horizons, while not the preferred procedure for reclamation, is often necessary because of weather conditions, limitations or availability of equipment, or the reclamation method utilized. These specifications provide guidance to ensure that if stockpiling is utilized, the soil resources will be protected until reconstruction begins. This section provides criteria for stockpile site selection, protection against contamination and loss, and temporary distribution if long-term stockpiling is required.

In the Soil Reconstruction section, NRCS incorporates the principle of SMCRA that the reclamation of prime farmland requires the re-establishment of the pre-mining productivity of the disturbed soils. The soil reconstruction specifications provide a framework which, if followed and the required conditions are achieved, should maximize the probability that the reconstructed soil will achieve the required productivity.

Many factors contribute to the pre-mining productivity of prime farmland, including the chemical and physical characteristics of the soil horizons, the soil depth, the soil slope, and the

drainage conditions. Research has shown that when the post-mining soil characteristics are similar to the pre-mining characteristics, pre-mining productivity can be achieved.

These specifications provide for documentation of the characteristics of original soil, as required by sections 507 and 508 of SMCRA, 30 U.S.C 1257 and 1258, and provide that the reconstructed soils should achieve, as best as possible, these characteristics. These specifications provide guidance on how to utilize pre-mining information in the development of a reconstruction plan for successful reclamation. This guidance includes provisions regarding rooting depths, chemical and physical characteristics of the soil horizons, and site conditions. These specifications also include erosion control measures to ensure that the reconstructed soils remain in place after reclamation.

NRCS has attached appendices A and B for information and compliance assistance purposes. These appendices do not establish an obligation not otherwise imposed by rules and regulations, nor do they detract from obligations imposed by other rules and regulations. Appendix A contains information describing the procedures for determining the rooting zone of the pre-mined prime farmland soil. Appendix B contains information describing the procedure and quantitative specifications which can be used to evaluate the rooting zone of the reconstructed soil in relation to the pre-mined soil.

Implementation Issues

It is important that the implementation and administration of the specifications be understood by everyone with an interest in the successful reclamation of surface mined prime farmlands. Once these specifications are finalized, NRCS will place these specifications in each NRCS State Office. NRCS will send copies to each State Regulatory Authority (RA) and each OSM office so that the specifications can be used in carrying out their responsibilities for prime farmland reclamation.

The applicant for a mining permit on prime farmland will prepare a reclamation plan, as required by sections 507 and 508 of SMCRA, 30 U.S.C. 1257 and 1258, based upon the particular prime farmland soils proposed to be mined, the equipment to be used, and the physical characteristics of the site. Because these conditions vary considerably among sites, the mining and reclamation plans will also vary. The RA must rely on its technical staff to assure the proposed reclamation plan will likely yield the required results. The RA technical staff will utilize the NRCS specifications in making their recommendations for approving, disapproving, or revising the proposed reclamation plan. In addition to the plan review by the RA technical staff, the RA will consult with the NRCS State Conservationist on the plan prior to a final decision. The NRCS State Conservationist will review and comment on the proposed reclamation plan and, if the plan does not reflect NRCS specifications, the NRCS State Conservationist will suggest appropriate plan revisions to the RA.

The RA will make a final decision on the reclamation plan based, in part, on its review of NRCS specifications and consideration of comments received from the NRCS State Conservationist. The decision will be specific to the particular permit under review.

If a NRCS State Conservationist determines that a revision in the State reconstruction specifications is desirable, then NRCS, in consultation and cooperation with the RA, will utilize a public outreach process to obtain comments on the proposed revision. Under no circumstances will the State reconstruction specifications be less effective than the National specifications. After a public comment process, including publication in the **Federal Register** and internal review by the NRCS and RA, the NRCS State Conservationist will incorporate the changes into the specifications and distribute them to the NRCS local offices within the State and to the RA. The RA will make the revised specifications available to mine operators and other interested parties.

Questions and Answers

NRCS lists below questions related to implementation of NRCS specifications which have arisen during their development along with answers to those questions.

Question 1: Are the RA's required to incorporate the NRCS specifications into their approved state program through the formal amendment process?

Answer: The RA will use the specifications in making their determinations on prime farmland reclamation plans, but they are not required to be a part of the approved state program.

Question 2: What if the RA decides not to incorporate the State Conservationist's recommendations into a reclamation plan?

Answer: The RA is required, under section 510(d)(1) of SMCRA, 30 U.S.C.1260(d)(1), to consult with the State Conservationist and to consider any suggested revisions. It is not mandatory that NRCS recommendations be adopted on the permit application and reclamation plan. Under the OSM regulations, 30 CFR 823.15, success of prime farmland reclamation is based on crop production. NRCS specifications are provided to aid the permittee and RA in reviewing and approving reclamation plans and in achieving productivity standards. The specifications are not performance standards. Section 515(b)(7), 30 U.S.C. 1265(b)(7), sets forth the general performance standards for mining and reclamation activities on prime farmland. Under the OSM regulation, the ultimate standard which must be met is the production standard. The specifications were not developed to restrict prime farmland reclamation, but rather to provide a basis upon which a prime farmland reclamation plan can be developed. A reclamation plan that differs from the specification can be approved if, in consultation with NRCS, the RA determines that a plan takes into consideration the particular soil conditions, equipment, and mining reclamation methods applicable to a site and will yield the desired results.

Question 3: The proposed specifications would require permit applicants to submit information which may not be required under the current RA regulations or in the current permit application form. What will be required of the RA's to address this issue?

Answer: The proposed specifications allow for a variety of options in the area of needed information. This approach is consistent with the variable site conditions, mining and reclamation equipment, and procedures inherent in mining. Individual State RA's will determine their informational needs using the NRCS specifications. Some RA's, at their discretion, may wish to change permit information requirements.

Question 4: How will the adoption of the NRCS Soil Reconstruction Specifications change the manner in which prime farmland plans are currently being approved?

Answer: Adoption of these specifications will formalize the knowledge and expertise that NRCS has brought to prime farmland reclamation for over 20 years. State and Federal RA's and mine operators have always relied upon the NRCS for technical advice relating to prime farmland reconstruction. State RA's have been required to consult with NRCS on every acre of non-exempted prime farmland which has been mined since enactment of SMCRA. Many State RA's with a large amount of prime farmland being mined,

such as Illinois, have included NRCS in their mine plan review prior to the enactment of SMCRA. Because of this long relationship and prior history of consultation, most of what will happen after the adoption of these specifications will not be new. Formalization of the specifications will provide a written framework developed during many years of experience and research, from which RA's and permittee can operate. The specifications will be available to all who have an interest in prime farmland restoration.

Applicability.

The specifications apply to the removal, stockpiling, replacement, and reconstruction of soil materials during surface coal mining and reclamation operations on prime farmland, as defined and regulated by the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*

These specifications are to be used in conjunction with the permanent program performance standards of the Office of Surface Mining Regulation and Enforcement, Department of the Interior, which are set forth in 30 CFR 785.17, 816.22, and part 823. These specifications apply to prime farmlands as defined by the Secretary of Agriculture in 7 CFR part 657 and historically used for cropland.

Definitions

The following definitions apply to all documents issued in accordance with these specifications, unless specified otherwise:

Prime farmland means that land which is defined by the Secretary of Agriculture in 7 CFR part 657 and which has been historically used for cropland.

Reclamation Plan means the part of a permit application that details the actions a mine operator will take to restore the area to be mined to an approved post-mining land use.

Rooting zone means the part of the soil that can be penetrated by plant roots. The rooting zone of a soil can be obtained from a published NRCS soil survey or determined in the field by a soil scientist in accordance with procedures.

Soil characteristics mean properties of the soil which can be described or measured by field or laboratory observations, such as color, temperature, water content, structure, pH, and exchangeable cations.

Soil morphology means: a. The physical constitution of a soil profile as exhibited by the kinds, thickness, and arrangement of the horizons in the profile, and by the texture, structure, consistence, and porosity of each horizon; or

b. The visible characteristics of the soil or any of its parts.

State regulatory authority means the agency in each State which has the primary responsibility at the state level for administering the initial or permanent state regulatory program.

Soil scientist means a technical specialist with the academic credentials or work experience which enables the specialist to use established procedures to collect the required information about soils.

Soil survey means field and other investigations which result in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use, and which meets the standards of the National Cooperative Soil Survey and the procedures of the USDA as incorporated by reference in 30 CFR 785.17(c)(1).

Soil removal

Specifications for Designating Prime Farmland Soils for Removal

a. A soil scientist should locate and mark, on the ground and on the plan map, the boundaries of prime farmland soils that will be removed during mining. Prime farmland soils on the proposed mining site will be identified from a published NRCS soil survey. If a soil survey is not available or does not provide the physical, chemical, and morphological soil properties described in 30 CFR 785.17(c)(ii), a soil scientist should sample and document those properties for the identified prime farmland soils using the following procedures:

i. Soil laboratory analysis for testing any sample will use the procedures described in Soil Survey Investigations Report No. 42.

ii. Identify the rooting zone of the undisturbed prime farmland soils in the reclamation plan.

iii. Identify the original topography of prime farmland soils to be mined in the reclamation plan.

iv. Identify the pre-mining surface and internal drainage conditions, flooding frequency, and surface or subsurface drainage systems of the prime farmland in the reclamation plan.

v. Identify the equipment that will be used for soil removal in the reclamation plan.

Specifications for Soil Removal.

a. Soil removal should be accomplished with adherence to the following principles;

i. Minimize pre-mining compaction and destruction of the soil structure by using equipment that will have the least impact on the natural soil.

ii. Route soil removal equipment and adjust removal depth with each cycle of that equipment to minimize the compaction and destruction of soil structure in the natural soil.

iii. Remove the topsoil layer (A, AP, AE, AB, E horizons and, where appropriate, dark noncalcareous Bw and Bt horizons) and, if there is not a currently or recently mined area to replace the topsoil, place it in a designated stockpile. If the natural topsoil layer is less than 6-inches thick, remove the top 6 inches of soil and treat it as topsoil. The topsoil of prime farmlands may be mixed only if the resulting topsoil will have greater potential productivity, as determined using the characteristics set forth in Appendix B, than the prime farmland topsoil alone. In no case will prime farmland topsoil be mixed with topsoil containing rocks larger than 2mm.

iv. Remove the B horizon and/or C horizon, or an RA approved substitute rooting media and, if there is not a currently or a recently mined area to concurrently place the rooting media, place it in a designated stockpile.

v. Soil removal should occur only in water state classes that are slightly dry or dryer, as defined in the Soil Survey Manual, United States Department of Agriculture, Handbook No. 18, October 1993.

b. Substitution of selected overburden materials for any portion of a prime farmland soil is subject to the regulations in 30 CFR 785.17, 816.22, and part 823. Substitution of any material for naturally occurring prime farmland soils should be approved by the RA, in consultation with the NRCS, only when the substitute material will have a clearly demonstrated productivity potential equivalent to or higher than the reconstructed original soil material. This will be based on characteristics outlined in Appendix B.

Soil Stockpiling

Specifications For Stockpiling

Stockpiling is permitted only if the soil removal and reconstruction operations cannot be carried out concurrently.

a. Stockpiled materials should:

i. Be placed on a stable site within the permit area;

ii. Be protected from contaminants and unnecessary compaction that would interfere with revegetation;

iii. Be protected from wind and water erosion through prompt establishment

and maintenance of an effective, quick growing vegetative cover or through other measures approved by the regulatory authority; and

(iv) Not be moved until required for redistribution.

b. Where long-term surface disturbances will result from facilities, such as support facilities and preparation plants, and where stockpiling of soils would be detrimental to the quality or quantity of those soils, the RA may approve the temporary distribution of the removed soil materials to an approved site within the permit area to enhance the current use of that site until needed for later reclamation, provided that diminish the capability of host site and the soil material will be retained in a condition more suitable for redistribution than if stockpiled.

c. Sites subject to flooding or slippage are to be avoided for stockpiling of soil. The soil survey map for the proposed stockpiling site, as well as a field investigation, should be used to determine if a proposed soil stockpile location will be subject to flooding or slippage.

d. Ponding of water should be avoided on all stockpiles.

e. All woody vegetation and any other materials on the stockpile site that may degrade the quality of stored material or interfere with placement or removal of stockpiled soils should be removed.

f. The topsoil should be stockpiled separately from the subsoil or approved substitute material.

g. If possible, topsoil and subsoil stockpiles should not be located on prime farmland soils. If prime farmland must be used as a stockpile site, actions should be taken to avoid and mitigate any adverse effects such as compaction.

Soil Replacement and Reconstruction

Specifications for soil replacement and reconstruction are as follows:

a. The minimum depth of soil and substitute soil material to be reconstructed should be 48 inches; or (1) a lesser depth equal to the depth of a sub-surface horizon in the natural soil that inhibits or prevents root penetration; or (2) a greater depth if determined by the RA, in consultation with the NRCS, to be necessary to restore the original soil productive capacity.

b. The rooting zone of the pre-mining soils will be used as a basis for determining the replacement soil depth. Appendix A provides guidance for establishing the pre-mining rooting zone depth. The depth and quality of the rooting zone of the reconstructed prime farmland soils should be equal to or greater than the pre-mined soil rooting zone. The depth and quality of the replaced subsoil should be verified, using characteristics in Appendix B, before replacement of the topsoil.

c. Topsoil, or the approved substitute material, must be returned to the mined area to a thickness not less than that of the pre-mined topsoil or to a minimum of 6 inches if the topsoil before mining was less than 6 inches thick.

d. The reconstructed soil should have a hydraulic conductivity, texture, porosity, consistency, penetration resistance, and other physical properties which approximates the pre-mined soil or are more favorable for plant growth as outlined in Appendix B.

e. The reaction (pH) and other chemical properties of the major horizon of the reconstructed soil must be within the ranges of the pre-mined soil or be more favorable for plant growth. (Appendix B provides additional guidance on desirable physical and chemical properties for the reconstructed soils).

f. Final grading of the reconstructed soil should provide for adequate surface drainage and for slope gradients within the range of the pre-mined prime farmland mapping units. In semi-arid and arid regions, surface drainage patterns and slope gradients must be reestablished to ensure that reconstructed prime farmland soils receive approximately the same amount of surface water run-on from adjacent areas as they did in their pre-mined condition.

g. Soon after topsoil replacement, the soil should be tilled at sufficient depth to encourage root and water penetration into the subsoil to reduce runoff and erosion.

h. Erosion control measures contained in the approved reclamation plan should be implemented immediately after replacement of the topsoil. These erosion control measures should meet, at a minimum, the specifications found in Section IV of the local NRCS Field Office Technical Guide for seeding, mulching, and other appropriate erosion control methods.

All field observation and testing should be performed by a soil scientist or persons under the direction of a soil scientist.

Appendices

Appendix A: Criteria for Determining Pre-Mining Rooting Zone

Soil horizons are considered as preventing root penetration if their physical or chemical properties or water holding capacity cause them to prevent penetration by roots of plants common to the area. Soil features, e.g. tillage pan, formed during mechanical disturbance are not to be considered as root inhibiting for purposes of determining pre-mining rooting zone.

Most prime farmland soils have a favorable rooting depth of at least 48 inches and, for such soils, proper soil reconstruction to this depth will help in the restoration of productivity. However, there may be some prime farmland soils for which reconstruction to a greater depth is needed. Where bedrock or approved root inhibiting horizons are at a depth of less than 48 inches, reconstruction is thus required to a lesser depth. Fragipans or other root inhibiting layers, in order to qualify for exclusion from reconstruction, must contribute little or nothing to the productive capacity of the soil. This contribution must be less than 0.06 inches per inch of available water capacity to qualify for such exclusion.

The rooting zone of the prime farmland soils before mining will be determined and documented in the reclamation plan. The rooting zone can be obtained from published soil surveys or field determination.

If a soil survey or field determination (observation of rooting depth in an excavation) is not used to determine the rooting zone, the following guidelines will be used to determine depth (below 20 inches) to a root inhibiting soil layer for each of the following factors.

Sodium Adsorption Ratio (SAR): This is a measure of the amount of sodium (Na^+) relative to calcium (Ca^+) and magnesium (Mg^+) in the water extract from saturated soil paste. SAR is calculated from the following equation:

$$SAR = Na^+ / \sqrt{\left(Ca^{++} + Mg^{++}\right)/2}$$

Soils having the SAR values listed below will have increased dispersion of organic matter and clay particles, reduced permeability and aeration, and a degradation of soil structure.

SAR Values

A value of greater than 30 is a root inhibiting soil layer

Electrical Conductivity: This is a measure of the concentration of water soluble salts in a soil (from an extract of saturated soil paste) and is used to indicate saline soils. High concentrations of neutral salts interfere with the absorption of water by plants because the osmotic pressure in the soil solution is higher than that in the plant cells. Salts in a soil layer can interfere with the exchange capacity of nutrient ions, thereby resulting in nutritional deficiencies in plants. Soils having the following value will be root inhibiting:

A value of greater than 8 mmho/cm.

Aluminum Saturation: Excess aluminum restricts plant root penetration and proliferation in acid subsoils by decreasing water uptake in plants. Aluminum toxicities damage roots to the extent that they cannot absorb adequate water. High concentrations of aluminum are linked to adverse interaction with other elements, e.g., iron and calcium. The relationship of aluminum and calcium is the most important factor affecting calcium uptake by plants. Aluminum toxicity is linked to phosphorus deficiency, and conversely, aluminum tolerance is related to the efficient use of phosphorus. A value of equal to or more than 55 percent aluminum saturation for cotton, peanuts, soybeans, and other similar crops and equal to or more than 60 percent aluminum saturation for corn, wheat, sorghum, and other similar crops is a root inhibiting soil layer using the following equation—

$$\frac{\text{Potassium chloride (KCl) extractable aluminum}}{\text{NH4OAc Extractable bases} + \text{KCl extractable aluminum}} \times 100$$

Root Inhibiting Structures: Separations between structural units that allow roots to enter have an average spacing of more than 4 inches on the horizontal dimension before being considered root inhibiting structure. Any of the following soil conditions will be considered a root inhibiting soil layer:

Strong subangular blocky larger than 4 inches or, moderate subangular blocky larger than 4 inches or,

Strong angular blocky larger than 4 inches or, moderate angular blocky larger than 4 inches or,

Prismatic larger than 4 inches or, columnar larger than 4 inches.

Separations between structural units that allow roots to enter will have an average spacing of more than 4 inches on the horizontal dimensions before being considered a root inhibiting structure. The consistency is always firm or firmer. The kind and size of structure and consistency are always evaluated under moderately moist or very moist conditions.

Moist Bulk Density: Bulk density is an indicator of the soil's ability for root development, both vertically and horizontally. A soil having moist bulk density equal to or more than values shown in table 1 is considered having a soil root inhibiting layer:

TABLE 1.—ROOT-LIMITING BULK DENSITIES FOR EACH FAMILY TEXTURE CLASS

Family texture class	Rooting-limiting bulk density g/cm3
Sandy	1.85
Coarse loamy	1.80
Fine loamy	1.78
Coarse silty	1.79
Fine silty	1.65
Clayey:	
35–45% clay	1.58
>45% clay	1.47

Soil Strength: Soil strength measurements with the deep-profile penetrometer appear to be a viable parameter for assessing rooting depth to root inhibiting soil layer when chemical and plant nutritional variables are not crop yield-limiting factors. A review of the literature for field measurements of soil strength over a period of about 15 years has concluded that more field measurements are needed before useful limits of soil strength can be established.

Appendix B: Desirable Characteristics for Physical and Chemical Properties of Reconstructed Soils

The reconstructed soils should have the following characteristics. These characteristics will help ensure the success of meeting the performance standards. Terms used in this Appendix are explained in Appendix A.

All rooting media must meet the following chemical and physical properties to have the minimal favorable environment for root growth:

Sodium Adsorption Ratio

$$SAR = Na^{+} / \sqrt{\left(Ca^{++} + Mg^{++}\right)/2}$$

SAR: A value of less than 4.

Electrical Conductivity:

A value of less than 4 mmho/cm.

Aluminum Saturation: Aluminum saturation value of less than 20 percent for cotton, peanuts, soybeans, and other similar crops and less than 35 percent aluminum saturation for corn, wheat sorghum, and other similar crops using the following equation—

$$\frac{\text{Potassium chloride (KCl) extractable aluminum}}{\text{NH4OAc Extractable bases} + \text{KCl extractable aluminum}} \times 100$$

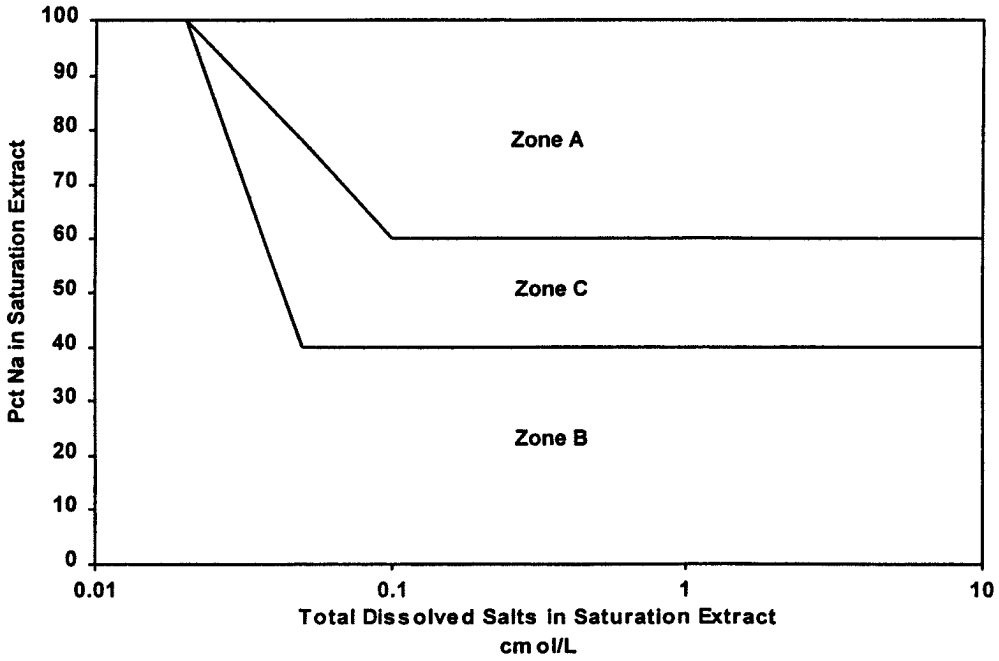
Root Permissive Structure: The reconstructed soil must have a root permissive structure after the soil material has been subject to the passage of at least 1.5 pore volumes of water in excess of the retention at 15 bar bringing all parts through the depth of consideration at least one time to very moist or wet. The pore volume is obtained by multiplying the depth zones by the water holding capacity volume fractions to follow: stratified by family particle-size class excluding the effect of those larger than two mm:

Family particle size [a]	Volume fraction
Sandy	0.10
Coarse-loamy	0.18
Fine-loamy	0.20
Coarse-silty	0.25
Fine-Silty	0.23
Clayey	0.15

[a] Family particle size classes defined in Soil Taxonomy Agriculture Handbook 436.

Alternative volume fractions may be substituted if documented. The volume of water for the family particle-size class is multiplied by the thickness of the zone and the amounts of zones are added through to 48 inches. Under rain fed conditions, the water addition is taken as the aggregate of successive monthly positive differences between precipitation and the evapotranspiration as computed by an acceptable method. Figure 1 is a method for determination of soluble salts and percent sodium from extract for identifying dispersive soils. Irrigation *should be considered* when precipitation is insufficient to subject the reclaimed soil to the passage of at least one pore volume of water while all parts of the soil are very moist or wet. The water added must not change the soil solution chemistry from indicative of dispersion (zone A in figure 1) to non-dispersive (zone B).

Figure 1. The field of percent sodium and total dissolved solids, both for the saturation extract, divided into a non-dispersive part (zone A), a dispersive part (zone B), and a transitional part (zone C). From Flanagan, C.P. and G.G.S. Holmgren. 1977. Field methods for determination of soluble salts and percent sodium from extract for identifying dispersive soils. Am. Soc. Test Mat. STP 623. Reference Address: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohcken, PA 19428–2959



Moist Bulk density is an indicator of the soil's ability for root development, both vertically and horizontally. Table 2 has values for bulk densities for use during reclamation of mined soils by family soil texture classes for nonlimiting to rooting, critical to rooting, and root-limiting. As a general rule, reclaimed soils do not have continuity of pores or interpedal voids: therefore, values in table 2 are important consideration during the reconstruction and reclamation of mined soils.

TABLE 2.—NONLIMITING, CRITICAL, AND ROOT-LIMITING BULK DENSITIES FOR EACH FAMILY TEXTURE CLASS

Family texture class	Nonlimiting bulk density	Critical bulk density g/cm^3	Rooting-limiting bulk density
Sandy	1.60	1.69	1.85
Coarse loamy	1.50	1.63	1.80
Fine loamy	1.46	1.67	1.78
Coarse silty	1.43	1.67	1.79
Fine silty	1.34	1.54	1.65
Clayey:			
35–45% clay	1.40	1.49	1.58
>45% clay	1.30	1.39	1.47

Caution—Because of the diversity of soil texture, rock fragments, climate, mining equipment, and other variables during reclamation, moist bulk density values are only a guide. In spite of overall high bulk density, there are cases where good root deployment and targeted crop yields have been achieved, mainly because the pattern of pore spaces was favorable. On the other hand, there are cases in which the overall bulk density is not high and good root deployment was expected, but a very thin highly compacted layer that could not be detected in a standard test method prohibited the entry of plant roots.

Soil Strength: Soil strength is highly correlated to crop yields on reclaimed and reconstructed mined soils. The response is curvilinear with crop yield decreasing as soil strength increases. There appears to be a lower and upper thresholds to the effect of soil strength on crop yield.

The mechanical impedence is at a minimum at or near 10 PSI. Therefore, the rooting volume does not change dramatically below the level of 100 PSI. Soil strength with 150 PSI range begins to impact rooting, and in the range of 280 PSI is root-limiting. Even though a reconstructed mined soil has nonlimiting soil strength for rooting, a significant difference in crop yield may occur compared to the soils on the permit area prior to mining. It must be understood that the quality of subsoil material, which is replaced during reconstruction and reclamation as well as reclamation practices, will become a dominate influence to any further increase in yield for soils having nonlimiting soil strength. The PSI values are determined by inserting into the soil profile a 3/4 inch rod with a 300 right circular cone point welded to the end of the rod.

Signed at Washington, D.C. on October 15, 1998.

Pearlie S. Reed,

Chief, Natural Resources Conservation Service.

[FR Doc. 98–28467 Filed 10–27–98; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Membership of the Departmental Performance Review Board

AGENCY: Department of Commerce.

ACTION: Notice of membership of Departmental Performance Review Board.

SUMMARY: In accordance with 5 U.S.C., 4314(c)(4), DOC announces the appointment of persons to serve as members of the Department Performance Review Board (DPRB). The DPRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and serves as the higher level review for executives who report to an appointing authority. Such reviews are conducted only at the executive's request. The appointment of these members to the DPRB will be for periods of 24 months.

EFFECTIVE DATE: The effective date of service of appointees to the Departmental Performance Review Board is October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Deborah Jefferson, Executive Resources Program Manager, Office of Human Resources Management, Office of the Director, 14th and Constitution Avenue, N.W., Washington, D.C. 20230, (202) 482–8075.

SUPPLEMENTARY INFORMATION: The names, positions titles, and type of appointment of the members of the DPRB are set forth below for organization.

Chief of Staff and Chief Financial Officer and Assistant Secretary for Administration

Erias A. Hyman, Senior Advisor to the Deputy Secretary and Counselor
Parnice Green, Director, Office of White House Liaison
Suellen P. Hamby, Chief Strategy Officer
K. David Holmes, Jr., Deputy Assistant Secretary for Security

General Counsel

Kathryn R. Lunney, Deputy General Counsel
Barbara S. Fredericks, Assistant General Counsel for Administration

Economics and Statistics Administration

James L. Price, Chief Economist
James K. White, Executive Director for Economic Affairs
William G. Barron, Jr., Deputy Under Secretary or Economic Affairs
Marvin D. Raines, Associate Director for Field Operations
Rosemary D. Marcuss, Deputy Director
Cyunthia Z.F. Clark, Associate Director for Methodology and Standards

Technology Administration

James Albus, Chief, Intelligent Systems Division
Keith Calhoun-Senghor, Director, Office of Air and Space Commercialization
William Ott, Deputy Director, Physics Laboratory
Rosalie Reugg, Director, Economic Assessment Office
Henry C. Waters, Director of Marketing
Willie E. May, Chief, Analytical Chemistry Division
Laura J. Powell, Director, Advanced Technology Program

National Telecommunications and Information Administration

Bernadett McGuire-Rivera, Associate Administrator
Shirl G. Kinney, Deputy Assistant Secretary for Administration

Economic Development Administration

Chester J. Struab, Jr., Deputy Assistant Secretary
Pedro Garza, Southwest Regional Director

International Trade Administration

Charles M. Ludolph, Deputy Assistant Secretary for Europe
Majory E. Searing, Deputy Assistant Secretary for Japan
Johnathan C. Menes, Director, Office of Trade and Economic Analysis
Susan H. Kuhbach, Senior Director, Antidumping and Countervailing Enforcement Group
Leslie R. Doggett, Deputy Assistant Secretary for Tourism Industries
Edward J. Casselle, Senior Advisor
Mary F. Kirchner, Deputy Assistant Secretary for Export Promotion Services

National Ocean and Atmospheric Administration

Susan B. Fruchter, Counselor to the Under Secretary
William B. Wheeler, Director, Office of Legislative Affairs
Sally J. Yoszell, Deputy Assistant Secretary
Nancy M. Foster, Assistant Administrator for Ocean Service and Coastal Zone Management
Irwin T. David, Chief Financial Officer/Chief Administrative
Officer Jay S. Johnson, Deputy General Counsel for Fisheries, Enforcement and Regions
Stewart S. Remer, Director for Human Resources Management
Louisa Koch, Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research

Patent and Trademark Office

Robert M. Anderson, Deputy Assistant Commissioner for Trademarks
Janice A. Howell, Patent Examining Group Director

Bureau of Export Administration

Eileen M. Albanese, Director, Office of Exporter Services
Steven C. Goodman, Director, Office of Chemical and Biological Controls and Treaty Compliance
Dexter M. Price, Director, Office of Antiboycott Compliance

Dated: October 22, 1998.

Deborah Jefferson,

Executive Secretary, DPRB.

[FR Doc. 98–28898 Filed 10–27–98; 8:45 am]

BILLING CODE 3510–BS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping and Countervailing Duty Proceedings, Assessment of Antidumping Duties: Notice of Extension of Due Date for the Submission of Comments

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

ACTION: Notice of extension of due date for the submission of comments.

FOR FURTHER INFORMATION CONTACT: Joan L. MacKenzie, Senior Attorney, Office of the Chief Counsel for Import Administration, (202) 482–1310, or Laurie Parkhill, Director, Office 3, Import Administration, (202) 482–4733.

SUPPLEMENTARY INFORMATION: On October 15, 1998, the Department of Commerce (the Department) published *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties* in the **Federal Register** (63 FR 55361). In that notice the Department announced a clarification of 19 CFR 351.212(c), the automatic-liquidation regulation, and invited the public to submit comments by October 30, 1998, on the proposed clarification. We have received a request to extend the comment period.

In response to the request for additional time to comment, we are extending the due date for the submission of comments. The revised due date for comments is November 13, 1998. Parties should address written comments to Robert S. LaRussa, Assistant Secretary for Import Administration, Dockets Center, Room 1870, Pennsylvania Avenue and 14th Street, N.W., Washington, D.C. 20230, Attention: Laurie Parkhill, Comment on Automatic Liquidation.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Dated: October 21, 1998.

[FR Doc. 98–28892 Filed 10–27–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101698C]

Fisheries of the Northeastern United States; Atlantic Surf Clam and Ocean Quahog Fisheries; Notice That Vendor Will Provide 1999 Cage Tags

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Authorization of vendor to provide 1999 cage tags.

SUMMARY: NMFS informs surf clam and ocean quahog allocation owners that they will be required to purchase their 1999 cage tags from a vendor.

ADDRESSES: Written inquiries may be sent to Tom Warren, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–3799.

FOR FURTHER INFORMATION CONTACT: Tom Warren, Fishery Management Specialist, (978) 281–9347.

SUPPLEMENTARY INFORMATION: The Atlantic Surf Clam and Ocean Quahog Fisheries regulations at 50 CFR 648.75(b) authorize the Regional Administrator, Northeast Region, NMFS, to specify in the **Federal Register** a vendor from whom cage tags, required under the management plan, shall be purchased. Notification is hereby given that National Band and Tag Company of Newport, KY, is the authorized vendor of cage tags required for the 1999 Federal surf clam and ocean quahog fisheries. Detailed instructions for purchasing these cage tags will be provided in a letter to allocation owners within the next several weeks.

Dated: October 22, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–28863 Filed 10–27–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 980909232–8232–01 I.D.092595C]

RIN 0648–ZA48

Financial Assistance for Research and Development Projects in the Gulf of Mexico and Off the U.S. South Atlantic Coastal States; Marine Fisheries Initiative (MARFIN)

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

ACTION: Notice.

SUMMARY: Subject to the availability of funds, NMFS will continue MARFIN to assist persons in carrying out research and development projects that optimize the use of fisheries in the Gulf of Mexico and off the South Atlantic States of North Carolina, South Carolina, Georgia, and Florida involving the U.S. fishing industry (recreational and commercial), including fishery biology, resource assessment, socio-economic assessment, management and conservation, selected harvesting methods, and fish handling and processing. NMFS issues this notice describing the conditions under which applications will be accepted and selected for funding. Areas of emphasis for MARFIN were formulated from recommendations received from non-Federal scientific and technical experts and from NMFS research and operations officials.

DATES: Applications for funding under this program will be accepted between October 28, 1998, and 5 p.m. eastern daylight time on December 28, 1998. Applications received after that time will not be considered for funding. No facsimile applications will be accepted.

ADDRESSES: Send applications to: Ellie Francisco Roche, Chief, State/Federal Liaison Office, Southeast Regional Office, NMFS, 9721 Executive Center Drive, N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Ellie Francisco Roche, 727–570–5324.

SUPPLEMENTARY INFORMATION:

I. Authority

The Secretary of Commerce (Secretary) is authorized under 15 U.S.C. 713c–3(d) to carry out a national program of research and development addressed to such aspects of U.S. fisheries as harvesting, processing, marketing and associated infrastructures, if not adequately covered by projects assisted under 15 U.S.C. 713c–3(c), as the Secretary deems appropriate.

II. Catalog of Federal Domestic Assistance

This program is described in the ''Catalog of Federal Domestic Assistance'' (CFDA) under program number 11.433, Marine Fisheries Initiative.

III. Program Description

MARFIN is a competitive Federal assistance program that promotes and endorses programs that seek to optimize research and development benefits from U.S. marine fishery resources through cooperative efforts that involve the best research and management talents to accomplish priority activities. Projects funded under MARFIN are focused into cooperative efforts that provide answers for fishery needs covered by the NMFS Strategic Plan, available from the Southeast Regional Office (see **ADDRESSES**), particularly those goals relating to rebuilding overfished marine fisheries, maintaining currently productive fisheries, and integrating conservation of protected species and fisheries management.

Emphasis will be placed upon funding projects that have the greatest probability of recovering, maintaining, improving, or developing fisheries; improving the understanding of factors affecting recruitment success; and/or generating increased values and recreational opportunities from fisheries. Projects will be evaluated as to the likelihood of achieving these benefits through both short- and long-term research efforts, with consideration given to the magnitude of the eventual economic or social benefits that may be realized. Short-term projects that may yield more immediate benefits and projects yielding longer-term benefits will receive equal consideration.

IV. Funding Availability

This solicitation announces that funding of approximately $1.10 million may be available in fiscal year (FY) 1999. MARFIN financial assistance started in FY 1986 for financial assistance to conduct research for fishery resources in the Gulf of Mexico and off the South Atlantic states of North Carolina, South Carolina, Georgia, and Florida. There is no guarantee that sufficient funds will be available to make awards for all approved projects.

Project proposals accepted for funding for a project period over 1 year that include multiple project components and severable tasks to be funded during each budget period will not compete for funding in subsequent budget periods within the approved project period. However, funding for subsequent project components is contingent upon the availability of funds from Congress and satisfactory performance and will be at the sole discretion of the agency. Publication of this notice does not obligate NMFS to award any specific cooperative agreement or to commit all or any parts of the available funds.

V. Matching Requirements

Applications must reflect the total budget necessary to accomplish the project, including contributions and/or donations. Cost-sharing is not required for the MARFIN program. However, cost-sharing is encouraged and, in case of a tie in considering proposals for funding, cost-sharing may affect the final decision. The allowability of all cost-sharing will be determined on the basis of guidance provided in applicable Federal cost principles. If an applicant chooses to cost-share, and if that application is selected for funding, the

applicant will be bound by the percentage of the cost share reflected in the cooperative agreement award.

The non-Federal share may include the value of in-kind contributions by the applicant or third parties or funds received from private sources or from state or local governments. Federal funds may not be used to meet the non-Federal share of matching funds, except as provided by Federal statute. Third party in-kind contributions may be in the form of, but are not limited to, personal services rendered in carrying out functions related to the project and use of real or personal property owned by others (for which consideration is not required) in carrying out the projects. NMFS must contribute at least 50 percent of total project costs, as provided by statute, 15 U.S.C. 713c–3(c)(4)(B).

The total cost of a project begins on the effective award date of an authorized cooperative agreement between the applicant and the NOAA Grants Officer and ends on the date specified in the award. Accordingly, costs incurred either in the development of a project or the financial assistance application or in time expended in any subsequent discussions or negotiations prior to the award are neither reimbursable nor recognizable as part of the recipient's cost share.

VI. Type of Funding Instrument

The cooperative agreement has been determined to be the appropriate funding instrument. NMFS is substantially involved in developing program research priorities, conducting cooperative activities with recipients, and evaluating the performance of recipients for effectiveness in meeting national and regional goals for fishery research in the southeastern United States.

VII. Eligibility Criteria

A. Applications for cooperative agreements for MARFIN projects may be made, in accordance with the procedures set forth in this notice, by:

1. Any individual who is a citizen or national of the United States or a citizen of the Republic of the Marshall Islands, Republic of Palau, or the Federated States of Micronesia.

2. Any corporation, partnership, or other entity, non-profit or otherwise, if such entity is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended (46 U.S.C. 802). Colleges, universities, and game and fish departments of the several states are included in this eligibility criteria.

DOC/NOAA/NMFS are committed to cultural and gender diversity in their programs and encourage women and minority individuals and groups to submit applications.

B. Federal agencies, Federal instrumentalities, including Regional Fishery management Councils and their employees, Federal employees, including NOAA employees (full-time, part-time, and intermittent personnel or their immediate families), and NOAA offices or centers are not eligible to submit an application under this solicitation or aid in the preparation of an application during the 60-day solicitation period, except to provide information about the MARFIN program and the priorities and procedures included in this solicitation. However, NOAA employees are permitted to provide information about ongoing and planned NOAA programs and activities that may have implication for an application. Potential applicants are encouraged to contact Ellie Francisco Roche at the NMFS Southeast Regional Office (see **ADDRESSE**S) for information on NOAA programs.

VIII. Award Period

The award period for the project may be more than 1 year consisting of one, two, or three budget periods that correspond to the funding for the proposed project components. The award period will depend upon the duration of funding requested by the applicant in the Application for Federal Assistance, the decision of the NMFS selecting official on the amount of funding, the results of post-selection negotiations between the applicant and NOAA officials, and pre-award review of the application by NOAA and DOC officials. Normally, each budget period may be no more than 12 months in duration. NOAA policy limits the total duration of a project to 3 years.

IX. Indirect Costs

The Project Budget form may include an amount for indirect costs if the applicant has an established indirect cost rate with the Federal government. The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award, or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less. The Federal share of the indirect costs may not exceed 25 percent of the total proposed direct costs. Applicants with approved indirect cost rates above 25 percent of the total proposed direct costs may use the amount above the 25–percent level up to the 100–percent level as part of the non-Federal share. If applicable, a copy of the current, approved, negotiated indirect cost agreement with the Federal government must be included in the application.

X. Profit or Fees

Profit or management fees paid to for-profit or commercial organization grantees are allowable at the discretion of NOAA. However, they shall not exceed 7 percent of the total estimated direct costs. There must be no profit or fees to the recipient in any overhead charge. Payment of fees or profit must be subject to successful completion of project objectives.

XI. Application Forms and Kit

Before submitting an application under this program, applicants should contact the NMFS Southeast Regional Office for a copy of this solicitation's MARFIN Application Package (see **ADDRESSES**).

Applications for project funding under this program must be complete and in accordance with instructions in the MARFIN Application Package. They must identify the principal participants and include copies of any agreements describing the specific tasks to be performed by participants. Project applications should give a clear presentation of the proposed work, the methods for carrying out the project, its relevance to managing and enhancing the use of Gulf of Mexico and/or South Atlantic fishery resources, and cost estimates as they relate to specific aspects of the project. Budgets must include a detailed breakdown, by category of expenditures, with appropriate justification for both the Federal and non-Federal shares. Applicants should not assume prior knowledge on the part of NMFS as to the relative merits of the project described in the application. Applications are not to be bound in any manner and must be printed only on one side of each sheet of paper. All incomplete applications will be returned to the applicant. Ten copies (one original and nine copies) of each application are required and should be submitted to the NMFS Southeast Regional Office, State/Federal Liaison Office (see **ADDRESSES**). OMB has approved 10 copies, under Approval #0648–0175.

XII. Project Funding Priorities

Proposals for FY 1999 should exhibit familiarity with related work that is completed or ongoing. Where appropriate, proposals should be multi-

disciplinary. Coordinated efforts involving multiple institutions or persons are encouraged. The areas of special emphasis are listed here, but proposals in other areas will be considered on a funds-available basis.

In addition to referencing specific area(s) of special interest as listed below, proposals should state whether the research will apply to the Gulf of Mexico only, the South Atlantic only, or to both areas. Successful applicants may be required to collect and manage data in accordance with standardized procedures and formats approved by NMFS and to participate with NMFS in specific cooperative activities that will be determined by consultations between NMFS and successful applicants before project grants are awarded. All recipients of financial assistance under this program shall include funding in the budget for the principal investigator to participate in an annual MARFIN Conference in Tampa, FL, at the completion of the project.

Bycatch

The bycatch of biological organisms (including interactions with sea turtles and marine mammals) by various fishing gears can have wide-reaching impacts from a fisheries management and an ecological standpoint, with the following major concerns:

A. *Shrimp trawl fisheries*. Studies are needed to contribute to the regional shrimp trawl bycatch program (including the rock shrimp fishery) being conducted by NMFS in cooperation with state fisheries management agencies, commercial and recreational fishing organizations and interests, environmental organizations, universities, Councils, and Commissions. Specific guidance and research requirements are contained in the Cooperative Bycatch Plan for the Southeast, available from NMFS (see **ADDRESSES**). In particular, the studies should address:

1. Data collection and analyses to expand and update current bycatch estimates, temporally and spatially emphasizing areas of greatest impact by shrimping. Sampling effort should include estimates of numbers, weight, and random samples of size (age) structure of associated bycatch complex, with emphasis on those overfished species under the jurisdiction of the Councils.

2. Assessment of the status and condition of fish stocks significantly impacted by shrimp trawler bycatch, with emphasis given to overfished species under the jurisdiction of the Councils. Other sources of fishing and nonfishing mortality should be considered and quantified as well.

3. Identification, development, and evaluation of gear, non-gear, and tactical fishing options to reduce bycatch.

4. Improved methods for communicating with and improving technology and information transfer to the shrimp industry.

5. Development and evaluation of statistical methods to estimate the bycatch of priority management species in the Gulf and South Atlantic shrimp trawl fisheries.

B. *Pelagic longline fisheries*. Several pelagic longline fisheries exist in the Gulf and South Atlantic, targeting such highly migratory species as tunas, sharks, billfish, and swordfish. Priority areas include:

1. Development and evaluation of gear and fishing tactics to minimize bycatch of undersized and unwanted species, including sea turtles, marine mammals, and overfished finfish species/stocks.

2. Assessment of the biological impact of longline bycatch on related fisheries.

C. *Reef fish fisheries*. The reef fish complex is exploited by a variety of fishing gear and tactics. The following research on bycatch of reef fish species is needed:

1. Development and evaluation of gear and fishing tactics to minimize the bycatch of undersized and unwanted species, including sea turtles and marine mammals.

2. Characterization and assessment of the impact of bycatch of undersized target species, including release mortality, during recreational fishing and during commercial longline, bandit gear and trap fishing.

3. Determination of the release mortality of red snapper caught on commercial bandit rigs that are electrically or hydraulically powered.

D. *Finfish trawl fisheries*. Studies are needed on quantification and qualification of the bycatch in finfish trawl fisheries, such as the flounder and fly-net fisheries in the South Atlantic.

E. *Gillnet fisheries*. Studies are needed on quantification and qualification of the bycatch in coastal and shelf gillnet fisheries for sciaenids, scombrids, bluefish and other dogfish sharks of the South Atlantic and Gulf of Mexico (particularly interaction with sea turtles and marine mammals).

F. *Economic considerations of bycatch reduction*.

1. Develop and test models, using actual or hypothesized data that explicitly consider the costs to the directed fishery and gains to the bycatch fishery. The models should include the effects of the management systems for the directed and bycatch fisheries and should attempt to describe criteria for the correct level of bycatch reduction (e.g., marginal cost and value of reduction are equal).

2. Develop economic incentives and other innovative alternatives to gear and season/area restrictions as ways to reduce bycatch. The proposal should attempt to contrast the relative costs, potential gains, and levels of bycatch reduction associated with traditional methods and any innovative alternatives addressed by the proposals.

3. Describe the costs and returns performance of South Atlantic shrimp fisheries as necessary background for the economics of bycatch reduction.

Reef Fish

Some species within the reef fish complex are showing signs of being overfished either because of directed efforts or because of being the bycatch of other fisheries. The ecology of reef fish makes them vulnerable to overfishing because they tend to concentrate over specific types of habitat with patchy distribution. This behavior pattern can make traditional fishery statistics misleading. Priority research areas include:

A. *Collection of basic biological data for species in commercially and recreationally important fisheries.*

1. *Age and growth of reef fish*.

a. Description of age and growth patterns, especially for red, vermilion, gray, and cubera snappers; gray triggerfish; gag; black grouper; hogfish; red porgy; and other less dominant forms in the management units for which data are lacking.

b. Contributions to the development of annual age-length keys and description of age structures for exploited populations for all species in the complex addressed in the Reef Fish and Snapper/Grouper Management Plans for the Gulf and South Atlantic, respectively, prioritized by importance in the total catch.

c. Design of sampling systems to provide a production-style aging program for the reef fish fishery. Effective dockside sampling programs are needed over a wide geographic range, especially for groupers, to collect information on reproductive state, size, age, and sex.

2. *Reproduction studies of reef fish*.

a. Maturity schedules, fecundity, and sex ratios of commercially and recreationally important reef fish, especially gray triggerfish, gag, and red porgy in the Gulf and South Atlantic.

b. Studies of all species to characterize the actual reproductive contribution of females by age.

c. Identification and characterization of spawning aggregations by species, area, size group, and season.

d. Effects of fishing on changes of sex ratios for gag, red grouper, and scamp, and disruption of aggregations.

e. Investigations of the reproductive biology of gag, red grouper and other grouper species.

3. *Recruitment of reef fish.*

a. Source of recruitment in Gulf and South Atlantic waters, especially for snappers, groupers, and amberjacks.

b. Annual estimation of the absolute or relative recruitment of juvenile gag, gray snapper, and lane snapper to estuarine habitats off the west coast of Florida and to similar estuarine nursery habitats along the South Atlantic Bight;

development of an index of juvenile gag recruitment for the South Atlantic based on historical databases and/or field studies.

c. The contribution of live-bottom habitat and habitat areas of particular concern (*Oculina* banks) off Fort Pierce, Florida and off west central Florida to reef fish recruitment.

4. *Stock structure of reef fish.*

a. Movement and migration patterns of commercially and recreationally valuable reef fish species, especially gag in the Gulf and South Atlantic and greater amberjack between the South Atlantic and Gulf.

b. Biochemical/immunological and morphological/meristic techniques to allow field separation of lesser amberjack, almaco jack, and banded rudderfish from greater amberjack to facilitate accurate reporting of catch.

c. Stock structure of wreckfish in the South Atlantic and of greater amberjack in the Gulf and South Atlantic.

B. *Population assessment of reef fish.*

1. Effect of reproductive mode and sex change (protogynous hermaphroditism) on population size and characteristics, with reference to sizes of fish exploited in the fisheries and the significance to proper management.

2. Source and quantification of natural and human-induced mortalities, including release mortality estimates for charter boats, headboats, and private recreational vessels, especially for red snapper and the grouper complex.

3. Determination of the habitat and limiting factors for important reef fish resources in the Gulf and South Atlantic. 4. Description of habitat and fish populations in the deep reef community and the prey distributions supporting the community.

5. Development of statistically valid indices of abundance for important reef fish species in the South Atlantic and Gulf, especially red grouper, jewfish, and Nassau grouper.

6. Assessment of tag performance on reef fish species, primarily snappers and groupers. Characteristics examined should include shedding rate, effects on growth and survival, and ultimately, the effects of these characteristics on estimations of vital population parameters.

7. Stock assessments to establish the status of major recreational and commercial species. Innovative methods are needed for stock assessments of aggregate species, including the effect of fishing on genetic structure and the incorporation of sex change for protogynous hermaphrodites into stock assessment models.

8. Assessment of Florida Bay recovery actions on reef fish recruitment and survival.

C. *Management of reef fish.*

1. Research in direct support of management, including catch-and-release mortalities, by gear and depth.

2. Evaluation of the use of marine reserves as an alternative or supplement to current fishery management practices and measures for reef fish. Studies should focus on the Experimental Oculina Reef Reserve, the Florida Keys National Marine Sanctuary, as well as on the identification of prime sites for the establishment of reserves in the U.S. South Atlantic and Gulf of Mexico.

3. Characterization and evaluation of biological impacts (e.g., changes in age or size structure of reef fish populations in response to management strategies).

4. Evaluation of vessel log data for monitoring the fishery and for providing biological, economic, and social information for management; and methods for matching log data to Trip Information Program samples for indices of effort.

Coastal Migratory Pelagic Fisheries

The commercial and recreational demand for migratory coastal pelagics has led to overfishing for certain species, including some stocks of king and Spanish mackerel. Additionally, some are transboundary with Mexico and other countries and may ultimately demand international management attention. Current high priorities include:

A. Recruitment indices for king and Spanish mackerel, cobia, dolphin, wahoo, and bluefish, primarily from fishery-independent data sources.

B. Fishery-independent methods of assessing stock abundance of king and Spanish mackerel.

C. Release mortality data for all coastal pelagic species.

D. Improved catch statistics for all species in Mexican waters, with special emphasis on king mackerel. This includes length-frequency and life history information.

E. Information on populations of coastal pelagics overwintering off the Gulf of Mexico and the South Atlantic States of North Carolina, South Carolina, Georgia, and Florida, especially concerning population size, age and movement patterns.

F. Development of a practical method for aging dolphin.

F. Basic biostatistics for cobia, dolphin, and wahoo to develop age-length keys and maturation schedules for stock assessments.

H. Impact of bag limits on total catch and landings of king and Spanish mackerel.

I. Demand and/or supply functions for the commercial king mackerel fisheries, including baseline cost and return data. Cooperative efforts that cover the entire Southeast and employ common methodologies for all geographic areas are strongly encouraged.

J. Sociological and anthropological surveys of coastal pelagic fisheries.

Groundfish and Estuarine Fishes

Substantial stocks of groundfish and estuarine species occur in the Gulf and South Atlantic. Most of the database for assessments comes from studies conducted by NMFS and state fishery management agencies. Because of the historical and current size of these fish stocks, their importance as predator and prey species and their current or potential use as commercial and recreational fisheries, more information on their biology and life history is needed. General research needs are:

A. *Red drum.*

1. Size and age structure of the offshore adult stock in the Gulf.

2. Life history parameters and stock structure for the Gulf and the South Atlantic: Migratory patterns, long-term changes in abundance, growth rates, and age structure. Specific research needs for Atlantic red drum are estimates of fecundity as a function of length and weight and improved coastwide coverage for age-length keys.

3. Catch-and-release mortality rates from inshore and nearshore waters.

B. Life history and stock structure for weakfish, menhaden, spot, and croaker in the Gulf and the South Atlantic: Migratory patterns, long-term changes in abundance, growth rates, and age structure and comparisons of the inshore and offshore components of recreational and commercial fisheries.

C. Improved catch-and-effort statistics from recreational and commercial

fisheries, including development of age-length keys for size and age structure of the catch, to develop production models.

D. Abundance and distribution information on spiny dogfish off the coast of North Carolina, and particularly southern North Carolina.

General

There are many other areas of research that need to be addressed for improved understanding and management of fishery resources. These include methods for data collection, management, analysis, and better conservation. Examples of high-priority research needs include:

A. Identification of fishing communities, characterization of community dependance upon fishery resources and demographics of the families dependent on fishing or fishing related businesses.

B. Development of improved methods and procedures for transferring technology and educating constituency groups concerning fishery management and conservation programs. Of special importance are programs concerned with controlled access and introduction of conservation gear.

B. Design and evaluation of innovative approaches to fishery management with special attention given to those approaches that control access to specific fisheries.

D. Social, cultural, and /or economic aspects of establishing fishery reserves. Studies should employ surveys or other accepted data collection methods and should include consumptive users, non-consumptive users, and persons not dependent on use of marine resources. Various management alternatives should be considered in the studies, e.g., exclude all users, exclude all consumptive users, size of reserve, anchoring rules, or any other relevant management tools.

E. Design and evaluation of limited access options for the red snapper and king mackerel recreational fisheries with specific emphasis on modes of fishing and jurisdictional issues.

F. Estimation of demand models for recreational fishing trips when the target species include a single species, an aggregate of related species, or all species combined. Studies using new data from the Southeast economics add-on to Marine Recreational Fisheries Statistics Survey are highly encouraged. Priority species include red drum Spanish mackerel, red grouper, and dolphin.

G. Sociocultural survey of commercial fishing in the Florida Keys. Proposals should address all fishing enterprises including potential sociocultural effects of large marine reserves in the Tortugas area.

H. Cost and returns and marketing studies for the live rock aquiculture industry.

I. Studies to evaluate the value of non-consumptive uses of marine resources, especially as related to diving activities and marine reserves.

J. Develop a scientific basis for refining essential fish habitat (EFH) designation for future amendments to fishery management plans.

Priority in program emphasis will be placed upon funding projects that have the greatest probability of recovering, maintaining, improving, or developing fisheries; improving the understanding of factors affecting recruitment success; and generating increased values and recreational opportunities from fisheries. Projects will be evaluated as to the likelihood of achieving these benefits through short- and long-term research efforts, with consideration given to the magnitude of the eventual economic benefits that may be realized.

XIII. Evaluation Criteria

Successful applicants generally will be recommended within 210 days from the date of publication of this notice. The earliest start date of awards will be about 90 days after each project is selected and after all NMFS/applicant negotiations of cooperative activities have been completed (the earliest start date of awards will be about 300 days after the date of publication of this notice). Applicants should consider this selection and processing time in developing requested start dates for their applications. Proposed projects will be evaluated and ranked as follows:

A. Unless otherwise specified by statute, in reviewing applications for cooperative agreements, including those that include consultants and contracts, NOAA will make a determination regarding the following:

1. Is the involvement of the applicant necessary to the conduct of the project and to the accomplishment of its goals and objectives?

2. Is the proposed allocation of the applicant's time reasonable and commensurate with the applicant's involvement in the project?

3. Are the proposed costs for the applicant's involvement in the project reasonable and commensurate with the benefits to be derived from the applicant's participation?

4. Is the project proposal substantial in character and design?

B. Applications meeting the above requirements will be forwarded for technical evaluation by a panel of at least 3 experts from non-NOAA as well as NOAA organizations. Applicants submitting applications not meeting the above requirements will be notified. Comments submitted to NMFS by each evaluator will be taken into consideration in the ranking of projects. NMFS will provide point scores on proposals, based on the following evaluation criteria:

1. Does the proposal have a clearly stated goal with associated objectives that meet the needs outlined in the Project Narrative? (30 points)

2. Does the proposal clearly identify and describe, in the Project Outline and Statement of Work, scientifically valid methodologies and analytical procedures that will adequately address project goals and objectives? (30 points)

3. Do the principal investigators provide a scientifically realistic timetable to enable full accomplishment of all aspects of the Statements of Work? (20 points)

4. Do the principal investigators define how they will maintain stewardship of the project performance, finances, cooperative relationships, and reporting requirements for the proposal? (10 points)

5. Are the proposed costs appropriate for the scope of work proposed? (10 points)

XIV. Selection Procedures

All applications will be ranked by a NMFS scientific panel into two groups: ''Recommended,'' and ''Not Recommended.'' Proposals ranked as ''Not Recommended'' will not be given further consideration for selection and funding. ''Recommended'' rankings will be presented to a panel of non-NOAA fishery experts who will individually consider the significance of the problem addressed in each project proposal, the technical evaluation, and need for funding. These panel members will provide individual recommendations to NMFS on each proposal classified as ''Recommended.''

The individual comments, recommendations, and evaluations of the non-NOAA panel members, and recommendations of the NMFS scientific panel and of the NMFS Southeast Program Officer will be considered by the Regional Administrator, Southeast Region, NMFS (Regional Administrator). The Regional Administrator, in consultation with the Assistant Administrator for Fisheries, will (a) determine which projects do not substantially duplicate other projects that are currently funded by NOAA or are approved for funding by other Federal offices, (b) select the projects to be funded, (c) determine the amount of

funds available for each project, and (d) determine which components of the selected projects shall be funded. The exact amount of funds awarded, the final scope of activities, the project duration, and specific NMFS cooperative involvement with the activities of each project will be determined in pre-award negotiations among the applicant, the NOAA Grants Office, and the NMFS Program Staff. Projects must not be initiated by recipients until a signed award is received from the NOAA Grants Office.

NMFS will make project applications available for review as follows:

A. *Consultation with members of the fishing industry, management agencies, environmental organizations, and academic institutions.* NMFS shall, at its discretion, request comments from members of the fishing and associated industries, groups, organizations, and institutions who have knowledge in the subject matter of a project or who would be affected by a project.

B. *Consultation with Government agencies.* Applications will be reviewed by the NMFS Southeast Region Program Office in consultation with the NMFS Southeast Fisheries Science Center, including appropriate operations and laboratory personnel, the NOAA Grants Office, and, as appropriate, DOC bureaus and other Federal agencies.

XV. Other Requirements

A. *Federal policies and procedures.* Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards. Women and minority individuals and groups are encouraged to submit applications under this program.

B. *Past performance.* Any first-time applicant for Federal grant funds is subject to a pre-award accounting survey prior to execution of the award. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

C. *Pre-award activities.* If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that they may have received, there is no obligation on the part of DOC to cover pre-award costs.

D. *No obligation of future funding.* If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

E. *Delinquent Federal debts.* No award of Federal funds shall be made to an applicant or to its subrecipients who have any outstanding delinquent Federal debt or fine until:

1. The delinquent account is paid in full;

2. A negotiated repayment schedule is established and at least one payment is received; or

3. Other arrangements satisfactory to DOC are made.

F. *Name check review.* All non-profit and for-profit applicants are subject to a name-check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of, or are presently facing, such criminal charges as fraud, theft, perjury, or other matters that significantly reflect on the applicant's management honesty or financial integrity. Potential non-profit and for-profit recipients may also be subject to reviews of Dun and Bradstreet data or of other similar credit checks.

G. *Primary applicant certifications.* All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided:

1. *Nonprocurement debarment and suspension.* Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR part 26, ''Nonprocurement Debarment and Suspension'' and to the related section of the certification form prescribed here;

2. *Drug-free workplace.* Grantees (as defined at 15 CFR 26.605) are subject to 15 CFR part 26, subpart F, ''Government wide Requirements for Drug-Free Workplace (Grants)'' and to the related section of the certification form prescribed here;

3. *Anti-lobbying.* Persons (as defined at 15 CFR 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions.'' The lobbying section of the CD–511 applies to applications/bids for grants, cooperative agreements, contracts for more than $100,000, and to loans and loan guarantees for more than $150,000.

4. *Anti-lobbying disclosures.* Any applicant who has paid or will pay for lobbying using any funds must submit a Form SL-LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR part 28, appendix B.

H. *Lower tier certifications.* Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form SF-LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. A form SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

I. *False statements.* A false statement on the application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

J. *Intergovernmental review.* Applications under this program are subject to the provisions of E.O. 12372, ''Intergovernmental Review of Federal Programs.''

K. *Requirement to buy American-made equipment and products.* Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program.

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

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

Cooperative agreements awarded pursuant to pertinent statutes shall be in accordance with the Fisheries Research Plan (comprehensive program of fisheries research) in effect on the date of the award.

Federal participation under the MARFIN Program may include the assignment of DOC scientific personnel and equipment.

Reasonable, negotiated financial compensation will be provided under awards for the work of eligible grantee workers.

Information-collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB control number 0648–

0175) under the provisions of the Paperwork Reduction Act.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

Public reporting burden for agency-specific collection-of-information elements, exclusive of requirements specified under applicable OMB circulars, is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this reporting burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**).

Authority: 15 U.S.C. 713c–3(d).

Dated: October 19, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 98–28861 Filed 10–27–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 980817219–8219–01]

RIN 0648–AL58

Revised NOAA Procedures Implementing the National Environmental Policy Act

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Availability; proposed revised environmental review procedures for NOAA.

SUMMARY: This notice announces the availability of proposed revised environmental review procedures for implementing the National Environmental Policy Act (NEPA) within the National Oceanic and Atmospheric Administration. The proposed revisions will update the agency's procedures published in 1984, based on changing Agency direction, laws, and public concerns. The revisions reflect new initiatives and mandates for NOAA, particularly involving the Magnuson-Stevens Act, Endangered Species Act, and Marine Mammal Protection Act. The revisions provide information on preparing NEPA documents and streamlining of NEPA and other analyses or documents within NOAA.

DATES: Comments must be received no later than December 14, 1998.

ADDRESSES: Comments should be sent to: Susan Fruchter, Acting NEPA Coordinator, Office of Policy and Strategic Planning, National Oceanic and Atmospheric Administration, Room 5805. Herbert C. Hoover Building, Department of Commerce, Washington, DC, 20230.

FOR FURTHER INFORMATION CONTACT: Bill Archambault or Ramona Schreiber, Office of Policy and Strategic Planning, 202–482–5181. A copy of the proposed revised NOAA Administrative Order (NAO) 216–6 is available from the above contact or via the Internet at: http://www.rdc.noaa.gov/~foia/adrian.html under ''Policies and Administrative Manuals that Affect the Public''; ''Notices, Proposed Rules and Final Rules''.

SUPPLEMENTARY INFORMATION: NOAA's existing environmental review procedures for implementing NEPA appear in NAO 216–6. These procedures are consistent with the Council on Environmental Quality's regulations for implementing NEPA. These procedures were last revised in 1991. A copy of that version is available at http://www.rdc.noaa.gov/~nao/216–6.html.

The proposed revisions are administrative and procedural improvements intended to enhance NOAA's ability to comply with a variety of legislative mandates and Executive Orders without unnecessarily delaying and duplicating steps in the decisionmaking process while ensuring public involvement in decisionmaking. These improvements will result in a better understanding of agency roles and responsibilities relative to NEPA.

Notable changes in this version of NAO–216–6 include: reorganization of the document such that users can review the general requirements for preparing NEPA documents, as well as specific guidance on NEPA requirements for particular programs and activities within NOAA; incorporation of new policies and procedures to streamline and improve NOAA's NEPA compliance; specific guidance for NOAA's NEPA responsibilities under the Magnuson-Stevens Act, Endangered Species Act, Marine Mammal Protection Act, and Oil Pollution Act; and incorporation of NOAA's requirements under E.O. 12898 issued on February 11, 1994, for Environmental Justice in Minority Populations and Low-Income Populations; and guidance on NOAA facilities and construction projects.

This document is available by request through the contact identified above (see **ADDRESSES**) as well as via the Internet at: http://www.rdc.noaa.gov/~foia/adrian.html under ''Policies and Administrative Manuals that Affect the Public''; ''Notices, Proposed Rules and Final Rules''.

Classification

It was determined that this procedural rule is not significant for purposes of Executive Order 12866.

The Assistant General Counsel for Legislation and Regulation certified to the Chief Counsel for Advocacy, Small Business Administration, that this rule will not have a significant economic impact on a substantial number of small entities because it is a procedural rule, and it will have no economic impact on entities. Therefore, a Regulatory Flexibility Analysis is not required and was not prepared.

Dated: October 21, 1998.

Susan Fruchter,

Director, Office of Policy and Strategic Planning, National Oceanic and Atmospheric Administration.

[FR Doc. 98–28801 Filed 10–27–98; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101998J]

Endangered Species; Permits

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

ACTION: Receipt of an application for an incidental take permit (1150).

SUMMARY: Notice is hereby given that the Idaho Department of Fish and Game at Boise, ID (IDFG) has applied in due form for a permit that would authorize an incidental take of anadromous fish species listed under the Endangered Species Act.

DATES: Written comments or requests for a public hearing on this application must be received on or before November 27, 1998.

ADDRESSES: The application and related documents are available for review in the following offices, by appointment:

Protected Resources Division (PRD), F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400); and

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

Written comments or requests for a public hearing should be submitted to the Chief, PRD in Portland, OR.

FOR FURTHER INFORMATION CONTACT: Robert Koch (503–230–5424).

SUPPLEMENTARY INFORMATION: IDFG requests a permit under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

IDFG requests a 5-year permit for an annual incidental take of adult, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*); adult and juvenile, threatened, naturally produced, Snake River spring/summer chinook salmon (*O. tshawytscha*); adult, threatened, Snake River fall chinook salmon; and adult, threatened, Snake River steelhead (*O, mykiss*) associated with the State of Idaho's sport-fishing programs. The new permit is requested to replace permit 844 which expires on December 31, 1998. IDFG proposes to implement four categories of sport-fishing regulations: (1) General Fishing Regulations (non-listed resident fish species), (2) Anadromous Salmon (non-listed) Fishing Regulations, (3) Steelhead (non-listed) Fishing Regulations, and (4) a kokanee fishery at the Redfish Lake area. IDFG states that the sport-fishing programs conducted in previous years in Idaho have had minimal impact on ESA-listed fish species in the State and pose no threat to the viability or continued existence of such populations. IDFG included a conservation plan in the permit application that proposes measures to monitor, minimize, and mitigate impacts to ESA-listed fish. Annual ESA-listed fish incidental mortalities associated with the sport-fishing programs are also requested.

To date, protective regulations for threatened Snake River steelhead under section 4(d) of the ESA have not been promulgated by NMFS. This notice of receipt of an application requesting a take of this species is issued as a precaution in the event that NMFS issues protective regulations that prohibit takes of Snake River steelhead. The initiation of a 30-day public comment period on the application, including its proposed take of Snake River steelhead, does not presuppose the contents of the eventual protective regulations. Those individuals requesting a hearing on this permit application should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the above application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: October 19, 1998.

Kevin Collins,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–28859 Filed 10–27–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101698K]

Endangered Species; Permits

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

ACTION: Receipt of an application for a scientific research permit (1184) and a modification to a scientific research permit (895); Issuance of scientific research permits (1138, 1166, 1177).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received a permit application from Garcia and Associates in San Anselmo, CA (GAA)(1184); NMFS has received an application to modify an existing permit from the U.S. Army Corps of Engineers, Walla Walla District at Walla Walla, WA (Corps-WWD)(895); NMFS has issued permits to: Dr. Jennifer Nielsen (1138), A.A. Rich and Associates (AARC)(1166), and the U.S. Army Corps of Engineers, Portland District in Portland, OR (Corps-PD)(1177).

DATES: Written comments or requests for a public hearing on any of the applications must be received on or before November 27, 1998.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

For permits 1138, 1166, and 1184: Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (707–575–6066);

For permits 895 and 1177: Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

All documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: For permits 1138, 1166, and 1184: Tom Hablett, Protected Resources Division, (707–575–6066).

For permit 895: Robert Koch, Portland, OR (503–230–5424).

For permit 1177: Tom Lichatowich, Portland, OR (503–230–5438).

SUPPLEMENTARY INFORMATION:

Authority

Permits are requested under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

Those individuals requesting a hearing on these requests for permits should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the below application summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Issuance of permits, as required by the ESA, is based on a finding that such permits: (1) Are applied for in good faith; (2) will not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Permits are also issued in accordance with and are subject to parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

Species Covered in This Notice

The following ESA-listed species are covered in this notice: Chinook salmon (*Oncorhynchus tshawytscha*), Coho salmon (*O. kisutch*), Sockeye salmon (*O. nerka*), and Steelhead trout (*O. mykiss*).

New Application Received

GAA (1184) requests a 5-year permit for takes of adult and juvenile, threatened, central California coast (CCC) coho salmon, and adult and juvenile, endangered, southern California coast (SCC) steelhead associated with fish population studies throughout the Evolutionarily Significant Units (ESUs) within California. Salmon and steelhead studies conducted by GAA consist of four assessment tasks for which ESA-

listed fish are proposed to be taken: (1) Presence/absence, (2) population estimates, (3) fish rescue, and (4) tissue/scale sampling for genetic studies. Fish will be observed or captured, anesthetized, handled (weighed, measured, fin-clipped), allowed to recover from the anesthetic, and released. Indirect mortalities associated with the research are also requested.

Modification Request Received

Corps-WWD requests modification 5 to permit 895, which authorizes annual direct takes of juvenile, endangered, Snake River sockeye salmon; juvenile, threatened, naturally produced and artificially propagated, Snake River spring/summer chinook salmon; juvenile, threatened, Snake River fall chinook salmon; and juvenile, endangered, naturally produced and artificially propagated, upper Columbia River steelhead associated with the operation of the Juvenile Fish Transportation Program at four hydroelectric projects on the Snake and Columbia Rivers in the Pacific Northwest (Lower Granite, Little Goose, Lower Monumental, and McNary Dams). Permit 895 also authorizes Corps-WWD annual incidental takes of adult salmonids associated with fallbacks through the juvenile fish bypass systems at the four dams. The purpose of the Juvenile Fish Transportation Program is to enhance the survival of migrating anadromous salmonids that would otherwise be subjected to adverse environmental conditions at the dams and reservoirs on the rivers. For modification 5, the Corps requests an increase in the annual direct take of juvenile, threatened, Snake River fall chinook salmon. Due to unknown factors, an unusually large number of wild juvenile fall chinook salmon are migrating out of the Snake River in 1998 and are being collected and transported at the Corps projects. An associated increase in juvenile fall chinook salmon indirect mortalities are also requested. Modification 5 is requested to be valid for the duration of the permit, which expires on December 31, 1999.

Permits Issued

Notice was published on July 14,1998 (63 FR 37851), that an application had been filed by Dr. Jennifer Nielsen for a scientific research permit. Permit 1138 was issued to Dr. Nielsen on October 14, 1998, and authorizes the receiving, possession and analyzing of tissues taken from adult and juvenile, threatened, CCC and southern Oregon/northern California coast (SONCC) coho salmon, and adult and juvenile, endangered, SCC steelhead associated with genetic studies throughout the ESUs. Fish will be captured only by other authorized NMFS Permit Holders. Permit 1138 expires on June 30, 2003.

Notice was published on July 14,1998 (63 FR 37851), that an application had been filed by AARC for a scientific research permit. Permit 1166 was issued to AARC on October 14, 1998, and authorizes takes of of adult and juvenile, threatened, CCC and SONCC coho salmon, and takes of adult and juvenile, endangered, SCC steelhead associated with fish population and habitat studies throughout the ESUs. ESA-listed fish may be captured, handled, and released. Indirect mortalities are also authorized. Permit 1166 expires on June 30, 2003.

Notice was published on August 31, 1998 (63 FR 46218), that an application had been filed by Corps-PD for a scientific research/enhancement permit. Permit 1177 was issued to Corps-PD on October 15, 1998, and authorizes annual direct takes of adult and juvenile, threatened, SONCC coho salmon associated with scientific research and an adult fish trap-and-haul program at Elk Creek Dam on the Rogue River in OR. The purpose of the trap-and-haul program is to move returning ESA-listed adult fish above Elk Creek Dam, an impassable barrier for adult salmonids, so that the fish may use the habitat upstream of the dam for natural spawning. To determine the annual spawning success of the fish upstream of the dam, ESA-listed juvenile fish will be observed by snorkeling. In addition, ESA-listed adult fish carcasses will be examined for evidence of spawning and immediately returned to the stream. Permit 1177 expires on June 30, 2000.

Dated: October 21, 1998.

Kevin Collins,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–28860 Filed 10–27–98; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Cambodia

October 22, 1998.

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

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

EFFECTIVE DATE: October 29, 1998.

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. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

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

As authorized by section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the United States Government has decided to continue the restraint limit on Categories 331/631 for an additional twelve-month period, beginning on October 29, 1998 and extending through October 28, 1999.

The United States remains committed to finding a mutual solution concerning Categories 331/631. Should such a solution be reached in consultations with the Government of Cambodia, further notice will be published in the **Federal Register**.

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 62 FR 66057, published on December 17, 1997). Also see 63 FR 7405, published on February 12, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 22, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 29, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 331/631, produced or manufactured in Cambodia and exported during the twelve-month period beginning on October 29, 1998

and extending through October 28, 1999, in excess of 1,250,841 dozen pairs [1].

Products in the above categories exported during the period October 29, 1997 through October 28, 1998 shall be charged to the applicable category limit for that period (see directive dated February 9, 1998) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–28857 Filed 10–27–98; 8:45 am]

BILLING CODE 3510–DR–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 the People's Republic of China

October 22, 1998.

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

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

EFFECTIVE DATE: October 28, 1998.

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

The current limits for certain categories are being increased for swing and 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 62 FR 66057, published on December 17, 1997). Also see 62 FR 67827, published on December 30, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 22, 1998.

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 December 22, 1997, 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 China and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on October 28, 1998, you are directed to increase the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
200	752,987 kilograms.
218	12,103,713 square meters.
237	2,119,203 dozen.
239	3,174,522 kilograms.
314	50,875,249 square meters.
331	5,571,870 dozen pairs.
334	337,034 dozen.
340	850,413 dozen of which not more than 413,396 dozen shall be in Category 340–Z [2].
345	135,213 dozen.
347/348	2,458,943 dozen.
351	591,232 dozen.
352	1,719,164 dozen.
360	7,765,552 numbers of which not more than 5,452,646 numbers shall be in Category 360–P [3].
361	4,553,412 numbers.
362	7,674,564 numbers.
363	22,364,197 numbers.
369–D [4]	5,034,883 kilograms.
410	1,008,939 square meters of which not more than 808,774 square meters shall be in Category 410–A [5] and not more than 848,420 square meters shall be in Category 410–B [6].
433	22,406 dozen.
435	26,070 dozen.
436	16,212 dozen.
438	28,369 dozen.
443	138,607 numbers.
444	215,110 numbers.
445/446	310,779 dozen.
447	75,886 dozen.
448	23,718 dozen.
614	12,710,730 square meters.
617	18,157,378 square meters.
631	1,384,244 dozen pairs.
633	61,312 dozen.
634	647,354 dozen.
635	684,059 dozen.
638/639	2,605,731 dozen.
640	1,490,044 dozen.
642	357,695 dozen.
643	550,631 numbers.
644/844	3,942,491 numbers.
645/646	864,604 dozen.
647	1,633,486 dozen.
649	1,004,176 dozen.
651	813,734 dozen of which not more than 134,891 dozen shall be in Category 651–B [7].
652	2,855,428 dozen.
659–H [8]	2,981,374 kilograms.
659–S [9]	640,150 kilograms.
666	3,794,012 kilograms of which not more than 1,255,625 kilograms shall be in Category 666–C [10].
670–L [11]	16,841,781 kilograms.
835	129,442 dozen.
836	299,586 dozen.
840	512,786 dozen.
Group II	
330, 332, 349, 353, 354, 359–O [12], 431, 432, 439, 459, 630, 632, 653, 654 and 659–O [13], as a group.	126,038,150 square meters equivalent.

[1] The limit has not been adjusted to account for any imports exported after October 28, 1998.

Category	Adjusted twelve-month limit [1]
Group III	
201, 220, 222, 223, 224–V [14], 224–O [15], 225, 227, 229, 369–O [16], 400, 414, 464, 465, 469, 600, 603, 604–O [17], 606, 618–622, 624–629, 665, 669–O [18] and 670–O [19], as a group.	261,446,831 square meters equivalent.
Group IV	
832, 834, 838, 839, 843, 850–852, 858 and 859, as a group.	11,712,490 square meters equivalent.
Level not in a Group	
870	35,418,329 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[3] Category 360–P: only HTS numbers 6302.21.3010, 6302.21.5010, 6302.21.7010, 6302.21.9010, 6302.31.3010, 6302.31.5010, 6302.31.7010 and 6302.31.9010.

[4] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[5] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[6] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[7] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[8] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[9] Category 659–S: only HTS numbers 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.

[10] Category 666–C: only HTS number 6303.92.2000.

[11] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907.

[12] 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, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070 (Category 359–V).

[13] 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); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 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).

[14] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[15] Category 224–O: all HTS numbers except 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020 (Category 224–V).

[16] Category 369–O: all HTS numbers except 6302.60.0010, 6302.91.0005 and 6302.91.0045 (Category 369–D); 4202.22.4020, 4202.22.4500, 4202.22.8030 (Category 369–H); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091, 6307.90.9905 (Category 369–L); and 6307.10.2005 (Category 369–S)

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

[18] 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).

[19] Category 670–O: only HTS numbers 4202.22.4030, 4202.22.8050 and 4202.32.9550.

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

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98–28856 Filed 10–27–98; 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 Costa Rica

October 22, 1998.

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

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

EFFECTIVE DATE: October 28, 1998.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this 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: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 443 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 62 FR 66057, published on December 17, 1997). Also see 62 FR 63520, published on December 1, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 22, 1998.

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 24, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Costa Rica and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on October 28, 1998, you are directed to increase the current limit for

Category 443 to 243,095 numbers [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing. The guaranteed access level for Category 443 remains unchanged.

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

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–28854 Filed 10–27–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

October 23, 1998.

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

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

EFFECTIVE DATE: October 28, 1998.

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

The current limits for certain categories are being adjusted, variously, for swing, carryforward and special 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 62 FR 66057, published on December 17, 1997). Also see 62 FR 67831, published on December 30, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 23, 1998.

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 December 22, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on October 28, 1998, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
219	66,578,074 square meters.
315	13,718,714 square meters.
326	7,765,839 square meters.
342/642	1,211,756 dozen.
641	1,275,563 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

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

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98–28858 Filed 10–27–98; 8:45 am]

BILLING CODE 3510–DR–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 Macau

October 22, 1998.

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

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

EFFECTIVE DATE: October 28, 1998.

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

The current limits for certain categories are being adjusted, variously, for swing, carryover and 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 62 FR 66057, published on December 17, 1997). Also see 62 FR 66054, published on December 17, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 22, 1998.

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 December 9, 1997, 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 Macau and exported during the period which began on January 1, 1998 and extends through December 31, 1998.

Effective on October 28, 1998, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
225	5,917,149 square meters.
317	4,170,449 square meters.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1997.

Category	Adjusted twelve-month limit [1]
333/334/335/833/834/835.	342,890 dozen of which not more than 153,070 dozen shall be in Categories 333/335/833/835.
336/836	77,827 dozen.
338	402,294 dozen.
339	1,762,763 dozen.
340	417,449 dozen.
341	262,743 dozen.
342	121,908 dozen.
345	69,319 dozen.
347/348/847	954,552 dozen.
350/850	81,271 dozen.
351/851	89,594 dozen.
359–C/659–C [2]	444,417 kilograms.
359–V [3]	162,547 kilograms.
625/626/627/628/629	5,997,860 square meters.
633/634/635	661,743 dozen.
638/639/838	2,170,099 dozen.
640	160,766 dozen.
641/840	267,740 dozen.
642/842	160,983 dozen.
645/646	354,494 dozen.
647/648	760,219 dozen.
659–S [4]	162,547 kilograms.
Group II	
400–431, 433–438, 440–448, 459pt. [5], 464, and 469pt. [6], as a group.	1,730,190 square meters equivalent.
Sublevel in Group II	
445/446	91,370 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 359–C: only HTS numbers 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 659–C: only HTS numbers 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 and 6211.43.0010.

[3] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[4] Category 659–S: only HTS numbers 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.

[5] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[6] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

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. 98–28853 Filed 10–27–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of a Designated Consultation Level for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

October 22, 1998.

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

ACTION: Issuing a directive to the Commissioner of Customs increasing a designated consultation level.

EFFECTIVE DATE: October 28, 1998.

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

SUPPLEMENTARY INFORMATION:

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

The Government of the United States has agreed to increase the current Designated Consultation Level (DCL) for Categories 338/339/638/639 to 721,500 dozen. The 1999 DCL for Categories 338/339/638/639 will be reduced by 71,500 dozen, the equivalent amount of the increase.

The level does not apply to NAFTA (North American Free Trade Agreement) originating goods, as defined in Annex 300–B, Chapter 4 and Annex 401 of the agreement. In addition, this consultation level does not apply to textile and apparel goods that are assembled in Mexico from fabrics wholly formed and cut in the United States and exported from and re-imported into the United States under U.S. tariff item 9802.00.90.

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 62 FR 66057, published on December 17, 1997). Also see 62 FR 67836, published on December 30, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 22, 1998.

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 December 22, 1997 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the period which began on January 1, 1998 and extends through December 31, 1998. The levels established in that directive do not apply to NAFTA (North American Free Trade Agreement) originating goods, as defined in Annex 300–B, Chapter 4 and Annex 401 of NAFTA or to goods assembled in Mexico from fabrics wholly formed and cut in the United States and exported from and re-imported into the United States under U.S. tariff item 9802.00.90.

Effective on October 28, 1998, you are directed to increase the current designated consultation level for Categories 338/339/638/639 to 721,500 dozen [1], pursuant to exchange of letters dated December 5, 1997 and provisions of the NAFTA (North American Free Trade Agreement).

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

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–28855 Filed 10–27–98; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0013]

Submission for OMB Review; Comment Request Entitled Cost or Pricing Data Requirements and Information Other Than Cost or Pricing Data

AGENCIES: Department of Defense (DOD), General Services Administration (GSA),

[1] The limit has not been adjusted to account for any imports exported after December 31, 1997.

and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Cost or Pricing Data Requirements and Information Other Than Cost or Pricing Data. A request for public comments was published at 63 FR 31448, June 9, 1998. No comments were received.

DATES: Comments may be submitted on or before November 27, 1998.

FOR FURTHER INFORMATION CONTACT: Jeremy Olson, Federal Acquisition Policy Division, GSA (202) 501–3221.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No, 9000–0013, Cost or Pricing Data Requirements and Information Other Than Cost Pricing Data, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Truth in Negotiations Act requires the Government to obtain certified cost or pricing data under certain circumstances. Contractors may request an exemption from this requirement under certain conditions and provide other information instead.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *50.51* hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The annual reporting burden is estimated as follows: Respondents, *33,332;* responses per respondent, *6;* total annual responses, *199,992;* preparation hours per response, *50.51;* and total response burden hours, *10,101,684.*

OBTAINING COPIES OF PROPOSALS: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0013, Cost or Pricing Data Requirements and Information Other Than Cost Pricing Data, in all correspondence.

Dated: October 23, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–28824 Filed 10–27–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0018]

Submission for OMB Review; Comment Request Entitled Certification of Independent Price Determination and Parent Company and Identifying Data

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Certification of Independent Price Determination and Parent Company and Identifying Data.

DATES: Comments may be submitted on or before November 27, 1998.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Federal Acquisition Policy Division, GSA (202) 501–1757.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

Agencies are required to report under 41 U.S.C. 252(d) and 10 U.S.C. 2305(d) suspected violations of the antitrust laws (e.g., collusive bidding, identical bids, uniform estimating systems, etc.) to the Attorney General.

As a first step in assuring that Government contracts are not awarded to firms violating such laws, offerors on Government contracts must complete the certificate of independent price determination. An offer will not be considered for award where the certificate has been deleted or modified. Deletions or modifications of the certificate and suspected false certificates are reported to the Attorney General.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *.04 hours for the first completion, .0083 hours for subsequent completions, or an average of .01 hours per completion,* including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *64,250;* responses per respondent, *20;* total annual responses, *1,285,000;* preparation hours per response, *.02;* and total response burden hours, *25,700.*

OBTAINING COPIES OF PROPOSALS: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB clearance 9000–0018, Certification of Independent Price Determination and Parent Company and Identifying Data, in all correspondence.

Dated: October 23, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–28825 Filed 10–27–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of a Draft Environmental Impact Statement (DEIS) for the Land Exchange Between Fort Benning and the City of Columbus, GA

AGENCY: U.S. Army Infantry Center and Fort Benning, Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: This announces the availability of the DEIS which assesses the potential environmental impacts of the exchange of tracts of land between Fort Benning and the City of Columbus (hereafter referred to as the City). Section 2829 of Pub. L. 101–510, enacted November 5, 1990, authorized a land exchange between the City and Fort Benning. The proposed action is to transfer the North Tract (ranging in size from 2113 acres to 2,760 acres) to the City in exchange for the South Tract, which ranges from 2,156 to 2,848 acres.

DATES: The public comments period for the DEIS will end 45 days after publication of the NOA in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: To obtain copies of the DEIS contact the U.S. Army Infantry Center, Directorate of Public Works, Environmental Management Division, (ATTN: Mr. John Brent), Fort Benning, Georgia 31905–5122, or send e-mail to Brentj@benning.army.mil.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposal may be directed to Mr. John Brent at (706) 545–4766.

SUPPLEMENTARY INFORMATION: On June 26, 1996, Fort Benning conveyed 346 acres to the City for landfill development in exchange for 380 acres, as authorized under the same enabling legislation as the currently proposed exchange. An Environmental Assessment was prepared pursuant to the National Environmental Policy Act (NEPA) of 1969, and a Finding of No Significant Impact was prepared for the landfill land exchange. This notice of availability pertains only to the proposed North-South Tract land exchange DEIS, involving the remaining 2,760 acres of Fort Benning land (the North Tract) and 2,848 acres of the City land (the South Tract).

The City intends to use the North Tract land for economic development and passive recreation. Fort Benning would use the land it receives for dismounted light infantry training.

The alternative actions considered in this DEIS are:

a. Alternative I: No-Action. No land would be exchanged under this alternative. Impacts associated with the Fort Benning mission and land use are evaluated for the North Tract. Impacts associated with the City's projected use of the South Tract for industrial development also are analyzed.

b. Alternative II: Minimum Development of North Tract. A North Tract of 2,760 acres would be exchanged for a South Tract of 2,848 acres. This alternative would provide approximately 885 acres of the North Tract for economic/light industrial development. Also approximately 690 acres of the North Tract would become a Parks and Recreation Area near Bull Creek and may be used for wetland mitigation. The remaining 1,185 acres of the North Tract would be conservation areas. The Army would use the South Tract for dismounted light infantry training.

c. Alternative III: Maximum Development of North Tract. This alternative would also include transfer of a North Tract of 2,760 acres in exchange for a South Tract of 2,848 acres. Approximately 690 acre Parks and Recreation Area near Bull Creek would be established on the North Tract and may be used for wetland mitigation. The remaining North Tract property (approximately 2,070 acres) would be developable land. The Army would use the South Tract for dismounted light infantry training.

d. Alternative IV: Development of the North Tract with Habitat Conservation Area (HCA). This alternative would also include transfer of a North Tract of 2,760 acres in exchange for a South Tract of 2,848 acres. An HCA would be established and managed for protected species on approximately 708 acres. An approximately 690 acre Parks and Recreation Area near Bull Creek would be established on the North Tract and may be used for wetland mitigation. The remaining North Tract property (approximately 1,362 acres) would be developable. The Army would use the South Tract for dismounted light infantry training.

e. Alternative V (Preferred Alternative): Development of Reduced North Tract Without the HCA. This alternative would reduce the North Tract to 2,113 acres in exchange for a South Tract of 2,156 acres. Most of the area identified for an HCA in Alternative IV would remain with Fort Benning. Approximately 690 acre Parks and Recreation Area would be established on the North Tract and may be used for wetlands protection, leaving approximately 1,423 acres of developable land. The Army would use the reduced South Tract for dismounted light infantry training. The City would continue timber production on the portion retained from the South Tract (692 acres).

The DEIS includes analyses of the environmental consequences each alternative may have on topographical setting and land use, aesthetics, air quality and climate, noise, geology and soils, water resources, biological resources, cultural resources, human health and safety, socioeconomics, infrastructure, hazardous and toxic materials/wastes, and environmental justice. The findings indicate that potential environmental impacts from each alternative may include changes to land use, impacts to biological resources and cultural resources, and cumulative impacts to biological resources.

A public meeting for the purpose of receiving comments on this DEIS will be held in Columbus, Georgia. Additional details will follow in the media or may be obtained by contacting the Fort Benning Public Affairs Office at (706) 545–2211. Public comments received on the DEIS will be considered and addressed in the final EIS and considered by the Army in its Record of Decision.

The DEIS and supporting documents are available for public review at the following locations: W.C. Bradley Memorial Library, 1120 Bradley Drive, Columbus, Georgia; South Lumpkin Library, 2034 South Lumpkin Road, Columbus, Georgia; Sawyers Library, Building 93, Fort Benning, Georgia; Simon Schwob Memorial Library, Columbus State University, 4225 University Avenue, Columbus, Georgia; Columbus Chamber of Commerce, 901 Front Street, Columbus, Georgia; and Columbus Government Center Tower, Columbus, Georgia.

Dated: October 23, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 98–28885 Filed 10–27–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Draft Programmatic Environmental Impact Statement for the Mission and Master Plan, Fort Bliss, Texas, and New Mexico

AGENCY: Department of the Army, DoD.

ACTION: Extension of public comment period.

SUMMARY: To accommodate requests from the public, the Department of the Army has decided to extend the public comment period on the Draft Programmatic Environmental Impact Statement (DPEIS) for the Mission and Master Plan, Fort Bliss, Texas and New Mexico from October 5, 1998 to November 5, 1998.

DATES: Comments on the DEIS should be postmarked by November 5, 1998 to

ensure consideration. Comments postmarked after that date will be considered to the extent practicable.

ADDRESSES: To request information about this DPEIS, contact Vicki Hamilton via e-mail at PEIS@emh10.bliss.army.mil. Written comments should be sent to U.S. Army Air Defense Artillery Center and Fort Bliss, Directorate of the Environment, ATTN: AZC–DOE–C (PEIS), Building 624 North, Pleasanton Road, Fort Bliss, TX 79916–6812.

FOR FURTHER INFORMATION CONTACT: Vick Hamilton at (915) 568–2774.

SUPPLEMENTARY INFORMATION: On August 18, 1998, Department of the Army published a notice in the **Federal Register** (63 FR 44247) (63 FR 44247) announcing the availability of the subject DPEIS and the locations of the planned public meetings as well as the repositories for the DPEIS. The dates and times for the public meetings were announced subsequently in the public media in the vicinity of Fort Bliss and the meetings were held on September 3, 4, and 5, 1998. The Environmental Protection Agency published its Notice of Availability for the DPEIS on August 21, 1998 (63 FR 44859). Department of the Army has received requests from several parties to extend the comment period. In response to these requests, and to ensure that all interested parties have time to comment, the comment period has been extended to November 5, 1998.

Dated: October 23, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OSASA (I,L&E).

[FR Doc. 98–28886 Filed 10–27–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–4109–001]

El Dorado Energy, LLC; Notice of Filing

October 22, 1998.

Take notice that on October 13, 1998, El Dorado Energy, LLC tendered for filing a revised code of conduct in compliance with the Commission's order issued on October 1, 1998, in Docket No. ER98–4109–001.

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 and protests should be filed on or before November 2, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–28799 Filed 10–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–363–000]

Etowah LNG Company, L.L.C.; Notice of Site Visit

October 22, 1998.

On November 4 and 5, 1998, the Office of Pipeline Regulation staff will be conducting and environmental site visit of Etowah LNG Company's proposed Etowah LNG Project in Polk, Paulding, and Cobb Counties, Georgia. All parties may attend. Those planning to attend must provide their own transportation.

For further information about where the site visit will begin, please call Paul McKee at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–28793 Filed 10–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–13–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

October 22, 1998.

Take notice that on October 13, 1998, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed a request with the Commission in Docket No. CP98–13–000, pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a new delivery point in Polk County, Florida for Chesapeake Utilities Corporation (Chesapeake), authorized in blanket certificate issued in Docket No. CP82–553–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

FGT proposes to construct, operate, and own an additional delivery point in Polk County, Florida for Chesapeake at or near mile post 26.1 on FGT's existing 6-inch Avon Park Lateral. FGT states that the subject delivery point would include a tap, minor connecting pipe, electronic flow measurement equipment, and any other related appurtenant facilities necessary for FGT to transport for and deliver to Chesapeake up to 100 MMBtu per day and 36,500 MMBtu per year of natural gas. Chesapeake would reimburse FGT for the $74,000 estimated construction costs. FGT further states that Chesapeake would construct, own, and operate the meter and regulation station.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed with the allowed time, 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 NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–28794 Filed 10–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2585–000, North Carolina]

Northbrook Carolina Hydro, L.L.C.; Notice Soliciting Applications

October 22, 1998.

On July 28, 1995, Duke Power Company, the original licensee of the Idols Project No. 2585, filed a Notice of Intent to file an application for a new license, pursuant to section 15(b)(1) of th4 Federal Power Act (Act), 16 U.S.C.

808 (1994). The Idols Project license was transferred from Duke Power Company to Northbrook Carolina Hydro, L.L.C. (Northbrook) on November 20, 1996. 77 FERC ¶ 62,100. The license for Project No. 2585 expires July 31, 2000.

The project is located on the Yadkin River in Forsyth County, North Carolina. The project consists of: (1) a 15-foot-high, 660-foot-long rubble dam with an ungated spillway; (2) a 1-mile-long reservoir with a 35-acre surface area and no appreciable storage at normal pool elevation; (3) an integral stone masonry and wood powerhouse containing six generating units having a total installed capacity of 1,411 kW; and (4) appurtenant facilities.

On July 6, 1998, Northbrook notified the Commission that it will surrender its license for Project No. 2585. Northbrook states that a fire destroyed all generating equipment and the wood powerhouse at the project in February, 1998. Northbrook will transfer the remaining facilities to the City of Winston Salem, North Carolina, which currently operates a water supply station at the project impoundment.

Pursuant to Section 16.20 of the Commission's regulations, the deadline for filing an application for subsequent license and for filing a competing license application was July 31, 1998. No license applications for this project are pending before the Commission. Pursuant to Section 16.25, the Commission hereby invites potential applicants, other than the existing licensee to file acceptable license applications for this project.

A potential applicant must file its notice of intent within 90 days from the date of issuance of this notice. A potential applicant that has filed such a notice may apply for a license under Part I of the Federal Power Act and Part 4 (except Section 4.38) of the Commission's regulations within 18 months of the date on which it has filed its notice. Such an applicant must comply with the requirement of Section 16.8 of the Commission's regulations. Finally, pursuant to Section 16.19 of the Commission's regulations, Northbrook is required to make available certain information described in Section 16.7 of the Commission's regulations. Such information is available from the licensee at Northbrook Carolina Hydro, L.L.C., 275 Wacker Drive, Suite 2330, Chicago, Illinois 60306.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–28791 Filed 10–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–19–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

October 22, 1998.

Take notice that on October 15, 1998, Tennessee Gas Pipeline company (Tennessee), P.O. Box 2511, Houston, Texas 77252–2511, filed in Docket No. CP99–19–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new delivery point, located in Hickman County, Tennessee, to provide service to Tennessee Valley Authority (TVA), an electric utility, under Tennessee's blanket certificate issued in Docket No. CP82–413–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that at TVA's request, Tennessee proposes to construct and operate a new delivery point on its system located at approximately Mile Post 80–3+5.99 and Mile Post 80–4+5.99 in Hickman County, Tennessee to provide up to 550,000 Mcf (approximately 558,250 dekatherms) of natural gas per day to TVA. Specifically, Tennessee proposes to install, own, and operate two (2) twenty-four inch tie-in assemblies, electronic gas measurement (EGM) and communications equipment, gas chromatograph equipment, EGM/chromatograph building, valving, instrumentation, conduit, heat traced tubing, and appurtenant equipment and facilities.

Tennessee states that TVA will install, own, operate, and maintain the interconnecting pipeline and will install, own, and maintain the measurement and flow control facilities.

Tennessee declares that TVA will reimburse them for the cost of this project, which is estimated to be $521,600. Tennessee asserts that all facilities downstream of the measurement facilities will be installed, owned, operated, and maintained by TVA.

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

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–28795 Filed 10–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–93–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 22, 1998.

Take notice that on October 19, 1998, 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, 1998.

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 has recently filed its Annual PCB-Related Cost Filing to reflect the PCB-Related Cost rate components to be effective for the twelve month period December 1, 1998 through November 30, 1999 (PCB Year 9). Texas Eastern states that the combined impact on Texas Eastern's rates at December 1, 1998 of this filing in combination with the PCB Year 9 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 increase of 0.85 cents as follows:

Rate impact	100% LF Impact ($/dth)
PCB Year 7 Filing	($0.0007)
ASA and Global Settlement:	
ASA Surcharge	0.0063
Spot Fuel Component	(0.0281)
Account 858 Costs	0.0004
Total Rate Impact	(0.0221)
Fuel Retention Impact: Annual Avg. ASA Percentage Increase—1.34%	
Rate Equivalent at P.I.R.A. projected price of $2.28/dth	0.0306
Net Impact	0.0085

Texas Eastern states that the filing reflects a significant change from previous ASA and Global Settlement filings because since the time of the last filing Texas Eastern has reached separate agreements on buyouts of its obligations under each of the three contracts listed on Appendix C of the Settlement (''Appendix C Contracts'') for the purchase of gas from South Pass 89. Texas Eastern states that as a result of the settlement of the Appendix C Contracts, Texas Eastern no longer purchases gas under the Appendix C Contracts, and accordingly it will no longer collect the Spot Cost of such purchases in rates and reduce its ASA shrinkage factors by the quantity of gas purchased and used as fuel under the Appendix C Contracts.

Texas Eastern states that the changes proposed to become effective beginning December 1, 1998 consist of: (1) ASA Percentages designed to retain in-kind the projected quantities of gas required for the operation of Texas Eastern's system in providing service to its customers, without reduction for quantities projected to be purchased from Appendix C Contracts under the Settlement; (2) the ASA Surcharge designed to recover the net monetary value recorded in the Applicable Shrinkage Deferred Account as of August 31, 1998, as reduced by the transfer of the credit balances in the Spot Fuel Deferred Account and the Account No. 858 Cost Deferred Account; (3) the removal of the Spot Fuel Components from Texas Eastern's rates due to the termination of all Spot Costs, as defined in the Settlement, and the transfer of the balance in the Spot Fuel Deferred Account to the ASA; (4) A Fuel Reservation Charge Adjustment designed to recover the excess (limited to a maximum rate specified by the Settlement) of the August 31, 1998 balance in the Non-Spot Fuel Deferred Account over the threshold amount of $15 million specified in Appendix E of the Settlement; and (5) the elimination of the Account No. 858 Costs rate components due to the termination of all Account No. 858 Costs and the transfer of the Account No. 858 Costs Deferred Account balance to the ASA. Texas Eastern states that this filing also constitutes Texas Eastern's report of the annual reconciliation of the interruptible revenues under Rate Schedules IT–I, PTI and ISS–I, as well as for Rate Schedule LLIT and for Rate Schedule VKIT.

Texas Eastern states that copies of its filing have been mailed to all affected customers of Texas Eastern and interested state commissions, as well as 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 life a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 or 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–28796 Filed 10–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–9–29–002]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 22, 1998.

Take notice that on October 19, 1998, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to its FERC Gas Tariff, Third Revised Volume No. 1, Tenth Revised Sheet No. 29 and Alternate Tenth Revised Sheet No. 29. Such tariff sheets are proposed to be effective November 1, 1998.

Transco states that the purpose of the instant filing is to comply with the Commission's letter order issued October 2, 1998 in Docket No. TM98–9–29–001 (the Order). The Order directs Transco to revise the fuel retention percentages under Rate Schedule GSS, LG–A and LG–S to correct an accounting and measurement error.

Transco states that it is serving copies of the instant filing to its affected 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 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–28798 Filed 10–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–94–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

October 22, 1998.

Take notice that on October 19, 1998, 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 November 18, 1998:

Sixth Revised Sheet No. 91
Sixth Revised Sheet No. 123
Fourth Revised Sheet No. 608A
Fourth Revised Sheet No. 658

Williston Basin states it is proposing to add language to its interruptible transportation and storage Rate Schedules and Form of Service Agreements to clarify the type of end-user(s) to which discounts may be granted by Williston Basin.

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 or 385.211 of the Commission's Rules and Regulations. All such motions of 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–28797 Filed 10–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Issuance of Draft License Application and Preliminary Draft Environmental Assessment (PDEA)

October 22, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major New License; Applicant-Prepared Environmental Assessment Process.

b. *Project No.:* 11588–001.

c. *Applicant:* Alaska Power & Telephone Company (AP&T).

d. *Name of Project:* Otter Creek Hydroelectric Project.

e. *Location:* Entirely within the Tongass National Forest, on Kasidaya Creek three miles south of Skagway, Alaska.

f. *Applicant Contact:* Mr. Robert Grimm, President, Alaska Power & Telephone, P.O. Box 3222, Port Townsend, WA 98368.

Send Comments to: Mr. Glen Martin, Project Manger, Alaska Power & Telephone, P.O. Box 3222, Port Townsend, WA 98368, 1–800 982–0136, (360) 385–1733 X122.

g. *FERC Contact:* Carl Keller (202) 219–2831.

h. AP&T mailed a copy of the Preliminary Draft Environmental Assessment (PDEA) and draft license application to interested parties on October 19, 1998. The Commission received a copy of the PDEA and draft license application on October 20, 1998.

i. With this notice, we are soliciting *preliminary* terms, conditions, prescriptions, and recommendations on the PDEA, and comments on the draft license application. After the application is officially filed with the Commission, we will request *final* terms, conditions, prescriptions, and recommendations on the DEA and final application.

j. All comments on the PDEA and draft license application for the Otter Creek Project should be sent to the address noted above in item (f) with one copy sent to the Commission at the following address: Carl J. Keller, Project Coordinator, Federal Energy Regulatory Commission, Office of Hydropower Licensing—Room 6H–10, 888 First Street, NE., Washington, DC 20426.

All comments must (1) bear the heading ''Preliminary Comments'', ''Preliminary Recommendations'', ''Preliminary Terms and Conditions'', or ''Preliminary Prescriptions''; and (2) set forth in the heading the name of the applicant and the project number of the application. Any party interested in commenting must do so before January 18, 1999.

k. With this notice, we are initiating consultation with the State Historic Preservation Officer, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–28792 Filed 10–27–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6181–3]

National Drinking Water Advisory Council; Notice of Open Meetings

Under Section 10(a)(2) of Public Law 92–423, ''The Federal Advisory Committee Act,'' notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on November 17, 1998, from 9:00 p.m. until approximately 6:00 p.m., and on November 18, 1998, from 8:30 a.m. until approximately 5:00 p.m. at the Hilton Crystal City, 2399 Jefferson Davis Highway, Arlington, Virginia 22202. The purpose of the meeting is to discuss the current status of the Environmental Protection Agency's (EPA) activities and the 1999 priorities and goals. The Council will also be provided recommendations from the Benefits, Operator Certification, Right to Know and Small Systems Working Groups.

The meeting is open to the public. The Council encourages the hearing of outside statements and will allocate one hour for this purpose. Oral statements will be limited to five minutes, and it is preferred that only one person present the statement. Any outside parties interested in presenting an oral statement should petition the Council by telephone at (202) 260–2285 before November 12, 1998.

Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received prior to the meeting will be distributed to all members of the Council before any final discussion or vote is completed. Any statements received after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Members of the public that would like to attend the meeting, present an oral statement, or submit a written statement, should contact Ms. Charlene Shaw, Designated Federal Officer, National Drinking Water Advisory Council, U.S. EPA, Office of Ground Water and Drinking Water (4601), 401 M Street SW, Washington, D.C. 20460. The telephone number is Area Code (202) 260–2285 or E-Mail Shaw.Charlene@epamail.epa.gov.

Dated: October 22, 1998.

Elizabeth J. Fellows,

Deputy Director, Office of Ground Water and Drinking Water.

[FR Doc. 98–28872 Filed 10–27–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6181–2]

Announcement of Public Meeting on the Safe Drinking Water Information System (SDWIS/FED)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that EPA is sponsoring three public meetings to discuss drinking water data quality on November 5, 6, and 9, 1998. The meetings will be held in Denver, Colorado (Nov. 5th), Washington, D.C. (Nov. 6th), and Kansas City, Missouri (Nov. 9th). The Denver meeting will be held in the Lakewood Sheraton, 360 Union Blvd., Lakewood, CO 80228, from 8:30 a.m. to 4:30 p.m. The Washington meeting will be held in the Auditorium at the Environmental Protection Agency (EPA), 401 M Street, SW, Washington, D.C. 20460, from 9:30 a.m. to 4:30 p.m. The Kansas City meeting will be held in the Downtown Marriott Hotel, 200 W. 12th St., Kansas City, MO 64105, from 9 a.m. to 4 p.m.

The purpose of these meetings is to obtain comments on EPA's draft action plan to improve drinking water data quality. The plan addresses data quality at all levels: from laboratories and public water utilities to local governments, state government, and finally to EPA, where data are housed in the Safe Drinking Water Information System, or SDWIS/FED, database. EPA is particularly interested in what is an appropriate data quality goal, how data quality problems originate, and how EPA can characterize, quantify, and improve data quality. EPA will ask for help in prioritizing activities to begin working on the most important activities first. Finally, participants will discuss ways to improve the way EPA presents SDWIS/FED data in its Envirofacts web site.

For more information on the Denver meeting, please contact: Aundrey Wilkins, U.S. EPA, Region 8, 999 18th Street, 8P–W–MS, Suite 500, Denver, CO 80202 (phone: 303–312–6245, e-mail address: *aundrey.wilkins@epa.gov*). For more information on the Washington meeting, please contact: Christine O'Brien, U.S. EPA, Office of Ground Water and Drinking Water (4606), 401 M Street SW, Washington, D.C. 20460 (phone: 202–260–4275, e-mail address: *obrien.christine@epa.gov*). For more information on the Kansas City meeting, please contact Ann Keener, U.S. EPA, Region 7, 726 Minnesota Ave., WWPP/RMBC, Kansas City, KS 66101 (phone: 913–551–7388, e-mail address: *keener.ann@epa.gov*).

To register for any of the meetings, call the Safe Drinking Water Hotline: 1–800–426–4791.

Dated: Ocober 21, 1998.

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 98–28871 Filed 10–27–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6180–8]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency.

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Call Sandy Farmer at (202) 260–2740, or E-mail at *''farmer.sandy@epamail.epa.gov''*, and please refer to the appropriated EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1442.16; Land Disposal Restriction (LDR Phase IV: Treatment Standards for Wastes from Toxicity Characteristic Metals, Mineral Processing Secondary Materials, and the Exclusion of Recycled Wood); in 40 CFR Part 261.4(a)(15)(vi); was approved 10/01/98; OMB No. 2050–0085; expires 08/31/2000.

EPA ICR No. 1189.06; Identification, Listing and Rule Making Petitions; in 49 CFR Parts 261.4 and 268; was approved 09/30/98; OMB No. 2050–0053; expires 09/30/2001.

EPA ICR No. 1189.07; Identification, Listing, and Rule Making Petition (LDR Phase IV: Treatment Standards for Wastes from Toxicity Characteristics Metals, Mineral Processing Secondary Materials, and the Exclusion of Recycled Wood Preserving Waste Waters); in 40 CFR Part 261.4(a)(9)()iii); was approved 10/01/98; OMB No. 2050–0053; expires 09/30/2001.

EPA ICR No. 0186.08; NESHAP for Vinyl Chloride, Information Requirements; in 40 CFR Part 61, Subpart F; was approved 09/30/98; OMB No. 2060–0071; expires 09/30/2001.

EPA ICR No. 1686.03; Secondary Lead Smelter Industry, Information Requirements—MACT; in 40 CFR Part 63, Subpart X; was approved 09/30/98; OMB No. 2060–0296; expires 09/30/2001.

EPA ICR No. 1657.03; Record Keeping and Reporting Requirements for NESHAP for Total HAP Emissions from the Pulp and Paper Production Sources Category, Process Operations; in 40 CFR Part 63, Subpart MM; was approved 09/30/98; OMB No. 2060–0387; expires 09/30/2001.

EPA ICR No. 1832.02; Consumer Confidence Reports for Community Water Systems; in 40 CFR Part 141; was approved 09/30/98; OMB No. 2040–0201; expires 09/30/2001.

EPA ICR No. 0270.38; Public Water Systems Supervision Program; in 40 CFR Part 141; was approved 09/29/98; OMB No. 2040–0090; expires 09/30/2001.

EPA ICR No. 0143.06; Record Keeping Requirements for Producers of Pesticides under Section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); in 40 CFR Part 169; was approved 09/30/98; OMB No. 2070–0028; expires 09/30/2001.

EPA ICR No. 1488.04; Superfund Site Evaluation and Hazard Ranking System; in 40 CFR Part 300, Appendis A; was approved 09/30/98; OMB No. 2050–0095; expires 09/30/2001.

EPA ICR No. 1639.03; National Pollutant Discharge Elimination System Great Lakes Water Quality Guidance; in 40 CFR Part 132; was approved 09/30/98; OMB No. 2040–0180; expires 09/30/2001.

EPA ICR No. 1800.01; Information Requirements for Locomotives and Locomotive Engines; in 40 CFR Part 92; was approved 09/30/98; OMB No. 2060–0392; expires 09/30/2001.

EPA ICR No. 1741.02; Correction of Misreported Chemical Substances on the Toxic Substances Control Act

(TSCA) Chemical Substance Inventory; in 40 CFR Part 710; was approved 09/30/98; OMB No. 2070–0145; expires 09/30/2001.

EPA ICR No. 1597.03; Hazardous Waste Management Systems Modifications of the Hazardous Waste Recycling Regulatory Program; Standards for Universal Waste Management; in 40 CFR Part 273; was approved 09/30/98; OMB No. 2050–0145; expires 09/30/2001.

EPA ICR No. 1246.06; Reporting and Record Keeping Requirements for Asbestos Abatement Worker Protection; in 40 CFR Part 763, Subpart G; was approved 09/30/98; OMB No. 2070–0072; expires 09/30/2001.

EPA ICR No. 1730.01; Standards of Performance for New Sources: Hospital/Medical/Infectious Waste Incinerators; in 40 CFR Part 60, Subpart Ec; was approved 09/30/98; OMB No. 2060–0363; expires 09/30/2001.

EPA ICR No. 1637.04; General Conformity of Federal Actions to State Implementation Plans; in 40 CFR Part 51, Subpart W and Part 93, Subpart B; was approved 09/30/98; OMB No. 2060–0279; expires 09/30/2001.

EPA ICR No. 0820.07; Hazardous Waste Generator Standards; in 40 CFR Parts 262, and 265; was approved 09/30/98; OMB No. 2050–0035; expires 09/30/2001.

EPA ICR No. 1062.06; Standards of Performance for Coal Preparation Plants; in 40 CFR Part 60, Subpart Y; was approved 09/30/98; OMB No. 2060–0122; expires 09/30/2001.

EPA ICR No. 1391.04; Clean Water Act State Revolving Fund Program; in 40 CFR Part 35; was approved 09/30/98; OMB No. 2040–0118; expires 09/30/2001.

EPA ICR No. 1681.03; National Emission Standards for Hazardous Air Pollutants for Epoxy Resin Production and Non-Nylon Polyamide Production; in 40 CFR Part 63, Subpart W; was approved 09/30/98; OMB No. 2060–0290; expires 09/30/2001.

EPA ICR No. 1876.01; National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers; in 40 CFR Part 63.404; was approved 09/30/98; OMB No. 2060–0268; expires 09/30/2001.

EPA ICR No. 1723.02; Reporting and Record Keeping Requirements for the Importation of Nonconforming Marine Engines; in 40 CFR Part 91, Subpart H; was approved 09/30/98; OMB No. 2060–0320; expires 09/30/2001.

EPA ICR No. 1736.02; Reporting and Record Keeping Requirements under EPA's Natural Gas STAR Program; non-regulatory; was approved 09/30/98; OMB No. 2060–0328; expires 09/30/2001.

EPA ICR No. 0229.11; Discharge Monitoring Report for the National Pollutant Discharge Elimination System (NPDES) Sewage Sludge Monitoring Reports; in 40 CFR Parts 501 and 503; was approved 09/30/98; OMB No. 2040–0004; expires 09/30/2001.

EPA ICR No. 0370.16; Underground Injection Control Program; in 40 CFR Part 144; was approved 09/30/98; OMB No. 2040–0042; expires 09/30/2001.

EPA ICR No. 1791.02; Establishment of No-Discharge Zones for Discharges Incidental to the Normal Operation of Armed Forces Vessels under CWA Section 312(n); in 40 CFR Part 139; was approved 09/30/98; OMB No. 2040–0187; expires 10/31/2000.

EPA ICR No. 1669.02; Lead Requirements for Hazard Education before Renovation of Target Housing; in 40 CFR Part 745.103; was approved 09/30/98; OMN No. 2070–0158; expires 09/30/2001.

EPA ICR No. 1808.02; Environmental Impact Assessment of Non-governmental Activities in Antarctica; in 40 CFR Part 8; was approved 09/30/98; OMB No. 2020–0007; expires 09/30/2001.

EPA ICR No. 1487.06; Cooperative Agreements and Superfund Contracts for Superfund Response Actions; in 40 CFR Part 35; was approved 09/30/98; OMB No. 2010–0020; expires 09/30/2001.

EPA ICR No. 0193.06; National Emission Standards for Hazardous Air Pollutants, Beryllium, Information Requirements; in 40 CFR Part 61, Subpart C; was approved 09/30/98; OMB No. 2060–0092; expires 09/30/2001.

EPA ICR No. 1831.01; NESHAP for Ferro Alloys Production; in 40 CFR Part 63, Subpart SSS; was approved 09/30/98; OMB No. 2060–0391; expires 09/30/2001.

EPA ICR No. 1360.05; Underground Storage Tanks: Technical and Financial Requirements and State Program Approval Procedures; in 40 CFR Parts 280 and 281; was approved 09/30/98; OMB No. 2050–0068; expires 09/30/2001.

OMB Disapprovals

EPA ICR No. 1850.01; NESHAP for Primary Cooper Smelters; was disapproved by OMB on 09/30/98.

EPA ICR No. 1820.01; Phase II of the NPDES Storm Water Program; was disapproved by OMB on 09/30/98.

Dated: October 21, 1998.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 98–28727 Filed 10–27–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6180–5]

Notice of Proposed Administrative De Minimis Settlement Pursuant to Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act and Notice of Public Meeting and Proposed Settlement Pursuant to Section 7003(d) of the Resource Conservation and Recovery Act; In Re: Lenz Oil Services, Inc., Site, Lemont, IL

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(I)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), and section 7003(d) of the Resource Conservation and Recovery Act, as amended (''RCRA''), notice is hereby given of a proposed administrative *de minimis* settlement under section 122(h)(1) of CERCLA and section 7003 of RCRA concerning the Lenz Oil Services, Inc., site (''Site'') in Lemont, Illinois. Subject to review and comment by the public pursuant to this Notice, the agreement has been approved by the United States Department of Justice. Pursuant to RCRA section 7003(d), upon public request EPA will provide for a public meeting in the vicinity of the Site to discuss this settlement.

The settlement resolves an Environmental Protection Agency (EPA) claim under section 107(a) of CERCLA and section 7003 of RCRA, and a State of Illinois claim under section 22.2a of the Illinois Environmental Protection Act, against 618 parties who have executed binding certifications of their consent to the settlement, as listed below in the **SUPPLEMENTARY INFORMATION** section. However, the settlement is being modified as specified in an errata sheet to correct certain errors in the settlement documents and to supplement settlement terms relating to federal Agency settlors. Consequently, following the public comment period, each party who has executed a certification of its consent to the settlement will be provided with an

opportunity to ratify the errata changes, or to withdraw from the settlement without penalty.

The settlement requires the settling parties to pay a total of $4,029,002.91 to the Hazardous Substances Superfund, Lenz Oil Services, Inc., Special Account. In addition, the settlement requires the settling parties to pay to reimburse the State of Illinois a total of $1,240,446.20 for costs incurred relating to past response actions relating to the Site. The total of these payments by the settling parties is $5,269,449.11. Each settling party is required to pay an amount specified for that party in the settlement based upon the volume of waste that party contributed to the Site; except as to twelve parties, who are paying a lesser amount which is based upon an analysis of their ability to pay the settlement. Payments received shall be applied, retained or used to finance the response actions taken or to be taken at or in connection with the Site, including payments for past response costs, future oversight costs and/or other future costs of conducting the response.

For thirty (30) days following the date of publication of this notice, and at the public meeting identified above, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the Lemont Town Hall, 418 Main Street, Lemont, Illinois and at the EPA, Region 5, 7th Floor File Room, 77 West Jackson Boulevard, Chicago, Illinois.

DATES: Comments must be submitted on or before November 27, 1998.

ADDRESSES: The proposed settlement, including the errata sheet, and additional background information relating to the settlement are available for public inspection at the Lemont Town Hall, 418 Main Street, Lemont, Illinois, and at the EPA, Region 5, 7th Floor File Room, 77 West Jackson Boulevard, Chicago, Illinois. In addition, a copy of the proposed settlement also may be obtained from Stuart P. Hersh, Associate Regional Counsel (C–14J), Region V, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, or by calling (312) 353–9484. Comments should reference the Lenz Oil Services Inc., Superfund Site, Lemont, Illinois and EPA Docket No. V–W–98–C–440 and should be addressed to Stuart P. Hersh, Associate Regional Counsel (C–14J), Region V, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

SUPPLEMENTARY INFORMATION: The parties listed below have executed binding certifications of their consent to participate in the settlement.

Respondents

A & R TRANSPORT; A & W AUTO SERVICE (f/k/a A & W AUTO TIRE & SERVICE, includes ANDY WURST (PHILLIPS 66)) and PHILLIPS 66 (HINSDALE); A–C DISTRIBUTING COMPANY; A. PODHAJSKI; A. A. ANDERSON INC.; A.B.C. DISPOSAL; AA QUALITY TOWING; AAMCO TRANSMISSION, CHICAGO HEIGHTS; AAMCO TRANSMISSION, CICERO; AAMCO TRANSMISSION, DES PLAINES; ACCRO PRECISION GRINDING; ACE TRANSMISSION SERVICE; ACKLEY TRUCKING; ADDISON AUTOMOTIVE; AIR PRODUCTS & CHEMICALS, INC.; AL GASKILL (STANDARD); AL'S CORNER; AL'S REPAIR SHOP; ALBERS 66 (PHILIPS 66); ALBERS AUTOMOTIVE; ALESSIO & SONS COMPANY; ALIGNMENT UNLIMITED INC.; ALL BRAKE-N-DRIVE UNIT SERVICE INC.; ALL SERVICE AUTO REPAIR; ALL TRUCK TRANSPORTATION COMPANY; ALPHA SCHOOL BUS COMPANY, INC.; AMERICAN BANK N.; AMERICAN FASTENER COMPANY; AMERICAN MAIZE-PRODUCTS; AMERICAN STEEL FOUNDRIES; AMOCO CORPORATION; ANDREWS' BUICK-PONTIAC INC.; ANDY'S AUTO SERVICE; ANTIOCH AUTO CENTER; APOLLO COLORS, INC.; APPLE CHEVROLET; ARMY & AIR FORCE EXCHANGE SERVICE; ARMY MAINTENANCE CENTER #45; ARMY MAINTENANCE CENTER #46; ARNIE BAUER CADILLAC GMC TRUCK; ART'S COMMUNICATIONS & CAMPER SALES; ARTHUR J. LOOTENS & SON INC.; ASHLAND CHEMICAL COMPANY; AURORA LIFT TRUCK SERVICE, INC.; AURORA MUNICIPAL AIRPORT; AURORA PACKING COMPANY; AURORA RECYCLING CENTER; AUTOMOTIVE SERVICE CENTER; AUTOTROL CORPORATION; AVALON PETROLEUM COMPANY; AVON GEAR & ENGINEERING COMPANY; AZZARELLI CONSTRUCTION COMPANY; BADGER MARINE HARDWARE COMPANY; BADGER PIPE LINE COMPANY; BANNER WESTERN; BARTEL'S STANDARD WEST; BATAVIA STANDARD; BAUER BUICK COMPANY, INC.; BEATRICE FOODS COMPANY; BECHSTEIN CONSTRUCTION COMPANY; BELSON SCRAP & STEEL, INC.; BEN HANSFORD CHEVROLET, INC.; BENNETT'S AUTO SERVICE CENTER; BENOY MOTOR SALES. INC.; BERT ADAMS PONTIAC, INC.; BETTENHAUSEN MOTOR SALES; BILL BOLGER CHEVROLET, INC.; BILL WALSH CHEVROLET; BILL'S SERVICE; BILL'S SERVICE CENTER (LEMONT); BILL'S TEXACO SERVICE/BILL REAMS (TEXACO); BLOOMBERG'S SERVICE CENTER; BOB KOLLER DODGE COMPANY; BOB KYLER EXCAVATING; BOB'S AUTO & TRUCK REPAIR; BOB'S AUTO REPAIR-BOLINGBROOK; BOB'S SUNOCO SERVICE; BOBAN BROTHERS AUTO SALES, INC.; BOCKMAN'S EASTSIDE STANDARD; BODINE ELECTRIC COMPANY; BORG-WARNER CORPORATION; BORSE PLASTICS; BOTTS WELDING & TRUCK SERVICE, INC.; BOWMAN TRANSPORTATION, INC.; BOYS MOTOR CAR SERVICE, THE; BRACKMAN & COMPANY; BRAD MANNING FORD, INC.; BRANDY'S (MOBIL); BRESSNER, GERALD (includes Bressner, Steve); BROWN TIRE OF VALPARAISO, INC.; BROWNING FORD; BRUCE GREY & COMPANY; BUD'S; BUDGET RENT-A-CAR CORPORATION; BUFFALO GROVE DISPOSAL COMPANY, INC.; BULKMATIC TRANSPORT COMPANY; BUNGE'S TIRE CENTER; BURKART OLDSMOBILE & GMC, INC.; BURLINGTON IMPORT AUTO; BURNS IMPLEMENT & COMPANY, INC.; BUTLER AUTO PARTS, INC.; BUTLER WALKER, INC.; CAR CARE (BURR RIDGE); CARLTON AUTO REPAIR; CARPENTERSVILLE FIRE DEPARTMENT; CARS, INC.; CASE POWER & EQUIPMENT; CENTRAL DUPAGE HOSPITAL; CHARLES O'BRIEN & SON CONSTRUCTION CO.; CHECKER OIL COMPANY/EMRO; CHEMLAWN-HINSDALE; CHEMLAWN-MUNSTER; CHEMLAWN-ORLAND PARK; CHEMLAWN-TINLEY PARK; CHICAGO EASTERN CORPORATION; CHICAGO FLUID POWER CORPORATION; CHICAGO KENWORTH; CHICAGO TRIBUNE COMPANY; CHIDESTER EXCAVATING, INC.; CHRISTENSON CHEVROLET, INC.; CHRYSLER CORPORATION; CICERO-OAKTON TEXACO SERVICE; CITY OF AURORA; CITY OF AURORA MUNICIPAL INCINERATOR; CITY OF AURORA STREET DEPARTMENT; CITY OF CRYSTAL LAKE; CITY OF GENEVA; CITY OF HAMMOND, IN; CITY OF NAPERVILLE; CLARENDON HILLS AUTO REPAIR, INC.; CLYDE BLOOMQUIST; COFFMAN TRUCK SALES, INC.; COG HILL GOLF &

COUNTRY CLUB, INC.; COL. RALPH BESIC & COMPANY; CONLON-COLLINS FORD-JEEP-EAGLE, INC.; CONTINENTAL HONDA, INC.; CONTINENTAL MOTORS, INC.; CONTINENTAL TOYOTA; COUNTRY GAS COMPANY; COURTESY AUTO & TRUCK SERVICE CENTER, INC.; COYE & RON'S SERVICE; CRAWFORD'S BUS SERVICE; CREATIVE MECHANIXS, INC. (CMI); CREST CHEVROLET-OLDSMOBILE-CADILLAC, INC.; CREST MARINE/THE MERC SHOP; CROSSTOWN SERVICE CENTER, INC.; CROUSE CARTAGE COMPANY; CRYSTAL LAKE DISPOSAL; CRYSTAL LAKE LEASING & SERVICE COMPANY; CRYSTAL LAKE TRANSPORT DIST. 47 & 155; CRYSTAL VALLEY RV CENTER; CURFIN OLDSMOBILE, INC.; D & L GARAGE; DALE'S CHRYSLER PLYMOUTH DODGE INC.; DAN WOLF PONTIAC-GMC, INC.; DAN'S MOTOR SALES & SERVICE, INC.; DANIEL OPYT (ARCO); DARNALL'S AUTO REPAIR; DEKALB LAWN & EQUIPMENT COMPANY, INC.; DE LONG FORD-MERCURY, INC.; DEALERS MANUFACTURING COMPANY; DEAN FOODS CO.; DEL'S TOWING; DELCO GM; DEL MONTE CORPORATION; DES PLAINES HONDA; DICK'S SHELL SERVICE/ DICK'S PHILLIPS SERVICE; DI TARDI PONTIAC-BUICK, INC.; DILLER-ROD, INC.; DILLOW'S AUTO SERVICE; DISTRICT AUTO REBUILDERS; DOLDER, STACEY; DON MCCUE CHEVROLET, INC.; DON MILLER DODGE, INC.; DON SCHMAL'S SERVICE STATION; DOWNERS GROVE PARK DISTRICT; DRALLE CHEVROLET; DRISCOLL MOTOR COMPANY, INC.; DUBUQUE PACKING COMPANY; DUNDEE & WOLF STANDARD; DUPAGE COUNTY; E.I. DUPONT DE NEMOURS & COMPANY, INC.; E.J. CATTANI & SON; E.M. MELAHN CONSTRUCTION CO.; EARL DIEHL'S LTD.; EASTERN ILLINI CO-OP; ED JAMES CHEVROLET, INC.; ED'S AUTO REPAIR-GENEVA; EDWARD GRAY CORPORATION; ELGIN AUGERING INC.; ELGIN EQUIPMENT COMPANY; ELGIN, JOLIET & EASTERN RAILWAY CO.; ELLIOTT & WOOD, INC; ELMHURST FIRESTONE DEALER STORE; EMIL'S STANDARD SERVICE (includes EMIL PUNTER (STANDARD); EVANS TOOL & MFG.; EVERGREEN PARK SERVICE STATION (TEXACO); FEDERAL PAPER BOARD COMPANY, INC.; FEECE OIL COMPANY; FELDOTT BROTHERS; FELTS SAND & GRAVEL; FENZEL MOTOR SALES; FIELD CONTAINER CORPORATION; FIRESTONE CORPORATION, n/k/a BRIDGESTONE/ FIRESTONE (includes FIRESTONE STORES HALSTED ST., CHICAGO HTS.; WESTERN AVE, CHICAGO HTS.; JOLIET; KANKAKEE; LAGRANGE; MIDLOTHIAN; NORTH AURORA; ST. CHARLES; HIGHLAND/HAMMOND, IN); FISCHER & PHALEN; FJA CHRISTIANSEN CORPORATION; FLIKKEMA MOTORS; FLOOD BROTHER DISPOSAL; FOREST PRESERVE DISTRICT OF WILL COUNTY; FOX LAKE HARBOR; FOX VALLEY CYCLE; FOX VALLEY DISPOSAL COMPANY; FOX VALLEY MOTORS; FRAHER FORD SALES; FRANK D'AVERSA AUTO SERVICE, INC.; FRANK MAPLETON LINCOLN-MERCURY (a/k/a FRANK NAPLETON LINCOLN-MERCURY); FRANK SMITH CARTAGE, INC.; FRANK'S STANDARD SERVICE CENTER; FRED'S GARAGE; FRED'S MOBIL SERVICE; FREUND BROTHERS, INC.; FRITZ CARTAGE; FRONTIER COACH; FULLER'S SERVICE CENTER, INC.; G & L AUTO REPAIR; GARDNER SALES & SERVICE, INC.; GAST INTERNATIONAL, INC.; GENE BALLARD'S; GENERAL TIRE SERVICE; GEO. R. GIBSON CHEVROLET, INC.; GEORGE BROWNING & SONS AUTOMOTIVE; GEORGE P. FREUND, INC.; GERALD OLDSMOBILE, INC.; GLEN EAGLE COUNTRY CLUB; GLEN ELLYN DODGE; GLEN ELLYN RECYCLING; GLENN MCCANN COMPANY; GLOBAL FIRE PROTECTION COMPANY; GLOBE GLASS & TRIM COMPANY; GODING ELECTRIC COMPANY; GOODYEAR TIRE & RUBBER COMPANY; GRAND SERVICE CENTER, INC.; GRANGER OLDSMOBILE, INC.; GRANITE CONSTRUCTION COMPANY; GRAYS LAKE FEED SALES; GRAYS LAKE SHELL; GREAT LAKES TERMINAL & TRANSPORT; GREENWAY PONTIAC-OLDS, INC.; GREGG MOTOR SALES, INC.; GRIFFIN DEWATERING CORP.; GRIFFIN WELL POINT CORPORATION; H & M AUTOHAUS, INC.; H. MICHAEL; H. WIGBOLDY SONS INC.; H.F. VEGTER EXCAVATING COMPANY; H.I. STONE & SONS, INC.; HAGGERTY PONTIAC INC.; HALLIBURTON SERVICES; HANSEN PLASTICS CORPORATION; HARTNELL CHEVROLET, INC.; HARVARD IMPLEMENT, INC.; HARVARD REDI MIX; HAWKINSON FORD COMPANY; HAYES SERVICE; HELMUT'S STANDARD SERVICE; HERMAN'S AUTO SERVICE & TOWING (includes HERMAN'S AUTO); HERTZ EQUIPMENT RENTAL; HESCO, INC.; HESTERBERG, EARL; HICKS PLAZA; HILLDALE COUNTRY CLUB; HINSDALE HOSPITAL & SAN; HINSDALE TEXACO; HINSDALE VILLAGE STANDARD; HOD DISPOSAL; HOECHST CELANESE; HOGAN IMPLEMENT COMPANY, INC.; HOLLAND MOTOR EXPRESS, INC.; HOMEWOOD SCAVENGER SERVICE, INC.; HONDA OF JOLIET; HOWARD CAB INC.; HOWARD'S AUTO CARE; HOWARD'S CAR CARE; HUNT'S SERVICE STATION; HUSKIE LINE; ICKE CONSTRUCTION COMPANY; IDEAL OIL SERVICE; ILLINOIS AUTO ELECTRIC COMPANY; ILLINOIS DEPARTMENT OF TRANSPORTATION; ILLINOIS FINEST TRUCK STOP (UNION 76); ILLINOIS FRUIT & PRODUCE; ILLINOIS SCHOOL BUS COMPANY, INC.; ILLINOIS VALLEY COMMUNITY COLLEGE-IVCC; IMPERIAL CRANE SERVICES, INC.; INDUSTRIAL STEEL SERVICE CENTER; INLAND BROACHING; INLAND CONTAINER CORPORATION; INSTITUTE IN BASIC YOUTH CONFLICTS; INTERNATIONAL CAR CARE; INTERSTATE TRUCK REPAIR; J. MATRICH & SONS, INC.; J. C. PENNY; J.J. WRIGHT OLDSMOBILE; J.W. OSSOLA COMPANY; JACK GRAY TRANSPORT, INC.; JAMES BERTINO (see Bertino, James & Mary); JANESVILLE AUTO TRANSPORT COMPANY (NKA Complete Auto Transport); JARBOE, JAMES; JERRY CENTONI'S FORD-LINCOLN-MERCURY; JERRY'S DIAGNOSTIC & REPAIR CENTER; JIM GRAHAM OLDSMOBILE, INC.; JIM'S AUTOMOTIVE CLINIC; JOE HATZER & SON; JOHN BAYS TOYOTA, INC.; JOHN GRAY TOWING (AURORA); JOHN LYNCH CHEVROLET-PONTIAC; JOHN ZIMBRICK BUICK, INC.; JOHN'S GARAGE (CHICAGO HEIGHTS); JOHN'S STANDARD (KANKAKEE); JOHNSON, PAUL; JOLIET ARMORY/ ILLINOIS NATIONAL GUARD; JOLIET COUNTRY CLUB; JOLIET FIRE DEPARTMENT; JOLIET JUNIOR COLLEGE; KANKAKEE INDUSTRIAL DISPOSAL, INC.; KARSTEN'S STANDARD; KASCHUB, JEAN; KATZ & SONS WEST (TEXACO); KEDZIE STANDARD SERVICE; KEIL CHEMICAL; KENDALL-RUNDY FS, INC.; KICKERT SCHOOL BUS LINES, INC.; KING-BRUWATER HOUSE; KING AUTOMATIC TRANSMISSIONS; KNOPF'S MARATHON; KRAHENBUIHL CHRYSLER-PLYMOUTH, INC.; KUETTNER OLDSMOBILE, INC.; KUIPERS-FORD-MERCURY SALES CO., INC. (n/k/a KUIPERS-BACHMAN FORD MERCURY, Inc.); L. NEILL CARTAGE COMPANY; L.B. FOSTER COMPANY; LAASCH'S STANDARD SERVICE; LAB TEK (MILES LABS); LADD CONSTRUCTION COMPANY; LAKE

VILLA COMMUNITY CONST. SCHOOL; LAKONE COMPANY; LAMBERT JONES MOTORS, INC.; LANDMEIER, LYNN; LARKIN, JOE; LARKIN STANDARD; LARKIN UNION 76; LASALLE ROLLING MILLS ; LASALLE STEEL COMPANY; LEADER OIL COMPANY, INC.; LEE'S CO–OP; LEVIN TIRE CENTER; LINCOLN SERVICE (MOBIL, MATTESON); LINCOLN WAY HIGH SCHOOL; LISLE-WOODRIDGE FIRE DISTRICT; LOCKPORT TOWNSHIP HIGH SCHOOL DISTRICT 205; LOCKPORT TOWNSHIP HIGHWAY DEPARTMENT; LYNN CHEVROLET-BUICK, INC.; LYONS-RYAN FORD SALES; M&O INSULATION COMPANY; MANLEY MOTOR SALES COMPANY; MARCLEY PETRO (MOBIL); MARCUS AUTO LEASE CORPORATION; MARQUARDT BUICK (includes MARQUARDT BUICK, Inc.); MARTIN BROTHERS IMPLEMENT COMPANY; MARTIN BROTHERS IMPLEMENT COMPANY (2 separate Martin Brothers Implement Companies signed); MARTIN'S SERVICE (MOBIL); MARVIN ALDERS TIRE SERVICE; MASSEY-FERGUSON, INC.; MASTER MOLDED PRODUCTS CORPORATION; MCGRATH BUICK HONDA; MCHENRY COUNTY CONSERVATION DISTRICT; MCHENRY COUNTY DEFENDERS; MCHENRY COUNTY HIGHWAY DEPARTMENT; MCHUGH CONSTRUCTION; MCKEOWN TROMPETER-CHEVROLET, INC.; MEADOWVIEW ENCO; METROPOLITAN PUMP COMPANY; MEYER CARTAGE (includes MEYER TRUCKING); MIDWEST ACTION CYCLE; MIDWEST HELICOPTER, INC.; MIDWEST TIRE SERVICE CENTER; MIKE & HENRY TEXACO SERVICE; MILEX (OAK FOREST); MILEX CAR CARE CENTER; MILLER'S AUTO & TRANSMISSION REPAIR; MILTRAN, INC.; MOBIL OIL CORPORATION (47TH & 53RD); MONARCH AIR SERVICE; MONTGOMERY STANDARD; MORETRENCH AMERICAN CORPORATION; MORRICE & HEYSE MOTOR, INC.; MORRIE & SONS, INC.; MORRIS CHRYSLER AMC; MT. PROSPECT COUNTRY CLUB; MT. PROSPECT PARK DISTRICT; NABISCO BRANDS, INC.; NAPERVILLE PUBLIC SCHOOL; NAPERVILLE TOWNSHIP; NATALE TEXACO SERVICE; NATIONAL K–9 SECURITY, INC.; NATIONAL PLANT SERVICE; NATIONWIDE BEEF; NCHS; NEASE A/C & AUTOMOTIVE SERVICE, INC.; NELSON'S UNION 76 SERVICE; NEWARK FORD; NGS (NATIONAL GENERATOR & STARTER); NICKELL, PAUL; NIELSEN CHEVROLET, INC.; NOREM BUICK; NORM OIL COMPANY, INC.; NORRICKS ARCO SERVICE; NORTHERN ILLINOIS GAS COMPANY; O.C. SHREFFLER & SON CHEVROLET-BUICK, INC.; OAKLAWN CHRYSLER-PLYMOUTH, INC; OAKLAWN DODGE COMPANY; OBERWEIS DAIRY, INC. (OATMAN BROTHERS); OGDEN CHRYSLER-PLYMOUTH, INC; OLSEN SERVICE STATION; OLYMPIA DODGE OF COUNTRYSIDE, INC.; ORLAND AUTOMOTIVE; ORVAL KENT FOOD COMPANY; OSWEGO SCHOOL DISTRICT 308; P & G AUTO DIAGNOSTIC CENTER; P & G ELECTRICAL REBUILDERS, INC.; P.T. FERRO CONSTRUCTION COMPANY; PALKO'S STANDARD SERVICE; PARK SERVICE STATION, INC. (MOBIL); PAUL'S SERVICE; PEACOCK (MOBIL) MINOOKA SCHOOL BUS CO.; PENDERSEN BROTHERS IMPLEMENT COMPANY; PENNZOIL PRODUCTS COMPANY; PEPSI-COLA GENERAL BOTTLERS, INC.; PETE'S SERVICE (SHELL); PETERSON MANUFACTURING COMPANY, INC.; PETTICE AUTO ELECTRIC; PHILADELPHIA GEAR CORPORATION; PHOENIX CLOSURES, INC.; PISTAKEE MARINA, INC.; PLOTE EXCAVATING; PORTION PACKAGING, INC.; PRAIRIE STATE CHARTERS; PRESTON TRUCKING (ELGIN); PUDER MOTORS, LTD.; PUMFREYS (MOBIL); QUALITY AUTO SERVICE; QUALITY CONTROL CORPORATION; QUALITY TOYOTA, INC.; R & R FORD SALES, INC.; R.J. DANIELS; RAILWAY & INDUSTRIAL SERVICES, INC.; RAMSEYER AMOCO; RANTOUL MOTOR SALES; RAY E. WALKER (SHELL); RAYMOND'S TRUCK PLAZA, INC.; REBER AUTO SERVICE, INC.; REESE AUTOMOTIVE; REICHERT CHEVROLET-OLDS SALES, INC.; REICHERT CHEVROLET & BUICK SALES, INC.; REISING MOTOR FORD-MERCURY SALES; RELIANCE TOOL & MANUFACTURING COMPANY; RHODES SUNOCO; RICH TRUCK SALES & SERVICE, INC.; RICHARD BUICK, INC.; RICHARDS WILCOX; RICK & LOU'S SERVICE CENTER; RIDGEWAY CHEVROLET; RIPPEL BUICK-PONTIAC, INC.; RIVER OAKS CHRYSLER-PLYMOUTH, INC.; RIVER OAKS FORD, INC.; RIVERDALE PLATING & HEAT TREATING; RIVERSIDE AUTO; RIVERSIDE GARAGE; ROADMASTER TIRE CO., LTD.; ROADWAY EXPRESS; ROBERT PAULI (STANDARD); ROCK COUNTY BUICK COMPANY; ROCKY'S SUPER SERVICE (SHELL); ROD BAKER FORD SALES, INC.; ROGERS CARTAGE COMPANY; ROLAND MACHINE COMPANY; ROLLINS LEASING CORPORATION (CHANNAHON); RONWAL TRANSPORTATION, INC.; ROY STORM COMPANY; RUAN LEASING, INC.; RUB BUICK; RYDER TRUCK RENTAL, INC.; S & R AUTO; S.P. BRADLEY MOTOR CO.; SAM BEETZ & SONS; SANFORD CORPORATION; SAWICKI CHEVROLET & CADILLAC, INC.; SCHAPPE PONTIAC INC.; SCHAUMBURG PARK DISTRICT; SCHIEN BODY & EQUIPMENT COMPANY; SCHMERLER FORD, INC.; SCHNEIDER NATIONAL LEASING, INC.; SCHOOL DISTRICT 203; SEBBY'S UNIVERSITY SHELL SERVICE; SENECA PETROLEUM COMPANY; SEVERSON BROTHERS; SHAVER CHEVY; SHEDD FOOD PRODUCTS; SIEBERT TRUCKING SERVICE; SIERRA DODGE-AMERICAN; SKACH MANUFACTURING COMPANY; SKIP'S GOODYEAR TIRE; SLUITER AUTO ELECTRIC INC.; SMITH'S OIL WELL; SMITTY'S SERVICE (LASALLE); SNOW BROTHERS, INC.; SOUTH ELGIN AMOCO; SOUTH HOLLAND TOYOTA; SOUTH SHORE SERVICE; SPRING HILL FORD, INC.; STAN OKE (STANDARD); STAR DISPOSAL SERVICE COMPANY; STARKS TRIANGLE SERVICE (AMOCO); STATE GARAGE REVOLVING FUND; STATE OF ILLINOIS; STOCKER HINGE MANUFACTURING COMPANY; STONEY'S 66 SERVICE; STRAKA, FRANK J.; SUBURBAN BUICK COMPANY; SULLAIR OF CHICAGO; SUPER AUTOMATIC TRANSMISSION; SUPER VALUE STORES, INC.; T.C. INDUSTRIES, INC.; T.J. DALEY'S TRANSFER, INC.; TANDIL AUTO SERVICES; TERESI SCARPELL'S CHEV.-OLDS, INC.; TERRY MONROE, INC.; THOM GRAVEL & EXCAVATING, INC.; THOMAS DODGE OF HIGHLAND, INC.; THOMAS KASO (SHELL); THOMAS MOBIL; THORNTON TOWNSHIP HIGH SCHOOLS, DISTRICT 205; TILSTRA MARATHON SERVICE; TOM TODD CHEVROLET, INC.; TONY PIET MOTOR SALES, INC.; TONY PIET PONTIAC DATSUN; TRACTOR & EQUIPMENT CO.; TRI-CITY TRANSMISSIONS; TRI-STATE FIRE PROTECTION DISTRICT; TRICON INDUSTRIES, INC.; U.S. ARMY CORPS OF ENGINEERS (CHICAGO DISTRICT); U.S. COAST GUARD (WILMETTE HARBOR); U.S. PLASTICS INC.; U.S. REDUCTION CO.; UNI-CARRIER, INC.; UNIROYAL GOODRICH TIRE CO.; VAIA AUTO SPECIALISTS; VALLEY TRANSIT; VALLEY VIEW COMMUNITY UNIT SCHOOL #365U; VALLEY VOLKSWAGON, INC. (includes Ivan Matko Mazda-Honda,

Inc.; V.V. Valley Honda; V.W. Del); VAPOR DIV. OF MARK IV TRANS. PRD.; VARLAND BUS SERVICE, INC.; VERMIGLIO'S MARATHON AUTO SALES; VETERANS ADMINISTRATION; VIDMAR BUICK COMPANY, INC.; VIKING DODGE, INC.; VILLAGE ARCO ENSSLIN SERVICE, INC.; VILLAGE OF BLOOMINGDALE; VILLAGE OF BUFFALO GROVE; VILLAGE OF DOWNERS GROVE; VILLAGE OF HANOVER PARK; VILLAGE OF LISLE; VILLAGE OF PALATINE; VILLAGE OF ROUND LAKE BEACH; VILLAGE OF SLEEPY HOLLOW; VILLAGE OF STREAMWOOD; VILLAGE PONTIAC-GMC, INC.; VIRL Z. HILL MOTOR COMPANY, INC.; VOGUE TYRE & RUBBER CO.; VOSS MOTOR SALES, INC.; W.W. TRANSPORTATION, INC.; WADSWORTH GOLF COURSE CONSTRUCTION; WALKER-SCHORK INTERNATIONAL, INC.; WALKER SALES; WASPI TRUCKING, INC.; WASTE MANAGEMENT; WASTE TRANSFER; WASTE WATCHERS, INC.; WATSON PONTIAC-BUICK-GMC, INC.; WAUKEGAN MARINE CO.; WEBB FORD, INC.; WES TEXACO; WESTERN CHEMICAL CO.; WESTLAKE IMPORT MOTORS, INC.; WHITE GMC TRUCK; WHITE MOTOR CORPORATION; WHITMORE CHEVROLET SALES, INC.; WHITNEY VOLKSWAGEN, INC.; WICKSTROM CHEVROLET; WILBERT VAULT CO.; WILL'S AUTOMOTIVE SERVICE; WILSON EQUIPMENT CO.; WINCKLERS SERVICE (MOBIL); WINDY CITY SOUTH AUTO/TRUCK STOP; WINFIELD TOWNSHIP DEPARTMENT; WISCONSIN POWER & LIGHT COMPANY; WIZARD OF WHEELS; WOLF CHEVROLET SALES, INC.; WOODSTOCK AREA RECYCLING; WRIGHT ON GRAND AVENUE SERVICE; WROBEL, VIVIAN; YAMAZEN USA, INC.; YELLOW TRANSIT; YORK HIGH SCHOOL DISTRICT 205; ZAYRE CORPORATION; ZELAITIS; ZIBERT TRANSPORT COMPANY; ZIEL'S TEXACO; ZIMMERMAN FORD, INC.

FOR FURTHER INFORMATION CONTACT: Stuart P. Hersh, Associate Regional Counsel (C–14J), Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604, or call (312) 353–9484.

Authority: The Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. sections 9601–9675, the Resource Conservation and Recovery Act, as amended, 42 U.S.C. sections 6901–6992, and the Illinois Environmental Protection Act, as amended, 415 ILCS section 5/22.2a.

Dated: October 19, 1998.

James Mayka,

Acting Director, Superfund Division, Region 5.

[FR Doc. 98–28865 Filed 10–27–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–UT; FRL–6037–5]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Utah's Authorization Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments and opportunity for public hearing.

SUMMARY: On August 31, 1998, the State of Utah submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the receipt of Utah's application, provides a 45–day public comment period and an opportunity to request a public hearing on the application. Utah has provided a certification that this program meets the requirements for approval of a State program under section 404 of TSCA. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission. If EPA finds that the program does not meet the requirements for approval of a State program, EPA will disapprove the program, at which time a notice will be issued in the **Federal Register** and the Federal program will be established.

DATES: Comments on the authorization application must be received on or before December 14, 1998.

ADDRESSES: Submit all written comments and/or requests for a public hearing identified by docket control number PB–402404–UT (in duplicate) to: Bruce Cooper, Environmental Protection Agency, Region VIII, 8P3-T, 999 18th St., Suite 500, Denver, CO 80202-2466. Comments, data, and requests for a public hearing may also be submitted electronically to: cooper.bruce@epa.gov. Follow the instructions under Unit IV. of this document. No information claimed to be Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Dave Combs, Regional Toxics Team Leader, 999 18th St., Suite 500, 8P3-T, Denver, CO 80202-2466; telephone: 303–312–6021; e-mail address: combs.dave@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1992, the Housing and Community Development Act of 1992, Pub. L. 102–550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681-92), entitled ''Lead Exposure Reduction.''

Section 402 of TSCA authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA, EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA authorization, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA authorization.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA

authorization, by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized until such time as EPA disapproves the program application or withdraws the authorization.

Section 404(b) of TSCA provides that EPA may approve a program application only after providing notice and an opportunity for a public hearing on the application. Therefore, by this notice EPA is soliciting public comment on whether Utah's application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. Utah has provided a self-certification letter from the Governor that its program meets the requirements for authorization of a State program under section 404 of TSCA. The State of Utah has requested interim approval of the compliance and enforcement program portion of the Utah Lead Program. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission (August 31, 1998). If EPA finds that the program does not meet the requirements for authorization of a state program, EPA will disapprove the program application, at which time a notice will be issued in the **Federal Register** and the Federal program will be established in Utah.

II. State Program Description Summary

The following summary of Utah's program has been provided by the applicant:

A. Legislative Summary

During the 1998 Utah legislative session, Senate Bill 118 (SB 118) was unanimously passed by both the House and the Senate. SB 118 amends section 19-2-104, Utah Code Annotated (UCA) of the Utah Air Conservation Act, which provides authority for the Utah Air Quality Board (Board) to make administrative rules for a Utah Lead-Based Paint (LBP) Program. The legislation specifically gives authority to the Board to make rules for training, certification, and performance requirements in accordance with the section 402 and 404 of subchapter IV of the Toxic Substances Control Act (TSCA). SB 118 also provides the Board with the authority to establish work practice, certification and clearance sampling requirements for persons who conduct LBP inspections in facilities subject to TSCA Title IV. The legislation also specifically gives the Board the authority to establish certification requirements for inspectors, risk assessors, supervisors, project designers or abatement workers when performing LBP activities subject to TSCA Title IV.

The Utah Attorney General's Office reviewed the content of SB 118 prior to enactment. It determined that SB 118 would provide the Board with the necessary legislative authority to develop a Utah LBP Program that is as protective as the Federal LBP Program (Title 40 Code of Federal Regulations (CFR) part 745, subpart L).

B. Administrative Rule Summary

On April 25, 1998, the Utah Department of Environmental Quality/ Division of Air Quality (UDEQ/DAQ) provided the Board with a proposed administrative rule (R307–840--Lead-Based Paint Accreditation, Certification and Work Practice Standards) for the Utah LBP Program. R307–840, adopts substantially all of 40 CFR part 745, subpart L by reference as the administrative rule regulating LBP activities in target housing and child-occupied facilities. The UDEQ/DAQ also proposed to add a new subsection to the Utah Air Conservation Rules (R307–1-2.5.1.f, Utah Administrative Code (UAC)) that allows any hearings or other proceedings pertaining to R307–840, to be conducted informally.

On August 12, 1998, the UDEQ/DAQ reported back to the Board with the comments received during the public hearing. The Board reviewed those comments and subsequently adopted the UDEQ/DAQ proposed administrative rules R307-840, UAC (appendix 4) and R307–1-2.5.1.f, UAC (appendix 5) with an effective date of August 13, 1998.

R307–840, UAC incorporates the Federal regulation with a few modifications to facilitate LBP program implementation by the State of Utah. The UDEQ/DAQ considers these modifications necessary to implement an effective LBP program and also considers these modifications to be as protective as the Federal LBP program. The following paragraphs provide a brief summary of the four sections of State Administrative Rule R307–840, UAC. Each section will identify which parts of the Federal regulations in 40 CFR part 745, subpart L are adopted by reference and give a brief overview of the contents of each section.

Throughout R307–840, UAC, references to ''EPA'' (Environmental Protection Agency) have been replaced with ''Executive Secretary'' (meaning Executive Secretary of the Utah Air Quality Board) when ''EPA'' is used for LBP program administrative activities.

1. *R307–840–1—Purpose and applicability.* This section uses the regulatory language found in 40 CFR 745.220 and modifies that language to facilitate LBP program implementation in Utah. These modifications to the Federal regulations in this and following sections are considered nonsubstantive by the UDEQ/DAQ and are considered as protective as the Federal LBP regulations.

2. *R307–840–2—Definitions.* This section substantially adopts 40 CFR 745.223 by reference. The only significant change to Federal definitions are those that reference ''TSCA Section 403.'' EPA has not yet promulgated final rules pursuant to TSCA section 403. The UDEQ/DAQ could not propose administrative rules to the Board which included a reference for a regulation which was not yet final. The UDEQ/DAQ chose to substitute an existing document (EPA Guidance on Identification of LBP Hazards - 60 FR 47248-57) which has been used by EPA as interim guidance during the TSCA section 403 rulemaking process.

3. *R307–840–3—Accreditation, certification and work standards: target housing and child-occupied facilities.* This section adopts 40 CFR 745.225(a)–(g), 745.225(i), 745.226(a)–(h), 745.227, and 745.233 from the Federal LBP regulations by reference. This section of the Utah LBP rule outlines the requirements for course accreditation, certification of individuals and firms as well as establishing the Utah LBP work practice standards.

Section R307–840–3, UAC creates some minor modifications to the Federal LBP regulations to facilitate program implementation in Utah. The Utah rules provide additional flexibility during the course accreditation process by allowing instructors to use experience from Utah accredited courses as relevant training experience, as well as allowing training experience from EPA-accredited and EPA-authorized State and Indian Tribe accredited courses. The Utah LBP rules require course providers to submit all course materials for approval when seeking course accreditation even if the course has been previously approved by another State, Indian Tribe, or the EPA. The Utah rules also require that LBP activities performed in the State of Utah must be performed according to the work practice standards of 40 CFR 745.227, which are adopted by reference. However, documented methodologies for the sampling of paint, dust and soil that are found in the regulations, guidance, methods or protocols used by other States, Indian Tribes, or EPA may not be considered appropriate methodologies in Utah.

4. *R307–840–4—Lead-based paint fees.* This section adopts a fee schedule for the Utah LBP Program during the first year of program implementation as allowed by section 63–38–3.2(5)(a) UAC. In subsequent years, LBP fees will be incorporated into the UDEQ Fee Schedule which is approved by the Utah Legislature annually.

III. Federal Overfiling

TSCA section 404(b) makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

IV. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established under docket control number PB–404404–UT. Copies of this notice, the State of Utah's authorization application, and all comments received on the application are available for inspection in the Region VIII office, from 8 a.m. to 4 p.m. , Monday through Friday, excluding legal holidays. The docket is located at EPA, Region VIII, 8P3-T, 999 18th St., Suite 500, Denver, CO 80202.

Commenters are encouraged to structure their comments so as not to contain information for which CBI claims would be made. However, any information claimed as CBI must be marked ''confidential,'' ''CBI,'' or with some other appropriate designation, and a commenter submitting such information must also prepare a non-confidential version (in duplicate) that can be placed in the public record. Any information so marked will be handled in accordance with the procedures contained in 40 CFR part 2. Comments and information not claimed as CBI at the time of submission will be placed in the public record.

Electronic comments can be sent directly to EPA at:

cooper.bruce@epa.com

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 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number PB–402404–UT. Electronic comments on this document may be filed online at many Federal Depository Libraries. Information claimed as CBI should not be submitted electronically.

V. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

EPA's actions on State or Tribal lead-based paint activities program applications are informal adjudications, not rules. Therefore, the requirements of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*), the Congressional Review Act (5 U.S.C. 801 *et seq.*), Executive Order 12866 (''Regulatory Planning and Review,'' 58 FR 51735, October 4, 1993), and Executive Order 13045 (''Protection of Children from Environmental Health Risks and Safety Risks,'' 62 FR 1985, April 23, 1997), do not apply to this action. This action does not contain any Federal mandates, and therefore is not subject to the requirements of the Unfunded Mandates Reform Act (2 U.S.C. 1531–1538). In addition, this action does not contain any information collection requirements and therefore does not require review or approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12875

Under Executive Order 12875, entitled ''Enhancing Intergovernmental Partnerships'' (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and Tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's action does not create an unfunded Federal mandate on State, local, or Tribal governments. This action does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

C. Executive Order 13084

Under Executive Order 13084, entitled ''Consultation and Coordination with Indian Tribal Governments'' (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's action does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

Authority: 15 U.S.C. 2682, 2684.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: October 21, 1998.

William Yellowtail,

Regional Administrator, Region VIII.

[FR Doc. 98–28866 Filed 10–27–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6180–9]

Final Second Modification of General NPDES Permit (GP) for Alaskan Mechanical Placer Miners (Permit Number AKG–37–0000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed second modification of a general permit.

SUMMARY: The Director, Office of Water, EPA Region 10 is issuing a modified General NPDES permit for mechanical placer mining in the state of Alaska. The modified general permit contains a new effluent limitation for arsenic which was based on the ''Withdrawal of Federal Regulations of the Applicability to Alaska's Waters of Human Health Criteria'' published in the **Federal Register** on March 2, 1998 (63 FR 10140) and effective on April 1, 1998. A Response to Comments was prepared and is included in this notice.

DATES: The modified general permit will become effective on November 27, 1998 and will expire on June 30, 1999.

FOR FURTHER INFORMATION CONTACT: Copies of the final general NPDES permit, response to comments, and today's publication will be provided upon request by EPA Region 10, Public Information Office, at (800) 424–4372 or (206) 553–1200 or upon request to Cindi Godsey at (907) 271–6561. Requests may also be electronically mailed to: GODSEY.CINDI@EPAMAIL.EPA.GOV. Copies of the final permit and response to comments can be found by visiting the Region 10 website at www.epa.gov/r10earth/offices/water/npdes.htm.

SUPPLEMENTARY INFORMATION: 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.

The state of Alaska, Department of Environmental Conservation (ADEC), has certified that the subject discharges comply with the applicable provisions of sections 208(e), 301, 302, 306 and 307 of the Clean Water Act.

The state of Alaska, Office of Management and Budget, Division of Governmental Coordination (DGC), has determined that this permitting action did not warrant a formal review for consistency with the Alaska Coastal Management Program (ACMP).

Regulatory Flexibility Act: Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, a Federal agency must prepare an initial regulatory flexibility analysis ''for any proposed rule'' for which the agency ''is required by section 553 of the [Administrative Procedure Act (APA)], or any other law, to publish general notice of proposed rulemaking.'' The RFA exempts from this requirement any rule that the issuing agency certifies ''will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' EPA has concluded that NPDES general permits are permits under the APA and thus not subject to APA rulemaking requirements or the RFA. Notwithstanding that general permits are not subject to the RFA, EPA has determined that this general permit, if issued, will not have a significant economic impact on a substantial number of small entities.

Dated: October 20, 1998.

Philip G. Millam,

Director, Office of Water, Region 10.

Response to Comments

EPA received comments on the Second Modification of the General Permit for Alaskan Mechanical Placer Miners AKG–37–0000 from the Alaska Miners Association (AMA) and Earthjustice Legal Defense Fund (Earthjustice) on behalf of the Trustees for Alaska, Northern Alaska Environmental Center, Southeast Alaska Conservation Council, Sitka Conservation Society, and the Juneau Chapter of the Audubon Society.

On September 10, 1998, the Division of Governmental Coordination (DGC) determined that this action did not warrant a formal review for consistency with the Alaska Coastal Management Program (ACMP).

On October 5, 1998, the Alaska Department of Environmental Conservation (ADEC) issued a Certificate of Reasonable Assurance for proposed discharges from Alaskan Mechanical Placer Mines.

1. Comment: AMA requests that the permit averaging period be adjusted to reflect the manner in which the criteria were derived. AMA states that the arsenic criteria are based upon regulating long-term human exposure to this pollutant to avoid potential adverse systemic and carcinogenic human health impacts.

Response: On March 2, 1998, EPA published the ''Withdrawal from Federal Regulations of the Applicability to Alaska's Waters of Arsenic Human Health Criteria'' (63 FR 10140). This rule became effective on April 1, 1998, and removed the applicability to Alaska's waters of the federal human health criteria for arsenic. If the criteria being applied were based on long-term human health criteria, EPA would base the arsenic limitations on such a standard. However, the criteria is a Drinking Water Maximum Contaminant Level (MCL) which, according to 40 CFR 142.2 is a ''maximum permissible level of a contaminant.'' Therefore, the standard must be based on an immediate limit. ADEC has indicated in their 401 Certification of this GP that this is the proper use of a Drinking Water Standard as a permit effluent limitation.

2. Comment: AMA suggests that the instantaneous maximum limitation is inappropriate for use as a permit limitation and recommends that it should be replaced with an appropriate 30-day average and daily maximum limitation, as is required in 40 CFR 122.45(d)(1). AMA suggests an average monthly discharge rate of 50 µg/L and maximum daily rate of 131 µg/L.

Response: 40 CFR 122.45(d)(1) applies only to continuous discharges. During EPA's metals study, EPA observed only one mine at which discharges were continuous. Furthermore, even after site visits in July 1998, when three more sites were included in the metals study, it was found that none of these additional sample sites discharged each week of the study. Therefore, EPA will not apply regulations for continuous discharges to Placer Mines. Instead, 40 CFR 122.45(e) is applicable to non-continuous discharges. That provision contains four considerations in setting appropriate effluent limitations. 40 CFR 122.45(e)(4) best describes how the arsenic limit was determined for the GP. It states:

> Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (for example, shall not contain at any time more than 0.1 mg/L zinc or more than 250 grams (¼ kilogram) of zinc in any discharge).

The regulations give EPA the authority to set effluent limitations in terms of rates not to be exceeded. When this regulation is combined with the use of an MCL, a ''*maximum permissible level of a contaminant,*'' the limit in the permit is permissible.

3. Comment: Earthjustice states that the use of the revised Water Quality Standard (WQS) of 50 µg/L is unjustified and unlawful as was the initial change to the WQS.

Response: The withdrawal of the human health criteria for arsenic was public noticed in the **Federal Register** (62 FR 27707) on May 21, 1997, and published final on March 2, 1998, (63 FR 10140) with an effective date of April 1, 1998. The withdrawal has not been challenged. Therefore, the WQS no longer contain a human health criteria for arsenic. However, this permit does contain a section on site specific criteria for arsenic making it possible for an affected person or community to request from the state of Alaska, a more stringent criteria for arsenic.

4. Comment: Earthjustice also attached a copy of the comment letter they submitted on the withdrawal of the human health criteria.

Response: These issues were addressed in the Response to Comments

for the withdrawal of the human health criteria for arsenic and were published in the **Federal Register** on March 2, 1998. EPA will not reiterate the responses in this document.

[FR Doc. 98–28869 Filed 10–27–98; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

October 20, 1998.

SUMMARY: The Federal Communications Commissions, 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 December 28, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 234, 1919 M St., NW, Washington, DC 20554 or via internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0384.

Title: Annual Auditor's Certification—Section 64.904.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 19.

Estimated Time Per Response: 500 hours (avg.).

Frequency of Response: Annual.

Total Annual Burden: 9,500 hours.

Estimated Cost to Respondents: $11,400,000.

Needs and Uses: Local exchange carriers required to file cost allocation manuals must have performed annually, by an independent auditor, an audit that provides a positive option on whether the applicable data shown in the carrier's annual report presents fairly the information of the carrier required to be set forth in accordance with the carrier's cost allocation manual, the Commission's Joint Cost Orders, and applicable Commission rules in Parts 32 and 64 in force as of the date of the auditor's reports. This requirement assists the Commission in effectively carrying out its responsibilities.

OMB Control Number: 3060–0484.

Title: Amendment of Part 63 of the Commission's Rules to Provide for Notification of Common Carriers of Service Disruptions—Section 63.100.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 208.

Estimated Time Per Response: 5 hours (avg.).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 1,040 hours.

Estimated Cost to Respondents: None.

Needs and Uses: 47 CFR Section 63.100 requires that any local exchange or interexchange common carrier that operates transmission or switching facilities and provides access service or interstate or international telecommunications service that experiences an outage on any facilities which it owns or operates must notify the Commission if such service outage continues for 30 minutes or more. An initial and a final report are required for each outage. Local exchange or interexchange common carriers or competitive access providers that operate either transmission or switching facilities and provide access service or interstate or international telecommunications service must report outages that affect 30,000 or more customers or that affect special facilities, and report fire-related incidents impacting 1,000 or more lines. With such reports the FCC can monitor and take effective action to ensure network reliability.

OMB Control Number: 3060–0421.

Title: New Service Reporting Requirements Under Price Cap Regulation.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for profit entities.

Number of Respondents: 16.

Estimated Time Per Response: 20 hours (avg.).

Frequency of Response: Annually.

Total Annual Burden: 320 hours.

Estimated Cost to Respondents: None.

Needs and Uses: Price cap carriers filing new service tariffs are subject to an annual reporting requirement which commences six months after initiation of new services. The net revenue data report is useful to the public and the Commission in determining the reasonableness of rates for new services. These reports are used to compare actual operating results with projections.

OMB Control Number: 3060–0687.

Title: Access to Telecommunications Equipment and Services by Persons with Disabilities, CC Docket No. 87–124.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for profit entities.

Number of Respondents: 806,100.

Estimated Time Per Response: 2.028 hours (avg.).

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 1,635,000 hours.

Estimated Cost to Respondents: $638,500.

Needs and Uses: The Commission requires that telephones with electro-magnetic coil hearing aid compatibility be stamped with the letters HAC. Section 68.112(b)(3)(E) requires that employers with fifteen or more employees provide emergency telephones for use by employees with hearing disabilities and that the employers ''designate'' such telephones for emergency use. Section 68.224(a) requires a notice to be contained on the surface of the packaging of a non-hearing aid compatible telephone that the telephone is not hearing aid compatible. The requirements were

implemented to assist the Commission in carrying out its responsibilities.

OMB Control Number: 3060–0804.

Title: Universal Service—Health Care Providers Universal Service Program.

Form Numbers: FCC Form 465, FCC Form 466, FCC Form 467, and FCC Form 468.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for profit entities; Not for profit institutions.

Number of Respondents: 73,000 (Form 465: 12,000; Form 466: 15,000; Form 467: 12,000; and Form 468: 34,000).

Estimated Time Per Response: Form 465: 2.5 hours; Form 466: 1.5 hours; Form 467: 1.5 hours; and Form 468: 1.5 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 121,500 hours (Form 465: 30,000 hours; Form 466: 22,500 hours; Form 467: 18,000 hours; and Form 468: 51,000 hours).

Estimated Cost to Respondents: None.

Needs and Uses: The Commission adopted rules providing support for all telecommunications services, limited distance charges, and Internet access for all eligible health care providers. Health care providers who want to participate in the universal service program must file the following forms. FCC Form 465 to request eligible services; FCC Form 466 to certify that the most cost effective method of providing the services has been requested; FCC Form 467 to confirm the receipt of the requested services; and FCC Form 468 to ensure that the proper amount of universal service support has been calculated. All the information is used to administer the universal service health care program.

OMB Control Number: 3060–0540.

Title: Tariff Filing Requirements for Nondominant Common Carriers.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 2,000.

Estimated Time Per Response: 10.5 hours (avg.).

Frequency of Response: On occasion reporting.

Total Annual Burden: 21,000 hours.

Estimated Cost to Respondents: $1,130,000.

Needs and Uses: Domestic nondominant carriers must file tariffs pursuant to 47 U.S.C. Section 203; implementing regulations are found at 47 CFR Sections 61.20–61.23. The information collected pursuant to the nondominant tariff filing rules is used to comply with Section 203 of the Communications Act of 1934, as amended, which requires that carriers file schedules indicating the rates, terms, and conditions of their service offerings. The information collected pursuant to the tariff filing requirements is used by the Commission to determine whether the rates, terms, and conditions of service offered are just and reasonable as the Act requires. These tariff filing requirements enable the Commission and the public to ensure that the service offerings of communications common carriers comply with the requirements of the Act.

OMB Control Number: 3060–0856.

Title: Universal Service—Schools and Libraries Universal Service program Reimbursement Forms.

Form Number: FCC Form 472, FCC Form 473, and FCC Form 474.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 61,800 (Form 472: 50,000; Form 473: 9,300; and Form 474: 2,500).

Estimated Time Per Response: Form 472: 1.5 hours; Form 473: 1.0 hours; and Form 474: 1.5 hours.

Frequency of Response: Annually; On occasion reporting requirements.

Total Annual Burden: 88,050 hours (Form 472: 75,000 hours; Form 473: 9,300 hours; and Form 474: 3,750 hours).

Estimated Cost to Respondents: None.

Needs and Uses: The Commission adopted rules providing universal service support for all telecommunications services, Internet access, and internal connections for all eligible schools and libraries. The Telecommunications Act of 1996 contemplates that discounts on eligible services shall be provided to schools and libraries, and that service providers shall seek reimbursement for the amount of the discounts.

FCC Form 472—*Billed Entity Applicant Reimbursement Form*. The information to be collected in the Billed Entity Applicant Reimbursement Form is necessary to enable the fund administrator, the SLC, to pay universal service support to service providers who provide discounted services to eligible schools, libraries, and consortia of those entities. The information is to be collected from each Form 471 Billed Entity Applicant (Applicant) that received a funding Commitment Decisions Letter from the administrator and filed a Form 486 to indicate the applicant intended to prepare and submit to the SLC an invoice for reimbursement. The information to be collected on the Billed Entity Applicant Reimbursement Form should be completed by an applicant to seek reimbursement for payments on approved services and/or products delivered to the applicant from the actual service start date, as reported in the applicant's Form 486 Column (E), through no later than December 31, 1998. This information is necessary to identify the amount of the discounts due and owing from the service provider to the applicant, so that the service provider may reimburse this amount to the applicant.

FCC Form 473—*Submission of Service Provider Annual Certification Form*. The Service Provider Annual Certification Form is to be submitted by each service provider or vendor, hereinafter collectively referred to as service providers, that was assigned a service provider identification number (SPIN) by the Universal Service Administrative Company (USAC) and that participates in the universal service support mechanism for schools and libraries. The purpose of the Annual Certification Form is to confirm that, for each Invoice Form submitted by the service provider, the Invoice form is in compliance with the FCC's rules governing the schools and libraries universal service support mechanism, and the Invoice Form is true, accurate, and complete. FCC Form 474—*Submission of Service Provider Invoice Form*. The Service Provider Invoice Form is to be used by all service providers or vendors, hereinafter collectively referred to as service providers, who were assigned a SPIN by the USAC and participate in the universal service support mechanism for schools and libraries. The purpose of the Invoice Form is for the service provider/vendor to seek reimbursement for the cost of discounts. The information to be collected on the Service Provider Invoice Form must be received by the SLC before a service provider participating in the universal service program for schools and libraries can receive payment for the discounted portion of its bill for eligible services to eligible entities. All of the information collected is used to administer the universal service schools and libraries program.

OMB Control Number: 3060–0843.

Title: Carrier Identification Codes Blocking Data Request.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 6.

Estimated Time Per Response: 8 hours (avg.).

Frequency of Response: One-time requirement.

Total Annual Burden: 48 hours.

Estimated Cost to Respondents: None.

Needs and Uses: The five regional Bell Operating Companies and GTE are required to submit reports to the Common Carrier Bureau describing their progress in phasing out three-digit Carrier Identification codes (CICs). This data are critical to the general and specific implementation and oversight responsibilities that the Commission bears under the Communications Act to evaluate the status of development of competition in the provision of local exchange telecommunications services. The data request will be used to evaluate the status of developing competition in the long distance telecommunications markets. The information will be used by the Commission to determine whether the phase-out of three-digit CICs is being implemented.

OMB Control Number: 3060–0816.

Title: Local Competition in the Local Exchange Telecommunications Services Report.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 20.

Estimated Time Per Response: 900 hours (avg.).

Frequency of Response: Quarterly; On occasion reporting requirements.

Total Annual Burden: 18,000 hours.

Estimated Cost to Respondents: None.

Needs and Uses: The Telecommunications Act of 1996 directed the Commission to undertake various initiatives to implement new statutory directives concerning the development of local exchange competition. Central to these directives are new Section 251, governing incumbent local exchange carrier (LEC) provision of interconnection to competitors, and new Section 271 which provides a means whereby Bell Operating Companies (BOCs)—long prohibited from entering various telecommunications markets—may now do so upon submission of qualifying applications. Pursuant to its new statutory obligations and in its general capacity as chief federal regulatory agency tasked with implementing the 1996 Communications Act amendments, the Commission must evaluate the status and development—nationwide—of local competition, i.e., competition in the provision of local exchange telecommunications services. Certain companies were asked to voluntarily submit information to the Commission to evaluate the status and development of developing competition in the local exchange telecommunications markets. The request is limited to technical queries about the nature and extent of carrier-provided access facilities; switch ports and non-switched service lines; number of customers purchasing specific services; state operations data; total carrier-handled switched local, intrastate toll, and interstate toll minutes; and number of local telephone numbers ported as of end-of-year 1997. The information is used by Commission economists and carrier analysts to advise the Commission about the efficacy of Commission rules and policies adopted to implement the Telecommunications Act of 1996.

OMB Control Number: 3060–0853.

Title: Receipt of Service Confirmation Form—Universal Service for Schools and Libraries.

Form Number: FCC Form 486.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 30,000.

Estimated Time Per Response: 1.5 hours (avg.)

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 45,000 hours.

Estimated Cost to Respondents: None.

Needs and Uses: The Commission adopted rules providing support for all telecommunications services, Internet access, and internal connections for all eligible schools and libraries. To participate in the program schools and libraries must confirm that they are actually receiving the services eligible for support. FCC Form 486, Receipt of Service Confirmation Form, is used by all billed entities who filed a FCC Form 471 on behalf of an eligible school, library, library consortium, or consortium of multiple entities, to inform the SLC when they begin receiving or have received service from the service provider. The FCC Form 486 is also used to confirm that technology plans of entities receiving universal service support pursuant to an SLC-approved funding commitment have been approved, indicating that the eligible entities applying for universal service support have a plan in place to utilize the services for which they have contracted, and to indicate the name of the authorized reviewing body, contact name, and contact telephone number. The FCC Form 486 is used to implement the congressional mandate for universal service.

Federal Communications Commisison.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–28770 Filed 10–27–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 98–2144]

Wireless Telecommunications Bureau Seeks Comment on Request for Stay of Location and Monitoring Service Auction; Comment Sought on Request for Temporary Delay From MicroTrax™.

AGENCY: Federal Communications Commission.

ACTION: Notice; seeking comment.

SUMMARY: In a letter dated October 22, 1998, to the Wireless Telecommunications Bureau, MicroTrax™ (''MicroTrax'') requested a temporary delay of the Location and Monitoring Service auction. On October 23, 1998, the Wireless Telecommunications Bureau released a Public Notice seeking comment on all aspects and each of the concerns raised in a request for temporary delay from MicroTrax.

DATES: Comments are due on or before November 2, 1998.

ADDRESSES: Comments should be addressed to: Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Room 5202, 2025 M Street, N.W., Washington, D.C. 20554. In addition, a copy of the comments should be sent to Kenneth Burnley, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Room 5126–D, 2025 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kenneth Burnley, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: The following is a summary of a Public Notice released by the Wireless Telecommunications Bureau on October 23, 1998. The complete text of this Public Notice is available in its entirety, including attachments, for inspection and copying during normal business hours in the Wireless Telecommunications Bureau Reference Center, 2025 M Street, N.W., Room 5608, Washington, D.C., 20554, and also may be retrieved from the FCC World Wide Web Auctions site at http://www.fcc.gov/wtb/auctions.

Synopsis of the Public Notice

A. Introduction

1. On December 15, 1998, the Federal Communications Commission (''Commission'') is scheduled to hold an auction for 528 multilateration Location and Monitoring Service (''LMS'') licenses to operate in the 902–928 MHz band.

2. In a letter dated October 22, 1998, to the Wireless Telecommunications Bureau (''Bureau''), MicroTrax™ (''MicroTrax'') requested a temporary delay of the LMS auction. MicroTrax contends that a six-month delay will allow it, ''and possibly other similarly situated companies, much needed time to organize and fully participate in the LMS auction.'' MicroTrax further contends that absent such a delay, it will not be able to participate in the LMS auction.

3. To assist the Bureau in making recommendations to the Commission, the Bureau seeks comment on all aspects and each of the concerns raised in the request for temporary delay from MicroTrax. Comments are due November 2, 1998.

Federal Communications Commission.

Amy Zoslov,

Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

[FR Doc. 98–28931 Filed 10–27–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved By Office of Management and Budget

October 20, 1998.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. 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 control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0856.

Expiration Date: 04/30/99.

Title: Universal Service—Schools and Libraries Universal Service Program Reimbursement Forms.

Form No.: FCC Form 472, FCC Form 473, FCC Form 474.

Respondents: Business or other for profit; Not for profit institutions.

Estimated Annual Burden: 61,800 respondents; 1.42 hours per response (avg.); 88,050 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: The Commission adopted rules providing universal service support for all telecommunications services, Internet access, and internal connections for all eligible schools and libraries. The Telecommunications Act of 1996 contemplates that discounts on eligible services shall be provided to schools and libraries, and that service providers shall seek reimbursement for the amount of the discounts. FCC Form 472—*Billed Entity Applicant Reimbursement Form*. The information to be collected in the Billed Entity Applicant Reimbursement Form is necessary to enable the fund administrator, the SLC, to pay universal service support to service providers who provide discounted services to eligible schools, libraries, and consortia of those entities. The information is to be collected from each Form 471 Billed Entity Applicant (Applicant) that received a funding Commitment Decisions Letter from the administrator and filed a Form 486 to indicate the applicant intended to prepare and submit to the SLC an invoice for reimbursement. The information to be collected on the Billed Entity Applicant Reimbursement Form should be completed by an applicant to seek reimbursement for payments on approved services and/or products delivered to the applicant from the actual service start date, as reported in the applicant's Form 486 Column (E), through no later than December 31, 1998. This information is necessary to identify the amount of the discounts due and owing from the service provider to the applicant, so that the service provider may reimburse this amount to the applicant. (*No. of respondents:* 50,000; *annual burden per respondent:* 1.5 hours; *total annual burden:* 75,000 hours). FCC Form 473—*Submission of Service Provider Annual Certification Form*. The Service Provider Annual Certification Form is to be submitted by each service provider or vendor, hereinafter collectively referred to as service providers, that was assigned a service provider identification number (SPIN) by the Universal Service Administrative Company (USAC) and that participates in the universal service support mechanism for schools and libraries. The purpose of the Annual Certification Form is to confirm that, for each Invoice Form submitted by the service provider, the Invoice form is in compliance with the FCC's rules governing the schools and libraries universal service support mechanism, and the Invoice Form is true, accurate and complete. (*No. of respondents:* 9300; *annual burden per respondent:* 1 hour; *total annual burden:* 9300 hours). FCC Form 474—*Submission of Service Provider Invoice Form*. The Service Provider Invoice Form is to be used by all service providers or vendors, hereinafter collectively referred to as service providers, who were assigned a SPIN by the USAC and participate in the universal service support mechanism for schools and libraries. The purpose of the Invoice Form is for the service provider/vendor to seek reimbursement for the cost of discounts. The information to be collected on the Service Provider Invoice Form must be received by the SLC before a service provider participating in the universal service program for schools and libraries can receive payment for the discounted portion of its bill for eligible services to eligible entities. (*No. of respondents:* 2500; *annual burden per respondent:* 1.5 hours; *total annual burden:* 3750 hours). All of the information collected is used to administer the universal service schools and libraries program. Copies of the forms may be obtained via e-mail <www.neca.org> or by calling 1–888–203–8100. Obligation to comply: required to obtain or retain benefits.

OMB Control No.: 3060–0470.

Expiration Date: 10/31/2001.

Title: Allocation of Cost, Cost Allocation Manual, RAO Letters 19 and 26.

Form No.: N/A.

Respondents: Business or other for profit.

Estimated Annual Burden: 18 respondents; 300 hours per response (avg.) (approximately 2 filings annually); 10,800 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annually.

Description: Section 64.903(a) requires local exchange carriers (LECs) with annual operating revenues equal to or above the indexed revenue threshold as defined in 47 CFR 32.9000 to file a cost allocation manual containing the information specified in Section 64.903(a) (1)–(6). Section 64.903(b) requires that carriers update their cost allocation manuals annually, except that changes to the cost apportionment table and to the description of time reporting

procedures must be filed at least 15 days before the carrier plans to implement the changes. The cost allocation manual is reviewed by the FCC to ensure that all costs are properly classified between regulated and nonregulated activity. Uniformity in the CAMs will help improve the joint cost allocation process. In addition, this uniformity will give the Commission greater reliability in financial data submitted by the carriers through the Automated Reporting Management Information System (ARMIS). Obligation to comply: Mandatory.

OMB Control No.: 3060–0853.

Expiration Date: 04/30/99.

Title: Receipt of Service Confirmation Form—Universal Service for Schools and Libraries.

Form No.: FCC Form 486.

Respondents: Business or other for profit; Not for profit institutions; State, local or tribal government.

Estimated Annual Burden: 30,000 respondents; 1.5 hours per response (avg.); 45,000 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: The Commission adopted rules providing support for all telecommunications services, Internet access, and internal connections for all eligible schools and libraries. To participate in the program schools and libraries must confirm that they are actually receiving the services eligible for support. FCC Form 486, Receipt of Service Confirmation Form is used by all billed entities who filed a FCC Form 471 on behalf of an eligible school, library, library consortium or consortium of multiple entities, to inform the SLC when they begin receiving or have received service from the service provider. The FCC Form 486 is also used to confirm that technology plans of entities receiving universal service support pursuant to an SLC-approved funding commitment have been approved, indicating that the eligible entities applying for universal service support have a plan in place to utilize the services for which they have contracted, and to indicate the name of the authorized reviewing body, contact name, and contact telephone number. The FCC Form 486 is used to implement the congressional mandate for universal service. See 47 USC 254. The reporting requirements verify that each eligible school or library has received the services it ordered and assure that invoices submitted from service providers for the costs of discounts for eligible services represent services which have been delivered to the eligible school or library. Copies of the forms may be obtained via e-mail <www.slcfund.org> or by calling 1–888–203–8100. Obligation to respond: Required to obtain or retain benefits.

OMB Control No.: 3060–0422.

Expiration Date: 10/31/2001.

Title: Section 68.5, Waivers (Application for Waiver of Hearing Aid Compatibility Requirement).

Form No.: N/A.

Respondents: Business or other for profit.

Estimated Annual Burden: 10 respondents; 3 hours per response (avg.); 30 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: Section 710(b) of the Communications Act of 1934, as amended, requires that almost all telephones manufactured in or imported into this country after August 15, 1989 be hearing aid compatible. Refurbished, repaired or resold telephones, telephones used with public and private mobile radio services, and secure telephones used for classified communications are exempt. The HAC Act provides a three year grace period for cordless telephones before they must comply with the requirement. Congress recognized, however, that there may be technological and/or economical reasons some new telephones may not meet the hearing aid compatibility requirement. Therefore, it provided for a waiver requirement for new telephone based on technological and economical grounds. Section 68.5 of the Commission's rules provides the criteria to be used to assess waivers. Applicants seeking waivers must submit sufficient information for the Commission to make an informed decision. Obligation to comply: Required to obtain or retain benefits.

OMB Control No.: 3060–0736.

Expiration Date: 10/31/2001.

Title: Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96–149.

Form No.: N/A.

Respondents: Business or other for profit.

Estimated Annual Burden: 5 respondents; 5 hours per response (avg.)(about 12 responses per year); 303 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: Section 272 of the Telecommunications Act of 1996 requires that BOCs make information available to third parties if it makes that information available to its section 272(a) affiliates. In an Order released February 6, 1998, the Commission's Common Carrier Bureau resolved questions regarding the application of sections 10 and 272 of the Communications Act of 1934, as amended, to the provision of E911 services by the Bell Operating Companies. Bell Operating Companies, Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, as amended, to Certain Activities, CC Docket No. 96–149, DA 98–220, Memorandum Opinion and Order (Com. Car. Bur. Feb. 6, 1998) (February 6 Order). E911 services enable emergency service personnel to identify the location of the party calling 911, and are essential to the safety of many Americans. In the February 6 Order, the Bureau determined that the BOCs' E911 services are interLATA information services. One consequence of this determination was that each BOC had an obligation under section 272(a)(2)(c) of the Act to provide E911 services only through a separate affiliate. In the February 6 Order, the Bureau forbore from the application of this separate affiliate requirement pursuant to the forbearance authority in section 10 of the Act, thus permitting the BOCs to provide E911 services on an integrated basis. The Bureau determined that requiring the BOCs to provide E911 services only through separate affiliates would have increased the cost, but not the quality, of those services. In the February 6 Order, the Bureau maintained the substance of the statutory nondiscrimination requirement by requiring each BOC to provide unaffiliated entities with all listing information, including unlisted and unpublished numbers as well as the numbers of other local exchange carriers' customers, that the BOC uses to provide E911 services, even though that Order was permitting the BOCs to provide those services on an integrated basis. The Bureau required that this listing information be provided at the same rates, terms, and conditions, if any, the BOC charges or imposes on its own E911 services. The BOCs are already required to account for their E911 services on the books of account that they maintain in accordance with Part 32 of the Commission's rules. The Commission requires that the BOCs treat their E911 services as nonregulated activities for federal accounting purposes to the extent they involve storage and retrieval functions included within the statutory definition of

information service. The BOCs shall record any charges they impute for their E911 services in their revenue accounts. The BOCs shall account for any imputed charges by debiting their nonregulated operating revenue accounts and crediting their regulated revenue accounts by the amounts of the imputed charges. The BOCs shall make any changes to their cost allocation manuals necessary to reflect this account. The BOCs' independent auditors shall include this accounting in their review of the BOCs compliance with their cost allocation manuals. The requirements will be used to ensure that BOCs comply with the nondiscrimination requirements under the 1996 Act. OMB also approved the proposals contained in the Further Notice of Proposed Rulemaking issued in CC Docket No. 96–149. In the FNPRM the Commission proposed that BOCs make certain information disclosures available to ''unaffiliated entities'' as defined under Commission rules. This disclosure include the amount of time, measured in percentages and averages, that it takes a BOC to respond to its section 272 affiliates. BOCs must submit an annual affidavit to the Commission certifying, *inter alia,* that they are maintaining the information according to the required format. Obligation to comply: Mandatory.

OMB Control No.: 3060–0804.

Expiration Date: 03/31/99.

Title: Universal Service—Health Care Providers Universal Service Program.

Form No.: FCC Form 465, FCC Form 466, FCC Form 467, and FCC Form 468.

Respondents: Businesses or other for profit entities; Not for profit institutions.

Estimated Annual Burden: 18,400 respondents; 6.6 hours per response (avg.); 121,500 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: . On occasion.

Description: The Commission adopted rules providing support for all telecommunications services, limited distance charges, and Internet access for all eligible health care providers. Health care providers who want to participate in the universal service program must file the following forms. FCC Form 465 to request eligible services (*no. of respondents:* 12,000; *annual burden per response:* 2.5 hours; total annual burden: 30,000 hours); FCC Form 466 to certify that the most cost effective method of providing the services has been requested (*no. of respondents:* 15,000; *annual burden per respondent:* 1.5 hours; *total annual burden:* 22,500 hours); FCC Form 467 to confirm the receipt of the requested services (*no. of respondents:* 12,000; *annual burden per respondent:* 1.5 hours; *total annual burden:* 18,000 hours); and FCC Form 468 to ensure that the proper amount of universal service support has been calculated (*no. of respondents:* 3400; *annual burden per respondent:* 1.5 hours; *total annual burden:* 51,000 hours). All the information is used to administer the universal service health care program. Copies of the forms may be obtained via e-mail <www.rhccfund.org> or by calling 1–888–203–8100. Obligation to comply: Required to obtain or retain benefits.

OMB Control No.: 3060–0824.

Expiration Date: 09/30/2001.

Title: Service Provider Information Form.

Form No.: FCC Form 498.

Respondents: Business or other for profit.

Estimated Annual Burden: 10,000 respondents; 1 hours per response (avg.); 10,000 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: Pursuant to Sections 54.515 and 54.611 of the Commission's rules, 47 CFR Sections 54.515 and 54.611, the Universal Service Administrative Company (USAC), must obtain information relating to: service provider name and address, telephone number, Federal employer identification number, contact names and telephone numbers, and billing and collection information. To that end, USAC has developed a Service Provider Information Form, FCC Form 498 to collect this information from carriers and service providers participating in the universal service programs. The FCC Form 498 is designed to collect only the information necessary to fulfill the obligation of USAC to bill and collect funds for the various universal service programs. All the requirements contained herein are necessary to implement the congressional mandate for universal service. See 47 USC 254. Copies of the form may be obtained via e-mail <www.neca.org/usacform.html> or by calling 1–888–641–8722.

OMB Control No.: 3060–0819.

Expiration Date: 09/30/2001.

Title: Lifeline Assistance (Lifeline) Connection Assistance (Link Up) Reporting Worksheet and Instructions (47 CFR 54.400–54.417).

Form No.: FCC Form 497.

Respondents: Business or other for profit.

Estimated Annual Burden: 1500 respondents; 28 hours per response (avg.) (about 12 submissions per respondent annually); 42,000 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: Pursuant to Section 54.405 all eligible telecommunications carriers (ETCs) are required to provide Lifeline service. In turn, these ETCs are permitted under Section 54.407 (Lifeline) or Section 54.413 (Link Up) to receive support for offering Lifeline service to qualifying low-income customers or reduced service-connection charges through Link Up. Pursuant to Section 54.403(c), carriers providing toll-limitation services (TLS) for qualifying low-income subscribers will be compensated from universal service mechanisms for the incremental cost of providing TLS. In addition, pursuant to Section 54.403(d), the cost of the Presubscribed Carriers Charge (PICC) for Lifeline customers who elect toll blocking is also recoverable from the low-income program. FCC Form 497, Lifeline and Link Up Worksheet, is to be used to request reimbursement for participating in the low-income program. The information is necessary in order for ETCs to receive universal service support reimbursement for providing Lifeline and Link Up. Copies of the form may be obtained via e-mail <www.neca.org/usacform.html> or by calling 1–888–641–8722. Obligation to comply: Required to obtain or retain benefits.

OMB Control No.: 3060–0815.

Expiration Date: 09/30/2001.

Title: North American Numbering Plan Funding Worksheet.

Form No.: FCC Form 496.

Respondents: Business or other for profit.

Estimated Annual Burden: 3700 respondents; .50 hours per response (avg.); 1850 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; annually.

Description: Pursuant to Congress's directive in the Telecommunications Act of 1996 that the Commission establish an independent entity to administer telecommunications numbering, the Commission determined on July 13, 1995, that the costs associated with administering numbering duties should be based on each telecommunications carrier's gross revenues less payments made to other carriers. The costs the North American Numbering Plan Administrator (NANPA) incurs from establishing telecommunications numbering administration arrangements and other number portability are to be borne by all

telecommunications carriers on a competitively neutral basis. See 47 USC 251(e)(2). Section 52.16(b) of the Commission's rules require the Billing and Collection agent to design a standard reporting worksheet to collect information for assessment calculations from carriers and to distribute it to carriers. FCC Form 498, is the instrument used to request that telecommunications carriers provide information regarding their yearly gross revenues less payments made to other telecommunications carriers. The Commission and the NANPA's billing and collection agent will use the information collected in the worksheet to determine the total revenue received from telecommunications carriers in order to arrive at an amount that each carrier must pay to fund the NANPA. Copies of the form were mailed to respondents. Copies of the form may be obtained via email <www.fcc.gov>. Obligation to respond: Mandatory.

OMB Control No.: 3060–0845.

Expiration Date: 10/31/2001.

Title: 1998 Annual Biennial Review of ARMIS Reporting Requirements.

Form No.: FCC 43–01–FCC 43–08, FCC 495A, FCC 495B.

Respondents: Business or other for profit.

Estimated Annual Burden: 150 respondents; 1092 hours per response (avg.); 163,846 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annual.

Description: Section 220 of the Communications Act of 1934, as amended, 47 USC 220, allows the Commission, at its discretion, to prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to this Act, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys. Section 219(b) of the Communications Act of 1934, as amended, 47 USC 219(b), authorizes the Commission by general or special orders to require any carriers subject to this Act to file annual reports concerning any matters with respect to which the Commission is authorized or required by law to act. Section 43.21 of the Commission's rules details that requirement. The Automated Reporting Management Information System (ARMIS) was implemented to facilitate the timely and efficient analysis of revenue requirements and rate of return to provide an improved basis for audits and other oversight functions, and to enhance the Commission's ability to quantify the effects of alternative policy. Section 11 of the Communications Act of 1934, as amended, requires the Commission, in every even-numbered year beginning in 1998, to review its regulations applicable to providers of telecommunications service to determine whether the regulations are no longer in the public interest due to meaningful economic competition between providers of such service and whether such regulations should be repealed or modified. (See 47 USC 161). In a NPRM issued in CC Docket No. 98–117, released 7/17/98, we proposed as part of the biennial review to reduce the reporting requirements of our ARMIS. These modifications are designed to minimize the reporting burden on carriers, improve the quality and use of the reported information and reduce the cost to the Commission of collection, verification, and distribution of the data. The Common Carrier Bureau currently requires carriers to submit both paper and electronic copies of the ARMIS reports. The Commission has, in recent years, relied on the data filed electronically to maintain internal databases and generate meaningful reports for policy making. We tentatively conclude that paper versions of the ARMIS reports do not significantly contribute to the Commission efforts or future goals in administering its accounting, joint cost, jurisdictional separations, access charge rules, or in monitoring the quality of service and infrastructure development in the public network. Therefore, we tentatively conclude that we should eliminate the paper filing requirement. We anticipate that the transition to an electronic-only reporting program will represent a substantial cost savings for all carriers that file ARMIS reports.

The Commission plans to make the ARMIS data available through the Internet. This will require Commission staff to develop software that will allow interested parties to obtain ARMIS reports over the Internet, which we anticipate to be a costly process. The Commission also proposed specific modifications for certain ARMIS reports. For example, the Commission proposed to modify the ARMIS 43–04 Access Report by eliminating 114 rows and three columns in which carriers report data pertaining to equal access, inside wire, and payphone investment. The Commission also proposed to reduce reporting requirements for mid-sized incumbent LECs. For the largest incumbent LECs, we tentatively conclude that we should maintain the Class A level of detail for their ARMIS reporting requirements. See CC Docket No. 98–117 for detailed discussion of the proposals. The proposals contained in the NPRM have been approved by OMB. The following is a listing of the reports that may be affected by the proposals contained in the NPRM and the burden estimate if the proposals are adopted.

a. ARMIS Annual Summary Report, FCC Report 43–01—The ARMIS Annual Summary Report contains financial and operating data and is used to monitor the local exchange carrier industry and to perform routine analyses of costs and revenues. (*No. of respondents:* 150; *estimated time per response:* 135 hours; total annual burden: 20,250 hours).

b. ARMIS USOA Report, FCC Report 43–02—The FCC Report 43–02 contains company-wide data for each account specified in the Uniform System of Accounts (USOA). It provides the annual operating results of the carriers' activities for every account in the USOA. (*No. of respondents:* 50; estimated time per response: 190 hours; *total annual burden:* 9500 hours).

c. ARMIS Joint Cost Report, FCC Report 43–03—FCC Report 43–03 contains financial and operating data. FCC Report 43–03 displays regulated and nonregulated data disaggregated by allocation method, at the study area level. The Commission uses it to monitor the local exchange carriers' allocation of costs to regulated and nonregulated activities and to perform routine analyses of costs and revenues. (*No. of respondents;* 150; *estimated time per response:* 110 hours; *total annual burden:* 12,450 hours).

d. ARMIS Access Report, FCC Report 43–04—FCC Report 43–04 contains financial and operating data and is used to monitor the local exchange carrier industry and to perform routine analyses of costs and revenues on behalf of the Commission. (*No. of respondents:* 150; *estimated per response:* 621 hours; *total annual burden:* 93,150 hours).

e. ARMIS Service Quality Report, FCC Report 43–05—The FCC Report 43–05 collects data at the study area level and holding company level and is designed to capture trends in service quality under price cap regulation. It provides service quality information in the areas of interexchange access service installation and repair intervals, local service installation and repair intervals, trunk blockage and total switch downtime for price cap companies. (*No. of respondents:* 12; *estimated time per response:* 625 hours; *total annual burden:* 7500 hours.

f. ARMIS Customer Satisfaction Report, FCC Report 43–06—The FCC Report 43–06 reflects the results of customer satisfaction surveys conducted

by individual carriers from residential and business customers. (*No. of respondents:* 8; *estimated time per response:* 675 hours; *total annual burden:* 5400 hours).

g. ARMIS Infrastructure Report, FCC Report 43–07—The FCC Report 43–07 is designed to capture trends in telephone industry infrastructure development under price cap regulation. It provides switch deployment and capabilities data. (*No. of respondents:* 8; *estimated time per response:* 412 hours; *total annual burden:* 3296 hours).

h. ARMIS Operating Data Report, FCC Report 43–08—The FCC Report 43–08 consists of statistical schedules previously contained in FCC Form M which are needed by the Commission to monitor network growth, usage and reliability. (*No. of respondents:* 50; *estimated time per response:* 120 hours; *total annual burden:* 6000 hours).

i. and j. ARMIS Forecast of Investment Usage Report and Actual Usage of Investment Report, FCC Reports 495A and 495B, implement the FCC's *Joint Cost Order*, CC Docket No. 86–111 which requires that certain telephone plant investments used for both regulated and nonregulated purposes be allocated on the basis of forecasted regulated and nonregulated use. The detection and correction of forecasting errors requires reporting of both forecasted and actual investment usage data. The Forecast of Investment Usage Report is used by carriers to subject the forecasts of investments used. The Actual Usage of Investment Report is used to submit the actual investments used. (*No. of respondents:* 300; *estimated time per response:* 21 hours; *total annual burden:* 6300 hours). The proposed modifications, if adopted, would result in a burden reduction of more than 50% in our current estimate for ARMIS reports. The information contained in the ARMIS Reports provide the necessary detail to enable the Commission to fulfill its regulatory responsibilities. Automated reporting of these data greatly enhances the Commissions ability to process and analyze the extensive amounts of data that are needed to administer its rules. It facilities the timely and efficient analyses of revenue requirements, rates of return and price caps, and provides an improved basis for auditing and other oversight functions. It also enhances the Commission's ability to quantify the effects of policy proposals. Obligation to comply: Mandatory.

OMB Control No.: 3060–0847.

Expiration Date: 10/31/2001.

Title: 1998 Biennial Regulatory Review, Review of Accounting and Cost Allocation Requirements—CC Docket No. 98–81.

Respondents: Business or other for profit.

Estimated Annual Burden: 276 respondents; 1092 hours per response (avg.); 2,415,568 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $1200.

Frequency of Response: On occasion, Annual.

Description: Section 220 of the Communications Act of 1934, as amended, 47 U.S.C. 220, allows the Commission, in its discretion, to prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to this Act, including the accounts, records and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys. Section 11 of the Communications Act of 1934, as amended, 47 U.S.C. 161, requires the Commission, in every even-numbered year beginning in 1998, to review its regulations applicable to providers of telecommunications services to determine whether the regulations are no longer in the public interest due to meaningful economic competition between providers of such service and whether such regulations should be repealed or modified. Section 11 further instructs the Commission to repeal or modify any regulation it determines to be no longer necessary in the public interest. On June 17, 1998, the Commission released a Notice of Proposed Rulemaking in CC Docket No. 98–81, proposing to modify its accounting and cost allocation rules as part of the biennial review process. Specifically, the Commission proposed (1) to raise the threshold significantly for required Class A accounting, thus allowing mid-sized carriers currently required to use Class A accounts to use the more streamlined Class B accounts; (2) to establish less burdensome cost allocation manual (''CAM'') procedures for the mid-sized incumbent local exchange carriers (''LECs'') and to reduce the frequency with which independent audits of the cost allocations based upon the CAMs are required; and (3) to make certain changes to our Uniform System of Accounts (''USOA'') to reduce accounting requirements and to eliminate or consolidate accounts. The proposals contained in the NPRM have been approved by OMB. Following is a listing of the collections that will be affected by the proposals contained in the NPRM along with the estimated burden hours.

a. *Part 32—Uniform Systems of Accounts (recordkeeping and reporting requirements)*—The Uniform System of Accounts is a historical financial accounting system which reports the results of operational and financial events in a manner which enables both management and regulators to assess these results within a specified accounting period. Subject respondents are telecommunications companies. The Commission for accounting purposes has classified companies into two classes in Part 32, namely Class A and Class B companies. Class A carriers are those entities having annual revenues from regulatory telecommunications operations of $100,000,000 or more. Class B carriers are those entities having annual revenues from regulated telecommunications operations of less than $100,000,000. (*No. of respondents:* 239; *estimated time per response:* 10,034.5 hours; *total annual burden:* 2,398,268 hours).

b. *Computer III Remand Proceeding: BOC Safeguards and Tier 1 LEC Safeguards and Implementation of Further Cost Allocation Uniformity*. Pursuant to Section 64.901, carriers are required to separate their regulated costs from nonregulated costs using the attributable cost method of accounting. Carriers must follow the principles described in Section 64.901. Carriers subject to 47 CFR 64.901 are also subject to the provisions of 47 CFR 32.23 and 32.27. Section 64.903(a), as amended by the Telecommunications Act of 1996, requires local exchange carriers with annual operating revenues equal to or above the indexed revenue threshold as defined in 47 CFR Section 32.9000 to file a cost allocation manual, containing the information specified in Section 64.903(a)(1)–(6). Section 64–903(b) requires that carriers update their cost allocation manuals annually, except that changes to the cost apportionment table and the description of time reporting procedures must be filed at least 15 days before the carrier plans to implement the changes. Proposed changes in the description of time reporting procedures, the statement concerning affiliate transactions, and the cost apportionment table must be accompanied by a statement quantifying the impact of each change on regulated operations. Changes in the description of time reporting procedures and the statement concerning affiliate transactions must be quantified in $100,000 increments at the account level. Changes in the cost apportionment table must be quantified in $100,000 increments at the cost pool level. Moreover, filing of cost allocation

manuals and occasional updates are subject to the uniform format and standard procedures specified in RAO letter 19. The Commission proposes to, among other things, eliminate or modify some of the information required in the CAMs for mid-sized incumbent LECs. (*No. of respondents:* 18; *estimated time per response:* 300 hours (about two filings per respondent); *total annual burden:* 10,800 hours).

c. *Annual Auditor's Certification—Section 64.904*—Independent auditors must evaluate the results of the carrier's cost allocation manuals in light of the requirements of the manuals as well as the Commission's joint cost rules and rules and regulations including 47 CFR 32.23, 32.27, 64.901 and 64.903 in force as of the date of the auditor's report. Independent auditors must follow all of the ten standards of generally accepted auditing standards (GAAS) in preparing the required reports. The Commission proposes to, among other things, to relax the audit requirement for mid-sized incumbent LECs. (*No. of respondents:* 19; *estimated time per response:* 500; *total annual burden:* 6500 hours). The proposed information collection requirements will provide the necessary information to enable this Commission to fulfill its regulatory responsibilities. These proposed accounts and recordkeeping requirements are intended to achieve the following goals: (1) to facilitate uniform reporting among ILECs; and (2) to ensure that regulated ratepayers do not bear the costs of ILECs' competitive activities. If the proposals are adopted, the Commission will realize a burden reduction of 633,500 hours. Obligation to comply: Mandatory.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–28769 Filed 10–27–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

October 22, 1998.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995, Pub. L. 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of law, 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. Questions concerning the OMB control numbers and expiration dates should be directed to Judy Boley, Federal Communications Commission, (202) 418–0214.

Federal Communications Commission

OMB Control No.: 3060–0262.

Expiration Date: 10/31/2001.

Title: Section 90.179 Shared Use of Radio Stations

Form No. N/A.

Estimated Annual Burden: 1,238 annual hours; .75 hours per response; 1,650 responses.

Description: This rule section is necessary to identify users of a shared land mobile radio station. The information is used by the Commission personnel to investigate interference complaints.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–28823 Filed 10–27–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSIONS

[Report No. 2302]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

October 21, 1998.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed November 12, 1998. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of Section 309(j) of the Communications Act—Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses (MM Docket No. 97–237).

Reexamination of the Policy Statement on Comparative Broadcast Hearings (GC Docket No. 92–52).

Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases (GEN Docket No. 90–264).

Number of Petitions Filed: 31.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–28771 Filed 10–27–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 203–011636

Title: The Ancillary Agreement

Parties:

Canadian Pacific Management (Bermuda) (''CPML'')
Bollore Technologies S.A.
SCAC Delmas Vieljeux—SDV
Brierley Investments Limited
Union Shipping Group Limited

Synopsis: The proposed agreement authorizes the parties to not compete with the Australia-New Zealand Direct Line (''ANZDL'') in the trade between the United States and Australia, New Zealand, and adjacent islands in the Pacific Ocean for a period of three years in connection with the acquisition of ANZDL by CPML. The parties have requested expedited review.

Agreement No.: 224–201062

Title: Philadelphia-Penn City Lease and Operating Agreement

Parties:

Philadelphia Regional Port Authority
Penn City Investments, Inc.

Synopsis: The agreement provides for a lease of certain piers as a warehouse and as a marine terminal as well as for the lessee being the exclusive operator of those piers. The agreement runs through June 20, 2003.

Dated: October 22, 1998.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–28779 Filed 10–27–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 23, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Mason-Dixon Bancshares, Inc., Westminster, Maryland; to merge with Sterling Bancorp, Baltimore, Maryland, and thereby indirectly acquire Sterling Bank & Trust Co., Baltimore, Maryland.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Freedom Holdings, L.C., West Des Moines, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Freedom Financial Bank, West Des Moines, Iowa.

2. First American Credit Corporation, Jewell, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Freedom Holdings, L.C., West Des Moines, Iowa, and thereby indirectly acquire Freedom Financial Bank, West Des Moines, Iowa.

3. First American Bank Group, Ltd., Fort Dodge, Iowa; to acquire 100 percent of the voting shares of First American Credit Corporation, Jewell, Iowa, and thereby indirectly acquire Freedom Holdings, L.C., West Des Moines, Iowa, and Freedom Financial Bank, West Des Moines, Iowa.

Board of Governors of the Federal Reserve System, October 23, 1998.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 98–28899 Filed 10–27–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Blood Safety and Availability

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of meeting.

The Advisory Committee on Blood Safety and Availability will meet on November 24, 1998, from 8 a.m. to 3 p.m. The meeting will take place in the Empire Room of the Omni Shoreham Hotel, 2500 Calvert St., NW., Washington DC. 20008. The meeting will be entirely open to the public.

The purpose of the meeting will be to consider the October 8, 1998 Report of the House Committee on Government Reform and Oversight titled, Hepatitis C: Silent Epidemic, Mute Public Health Response.

Prospective speakers should notify the Executive Security of their desire to address the Committee and should plan for no more than 5 minutes of comment.

FOR FURTHER INFORMATION CONTACT: Stephen D. Nightingale, M.D., Executive Secretary, Advisory Committee on Blood Safety and Availability, Office of Public Health and Safety, Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201. Phone (202) 690–5560, FAX (202) 690–6584 e-mail SNIGHTIN@osophs.dhhs.gov.

Dated: October 19, 1998.

Stephen D. Nightingale,

Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. 98–28838 Filed 10–27–98; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT AND HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notice of Senior Executive Service Performance Review Board

The Agency for Health Care Policy and Research (AHCPR) announces the appointment of members to the AHCPR Senior Executive Service (SES) Performance Review Board (PRB). This action is being taken in accordance with Title 5, U.S. Code, Section 4314(c)(4) of the Civil Service Reform Act of 1978 which requires members of performance review boards be published in the **Federal Register**.

The function of the PRB is to ensure consistency, stability and objectivity in SES performance appraisals, and to make recommendations to the Administrator, AHCPR, relating to the performance of senior executives in the Agency.

The following persons will serve on the FY 1999 AHCPR SES Performance Review Board:

Chairperson

Lisa A. Simpson, M.B., B.Ch. Deputy Administrator, Agency for Health Care Policy and Research.

Members

Douglas B. Kamerow, M.D., Director, Center for Practice and Technology, Agency for Health Care Policy and Research

Gregg. S. Meyer, M.D., Director, Center for Quality Measurement and Improvement, Agency for Health Care Policy and Research

William A. Robinson, M.D., Director, Center for Quality, Health Resources and Services Administration

Evelyn M. White, Deputy Assistant Secretary for Humans Resources, Office of the Secretary

Phyllis M. Zucker, Public Health Advisor, Immediate Office of the Administrator, Agency for Health Care Policy and Research

For further information about the AHCPR Performance Review Board, contact Mr. Jeffrey Toven, AHCPR Human Resources Management Staff, Executive Office Center, Suite 601, 2101 East Jefferson Street, Rockville, Maryland 20852.

Dated: October 15, 1998.

John M. Eisenburg,

Administrator.

[FR Doc. 98–28781 Filed 10–27–98; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency For Toxic Substances and Disease Registry

[ATSDR–133]

Availability of the Interagency Workgroup Document, a Draft Report on Multiple Chemical Sensitivity (MCS); Correction

A notice announcing the Availability of the Interagency Workgroup Document, A Draft Report on Multiple Chemical Sensitivity (MCS) was published in the **Federal Register** on August 31, 1998, (63 FR 46225). This notice is corrected as follows:

On page 46225, in the first column under **DATES**, the public comment period should be changed from October 30, 1998 to December 15, 1998.

On page 46225, in the first column under **ADDRESSES**, second paragraph, please add the MCS report is also available on the Environmental Health Policy Committee's website: http://web.health.gov/environment.

All other information and requirements of the August 31, 1998, notice remain the same.

Dated: October 21, 1998.

Donna Garland,

Acting Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 98–28800 Filed 10–27–98; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Ethics Subcommittee of the Advisory Committee to the Director, Centers for Disease Control and Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee meeting.

Name: Ethics Subcommittee of the Advisory Committee to the Director, CDC.

Time and Date: 9 a.m.–3 p.m., November 23, 1998.

Place: CDC, Building 16, Room 5126, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 25 people.

PURPOSE: This subcommittee will anticipate, identify, and propose solutions to strategic and broad ethical issues facing CDC.

Matters To Be Discussed: Agenda items will include an update from the Associate Director for Science, Dixie E. Snider, M.D., M.P.H.; a discussion on CDC's pandemic influenza plan; and ethical consultation on blinded HIV serosurveys.

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Linda Kay McGowan, Executive Secretary, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE, M/S D–24, Atlanta, Georgia 30333. Telephone 404/639–7080, fax 404/639–7181, e-mail lkm3@cdc.gov.

Dated: October 22, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–28820 Filed 10–27–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Immunology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Immunology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 9, 1998, 9:45 a.m. to 5:30 p.m.

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: Louise E. Magruder, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1293, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12516. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application for a fluorescence *in situ* hybridization assay used in the detection of amplification of the HER–2/neu gene from subjects with node positive, stage II breast cancer to aid in the assessment of response to adjuvant therapy.

Procedure: On November 9, 1998, from 10:15 a.m. to 5:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 2, 1998. Oral presentations from the public will be scheduled between approximately 10:30 a.m. and 11 a.m. Near the end of the committee deliberations, a 30-minute open public session will be conducted for interested persons to address issues specific to the submission before the committee. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 2, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On November 9, 1998, from 9:45 a.m. to 10:15 a.m., the meeting will be closed to the public to permit FDA to present to the committee trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)) regarding pending and future device submissions.

FDA regrets that it was unable to publish this notice 15 days prior to the November 9, 1998, Immunology Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Immunology Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 22, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–28900 Filed 10–23–98; 3:31 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0878]

Global Harmonization Task Force: Essential Principles of Safety and Performance of Medical Devices on a Global Basis; Final Working Draft; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Essential Principles of Safety and Performance of Medical Devices on a Global Basis; Final Working Draft'' (draft document). This draft document has been prepared by members of the Global Harmonization Task Force (GHTF), study group 1 on product approval issues and requirements. The draft document is intended to provide information only and represents a harmonized proposal. Elements of the approach set forth in this document may not be consistent with current U.S. regulatory requirements. FDA is requesting comments on this draft document.

DATES: Written comments by January 26, 1999. After the close of the comment period, written comments may be submitted at any time to Kimber C. Richter (address below).

ADDRESSES: Submit written comments on the draft document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. If you do not have access to the World Wide Web (WWW), submit written requests for single copies on a 3.5'' diskette of the draft document entitled ''Essential Principles of Safety and Performance of Medical Devices on a Global Basis; Final Working Draft'' to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your requests, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to this draft document.

FOR FURTHER INFORMATION CONTACT: Kimber C. Richter, Office of Device Evaluation (HFZ–400), Center for Devices and Radiological Health, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2022.

SUPPLEMENTARY INFORMATION:

I. Background

FDA has participated in a number of activities to promote the international harmonization of regulatory requirements, as described in an FDA notice on these activities published in the **Federal Register** of October 11, 1995 (60 FR 53078). As part of this effort, FDA has been actively involved since 1992 with GHTF. GHTF has formed four study groups to draft documents and carry on other activities designed to facilitate global harmonization. The purpose of this notice is to seek public comments on a draft document that has been prepared by one of the GHTF study groups.

Study group 1 was formed in January 1993 and was originally tasked with identifying divergence between various regulatory systems. In 1995, the group was asked to propose areas of premarket device regulation and possible guidances or other documents that could lead to harmonization of requirements. As a result of their efforts, this group has developed a draft document entitled ''Essential Principles of Safety and Performance of Medical Devices on a Global Basis; Final Working Draft,'' which suggests a minimum harmonized set of expectations that medical devices worldwide should meet. It is not intended to exclude country-specific requirements or higher standards that already exist. It may be used by governments developing new systems for premarket regulation of devices. This draft document also provides harmonized language for study group 1 to build on as they develop further guidance documents, and may ultimately be adapted in place of country or region-specific language in existing systems.

The draft document is presented for review and comment so that industry and other members of the public may express their views regarding global harmonization of premarket regulation of medical devices.

II. Electronic Access

Persons interested in obtaining a copy of the draft document may also do so using the WWW. CDRH maintains an entry on the WWW for easy access to the Web. Updated on a regular basis, the CDRH home page includes ''Essential Principles for Safety and Performance of Medical Devices on a Global Basis; Final Working Draft,'' device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video-oriented conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh.

III. Comments

Interested persons may, on or before January 26, 1999, submit to the Dockets Management Branch (address above) written comments regarding the draft document. 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 and with the full title of the document. The draft document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

After January 26, 1999, written comments regarding the draft document may be submitted at any time to the contact person (address above).

Dated: October 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–28833 Filed 10–27–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–0416]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated

burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Annual Early and Periodic Screening, Diagnostic, and Treatment Services (EPSDT) Participation Report and Supporting Regulations in 42 CFR 441.60; *Form No.:* HCFA–416 (OMB 0938–0354); *Use:* States are required to submit an annual report on the provision of EPSDT services to HCFA pursuant to section 1902(a)(43) of the Social Security Act. These reports provide HCFA with data necessary to assess the effectiveness of State EPSDT programs. It is also helpful in developing trend patterns, national projections, responding to inquiries, and determining a State's results in achieving its participation goal; *Frequency:* Annually; *Affected Public:* State, Local or Tribal Government; Number of *Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 1,568.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: October 15, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–28834 Filed 10–27–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1035–CN]

RIN 0938–AI13

Medicare Program; Schedules of Per-Visit and Per-Beneficiary Limitations on Home Health Agency Costs for Cost Reporting Periods Beginning on or After October 1, 1998; Correction

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

ACTION: Correction of notice with comment period.

SUMMARY: In the August 11, 1998 issue of the **Federal Register** (63 FR 42912), we published a notice with comment period setting forth revised schedules of limitations on home health agency costs that may be paid under the Medicare program for cost reporting periods beginning on or after October 1, 1998. This document corrects technical and typographical errors made in that document.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Cathy Johnson, (410) 786–5241.

SUPPLEMENTARY INFORMATION:

Background

In the August 11, 1998 notice, we announced the limitations for home health agencies for cost reporting periods beginning on or after October 1, 1998, including the per-visit limitations. In publishing table 3A, Type of Visits, setting forth the per-visit limitations by type, we inadvertently transposed the MSA and non-MSA cost limit numbers. This document corrects that error. The inadvertent transposition of these cost limits resulted in the need to correct the examples and tables that rely on the limits. This document corrects the examples and tables and corrects other technical and typographical errors. Therefore, we are making the following corrections:

Correction of Errors

1. On page 42923, in column 3, the last six lines are corrected to read as follows:

a. Urban skilled nursing per-visit labor portion

$74.13 x 1.0145693 = $75.21

b. Urban skilled nursing per-visit nonlabor portion

$20.84 x 1.0145693 = $21.14

2. On page 42924, in the chart entitled ''Computation of Revised Per-visit for Occupational Therapy,'' in line 1, '' $123.05'' is corrected to read ''$108.10,'' and, in line 3, ''$123.94'' is corrected to read ''$108.88.''

3. On page 42924, in the chart entitled ''Computation of Revised Per-Beneficiary Limitations for an HHA With a 1994 Base Period'', in the last line, ''$5,521.72'' is corrected to read ''5,421.72''.

4. On page 42925, the chart entitled ''Determining the Aggregate Per-Visit Limitation'' is corrected in its entirety to read as follows:

DETERMINING THE AGGREGATE PER-VISIT LIMITATION

Area/type of visit	Number of visits	Per-visit limit (1)	Total limit
Dallas-MSA:			
Skilled nursing	11,550	94.93	1,096,442
Physical therapy	4,300	107.21	461,003
Home health aide	8,900	43.83	389,998
Rural Texas:			
Skilled nursing	5,000	87.18	435,900
Physical therapy	2,300	97.68	224,664
Home health aide	4,300	36.41	156,563
Aggregate limitation			2,764,570

(1) The per-visit has been adjusted by the appropriate wage-index and the budget neutrality adjustment factor of 1.03.

5. On page 42925 Table 3A is corrected in its entirety to read as follows:

TABLE 3A.—PER-VISIT LIMITATIONS TYPE OF VISIT

	Per-visit limitation	Labor portion	Nonlabor portion
MSA (NECMA) location:			
Skilled nursing care	$ 94.97	$74.13	$20.84
Physical therapy	107.26	83.56	23.70
Speech therapy	107.97	83.99	23.98
Occupational therapy	108.15	84.05	24.10
Medical social services	130.69	101.38	29.31
Home health aide	43.84	34.21	9.63
NonMSA location:			
Skilled nursing care	108.17	88.44	19.73
Physical therapy	121.14	98.82	22.32
Speech therapy	126.52	103.01	23.51
Occupational therapy	123.10	99.81	23.29
Medical social services	167.78	136.78	31.00
Home health aide	45.16	36.88	8.28

6. On page 42926, in Table 3A, under the heading ''Location'' the following corrections are made:

a. In column 1, line 3, ''County of Hawaii'' is corrected to read ''County of Honolulu''.

b. In column 2, line 5, ''1.2225'' is corrected to read ''1.225''.

7. On page 42935, in the chart entitled ''Impact of the IPS HHA Limits, Effective 10/1/98'', the number ''12.3'' is moved from the first column to the last column of the previous line.

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance)

Dated: October 9, 1998.

Michael W. Carleton,

Acting Deputy Assistant for Information Resources Management.

[FR Doc. 98–28839 Filed 10–27–98; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: GPRA Client Outcomes for the Substance Abuse and Mental Health Services Administration (SAMHSA)—NEW—The mission of the Substance Abuse and Mental Health Services Administration (SAMHSA) is to improve the effectiveness and efficiency of substance abuse and mental health treatment and prevention services across the United States. All of SAMHSA's activities are designed to ultimately reduce the gap in the availability of substance abuse and mental health services and to improve their effectiveness and efficiency. Data will be collected from all of SAMHSA-funded grants and contracts receiving initial funding in Fiscal Year 1998 and later years where client outcomes are to be assessed at intake and post-treatment. SAMHSA-funded projects will be required to submit this data as a contingency for their award. The analysis of the data will also help determine whether the goal of reducing health and social costs of drug use to the public is being achieved.

The primary purpose of the proposed data collection activity is to meet the reporting requirements of the Government Performance Review Act (GPRA) (Pub. L. 103–62) by allowing SAMHSA to quantify the effects and accomplishments of SAMHSA programs. In addition, the data will be useful in addressing goals and objectives outlined in ONDCP's *Performance Measures of Effectiveness.* Following is the estimated annual response burden for this effort.

	Number of clients	Responses/ client	Hours/ response	Annual burden
Center for Substance Abuse Treatment	15,000	1	.33	5,000
Center for Substance Abuse Prevention	30,000	1	.33	10,000
Center for Mental Health Services	27,000	1	.33	9,000
TOTAL	72,000			24,000

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: October 21, 1998.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–28818 Filed 10–27–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Partial Settlement and Hearing

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice of the Proposed Partial Settlement and Hearing is being mailed to each class member. The notice is set forth below. It consists of nine parts and describes the purpose, general nature of claim and action, definition of the class, the proposed settlement agreement, proposed deductions, payment and distribution of the Common Fund, dismissal and release of settled claims, right to object, examination of papers and additional information.

FOR FURTHER INFORMATION CONTACT: Class Counsel: Michael P. Gross, Lead Counsel, Law Offices of Michael P. Gross, 347 East Palace Avenue, Post Office Box 1447, Santa Fe, New Mexico 87504–1447. Telephone number: (505) 988–8979. Facsimile: (505) 983–7508. E-Mail address: mpgross@santa-fe.net; or Co-Counsel: C. Bryant Rogers, Roth, VanAmberg, Rogers, Ortiz, Fairbanks & Yepa, LLP, Post Office Box 1447, Santa Fe, New Mexico 87504-1447. Telephone number: (505) 988–8979.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Partial Settlement and Hearing in *Ramah Navajo Chapter, for itself and on behalf of a class of persons who are similarly situated* v. *Bruce Babbitt, Secretary of the Interior, Kevin Gover, Assistant Secretary for Indian Affairs, Robert J. Williams, Acting Inspector General, U.S. Department of the Interior, and the United States of America* (No. CIV90–0957 LH/WWD), before the United States District Court for the District of New Mexico, reads as set forth below.

Dated: October 22, 1998.

Bettie Rushing,

Acting Director, Office of Tribal Services.

Ramah Navajo Chapter, for Itself and on Behalf of a Class of Persons Who Are Similarly Situated v. Bruce Babbitt, Secretary of the Interior, Kevin Gover, Assistant Secretary for Indian Affairs, Robert J. Williams, Acting Inspector General, U.S. Department of the Interior, and the United States of America (No. CIV90–0957 LH/WWD)

Notice of Proposed Partial Settlement and Hearing as a Contractor, Grantee or Compactor under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638), as amended, you may be entitled to a payment from a proposed partial settlement in this case. Important legal rights are involved and you should read this notice carefully and confer with your own legal counsel.

I. Purpose of This Notice

A proposed partial settlement of damage claims for certain shortfalls in indirect costs (contract support) on Indian Self-Determination and Education Assistance Act (ISDEAA) contracts, grants or compacts for Fiscal Years 1989 through 1993 have been agreed upon by the Plaintiffs and Defendants in the above-styled class action now pending in the United States District Court for the District of New Mexico. The purpose of this Notice is to inform each Class Member about the proposed partial settlement including the amount of the settlement, who is a Class Member, how the settlement amount will be distributed, which claims are being settled and released, how to participate in the settlement, what the settlement proceeds may be used for, how to object to the settlement and application for attorney's fees if you wish, and how to get more information. A hearing on the proposed partial settlement and application for attorney's fees and expenses is scheduled for 1:30 p.m. on December 2, 1998, at the U.S. Courthouse and Office Building, 5th Street and Gold Avenue, NW, Albuquerque, New Mexico, before the Honorable C. Le Roy Hansen, District Judge. [The Federal District Court is scheduled to move to new quarters at 4th Street and Lomas Boulevard in Albuquerque some time in November. To be certain of the location for this hearing please call the Clerk's Office at (505) 248–8052.] Please do not contact the court or the court clerk concerning this Notice or the Lawsuit, except as otherwise provided herein.

II. General Nature of the Claim and the Action

In October 1990, following enactment of the 1988 amendments to ISDEAA Pub. L. 100–472, the Ramah Navajo Chapter (RNC) filed this Action to recover unpaid indirect costs (IDC) from the BIA on its Pub. L 93–638 contracts. The claim arose when, despite these amendments, the BIA failed to adjust its method for computing RNC's indirect cost rate based on OMB Circular A–87. That method required inclusion of funding from other federal agencies in the direct cost base, which in turn produced a lower IDC rate with consequent reduction in IDC recovery contrary to the provisions of Pub. L. 100–472.

After certifying a class action, the District Court dismissed Plaintiffs' claims by granting the Government's motion for summary judgment. Plaintiffs appealed. On May 8, 1997, the United States Court of Appeals for the Tenth Circuit reversed and remanded the case for determination of damages and injunctive relief. *Ramah Navajo Chapter* v. *Lujan*, 112 F. 3d 1455 (10th Cir. 1997).

Since September 1997, the parties have been engaged in settlement negotiations. They have formally met over seven times in Washington, D.C., New Mexico and elsewhere, each occasion averaging two or more days, and have conferred informally throughout. For the break-through session in Tempe, Arizona, the parties jointly retained a private mediator. The session lasted four days. Observers to the negotiations included representatives from the National Congress of American Indians (NCAI), the United South and East Tribes, Inc. (USET), and the Oglala Sioux Tribe. In addition, from October 1997 through September 1998, Class Counsel attended several conferences sponsored by NCAI, USET, the self-governance tribes, the IHS work group on contract support, the Billings Area Tribal Chairmen's organization, and the Bureau of Indian Affairs Budget Review Meeting in Palm Springs, California. Counsel also met with individual tribes in an effort to keep the class informed of the progress of negotiations and to seek input on the proposed agreement. Major law firms in the Indian law field have also been kept informed and were consulted about the negotiations and final form of agreement. Additionally, Class Counsel have been involved in discussions with Congressional Committees about the settlement and are participating in meetings sponsored by NCAI on indirect costs/contract support, aiming toward

reforms of the entire indirect cost system.

III. Definition of the Class

The class consists of all Indian tribes and entities which have contracted, received grants, or compacted under ISDEAA with the Bureau of Indian Affairs at any time since the beginning of Fiscal Year 1989 (October 1, 1988) and which had an indirect cost rate agreement with the Office of Inspector General of the Department of the Interior or a lump sum agreement for contract support with the BIA. Only Class Members in existence prior to the end of Federal Fiscal Year 1993 are eligible for a distribution from this settlement, although newer Class Members may be eligible for shares in a future settlement or judgment, if any.

Four tribes filed timely notices of their desire to opt-out of the action and, therefore, were not a part of the Class when the Tenth Circuit issued its decision. These are the Navajo Nation, the Confederated Tribes of Siletz, the Eastern Shoshone Tribe, and the White Mountain Apache Tribe. The first three of these tribes have filed motions to be readmitted to the class. Their motions are still pending. None of the opt-out tribes will participate in or be bound by the proposed settlement. The proposed settlement agreement provides that should Defendants and Plaintiffs agree to reentry of the opt-outs into the class they will do so only on condition that there be (1) no dilution of the common fund provided by the settlement for existing Class Members, (2) proportionate sharing of costs, fees and expenses by the readmitted opt-outs, and (3) no preferential treatment for any of the opt-outs.

Only new Class Members (those who became Class Members after April 12, 1994) may opt-out of the Class at this time. To do so they must actually file a notice to opt-out with the court within thirty (30) days of the mailing of this notice, or the date of newspaper publication of this notice, whichever is later, and serve a copy on Defendants' and Plaintiffs' legal counsel whose names and addresses appear at the end of this Notice. In such event, the opt-out entity shall not be bound by or receive any benefits from any judgment or order for relief which may be determined during the balance of this case. All Class Members, except new Class Members who timely file a notice to opt-out, shall be bound by this proposed Partial Settlement Agreement, if approved, including the Release, and by any rulings, orders or judgments in the case which may be entered in future.

IV. The Proposed Settlement Agreement

This is a partial settlement of Plaintiffs' Cause of Action covering only the years FY 1989 through FY 1993. All claims of any nature which arose or arise after FY 1993 are not part of this settlement and are not to be released.

By terms of the proposed Partial Settlement Agreement, the Defendants agree to entry of a judgment against them in the amount of Seventy-Six Million Two Hundred Thousand Dollars and No Cents ($76,200,000.00), plus pre-judgment interest on this amount from July 1, 1998, until the date the judgment approving the settlement is entered at the interest rate set by the Contract Disputes Act (''CDA''), all of which is the ''judgment amount''. Thereafter, post-judgment interest will accrue on the combined total of the judgment amount plus accrued CDA interest at the post-judgment interest rate set by statute. Because of its initiative in bringing this case, its risk of nonrecovery of litigation expenses it incurred, and for advancing the public interest, the named Plaintiff Ramah Navajo Chapter will receive a lump sum payment from the class common fund of $400,000.00 plus interest as its full share from the judgment amount. This sum represents the named Plaintiff's actual shortfall in indirect costs for the settlement years plus expenses in connection with the case. The remaining amount of $75,800,000.00, plus accrued interest, is the Gross Common Fund. The remainder of the judgment amount after deduction of the RNC lump sum payment shall be reduced by the fees, costs and expenses approved by the court. After these deductions the remaining balance will be the Net Common Fund available for distribution to all other Class Members.

Proceeds from the settlement received by Class Members may be used for any lawful purpose or expenditure (direct or indirect) which would be permitted under any self-determination contract under Section 102 of ISDEAA, as amended. Ramah Navajo Chapter is permitted, consistent with its organic documents, to expend any or all of the sums it receives from the settlement as authorized by ISDEAA.

By operation of law this settlement will be paid from the Judgment Fund pursuant to 31 U.S.C. Sec. 1304 and 41 U.S.C. Sec. 612. No issue or claim concerning any possible payback of the Judgment Fund under 41 U.S.C. 612(c) is part of the Settled Claims which are to be released. The Partial Settlement Agreement includes a detailed description of this matter including Plaintiffs' position that no payback could be legally or equitably required from tribal programs, and Defendants' statement that the issue is not ripe and their expression of shared concern. The agreement obligates the Government to take actions to support reasonable efforts to minimize or eliminate this possible problem. Defendants also bind themselves not to make a payback if not required to do so and to give advance notice to Class Counsel and publish in the **Federal Register** any decision to pay back the Judgment Fund.

V. Proposed Deductions

Under the terms of the proposed Partial Settlement Agreement the Judgment Amount will first be reduced by the Ramah Navajo Chapter's separate settlement of $400,000.00 plus accrued interest. That amount shall be paid without deduction to the RNC in recognition of its initiative in filing this suit, pursuing and sustaining the suit, incurring the risk of non-reimbursement of its expenses in the suit, and vindicating the public policy of The Indian Self-Determination Act. The resulting Gross Common Fund will be further reduced as follows:

1. $250,000 will be contracted by the Class to NCAI for the purpose of conducting a study of the entire issue of indirect costs and contract support as it relates to ISDEAA. The terms and conditions of this award will be negotiated in good faith by Class Counsel and NCAI, with Class Counsel having the right to audit the expenditures of NCAI for this study.

2. A Reserve of $1,000,000 will also be deducted to pay the actual and estimated costs to distribute the Net Common Fund. Class Counsel will retain an independent CPA firm to manage the distribution and allocation. After such distribution, the court will determine whether there is enough money in the Reserve to warrant a second distribution to the class. If there is, the same method used in the initial distribution will be employed. If the court concludes that there is not enough money to make a second distribution economically feasible it will determine, on application, whether and how any money remaining in the Reserve should be disbursed and to whom (an intertribal organization or charity). The Reserve will be augmented on a monthly basis by interest earned on the Net Common Fund before it is distributed, less the fees and costs of managing the funds by a bank, broker, or similar custodian. Class Counsel will be allowed to apply to the Court periodically for drawdowns from the Reserve to pay for on-going expenses of administering the Gross and Net

Common Funds including the Independent CPA who will manage the distribution and allocation, the Class' expert accountant and statistician and other expenses associated with managing the Distribution/Allocation methodology set forth in Appendix D to the agreement. However, no additional attorney's fees will be paid for the services of Class Counsel in connection with the Distribution/Allocation methodology.

3. For achieving this partial settlement and recovering the Gross Common Fund for the benefit of the Class, Class Counsel are entitled to an award of attorney's fees, costs and expenses in an amount to be determined by the Court. Class Counsel intend to apply for Court approval of an award of attorney's fees in the amount of 12.5% of the Gross Common Fund plus gross receipts tax. This amount includes all fees for all services in connection with the Settled Claims rendered from the inception of this case in 1989 to the present and all services to be rendered in connection with the distribution of the Net Common Fund and any defense of the settlement as against a payback under 41 U.S.C. 612(c). Class Counsel also intend to seek Court approval of an award of expenses incurred to the date of application in an amount not to exceed $170,000.00, plus supplemental costs to date of settlement hearing upon application by Class Counsel and approval of the Court. Class Counsel also seeks any interest which may accrue on the award of attorney's fees, tax and costs. Class Counsel has reserved the right to seek an award of attorney's fees and expenses for services performed in connection with any matters other than achieving and defending this Partial Settlement Agreement and overseeing the distribution of the Net Common Fund.

4. The Net Common Fund shall be distributed to the Class Members according to Appendix D to the Partial Settlement Agreement, see below.

VI. Payment and Distribution of the Common Fund

When received, the Judgment Amount plus interest will be placed in a trust account and prudently deposited and invested according to the Standards in Appropriations Act for Department of the Interior and Related Agencies for FY 1998, Pub. L. 105–83, Sec. 112, so that the settlement monies will earn interest before distribution. Class Counsel and the Independent CPA (to be hired by Class Counsel through a competitive process) will file reports with the court as to the status of the account, all as required by the Partial Settlement Agreement.

The Net Common Fund will be distributed according to Appendix D to the agreement, Distribution/Allocation Methodology. This method will be based on each Class Member's other-federal-agency funding (other than IHS) compared with the class' total other-federal-agency-funding (other than IHS) for each of the five settlement years. Class Members will be asked to submit data to the Independent CPA. If such data is missing, the CPA will attempt to secure the information from other sources including Defendants. Class Counsel are given the right, after Notice to the Class, to apply to the court for modification or replacement of this system if it proves unworkable.

Further notices to each Class Member and publication in the **Federal Register** by the BIA will be made following final Court approval of the settlement. Do not send any documents yet. You will be notified what, when and where to send information after the proposed settlement is approved by the court.

There may be Class Members who did not receive funding from any other federal agency or who did not become Class Members until after the settlement years. In this case, no share will be distributed to that Class Member, because the distribution methodology tracks the legal theory which was litigated, i.e., the inclusion of other-federal-agency-funds in the direct cost base in the settlement years.

VII. Dismissal and Release of Settled Claims

Upon approval by the Court of this Partial Settlement Agreement, the portion of Plaintiffs' Cause of Action for the settlement years will be dismissed with prejudice as part of the judgment to be entered by the Court.

Upon payment of the settlement amount plus accrued interest by the Defendants and their fulfillment of the other terms and conditions of the settlement, the Named Plaintiff Ramah Navajo Chapter on its own behalf and Class Counsel on behalf of the Plaintiff Class shall release the Defendants from the Settled Claims as defined in the Partial Settlement Agreement which reserves other claims as defined in the agreement

In summary form, the release and dismissal will cover all claims for shortfalls of indirect costs of Class members for the settlement years, FY 1989 through FY 1993, except for reserved claims which include:

1. Future equitable or injunctive relief;

2. Any and all claims against the Defendants and all federal agencies arising for Fiscal Year 1994 and forward, including any issue arising from the judgment fund provision in 41 U.S.C. 612(c);

3. Any and all claims against IHS for underpayment of indirect costs or contract support under ISDEAA except those based on the other-agency-funding methodology for the settlements years;

4. Any and all claims against BIA based on a computational or mathematical error; failure to pay indirect cost obligations already acknowledged in writing by BIA; or failure to pay such costs based on BIA's assertion of insufficiency of appropriations; and

5. Any and all individual claims which could not be maintained as class actions under FRCP 23.

The judgment and release in the action will apply to and bind all Class Members except for new Class Members who file a timely request for exclusion. If you have any question about whether or how a pending or any prospective claim(s) will be affected by the dismissal and release of the settled claims, you are advised to contact your attorney.

After dismissal of the Settled Claims the portions of Plaintiffs' Cause of Action remaining for resolution in this case are (1) prospective declaratory, injunctive or other equitable relief, and (2) monetary relief for the years Fiscal Year 1994 forward. A stipulated order has been presented to the Court regarding equitable relief. The order requires periodic reports to the Court describing progress made in consultation with BIA, IHS, and Congress toward a general reform of the indirect cost system.

VIII. Right to Object

Any Class Member who objects to any of the terms of the proposed partial settlement or the proposed attorneys' fees and costs, and who has not excluded itself from the class, may file a written objection with Mr. Robert C. March, Court Clerk, U.S. District Court for the District of New Mexico, P.O. Box 689, Federal Bldg. & U.S. Courthouse, 500 Gold Avenue, SW, Albuquerque, New Mexico 87103. Any such objection must be received by the clerk of the court on or before thirty (30) days of the date of mailing of this notice or the date of newspaper publication, whichever is later. Copies of the objection must be served within the same time limit on counsel for plaintiffs and counsel for defendants. The objection must also begin with the following statement: ''The (name of entity) objects to the

proposed settlement in *Ramah Navajo Chapter* v. *Babbitt*, No. CIV 90–0957 LH/WWD.'' All objections must state the objector's full name, address, and the name and number of this case, and must state in detail the factual basis and legal grounds for the objection. If you wish, you may retain your own counsel, at your expense, to represent you in connection with your objection to the settlement. If you wish to appear at the hearing to approve the settlement and application for fees and expenses, you must also file a written statement of intention to appear with the clerk of court with copies to counsel no later than twenty days prior to the date scheduled for the hearing. All timely written objections will be considered by the Court with or without appearance by the objector at the hearing.

IX. Examination of Papers

You may inspect the proposed Partial Settlement Agreement and the other papers in the record during regular business hours at the office of the Clerk of the Court, U.S. District Court for the District of New Mexico, 5th and Gold, SW, Albuquerque, New Mexico. The settlement agreement with appendices, application for attorney's fees and costs, and other papers in connection with this settlement will be posted on a website for this case: http://www.RNCclassaction.santa-fe.net.

X. Additional Information

Please, except as otherwise expressly provided in this notice, do not contact the Court concerning this notice or the lawsuit. If you have any questions, contact either your own attorney or Lead Counsel for the Plaintiffs. If you wish to obtain copies of the Partial Settlement Agreement or the application for attorney's fees and costs you may write or call Class Counsel.

Class Counsel

Michael P. Gross, Lead Counsel, Law Offices of Michael P. Gross; C. Bryant Rogers, Co-Counsel, 347 East Palace Avenue, Post Office Box 1447, Santa Fe, New Mexico 87504–1447, Telephone: 505 988 8979, Facsimile: 505 983 7508, E-mail: mpgross@santa-fe.net

Counsel for Defendants

John W. Zavitz, Assistant U.S. Attorney, Post Office Box 609, Albuquerque, New Mexico 87102–0607, Telephone: 505 224 1505, Facsimile: 505 766 7105

Dated the 5th day of October 1998.

Approved as to form by John W. Zavitz, Assistant U. S. Attorney, Defendant's Counsel, and Michael P. Gross, Plaintiff's Counsel.

[FR Doc. 98–28783 Filed 10–27–98; 8:45 am]

BILLING CODE 4310–02–W

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Announcement of Minerals Management Service Meeting on Natural Gas Royalty-in-Kind Pilot Program in the Federal Gulf of Mexico Region

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Minerals Management Service (MMS) will hold a public meeting with lessees, operators, and payors on royalty-in-kind (RIK) gas produced from a number of Federal leases in the 8(g) zone offshore Texas in MMS's Gulf of Mexico Region (GOMR). The purpose of the meeting is to discuss the operational issues involved in implementing sales of Federal gas production to be taken as royalty-in-kind.

DATES: The meeting will be held on November 10, 1998, from 10:00 a.m. until 5:00 p.m., Central time.

ADDRESSES: The meeting will be held at MMS's Houston Compliance Division Office, in Room 104, at 4141 N. Sam Houston Parkway, Houston, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Bonn J. Macy, Minerals Management Service, 1849 C Street, NW, MS 4230, Washington, D.C. 20240; telephone number (202) 208–3827; fax (202) 208–3918; e-mail Bonn.Macy@ mms.gov.

COMMENTS: Written comments on the meetings or the topics for discussion listed below should be addressed to Mr. Bonn J. Macy at the address given in the **FOR FURTHER INFORMATION** section.

SUPPLEMENTARY INFORMATION: The subject of this Notice is the continuation of MMS's planning process for the Texas 8(g) gas RIK pilot in MMS's GOMR. This is one of three RIK pilot programs MMS is developing based on the recommendations in our 1997 RIK Feasibility Study. The 8(g) zone is a 3-mile wide band of Federal waters that lies directly adjacent to the State's jurisdiction. In the case of Texas, the band begins at 10.35 miles and extends out 3 miles. The objective of the Texas 8(g) GOMR pilot program for Federal gas is, as with all three pilots, to test the effectiveness of RIK for collecting Federal oil and gas royalties. Operators of affected Federal leases and associated communication/unit agreements have been directed to deliver royalty volumes in-kind to the Federal Government beginning December 1, 1998. For all other leases or agreements, payors will continue paying royalties based on current requirements.

Topics to be discussed at the meeting are:

1. Overall framework and phases of the Texas 8(g) GOMR pilot.
2. Intent of the pilot.
3. Point of delivery for Federal RIK gas volumes and transportation arrangements.
4. Operator responsibilities:
- Reporting;
- Imbalance procedures;
- Communication with purchaser or agent;
- Verification of royalty volumes; and
- Project termination and next phase of the pilot.
5. Federal Government or its agent/purchaser's responsibilities:
- 100% take of all royalty volumes delivered;
- Communication with operator;
- Imbalance procedures; and
- Reporting.
6. Question and Answer Period.

The operators and payors of affected properties have been notified by MMS of this meeting. If you are the operator or lessee of an affected property, you are urged to attend or send representative(s) to the November 10, 1998, meeting to discuss these issues at the location provided under **ADDRESSES** in this Notice.

Dated: October 23, 1998.

Walter D. Cruickshank,

Associate Director for Policy and Management Improvement.

[FR Doc. 98–28910 Filed 10–27–98; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

Zion National Park, Utah; Order Adjusting the Boundary of Zion National Park to Include and Exclude Certain Lands

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the authority contained in Public Law 104–333, November 12, 1996, (110 Stat. 4105), and as certain lands authorized to be acquired and conveyed by exchange by the Secretary of the Interior have now been so exchanged, the boundaries of Zion National Park are being revised accordingly.

DATES: The effective date of this Order shall be the date of the **Federal Register** publication in which this Order appears.

SUPPLEMENTARY INFORMATION: The above-cited Act authorizes the Secretary of the Interior to acquire certain lands adjacent to Zion National Park and, in exchange, convey all right, title, and interest of the United States in certain other lands within Zion National Park and, upon completion of such exchange, to revise the park boundary to include within the park such lands acquired in the exchange, and to exclude such conveyed lands from the park. The total acreage of Zion National Park will be increased by 0.07 acres by this boundary adjustment.

Subject to valid existing rights, the following described lands are hereby added to Zion National Park to be administered in accordance with the laws and regulations applicable thereto:

A parcel of land situated in the County of Washington, State of Utah, being more particularly described as follows:

Beginning at a point North 0°14′52″ East, along the Quarter (¼) Section Line, 882.51 feet from the Southeast Corner of the Northeast Quarter of the Southwest Quarter (NE¼SW¼) of Section 28, Township 41 South, Range 10 West, Salt Lake Base and Meridian, and running thence North 0°14′52″ East, along the Quarter (¼) Section line, 370.92 feet; thence South 61°35′25″ West 341.11 feet; thence South 7°18′04″ East 35.38 feet; thence South 35°14′19″ West 98.75 feet; thence South 30°06′05″ West 437.48 feet; thence South 51°35′40″ West 82.93 feet; thence South 31°00′50″ West 143.23 feet; thence South 52°08′52″ East 149.84 feet; thence North 40°13′07″ East 487.83 feet; thence South 89°17′32″ East 142.17 feet; thence North 36°25′36″ East 225.05 feet to the point of beginning. Containing 5.40 acres, more or less.

The following described lands are hereby excluded from Zion National Park: Township 41 South, Range 11 West, Salt Lake Base and Meridian, Washington County, Utah, Section 5: All of Lot 6. Containing 5.33 acres, more or less.

FOR FURTHER INFORMATION CONTACT: Chief, Land Resources Program Center, Intermountain Region, P.O. Box 728, Santa Fe, New Mexico 87504–0728, (505) 988–6810.

Dated: October 14, 1998.

John H. King,

Acting Regional Director, Intermountain Region, National Park Service.

[FR Doc. 98–28784 Filed 10–27–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Missouri National Recreational River (59-mile District)

AGENCY: National Park Service, Interior.

ACTION: Availability of the Draft Environmental Impact Statement and General Management Plan.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of the draft environmental impact statement (DEIS) and general management plan for the Missouri National Recreational River 59-mile district located in portions of Clay, Union, and Yankton counties, South Dakota; and Cedar, Dixon, and Knox counties in Nebraska. The DEIS responds to Public Law 95–625 (1978), which amended the Wild and Scenic Rivers Act by adding a 59-mile reach of the Missouri River below the Gavins Point Dam to the National Wild and Scenic Rivers System. The NPS prepared this DEIS to update a previous management plan written in 1980 by the Heritage Conservation and Recreation Service and only partially implemented. Cooperating agencies included the U.S. Army Corps of Engineers; U.S. Fish and Wildlife Service; Nebraska Game and Parks Commission; South Dakota Game, Fish, and Parks Department; South Dakota Region Three Planning; and Nebraska Lewis and Clark Planning District.

Two management Alternatives and a ''Continuing Existing Conditions'' (no action) alternative are described. Boundary descriptions are included with each management alternative. Alternative 1, the no action alternative calls for continued management under the 1980 plan. The boundary under this alternative would remain the same as determined in the 1978 legislation and the 1980 plan. Alternative 2, Resource Protection (the preferred alternative) gives relative equal weight to biologic resource protection, habitat restoration, and recreational development. This alternative calls for low impact recreational activities. Alternative 3, the Recreational Alternative would provide greater recreational opportunity and increased visitor facilities while protecting existing resources. Less priority would be placed on habitat restoration efforts. The boundary for alternatives 2 and 3 is the same and would be similar to the 1980 boundary with the addition of land containing archeological sites and some areas of active erosion. A portion of Clay County Park is removed from the boundary so as not to exceed legislative acreage limits.

All management action alternatives are expected to provide a mechanism for long-term resource protection and to accommodate recreational use of the river without impacting private property values.

DATES: Comments on the DEIS should be received no later than December 18, 1998. Public meetings will be held in various Nebraska and South Dakota River communities during November 1998, and will be announced in local news media when schedules are final.

ADDRESSES: Comments on the DEIS should be submitted to the Superintendent, Missouri National Recreational River, P.O. Box 591, O'Neill, Nebraska 68763, or by e-mail to MNRR__Superintendent@nps.gov.

FOR FURTHER INFORMATION CONTACT: Paul Hedren, Superintendent, Missouri National Recreational River at the above address, or call 402–336–3970.

SUPPLEMENTARY INFORMATION: Public reading copies of the DEIS will be available for review at the Department of Interior Natural Resources Library, 1849 C Street, NW., Washington, DC 20240, and at public libraries and county courthouses in Yankton and Vermillion, South Dakota; Sioux City, Iowa; and Center, Hartington, and Ponca, Nebraska.

Dated: October 5, 1998.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 98–28785 Filed 10–27–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the Museum of Indian Arts and Culture/Laboratory of Anthropology, Museum of New Mexico, Santa Fe, NM

AGENCY: National Park Service, DOI.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the Museum of Indian Arts and Culture/Laboratory of Anthropology, Museum of New Mexico, Santa Fe, NM which meets the definition of ''object of cultural patrimony'' under Section 2 of the Act.

The cultural item is a leather cap constructed of buckskin, brass, silver, glass, and a feather.

In 1934, this cultural item was purchased on the San Carlos Apache Reservation by the Laboratory of Anthropology. The Laboratory of Anthropology became part of the Museum of New Mexico in 1947.

Representatives of the San Carlos Apache Tribe of the San Carlos Reservation have stated that this object has ongoing historical, traditional, and cultural importance central to the culture itself, and that no individual had the right to alienate this cultural item. Information regarding the status of this cultural item is being withheld from this notice by the Museum of Indian Arts and Culture/Laboratory of Anthropology, Museum of New Mexico at the request of the representatives of the San Carlos Apache Tribe in order not to compromise the San Carlos Apache Tribe's code of religious practice.

Officials of the Museum of Indian Arts and Culture/Laboratory of Anthropology, Museum of New Mexico have determined that, pursuant to 43 CFR 10.2 (d)(4), this cultural item has ongoing historical, traditional, and cultural importance central to the culture itself, and could not have been alienated, appropriated, or conveyed by any individual. Officials of the Museum of Indian Arts and Culture/Laboratory of Anthropology, Museum of New Mexico have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between this item and the San Carlos Apache Tribe of the San Carlos Reservation.

This notice has been sent to officials of the Fort McDowell Mohave-Apache Indian Community of the Fort McDowell Indian Reservation, the San Carlos Apache Tribe of the San Carlos Reservation, the Tonto Apache Tribe, the White Mountain Apache Tribe of the Fort Apache Reservation, and the Yavapai-Apache Nation of the Camp Verde Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Patricia House, Director, Museum of Indian Arts and Cultures/Laboratory of Anthropology, Museum of New Mexico, P.O. Box 2087, Santa Fe, NM 87504–2087; telephone: (505) 827–6344 before November 27, 1998. Repatriation of these objects to the San Carlos Apache Tribe of the San Carlos Reservation may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: October 6, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–28807 Filed 10–27–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from the Hawaiian Islands in the Possession of the Bernice Pauahi Bishop Museum, Honolulu, HI

AGENCY: National Park Service, DOI.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from the Hawaiian Islands in the possession of the Bernice Pauahi Bishop Museum, Honolulu, HI.

A detailed assessment of the human remains was made by Bishop Museum professional staff in consultation with representatives of the Association of Hawaiian Civic Clubs, the Hawai'i Island Burial Council, the Kaua'i/Ni'ihau Island Burial Council, the Maui/Lanai'i Island Burial Council, the Moloka'i Island Burial Council, the O'ahu Island Burial Council, Ka Lahui Hawai'i, Hui Malama I Na Kupuna O Hawai'i Nei, and the Office of Hawaiian Affairs.

In 1891, human remains representing 24 individuals from unknown locations in the Hawaiian Islands were transferred to the Bishop Museum from the Hawaiian Government Museum collections. No known individuals were identified. No associated funerary objects are present.

In 1910, human remains representing one individual from an unknown location in the Hawaiian Islands were donated to the Bishop Museum by the Hawaiian Board of Missions. No known individual was identified. No associated funerary objects are present.

In 1928, human remains representing one individual from an unknown location in the Hawaiian Islands were donated to the Bishop Museum by an unknown donor. No known individual was identified. The one associated funerary object is a burial kapa.

In 1928, human remains representing four individuals from unknown location(s) in the Hawaiian Islands were donated to the Bishop Museum by an unknown donor. No known individuals were identified. The six associated funerary objects are kapa, basketry, newspaper, and a wood block with glass fragment.

In 1952, human remains representing one individual were donated to the Bishop Museum by the Estate of Samuel Damon. These remains had been removed as some earlier date from an unknown burial cave. No known individual was identified. The one associated funerary object is a piece of kapa.

At an unknown date, human remains representing two individuals from unknown location(s) in the Hawaiian Islands were donated to the Bishop Museum by an unknown donor. In 1995, these human remains were found in Bishop Museum collections and accessioned at that time. No known individuals were identified. No associated funerary objects are present.

In 1995, human remains representing three individuals were found in Bishop Museum collections and accessioned at that time. No known individuals were identified. No associated funerary objects are present.

In 1996, human remains representing 55 individuals were found in Bishop Museum collections and accessioned at that time. No known individuals were identified. No associated funerary objects are present.

Also in 1996, human remains representing four individuals were found in Bishop Museum collections and accessioned at that time. No known individuals were identified. No associated funerary objects are present.

During consultation with Native Hawaiian organizations, the Bishop Museum decided that no attempt would be made to determine the age of the human remains. Geographic location, manner of interment, and types of associated funerary object are all consistent with Native Hawaiian tradition.

Based on the above mentioned information, officials of the Bishop Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 95 individuals of Native American ancestry. Officials of the Bishop Museum have also determined that, pursuant to 43 CFR 10.2 (d)(2), the eight objects listed above are reasonably believed to have been placed with or near individual human

remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bishop Museum have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Association of Hawaiian Civic Clubs, the Hawai'i Island Burial Council, the Kaua'i/Ni'ihau Island Burial Council, the Maui/Lanai'i Island Burial Council, the Moloka'i Island Burial Council, the O'ahu Island Burial Council, Ka Lahui Hawai'i, Hui Malama I Na Kupuna O Hawai'i Nei, and the Office of Hawaiian Affairs.

This notice has been sent to officials of the Association of Hawaiian Civic Clubs, the Hawai'i Island Burial Council, the Kaua'i/Ni'ihau Island Burial Council, the Maui/Lanai'i Island Burial Council, the Moloka'i Island Burial Council, the O'ahu Island Burial Council, Ka Lahui Hawai'i, Hui Malama I Na Kupuna O Hawai'i Nei, and the Office of Hawaiian Affairs. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Janet Ness, Registrar, Bernice Pauahi Bishop Museum, 1525 Bernice Street, Honolulu, HI 96817; telephone: (808) 848–4105, before November 27, 1998. Repatriation of the human remains and associated funerary objects to the Association of Hawaiian Civic Clubs, the Hawai'i Island Burial Council, the Kaua'i/Ni'ihau Island Burial Council, the Maui/Lanai'i Island Burial Council, the Moloka'i Island Burial Council, the O'ahu Island Burial Council, Ka Lahui Hawai'i, Hui Malama I Na Kupuna O Hawai'i Nei, and the Office of Hawaiian Affairs may begin after that date if no additional claimants come forward.

Dated: October 15, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Archeology and Ethnography Program.

[FR Doc. 98–28808 Filed 10–27–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the Field Museum of Natural History, Chicago, IL

AGENCY: National Park Service, DOI.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the Field Museum of Natural History, Chicago, IL which meets the definition of ''unassociated funerary object'' under Section 2 of the Act.

The cultural item consists of a caribou skin robe (catalog number 78303; accession number 807) painted in red and black with designs representing a split figure of a whale on one side and a ''devil fish'' on the other.

In 1902, this robe was purchased by the Field Museum from Lt. G.T. Emmons as part of a larger collection of Northwest Coast objects. According to Lt. Emmons' field notes, this is a Tlingit shaman's robe and was collected in the second half of the 19th century from the ''Hootz-ar-tar'' tribe.

The form of this object, its source, and the documentation concerning its acquisition lead the Field Museum to blieve that it is a shaman's robe of the Hutsnuwu, or Kootznoowoo Tlingit. Representatives of Kootznoowoo, Inc. Have verified this identification, and have further indicated that this object is reasonably believed to have been removed from a specific burial site of a Kootznoowoo individual.

Based on the above-mentioned information, officials of the Field Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), this cultural item is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Field Museum of Natural History have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between this item and Kootznoowoo, Inc.

Although officials of the Field Museum recognize the importance of these cultural items to Kootznoowoo Inc., the Field Museum asserts that it has right of possession of these cultural items. However, the Field Museum is willing to return the object under a compromise repatriation claim.

This notice has been sent to officials of Kootznoowoo, Inc. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this objects should contact Jonathan Haas, MacArthur Curator of North American Anthropology, Field Museum of Natural History, Roosevelt Road at Lake Shore Dr., Chicago, IL 60605; telephone: (312) 922–9410, ext. 641 before November 27, 1998. Repatriation of this object to Kootznoowoo, Inc. may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: October 6, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–28806 Filed 10–27–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Sioux County, NE in the Possession of the Nebraska State Historical Society, Lincoln, NE

AGENCY: National Park Service, DOI.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Nebraska in the possession of the Nebraska State Historical Society, Lincoln, NE.

A detailed assessment of the human remains was made by Nebraska State Historical Society professional staff in consultation with representatives of the Cheyenne-Arapaho Tribes of Oklahoma and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation.

In 1961 and 1981, human remains representing a minimum of one individual were recovered from site 25SX131 in Sioux County, NE during investigations conducted on private land by archaeologists for the Nebraska State Historical Society. No known individual was identified. No associated funerary objects are present.

Based on U.S. Army records and maps, as well as Indian Agency official accounts, site 25SX131 in Sioux County, NE has been identified as the site of the final battle between the Cheyenne and the U.S. Army on January 22, 1879 following Chief Dull Knife's escape from Ft. Robinson. According to historical records, the ''Cheyenne killed in the final action, on January 22, 1879, were apparently buried on the spot in their

defensive pit * * *'' According to historical accounts, the U.S. Army removed human remains from this site in 1880. In 1961, a group of three private individuals located what they felt was the site of the last battle between Dull Knife's people and the troops from Fort Robinson and presented their findings to Roger T. Grange, an archaeologist for the Nebraska State Historical Society. The location is entirely consistent with archival U.S. Army records. Grange examined the site that same year (1961) and collected materials from the surface and dug one test pit, yielding twenty human bone fragments. In 1981, Society staff again examined the site and located one human bone fragment on the surface.

Based on the above mentioned information, officials of the Nebraska State Historical Society have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of one individual of Native American ancestry. Officials of the Nebraska State Historical Society have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Cheyenne-Arapaho Tribes of Oklahoma and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation.

This notice has been sent to officials of the Cheyenne-Arapaho Tribes of Oklahoma and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Rob Bozell, Associate Director, Nebraska State Historical Society, 1500 R Street, P.O. Box 82554, Lincoln, NE 68501–2554; telephone: (402) 471–4789, before November 27, 1998. Repatriation of the human remains to the Cheyenne-Arapaho Tribes of Oklahoma and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation may begin after that date if no additional claimants come forward.

Dated: October 8, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–28809 Filed 10–27–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Point Hope, AK in the Possession of the Nebraska State Historical Society, Lincoln, NE

AGENCY: National Park Service, DOI.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from Point Hope, AK in the possession of the Nebraska State Historical Society, Lincoln, NE.

A detailed assessment of the human remains was made by Nebraska State Historical Society professional staff in consultation with representatives of the Native Village of Point Hope and the Tigara Corporation.

In 1927, human remains representing one individual were donated to the Society by Charles H. Dietrich. No known individual was identified. No associated funerary objects are present.

During the summer of 1902, U.S. Senator Charles H. Dietrich of Hastings, NE visited Alaska in the revenue cutter, *Thetis*. Dietrich's catalog indicates that he acquired several Alaskan objects from a man in Alaska who traded them to Dietrich in exchange for a box of magazines and newspapers from the United States. Based on information in the Society donor files, the original identification is recorded as, ''skull found at Point Hope, where the dead are not buried.''

Based on the above mentioned information, officials of the Nebraska State Historical Society have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Lastly, officials of the Nebraska State Historical Society have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Native Village of Point Hope and the Tigara Corporation.

This notice has been sent to officials of the Native Village of Point Hope and the Tigara Corporation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Rob Bozell, Associate Director, Nebraska State Historical Society, 1500 R Street, P.O. Box 82554, Lincoln, NE 68501–2554; telephone: (402) 471–4789, before November 27, 1998. Repatriation of the human remains to the Native Village of Point Hope and the Tigara Corporation may begin after that date if no additional claimants come forward.

Dated: October 6, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–28810 Filed 10–27–98; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 337–TA–402 and 337–TA–404]

Certain Integrated Circuits and Products Containing Same and Certain SDRAMs, DRAMs, ASICs, RAM-and-Logic Chips, Microprocessors, Microcontrollers, Processes for Manufacturing Same and Products Containing Same; Notice of Commission Determinations Not To Review Initial Determinations Terminating the Above-Captioned Investigations on the Basis of a Settlement and Cross-License Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review either of the presiding administrative law judge's (''ALJ's'') initial determinations (''IDs'') granting the parties' joint motions to terminate the above-captioned investigations on the basis of a settlement and cross-license agreement.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3107.

SUPPLEMENTARY INFORMATION: The Commission instituted the above-captioned *Integrated Circuits* investigation (Inv. No. 337–TA–402) on October 29, 1997, based on a complaint filed by Fujitsu Ltd. and Fujitsu Microelectronics, Inc. (collectively ''Fujitsu''), alleging that respondents Samsung Electronics Co. and Samsung Semiconductor, Inc. (collectively ''Samsung'') violated section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by importing, selling for importation, or selling within the

United States after importation certain integrated circuits that infringed certain patents held by Fujitsu.

The Commission instituted the above-captioned *SDRAMs* investigation (Inv. No. 337–TA–404) on November 13, 1997, based on a complaint by Samsung that Fujitsu violated section 337 by importing, selling for importation, or selling within the United States after importation certain integrated circuits that infringed certain patents held by Samsung.

On September 11, 1998, Fujitsu and Samsung jointly moved to terminate both investigations on the basis of a settlement and cross-license agreement. In their motions, Fujitsu and Samsung represented that their agreement reflects the entire and only agreement between them relating to the subject matter of these two investigations, and that there no longer exists a basis upon which to continue either investigation in view of the cross-licenses granted to each party.

On September 24, 1998, the ALJ issued two IDs (Order No. 24 in *Integrated Circuits;* Order No. 26 in *SDRAMs*) terminating the two investigations on the basis of the parties' settlement and cross-license agreement. The ALJ found that each motion complied with the Commission's rules regarding termination of an investigation, and that termination of the investigations would favor the public interest by avoiding needless litigation and the consumption of public resources. In addition, the ALJ found that the parties' agreement would not adversely affect the supply or pricing of any product or otherwise adversely affect consumers or the public generally in the United States.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42. Copies of the ALJ's IDs and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: October 20, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–28891 Filed 10–27–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 97–16]

Penick Corporation, Newark, New Jersey; Notice of Administrative Hearing, Summary of Comments and Objections; Notice of Hearing

This Notice of Administrative Hearing, Summary of Comments and Objections, regarding the application of Penick Corporation (Penick) for registration as an importer of coca leaves, raw opium, opium poppy and poppy straw concentrate, all Schedule II controlled substances, is published pursuant to 21 CFR 1301.42(a). On May 12, 1997, notice was published in the **Federal Register** [1] stating that Penick has applied to be registered as an importer of coca leaves, raw opium, opium poppy and poppy straw concentrate.

On June 12, 1997, Noramco of Delaware, Inc. (Noramco), filed comments and objections on the application and requested a hearing in the event that the application is not denied. Mallinckrodt Chemical, Inc. (Mallinckrodt), also filed comments and objections to the application. Notice is hereby given that a hearing with respect to Penick's application to be registered as an importer of coca leaves, raw opium, opium poppy and poppy straw concentrate will be conducted pursuant to the provisions of 5 U.S.C. 952(a) and 958 and 21 CFR 1311.42.

HEARING DATE: The hearing will begin at 9:30 a.m. on November 30, 1998, and will be held at the Drug Enforcement Administration Headquarters, 600 Army Navy Drive, Hearing Room, Room E–2103, Arlington, Virginia.

NOTICE OF APPEARANCE: Any person entitled to participate in this hearing pursuant to 21 CFR 1301.42(a), and desiring to do so, may participate by filing a notice of intention to participate in accordance with 21 CFR 1301.54, in triplicate, with the Hearing Clerk, Office of the Administrative Law Judges, Drug Enforcement Administration, Washington, D.C. 20537, within 30 days of the date of publication of this notice in the **Federal Register.** Each notice of appearance must be in the form prescribed in 21 CFR 1216.48. Penick, Noramco, Mallinckrodt, and DEA Office of Chief Counsel need not file a notice of intention to participate.

FOR FURTHER INFORMATION CONTACT: Helen Farmer, Hearing Clerk, Drug Enforcement Administration, Washington, D.C. 20537; Telephone (202) 307–8188.

Summary of Comments and Objections

Mallinckrodt's Comments

Mallinckrodt states that as a result of Penick's financial difficulties, which led to Penick's Chapter 11 bankruptcy petition, Penick has not produced significant quantities of controlled substances since 1991 and does not have the present ability to do so. Mallinckrodt further asserts that Penick's bankruptcy trustee, appointed by the bankruptcy court, has no experience in the controlled substance business, and that the goal of Penick and its bankruptcy trustee has not been to ressurect the business, but rather, to sell the business in order to pay off Penick's creditors. Mallinckrodt asserts that Penick has previously stated that it views its DEA registrations as its most valuable assets. Mallinckrodt argues that because DEA has a policy of not granting ''shelf registrations,'' i.e., registrations that the applicant intends to use only in the future, Penick should not be granting a DEA registration because ''[a]llowing Penick to treat its DEA registrations as assets is not the proper use of [a] DEA registration or the DEA registration process.''

Noramco's Comments

Noramco argues that Penick cannot meet the burden of demonstrating that its registration is in the public interest due to a combination of its financial status and its management by a court-appointed bankruptcy trustee. Noramco first argues that Penick has substantial financial difficulties, which has resulted in Penick producing only small amounts of controlled substances since 1991 and that also caused Penick, in June 1994, to file for bankruptcy under Chapter 11 of the Bankruptcy Code. Normaco states that the management of Penick is now controlled by a bankruptcy trustee who does not have experience in the controlled substances industry. Moreover, Noramco asserts that the trustee's primary function is to market Penick's assets, with Penick's DEA registrations being the corporation's most significant assets. Noramco claims that the bankruptcy trustee's desire to make the sale of Penick more lucrative is not a lawful purpose for registration under the Controlled Substances Act.

[1] 62 FR 25972.

Finally, Noramco has expressed concern that Penick's poor financial situation and management may increase the risk of diversion of any controlled substances that it imports.

The Government's Comments

The Government asserts that the above-captioned proceeding is a combination of a rulemaking to determine whether the Schedule II raw materials coca leaves, raw opium, poppy straw, and poppy straw concentrate may be imported lawfully into the United States pursuant to 21 U.S.C. 952(a)(1) and also an adjudication pursuant to 21 U.S.C. 958(a) on Penick's pending application for a DEA registration as an importer of Schedule II raw materials. The Government argues that because DEA does not maintain a ''contingency reserve'' of DEA registrants Penick must first demonstrate that raw opium and poppy straw concentrate may be imported into the United States pursuant to 21 U.S.C. 952(a)(1). The Government further asserts that Penick, which is involved in Chapter 11 bankruptcy proceedings, must next demonstrate to the Deputy Administrator that it is able to satisfy the requirements of 21 U.S.C. 823(a) and 958(a) and 21 CFR 1301.34(b)–(f) before the Deputy Administrator will renew its DEA registration to import the above-listed Schedule II raw materials into the United States.

The Government also requests that all interested parties be afforded the opportunity to provide comments for such rulemaking. Due to the length of time between the notice of Penick's application for renewal of its DEA registration, see 62 FR 25972 (1997), and this Notice of Hearing, the Government's request is granted. All interested parties shall have until November 30, 1998, to file comments regarding the above-mentioned rulemaking.

Dated: October 22, 1998.

Donnie R. Marshall,

Acting Deputy Administrator, Drug Enforcement Administration.

[FR Doc. 98–28897 Filed 10–27–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request; The National Judicial Reporting Program, Form NJRP–1

ACTION: Notice of Information Collection Under Review; (Reinstatement, without change of a previously approved collection for which approval has expired).

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (BJS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until December 28, 1998.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Patrick Langan, 202–616–3490, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, N.W., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* National Judicial Reporting Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form NJRP–1. Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State Court authorities. The National Judicial Reporting Program (NJRP) is the only collection effort that provides an ability to maintain important statistics on felons convicted and sentenced in state courts. The NJRP enables the Bureau, Federal, State, and local correctional administrators; legislators; researchers; and planners to track change in the numbers and types of offenses and sentences felons convicted in state courts receive; as well as track changes in the demographics, conviction type, number of charges, sentence length, and time between arrest and conviction and sentencing of felons convicted in state courts.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 344 respondents will take 11.5 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: The total annual burden hours are 3,956.

If additional information is required, contact: Ms. Brenda E. Dyer, Deputy Clearance Office, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: October 23, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–28895 Filed 10–27–98; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–157]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, NASA–NIH Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, NASA–NIH Advisory Subcommittee.

DATES: Thursday, November 12, 1998, 9:00 a.m. to 5:00 p.m.; and Friday, November 13, 1998, 9:00 a.m. to 12:00 Noon.

ADDRESSES: National Institutes of Health, 31 Center Drive, Building 31, Conference Room No. 3C05, Bethesda, Maryland, 20892.

FOR FURTHER INFORMATION CONTACT: Dr. Joan Vernikos, Code UL, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0220.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Action Status
—NIH Peer Review Changes
—Report of NASA Ad Hoc Panel to Evaluate Peer Review
—NSBRI Status
—NRC Committee on Space Biology and Medicine Report
—Flight Status (Neurolab, STS–95, and ISS)
—NASA Research Announcement for Biology Based Technology
—Preparation of Committee Findings and Recommendations
—NASA–NIH Program Update
—Review of Committee Findings and Recommendations

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: October 20, 1998.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–28894 Filed 10–27–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting Agenda

TIME AND DATE: 9:30 a.m., Tuesday, November 3, 1998.

PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6758A—Pipeline Accident Report—Pipeline Rupture and Release of Fuel Oil into the Reedy River at Fork Shoals, South Carolina, June 26, 1996.

7081—Pipeline Accident Summary Report—Pipeline Rupture, Liquid Butane Release, and Fire, Lively, Texas, August 24, 1996.

NEW MEDIA CONTACT: Telephone: (202) 314–6100.

FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314–6065.

Dated: October 23, 1998.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 98–28916 Filed 10–23–98; 4:26 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–454, STN 50–455, STN 50–456, and STN 50–457]

Commonwealth Edison Co.; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–37 and NPF–66, issued to Commonwealth Edison Company (ComEd, the licensee) for operation of Byron Station, Units 1 and 2, located in Ogle County, Illinois and Facility Operating License Nos. NPF–72 and NPF–77, issued to ComEd for operation of Braidwood Station, Units 1 and 2, located in Will County, Illinois.

This notification addresses the beyond scope items identified in the requested amendments dated December 13, 1996. The proposed amendments would revise current Technical Specifications (CTS) of each unit to conform with NUREG–1431, Revision 1, ''Standard Technical Specifications —Westinghouse Plants.'' The beyond scope issues were further supplemented by letters dated October 10, 1997, February 13, 1998, April 13, 1998, June 2, 1998, July 8, 1998, September 25, 1998, and October 1, 1998. The following descriptions and proposed no significant hazard analyses cover only those beyond scope changes. Associated with each change are administrative/editorial changes such that the new or revised requirements would fit the format of NUREG–1431.

1. CTS Limiting Condition of Operation (LCO) 3.1.3.5 states that ''all shutdown rods shall be fully withdrawn'' when in MODE 1 and MODE 2 with K_{eff} greater than or equal to 1.0. ComEd proposes to change the applicability to MODE 1 and MODE 2 with any control bank not fully inserted. The revised requirement will be stated as ITS 3.1.5.

2. CTS 3.1.3.2.a.1 states, ''Determine the position of the non-indicating rod(s) indirectly by the movable incore detectors at least once per 8 hours and immediately after any motion of the non-indicating rod which exceeds 24 steps in one direction since the last determination of the rod's position * * *'' ComEd proposes to eliminate the requirement for ''immediate'' determination of rod position. This is an administrative change. The revised requirement will be stated as ITS 3.1.7.

3. CTS Surveillance Requirement (SR) 4.1.2.7.a requires each Boron Dilution Protection System (BDPS) subsystem to be demonstrated OPERABLE at least every 12 hours. One of the requirements to determine OPERABILITY is to ''verify that (each subsystem's) associated nuclear instrumentation source range detector is OPERABLE and indicating greater than or equal to 10 counts per second.'' OPERABILITY of the source range nuclear instruments is accomplished by satisfactorily completing the SR of CTS Table 4.3–1. The surveillance cannot by performed in the higher MODE without utilizing jumpers or lifting leads, which could result in an undesirable reactor transient. Consequently, ComEd proposes to allow the unit to enter the MODEs of applicability from a higher MODE (i.e., entering MODE 3 from MODE 2) without having performed the SR; however, the surveillance must be completed within 4 hours after entering the mode of applicability. This revised requirement will be stated as ITS SR 3.3.9.7.

4. CTS SR 4.2.3.5 requires the determination of reactor coolant system (RCS) total flow rate by a precision heat balance measurement. No time limit is stated for completion of this SR; however, it must be done prior to the completion of PHYSICS TESTS. ComEd

proposes to revise the CTS to limit the period of time (to 7 days) that the SR is not required to be performed after attaining the required unit status necessary to perform the SR. This revised requirement will be stated as ITS SR 3.4.1.4.

5. CTS 3.4.9.1 Action requires that if any of the limits are exceeded and cannot be restored within 30 minutes, the unit must be in Hot Standby within the next 6 hours and the RCS T_{AVG} and pressure must be reduced to less than 200 degrees Fahrenheit and 500 psig, respectively, within the following 30 hours. ComEd proposes to eliminate the requirement to reduce pressure to less than 500 psig. This revised requirement will be stated as ITS LCO 3.4.3.

6. ComEd proposes to revise CTS LCO 3.4.1.5.2 and CTS SR 4.4.1.5.2.2 to change the standard against which the isolated loop is compared to allow opening of the isolation valves. The revision requires the isolated loop boron concentration to be greater than or equal to the ''required shutdown margin boron concentration.'' This change allows an isolated loop to be unisolated even if the boron concentration of the isolated loop is less than the unisolated portion of the RCS as long as the isolated loop concentration is greater than the required RCS concentration to meet ITS LCO 3.1.1 (when in MODE 5) or ITS LCO 3.9.1 (when in MODE 6). This change prevents unnecessary dilutions under conditions where both the isolated loop and unisolated portion meet the applicable shutdown margin requirements, but the unisolated portion is at a higher concentration than the isolated loop. This revised requirement will be stated as ITS LCO 3.4.18.

7. CTS SR 4.4.1.5.2.2 requires the boron concentration of an isolated loop be determined to be greater than the boron concentration of an operating loop within 2 hours prior to opening the valves of an isolated loop. ComEd proposes to revise the time requirement from 2 hours to 4 hours. This revised requirement will be stated as ITS SR 3.4.18.2.

8. CTS LCO 3.4.6.2.e and CTS SR 4.4.6.2.1 require that RCS leakage be limited to ''40 gpm CONTROLLED LEAKAGE at a Reactor Coolant System pressure of 2235 plus/minus 20 psig.'' ComEd proposes to change this leakage requirement from 40 gpm to a value determined as a function of the differential pressure between charging pump discharge header pressure and RCS pressure (as shown on ITS Figure 3.5.5–1). The revised requirement will be stated as ITS LCO 3.5.5 and ITS SR 3.5.5.1.

9. ComEd proposes an editorial change to CTS LCO 3.6.3.a.2 to allow deactivated remote manual valves to satisfy the required action to isolate the penetration. The revised requirement will be stated as ITS LCO 3.6.3 Required Action A.1.

10. CTS LCO 3.8.1.1 does not provide an explicit Action for the situation of a diesel generator inoperable and one bus with two required qualified circuits inoperable (under the CTS, this condition would require entry into CTS LCO 3.03). Consistent with the guidance in NUREG–1431, ComEd proposes to add this Condition to provide required actions to either restore the diesel generator within 12 hours or restore the required qualified circuits within 12 hours. The proposed restoration time is consistent with the discussions provided in Regulatory Guide 1.93. The revised requirement will be stated as ITS LCO 3.8.1.

11. CTS SR 4.8.1.1.1.b, CTS SR 4.8.1.1.2.f.5 and CTS SR 4.8.1.1.2.f.6 require their respective surveillance to be completed while shut down. CTS SR 4.8.1.1.1.b involves transfer of offsite circuits from normal to alternate. CTS SR 4.8.1.1.2.f.5 and CTS SR 4.8.1.1.2.f.6 involves surveillance of the engineered safety feature (ESF) bus electrical power systems. ComEd proposes to eliminate the shutdown restriction required by the CTS surveillance. The revised requirements will be stated as ITS SR 3.8.1.8, ITS SR 3.8.1.12 and ITS SR 3.8.1.13, respectively.

12. CTS SR 4.8.1.1.2.f.3 states that ''* * * The (diesel) generator voltage shall not exceed 4784 volts during and following the load rejection * * *'' ComEd proposes to add a note which states that momentary transients above voltage immediately following a load rejection do not invalidate the test. Based on plant experience and discussions with the diesel generator manufacturer during a full load reject test, very high voltage spikes may occur during this test with no detrimental impact on generator performance. This revised requirement will be stated as ITS SR 3.8.1.10.

13. CTS SR 4.9.4.1 requires, during CORE ALTERATIONS or movement of irradiated fuel in the containment, the verification that each containment purge isolation valve actuates to the isolation position, but does not require the isolation time for each valve to be verified. ComEd proposes to verify each required containment purge valve actuates to the isolation position on an actual or simulated actuation signal (every 18 months) and to verify the isolation time of each required containment purge valve is within limits with frequency determined in accordance with the inservice test (IST) program. The revised requirement will be stated as ITS SR 3.9.4.2 and 3.9.4.3.

14. Various ventilation filter testing requirements of CTS LCO 3.7.6, 3.7.7 and 3.9.12 specify that testing be performed ''in accordance with'' the applicable Regulatory Guide or ANSI Standard. ComEd proposes that the required testing be performed ''in general conformance with'' Regulatory Guide 1.52, Revision 2, and ANSI N510–1980 ''with any exception noted in Appendix A of the [Updated Final Safety Analysis Report] UFSAR.'' This change provides the capability for justified variances between the applicable Regulatory Guide/ANSI Standard and the implementing procedures. Any future variances will be evaluated in accordance with 10 CFR 50.59 and documented in UFSAR Appendix A consistent with current practice. The revised requirement will be stated as ITS Administrative Control 5.5.11.

15. CTS LCO 3.6.1.2 requires that the containment leakage rates be determined in accordance with 10 CFR part 50, appendix J, Option B and Regulatory Guide 1.163, September 1995. In turn, Regulatory Guide 1.163 references NEI 94–01, ''Industry Guideline for Implementing Performance-Based Option to 10 CFR part 50, appendix J.'' ComEd proposes to modify conformance to these documents by the addition of an exception which allows the time interval between the first and last tests in a series of consecutive satisfactory Type A tests (where two satisfactory tests are required prior to extending the Type A test interval) to be 18 months vice 24 months as stated in the NEI Guideline. The nominal refueling cycle frequency is 18 months and provides the reasonable time interval. This revised requirement will be stated as ITS Administrative Control 5.5.16.

16. CTS 6.12 provides high radiation area access control alternatives pursuant to 10 CFR 20.203(c)(2) (revised to 10 CFR 20.1601(c)). ComEd proposed to revise this specification as a result of the change to 10 CFR part 20, using the guidance provided in Regulatory Guide 8.38, ''Control of Access to High and Very High Radiation Areas in Nuclear Power Plants,'' and current industry technology in controlling access to high radiation areas. The proposed changes include additional requirements for groups entering high radiation areas, clarification of the need for communication and control of workers in high radiation areas, clarification of definition of high radiation areas, and

the clarification that an equivalent document to a Radiation Work Permit is acceptable. This revised requirement will be stated as ITS Administrative Control 5.7.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the requested amendments involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration for each of the above proposed changes. The NRC staff has reviewed ComEd's analyses against the standards of 10 CFR 50.92(c). The staff's analysis is presented below.

1. Will the changes involve a significant increase in the probability or consequences of an accident previously evaluated?

In all of the changes described above the answer is ''no.'' The proposed changes will not affect the safety function of the subject systems. There will be no direct effect on the design or operation of any plant structures, systems, or components. No previously analyzed accidents were initiated by the functions of these systems, and the systems will continue to perform their functions in mitigating consequences of previously analyzed accidents. Therefore, the proposed changes will have no impact of the consequences of any previously evaluated accidents.

2. Will the changes create the possibility of a new or different kind of accident from any accident previously evaluated?

In all of the changes described above, the answer is ''no.'' The proposed changes would not lead to any design or operating procedure change. Hence, no new equipment failure modes or accidents from those previously evaluated will be created.

3. Will the changes involve a significant reduction in a margin of safety?

In all of the changes described above, the answer is ''no.'' Margin of safety is associated with confidence in the design and operation of the plant. The proposed changes to the CTS do not involve any change to plant design, operation, or analysis. Thus, the margin of safety previously analyzed and evaluated is maintained.

Based on the analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied for each of the proposed changes. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 27, 1998, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at: for Byron, the Byron Public Library District, 109 N. Franklin, PO Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of

the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for ComEd.

Non-timely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(I)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 13, 1996, as supplemented on October 10, 1997, February 13, 1998, April 13, 1998, June 2, 1998, July 8, 1998, September 25, 1998, and October 1, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at: for Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 21st day of October 1998.

For the Nuclear Regulatory Commission.

Ramin R. Assa,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–28816 Filed 10–27–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No.: 71–9271]

Portland General Electric Co.; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Proposed Exemptions From Requirements of 10 CFR Part 71

Portland General Electric Company (PGE or applicant) has applied for a package approval from the U.S. Nuclear Regulatory Commission (NRC) for the one-time shipment of the Trojan Reactor Vessel Package (TRVP), with internals intact, from the Trojan Nuclear Plant site at Rainier, Oregon, to the US Ecology radioactive waste disposal facility near Richland, Washington. As part of its application, PGE has requested exemptions, pursuant to 10 CFR 71.8, from requirements 10 CFR 71.71(c)(7) and 10 CFR 71.73(c)(1). This Environmental Assessment (EA) was prepared to assess the potential environmental impacts of granting these exemptions as well as an exemption from 10 CFR 71.73(b) to the extent it is needed to grant an exemption from 10 CFR 71.73(c)(1).

Identification of Proposed Action

By letter dated March 31, 1997, PGE requested, in part, approval for the one-time shipment of the TRVP by means of two specific exemptions, under 10 CFR 71.8, from the requirements of 10 CFR 71.71(c)(7) and 71.73(c)(1), in the 10 CFR part 71 regulations governing the packaging and transportation of licensed materials.

The TRVP is the Trojan reactor vessel prepared for transport as a shipping package. The reactor vessel is a large, thick-walled, steel structure measuring approximately 13 m (42 feet, 6 inches) in length and 5.2 m (17 feet, 1 inch) in outside diameter. The reactor vessel void space, with internals installed and intact, will be filled with low-density cellular concrete, to prevent movement of radioactive material within the reactor vessel. The vessel will be sealed and shielded as necessary to meet the dose limit requirements of 10 CFR 71.47 and 10 CFR 71.51. Impact limiters will be installed to minimize reactor vessel stresses associated with the analyzed TRVP drops. The impact limiters are each approximately 1.5 m (4 feet, 10 inches) in width and 7.6 m (28 feet) in outside diameter. The maximum gross weight of the TRVP is conservatively 925 metric tons (2.04 million pounds).

The TRVP will be shipped approximately 482 km (300 miles) as a one-time, exclusive use, radioactive material transportation package for the purpose of disposal at the US Ecology low-level radioactive waste facility on the Hanford Nuclear Reservation near Richland, Washington. During the shipment, the TRVP is expected to be outside the Trojan Nuclear Plant site and US Ecology facility boundaries less than 72 hours.

Section 71.71(c)(7) requires an evaluation of the package design under normal conditions of transport and must include a determination of the effect, on that design, of a free drop of the specimen through a distance of 0.3 m (1 foot) [for a package weighing more than 15000 kg (33,100 pounds)] ''* * * onto a flat, essentially unyielding, horizontal surface in a position for which maximum damage is expected.''

Before shipment, the TRVP will be prepared as a shipping package and will be loaded and tied down onto a specially designed transporter. The loaded transporter will be moved onto

a specially selected barge and secured using an engineered tie-down system. The barge will be grounded during this evolution. The TRVP loaded transporter will be barged up the Columbia River to the Port of Benton where a heavy-haul mover will connect to the transporter and move it off the barge and overland to the disposal facility. The TRVP will be off-loaded at the disposal facility.

The TRVP will be rotated to a horizontal position (i.e., the centerline longitudinal axis of the package will be horizontal) during preparation in the Trojan Nuclear Plant industrial area. During transport, the TRVP will remain oriented in the horizontal position. Because of the unique size and mass of the package and the method of support of the package, no other orientation is reasonable during TRVP transport. Once loaded onto the transporter, the TRVP will not be removed from the transporter at any time during transport.

Based on the above conditions and the special handling and operational controls to be exercised, PGE requested exemption from the requirement to consider the 0.3 m (1 foot) drop (in any orientation) as a normal condition of transport. PGE has, however, designed and analyzed the TRVP with impact limiters to withstand the effects of a 0.3 m (1 foot) horizontal orientation drop.

Section 71.73(c)(1) concerns tests for hypothetical accident conditions and requires: ''A free drop of the specimen through a distance of 9 m (30 feet) onto a flat, essentially unyielding, horizontal surface, striking the surface in a position for which maximum damage is expected.'' Based on the Safety Analysis Report (SAR) specified transportation route, method of shipment, and special controls [including 18.5 km/h (10 knots) and 8 km/h (5 mi/h) speed limits for river and road, respectively], the PGE contends the 9 m (30-foot) drop should not be considered a hypothetical accident condition for the TRVP shipment. PGE determined that the maximum postulated distance that the TRVP could drop during a hypothetical transport accident is 3.3 m (11 feet), based on the transportation system, route, and operational controls. This drop height and horizontal orientation were used as a design basis for the TRVP. Because the TRVP shipment is conditioned on a minimum initial TRVP temperature of 50 °F, and on a forecasted minimum daily low temperature during transport of 40 °F, the 11-foot drop and puncture were evaluated at 45 °F, rather than the −20 °F which otherwise would be required by 10 CFR 71.73(b).

PGE designed the TRVP and analyzed its performance under accident conditions that are not as rigorous as those specified in 10 CFR 71.73(c)(1), and therefore requested exemption from that requirement. To assure comparable shipment safety, PGE has committed to the use of stringent operational and administrative controls. The purpose of these controls is to ensure that the probability of the TRVP encountering accident conditions beyond those for which it has been analyzed is low.

Need for the Proposed Action

The Trojan Nuclear Plant was shut down in November 1992. On January 27, 1993, PGE notified the NRC of its decision to permanently cease power operations and subsequently defueled the reactor, storing the spent fuel in the Trojan spent fuel pool. Currently, PGE has a possession-only license under 10 CFR part 50, and on January 25, 1995, applied to terminate its license by submitting a decommissioning plan. PGE proposed to decommission the facility using a dismantlement or DECON approach as defined in the ''Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities,'' NUREG–0586, dated August 1988.

In accordance with the NRC-approved decommissioning plan, PGE's plans for decommissioning the Trojan Nuclear Plant include decontamination and dismantlement of contaminated structures, systems, and components. The removal of the Trojan reactor vessel and the internals is an evolution that is discussed in the decommissioning plan, and is necessary for completion of decommissioning and release of the site for unrestricted use.

Certain normal- and accident-condition test requirements of 10 CFR 71 [i.e., 10 CFR 71.71(c)(7) and 71.73(c)(1)] are impractical for the proposed shipment of the TRVP. They would significantly increase the size and cost of impact limiters attached to the reactor vessel. Larger impact limiters would raise the center of gravity of the TRVP in its transport configuration, resulting in a larger actual drop height that could occur during the shipment. Larger impact limiters could also make the shipment by barge physically impossible because a slightly taller package would not fit under the minimum overhead clearance point for the shipment route. Furthermore, installation of larger impact limiters would result in an increase in occupational dose to the workers performing the installation, which is not in keeping with the as low as reasonably achievable (ALARA) concept. Thus, exemptions from the requirements of 10 CFR 71.71(c)(7), and 71.73(c)(1) and the related exemption from 71.73(b), are needed to approve use of the TRVP for transport.

Environmental Impacts of the Proposed Action

NRC has considered the impacts of radioactive material transportation in general in its ''Final Environmental Statement on the Transportation of Radioactive Material by Air and Other Modes,'' (NUREG–0170, December 1977). The one-time, short-duration shipment of the TRVP will be made along a well-defined, favorable transportation route to the U.S. Ecology licensed radioactive waste disposal facility. The staff has established, by evaluation of the revised SAR and transportation Probabilistic Safety Study (PSS) and by personal interviews with the U.S. Coast Guard and the U.S. Department of Transportation (DOT), that the operational and administrative controls provide reasonable assurance that the TRVP will not encounter accident conditions during the shipment beyond those for which it has been analyzed. Therefore, any stress to the TRVP from normal or credible accidents is not expected to have impacts that would lead to radiological releases.

The PSS shows that the most likely of the accident scenarios is a TRVP barge collision, with the TRVP lost overboard (probability of 10^{-6} for the shipment). PGE has developed a recovery plan for this scenario that indicates that the TRVP would be recovered in about 30 days. Since the probability of accidents that could damage the package and lead to potential health impacts is less than 10^{-6}, these accidents were not evaluated by the staff. The staff concluded that the TRVP shipment will not significantly affect the public health and safety, or adversely impact the environment.

Alternative to the Proposed Action

The alternative to the proposed action is to not grant the exemptions from 10 CFR part 71, which would then require other approaches to disposition of the Trojan reactor vessel and evaluation of its environmental impacts. Three other disposition scenarios were considered for the disposal of the reactor vessel and internals from the Trojan Nuclear Plant:

A. No Action

Storage of the reactor vessel on site. On-site storage of the reactor vessel with its internals intact is not considered to be a viable alternative. Federal regulations (10 CFR 50.82(a)) provide for decommissioning within 60 years, unless a longer period is approved by

the Commission, in accordance with the regulations. Storing the vessel on-site for 50 years before removal is similar to the SAFSTOR decommissioning alternative, which was addressed in NUREG–0586, ''Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities.'' On-site storage for 50 years is not consistent with the DECON decommissioning alternative that was selected by PGE and approved by NRC. The DECON decommissioning alternative has also been accepted and approved by the State of Oregon for the decommissioning of the Trojan Nuclear Plant. On-site storage of the reactor vessel would result in retaining the part 50 license and necessary staff to maintain radiological controls and other part 50 required programs. Other results include, but are not limited to, performance of required periodic surveys, increased exposure to workers, and increased cost. Although radioactive decay would reduce shielding requirements, the reactor vessel would still have to be disposed of using one of the alternatives described below. Since insignificant gain would be realized, this scenario was not evaluated further.

B. Modified Reactor Vessel and Internals Removal (Modified TRVP)

Disposal of the reactor vessel in one piece with only the non-greater than Class C (non-GTCC) internals left inside. The TRVP, with all internals included, is classified as Class C waste. Certain internals, if removed from the TRVP, would likely be classified as GTCC waste. The GTCC internals would have to be segmented underwater, placed into containers, and stored in the spent fuel pool or the independent spent fuel storage installation (ISFSI) at the Trojan Site. The vessel and remaining internals would be shipped via barge in a single package similar to the TRVP alternative. Depending on the package shipped, NRC and/or DOT exemptions might still be required. The GTCC internals would be shipped at an unknown date in the future when a suitable repository becomes available to accept the waste.

C. Separate Disposal

Separate disposal of the reactor vessel and internals. The reactor vessel internals would be segmented underwater. The non-GTCC internals would be placed in shielded casks and shipped to the US Ecology disposal facility via truck. The GTCC internals would be stored in the spent fuel pool or the ISFSI at the Trojan site. The reactor vessel would be disposed of separately from the internals and either shipped whole, via barge, or segmented and shipped, via truck, to the disposal facility. Depending on the package shipped, NRC and/or DOT exemptions might still be required. The GTCC internals would be shipped at an unknown date in the future when a suitable repository becomes available to accept the waste.

Radiation exposures for the proposed action and the other disposition options were analyzed for on-site personnel, transportation personnel, general public, and disposal facility workers. The number of radioactive waste shipments for each scenario was based on the amount and configuration of the waste produced. Dose estimates do not include doses resulting from on-site storage and future shipment of GTCC waste to a waste repository (date and site unknown).

The proposed TRVP action has one radioactive waste shipment and a total exposure of 0.674 person-Sv (67.4 person-rem) [0.671 person-Sv (67.1 person-rem) of occupational exposure to on-site personnel]. Alternative A is inconsistent with the NRC-approved decommissioning plan for the site, and the impacts do not differ significantly from the proposed action. Alternative B would entail three radioactive waste shipments and a total exposure of 0.881 person-Sv (88.1 person-rem) [0.878 person-Sv (87.8 person-rem) of occupational exposure to on-site personnel]. Alternative C would involve 47 radioactive waste shipments and a total exposure of 1.389 to 1.399 person-Sv (138.9 to 139.9 person-rem) (1.332 person-Sv (133.2 person-rem) of occupational exposure to on-site personnel).

Agencies and Persons Contacted

Officials from the DOT Office of Hazardous Materials Technology, and the U.S. Coast Guard, Marine Safety Office/Group Portland, were contacted regarding impacts of the proposed action and had no concerns.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements of part 51. Based on the foregoing EA, the Commission finds that the proposed action of: (1) Granting an exemption from 10 CFR 71.71(c)(7), so that PGE need not evaluate a free drop of 0.3 m (1 foot) under normal conditions of transport; and (2) granting an exemption from 10 CFR 71.73(c)(1) and 71.73(b), so that PGE need not evaluate a free drop of 9 m (30 feet) under hypothetical accident conditions, will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

This application was docketed under part 71, Docket 71–9271. For further details about this action, see Dockets 50–344 and 72–017, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555, and the Local Public Document Room at Portland State University Library, Science Library, 951 Southwest Hall Street, Portland, Oregon 97201.

Dated at Rockville, MD, this 22nd day of October 1998.

For the Nuclear Regulatory Commission.

M. Wayne Hodges,

Acting Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–28813 Filed 10–27–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–9027]

Notice of Consideration of Amendment Request for Decommissioning the Cabot Performance Materials Reading, Pennsylvania, Site, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Source Material License No. SMC–1562 to authorize decommissioning of the Cabot Performance Materials (CABOT) Reading, Pennsylvania, site. This license is issued to CABOT to possess contaminated material at its Reading and Revere, Pennsylvania, sites. NRC licenses these facilities under 10 CFR Part 40. Specifically, the license authorizes CABOT to possess 100 tons of elemental uranium and thorium total at both sites. The contaminated material at the Reading site is in the form of slag and soil located on the face of a slope. The contamination is the result of processing ores which contained uranium and thorium.

On August 28, 1998, the licensee submitted a site decommissioning plan (SDP) to NRC for review. The SDP concludes that long-term doses from the contaminated material at current levels meet the requirements of the Radiological Criteria for License Termination rule (10 CFR Part 20, Subpart E) (62 FR 39058). Therefore, the licensee proposes that no additional decommissioning is required.

Prior to the issuance of the amendment, 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.

NRC provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings,'' of NRC's rules of practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to § 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 this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 am and 4:15 pm Federal workdays; or

2. By mail or telegram addressed to Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemaking and Adjudications Staff.

In addition to meeting other applicable requirements of 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 areas of concern about the 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).

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Cabot Performance Materials, P.O. Box 1608, Boyertown, Pennsylvania 19512, Attention: Mr. Anthony T. Campitelli, and;

2. NRC staff, by delivery to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 am and 4:15 pm Federal workdays, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For further details with respect to this action, the application for amendment is available for inspection at NRC's Public Document Room, 2120 L Street NW., Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Timothy E. Harris, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6613. Fax.: (301) 415–5398.

Dated at Rockville, Maryland, this 20th day of October 1998.

For the Nuclear Regulatory Commission.

John W. N. Hickey,

Chief Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–28815 Filed 10–27–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40588; File No. SR–DTC–98–13]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Establishing a Practice of Collecting the Difference Between a Participant's Required Fund Deposit and its Actual Fund Deposit More Frequently

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on June 11, 1998, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. DTC amended the proposed rule change on July 29, 1998. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes a practice of collecting the difference between a participant's required fund deposit [2] and its actual fund deposit [3] more frequently than monthly.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, DTC calculates each participant's required fund deposit daily. If a participant's required fund deposit exceeds its actual fund deposit, DTC requires the participant to deposit the difference into DTC's participant fund on a monthly basis. The proposed rule change will further minimize DTC's exposure by providing for the collection of the difference between a participant's required fund deposit and actual fund deposit on a daily basis under certain circumstances.

Under the proposal, DTC will calculate a participant's actual and required fund deposit daily and require a participant to deposit the difference if two conditions are met. First, the amount of the difference between the funds must be equal to or exceed $500,000, and second, the difference must represent 25% or more of the newly calculated required fund deposit. Under such circumstances, the participant will be required to deposit the difference into DTC's participant fund within two business days of the day the difference was calculated. This new standard will ensure that DTC's resources are sufficient to complete

[2] Required fund deposit is defined in DTC's Rule 1 as the amount a participant is required to deposit to the participant's fund.

[3] Actual fund deposit is defined in DTC's Rule 1 as the amount a participant has deposited to DTC's participant fund, including both its required fund deposit and any voluntary fund deposit.

[4] The Commission has modified the text of the summaries prepared by DTC.

settlement if a participant fails to settle its net debit obligation.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder because it assures the safeguarding of securities and funds which are in its custody or control.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposal from DTC participants or others have not been solicited or received. The staff of the Commission recommended that DTC establish a practice of collecting the difference between a participant's required fund deposit and actual fund deposit more often than monthly.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–98–13 and should be submitted by November 18, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–28847 Filed 10–27–98; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78q–1.

[6] 17 CFR 200.30–3(a)(13).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40589; File No. SR–DTC–98–17]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Enhancements of Its Memo Segregation Procedures

October 22, 1998.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on August 21, 1998, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change adds three options to DTC's Memo Segregation (''Memo Seg'') procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

This proposed rule change is adding three Memo Seg options made possible by the modification. The three memo seg options being added are: (1) an instruction to increase the instructing participant's Free position and Memo Seg position upon the receipt of deliver orders (free or valued) with certain reclaim reason codes; (2) an instruction to increase the instructing participant's Free position and Memo Seg position upon the receipt of certain continuous net settlement system account allocations; and (3) an instruction to turn around all positions received from deliver orders except for certain positions. These enhancements will be made available to participants starting August 24, 1998.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[3] and the rules and regulations thereunder because it provided for the safeguarding of securities and funds in DTC's custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC informed participants of the proposed rule change in Important Notices dated May 5, 1998, and August 12, 1998. Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[4] of the Act and pursuant

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

to Rule 19b–4(e)(4)[5] promulgated thereunder because the proposal effects a change in an existing service of a registered clearing agency that: does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible; and does not significantly affect the respective rights or obligations of DTC or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–98–17 and should be submitted by November 18, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–28848 Filed 10–27–98; 8:45 am]

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[5] 17 CFR 240.19b–4(e)(4).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 40592; File No. SR–NASD–98–77]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Central Registration Depository Fees

October 22, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 1998, the National Association of Securities Dealer, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Schedule A of the NASD By-Laws revise the fees imposed for filings made with the Central Registration Depository (''CRD''). The text of the proposed rule change is as follows (addition are *italicized;* deletions are [bracketed]):

Schedule A to the NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of the [Corporation] NASD[,] shall be determined on the following basis:

* * * * *

Section 2—Fees

(a) No change.

(b) [Each member shall be assessed a fee of $85.00 for each application filed with the Association for registration of a registered representative or registered principal. Additionally, each member shall be assessed a surcharge of $95.00 for registrations involving a special registration review filed with the Association.]

The NASD shall assess each member a fee of:

(1) $85.00 for each initial Form U–4 filed by the member with the NASD for the registration of a representative or principal, except that [The] *the* following *discounts* shall apply to the filing of [applications] *Forms U–4* to [register or] transfer the registration of [registered persons] *representatives* or [registered] principals in connection with acquisition of all or a part of a member's business by another member:

Number of registered personnel transferred	Discount Percent
1,000–1,999	10
2,000–2,999	20
3,000–3,999	30
4,000–4,999	40
5,000 and over	50

(2) $40.00 for each initial Form U–5 filed by the member with the NASD for the termination of a registered representative or registered principal, plus a late filing fee of $80.00 if the member fails to file the initial form U–5 within 30 days after the date of termination:

(3) $20.00 for each amended Form U–4 or Form U–5 filed by the member with the NASD:

(4) $95.00 for the additional processing of each initial or amended Form U–4 or Form U–5 that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings:

(5) $10.00 for each fingerprint card submitted by the member to the NASD, plus any other charge that may be imposed by the United States Department of Justice for processing such fingerprint card: and

(6) $15.00 annually for each of the member's registered representatives and principals to renew the registration for the following year.

(c)–(g) No change.

(h)(i) Each member shall be assessed a fee of $40.00 for each notice of termination of a registered representative or registered principal filed with the Corporation as required by Section 3 of Article IV of the By-Laws.

(ii) A late filing fee of $65.00 shall be assessed a member who fails to file with the Corporation written notice of termination of a registered representative or registered principal within thirty (30) calendar days of such termination.

(II) In the event a member believes it should not be required to pay the late filing fee, it shall be entitled to a hearing in accordance with the procedures set forth in the Rule 9640 Series.

(i)–(k) No change.

Section 3—Elimination of Duplicate Assessments and Fees

Two or more members under substantially the same ownership or control shall be required to pay only one personnel assessment *and one*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

registration renewal fee annually for those individuals employed by more than one of the members and only one fee annually for each branch office registered at the same location by more than one of the members. There shall be only one registration fee applicable to each applicant registered simultaneously with two or more members under substantially the same ownership or control. [If a substantial number of the registrants of a member are to be dually registered with another member under substantially the same ownership and control and this additional registration cannot be effected simultaneously, there shall be a $5.00 fee applicable to each applicant at the time of the second registration provided that arrangements are made with the Association for special processing of such applicants, and appropriate certification is made by each affiliated member. The registration fee referred to in Section 2 of this Article will apply if the foregoing provisions are not applicable.]

Section 9—[Subscription Charges for Firm Access Query System (FAQS)] ***Reserved***

[(a) Each firm electing to subscribe to the Firm Access Query System (FAQS) will be assessed a user fee consisting of three components (1) a monthly data base access charge, (2) an hourly usage fee, and (3) a charge per 1,000 characters (''kilocharacter'') of information sent or received. The fee schedule to be paid by each firm is as follows:

(1) Monthly Data Base Access Charge—$70.00
(2) Hourly Usage Charge—$70.00 per hour; and
(3) Kilocharacter Transmission Charge—$0.70.

Each firm which subscribes to the service will provide its own terminal and modem.]

* * * * *

[Section 14—Service Charge for Fingerprints Submitted]

[In addition to such charge as may be imposed by the United States Department of Justice, there shall be a service charge of $2.50 for each fingerprint cart submitted to the Association's Membership Department.]

[Section 15—Fees for Central Registration Depository]

[(a) Each member shall be assessed a Software Subscription Fee of $300 for each copy of CRD software purchased. Each member shall be assessed a fee of $10.00 for each set of Branch Filing Software.]

[(b) Each member shall be assessed an annual Software Subscription Maintenance Fee of $300 for each copy of the CRD software purchased by the member.] [3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and 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 NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change amends Schedule A of the NASD By-Laws to revise various fees charged for operating the CRD and to include all CRD fees in Section 2 of Schedule A.[4] NASD Regulation's CRD system has been the single registration system for broker-dealers for over 15 years. The CRD system enables ''one stop'' filing of broker-dealer and broker registration forms, eliminating the need for separate filings with the 50 states, the Commission, the New York Stock Exchange Inc., and other regulators. The CRD system also provides a centralized funds collection and distribution system (handing over $420 million per year) and a uniform reporting structure (with staff processing and reviewing approximately one million filings per year). When the CRD system was implemented in the early 1980s, it was estimated that the benefits to NASD members from the system (*e.g.*, reduced administrative costs, faster processing of filing, etc.) would be more than $50 million per year ($94 million in 1997 dollars).

The NASD believes that the modernized CRD system, scheduled for release in the third quarter of 1999, will provide additional benefits by:

- Reducing overall processing time for initial registrations and transfers by at least three to six days per filing, thereby reducing the number of days that brokers are restricted from conducting business, [5]
- Reducing member registration system development and maintenance costs; and
- Reducing registration processing costs (*e.g.*, replacing paper filings with electronic form filing through NASD Regulations, Inc.'s Web site) and providing current registration processing status and other information through the Web site.

The cost of developing, maintaining, and operating the CRD system is largely paid for by members through a series of fees charged by the NASD for CRD filings and other CRD-related activity. Non-NASD members are not charged for the use of the system.[6] The NASD last increased CRD fees on August 1, 1995.[7] CRD costs have increased since that time for a number of reasons, including: (1) development and maintenance of an Internet-based modernized CRD system; (2) implementation of the enhanced Public Disclosure Program, including Public Disclosure on the Internet; and (3) increased filing volume due to changes in disclosure reporting requirements.

The NASD believes that CRD fees should be set at a level that fully covers the costs of the CRD/Public Disclosure system and department. Currently, such fees do not cover the full costs of these systems and activities. The revised fee structure is based on the principal cost drivers for CRD, which include: (1) the number of registered individuals; (2) the number of filings; and (3) the number of disclosure events and proceedings [8] reported with each filing and the costs associated with reviewing these items. To recover such costs most effectively,

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[3] A table describing changes to the NASD Registration Fee Structure is included in the NASD Regulation, Inc. Website, www.nasdr.com/3430d.htm.

[4] Currently, CRD-related fees are found in Sections 2,9, 14 and 15 of Schedule A.

[5] Under Article V, Section 1 of the NASD By-Laws, an individual may not engage in the investment banking or securities business until the NASD has approved an appropriate registration for the individual.

[6] The CRD fees amended by this filing apply only to fees charged to member firms and not to any other parties. Non-NASD member participants in the CRD are not affected by these changes. *See* E-mails from John Ramsay, Office of General Counsel, NASD Regulation, to Anitra Cassas, Division of Market Regulation, Commission, dated October 16, 1998.

[7] Exchange Act Release No. 36025 (July 26, 1995), 60 FR 39200 (August 1, 1995) (File No. SR–NASD–95–32).

[8] The term ''disclosure events and proceedings'' means events and proceedings that must be reported on Form U–4 or Form U–5. This includes, for example, certain criminal charges or convictions, regulatory actions, formal investigations, investment-related civil judgments or injunctions, arbitration proceedings and awards, customer-initiated sales practice complaints, settlements, and bankruptcies.

the fee structure will be changed as described in the following paragraphs.

First, the NASD will charge a $20.00 fee for each amended Form U–4 or U–5 filed with the CRD.[9] Currently, the NASD charges $85.00 for the filing of an initial Form U–4 and $40.00 for an initial Form U–5 by an NASD member,[10] but does not charge any fee for the filing of amendments to Form U–4 or U–5. Thus, under the new fee structure, an NASD member that filed an amended Form U–4 *e.g.*, to change the representative's home address or request registration in an additional jurisdiction, would be charged $20.00. Similarly, if the member filed an amended Form U–5, *e.g.*, to terminate such representative's registration in a particular jurisdiction, the member also would be charged $20.00. The new fees for filing amended Forms will help the NASD recover the costs of processing such Forms, which account for a large portion of overall filing volume for the CRD system.

Second, the NASD will charge $95.00 as an additional processing fee for each initial or amended Form U–4 or Form U–5 that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings. Currently, the NASD charges a $95.00 Special Registration Review (''SRR'') fee only if an event or proceeding is reported on an initial Form U–4. Thus, under the current fee structure, if an NASD member hires a representative who has a misdemeanor conviction that is reportable on Form U–4, the member is charged $85.00 for the initial Form U–4 plus a $95.00 SRR fee, for a total of $180.00; if the member subsequently files an amended Form U–4 to report a customer complaint, no additional fee is charged and the total charge for the two filings is $180.00. Using the same example under the new fee structure, the member would still pay $85.00 for the initial Form U–4, plus an additional $95.00 processing fee because the initial Form includes a disclosure event, for a total of $180.00. However, when the member reports the subsequent customer complaint, the member will be charged $20.00 for the amended Form U–4, plus $95.00 as an additional processing fee for the initial reporting of a new disclosure event, for a total of $115.00 for the amended Form U–4. The combined charges for the two filings would be $295.00.

Third, the fee for a late filing of a Form U–5 (*i.e.*, more than 30 days after the individual's termination) will be increased form $65.00 to $80.00. The NASD believes that raising the fee will help to discourage late filings by its members.

Fourth, the NASD will increase the fee for processing a fingerprint card from $2.50 to $10.00.[11] The NASD will continue to add any fee charged by the Federal bureau of Investigation for processing a fingerprint card.

Fifth, the NASD will implement a new annual renewal processing fee of $15.00 per registered representative or principal. In the past, the NASD has sent invoices to its members in October or November for registration renewal for the following year. An invoice includes fees for NASD personnel assessments under Section 1 of Schedule A of the NASD by-Laws, NASD branch office fees, maintenance fees for other exchanges, and state agent and broker-dealer renewal fees.[12] The annual renewal processing fee would be in addition to the NASD personnel assessment. To ensure that duplicate renewal fees are not paid, the NASD proposes to amend Section 3 of Schedule A to provide that if an individual is employed by two or more NASD members under substantially the same ownership or control, then only one renewal fee will be charged.

Sixth, in section 3 of Schedule A, the NASD will eliminate the reduced fee for registrations with more than one member that are made simultaneously. Section 3 currently provides that simultaneous registrations with broker-dealers under common control are charged a single NASD registration fee, with a provision for a $5.00 fee in certain cases where in fact the registrations are not filed simultaneously. While the single registration fee for simultaneous registrations will be retained, the $5.00 reduced fee for registrations with more than one member that are not made simultaneously will be eliminated. This reduced fee is being eliminated because the CRD/Public Disclosure department does not realize any cost savings form anon-simultaneous filing in the modernized CRD system environment.

Seventh, upon the deployment of the modernized CRD system, the NASD will eliminate the Firm Access Query System (''FAQS'') charges set forth in Section 9 of Schedule A. FAQS is an electronic system that enables subscribing NASD members to review the registration and examination data maintained on the CRD relating to individuals registered or seeking to be registered with the member. Through FAQS, subscribers also may elect to schedule exams, review accounting transactions and balances, and file select Form U–4 amendments and Forms U–5 electronically. Under the modernized CRD system, the information and services provided today by FAQS will be available to firms through the Internet without a usage charge. The date of the elimination of FAQS charges will be announced 45 days in advance in a Notice to Members.

Finally, the CRD software license and maintenance fees currently set forth in Section 15 will be eliminated due to the change from a distributed software approach to the Internet-based approach of the modernized CRD system. As noted above, the costs of the modernized CRD system will be recovered through the filing fees. There are no separate license usage or maintenance fees for the modernized CRD system.

The NASD will begin to charge most of the revised fees described in this filing, except those related to FAQS, on January 1, 1999. The current FAQS fees will continue to be assessed until the deployment of the modernized CRD system, currently scheduled for he third quarter of 1999. The first annual renewal processing fee under the new fee structure will be collected with registration renewals in the fourth quarter of 1998. The NASD believes that the revenue from the new fees will cover the likely costs of the CRD/Public Disclosure system and department at projected levels of registration activity.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[13] which requires, among other things, that the Association's rules must provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the Association operates or controls. The NASD believes that the revised fee structure equitably distributes CRD costs among its members by adjusting the fees to reflect the costs associated with different types of filings. The NASD believe that it is reasonable for the overall level of fees to be set at a level that fully covers the costs of the CRD/Public Disclosure

[9] An initial Form U–4 is the first Form U–4 filed by each member for a representative who is becoming registered for the first time or who is transferring his registration from another member. Similarly, the initial Form U–5 refers to the first Form U–5 filed by each member upon the termination of a registration.

[10] The fees for initial filings remain the same.

[11] *See* Rule 17f–2 under the Act. 17 CFR 240.17f–2.

[12] *See, e.g.*, NASD Notice To Members 97–70.

[13] 15 U.S.C. 78o–3(b)(5).

system and department at projected levels of registration activity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NASD has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, which establishes or changes a due, fee, or other charge, has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and subparagraph (e)(2) of Rule 19b–4 thereunder.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing; including whether the proposed rule change is consistent with the Act. 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 all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–77 and should be submitted by November 18, 1998.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[16]

[FR Doc. 98–28849 Filed 10–27–98; 8:45 am]

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[14] 15 U.S.A. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(e)(2).

[16] 17 CFR 200.30–3(as)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40577, File No. SR–PSE–97–02]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments 1 and 2 to the Proposed Rule Change by the Pacific Exchange, Inc., Relating to the Proprietary Hand-Held Terminal Program for Floor Brokers

October 20, 1998.

I. Introduction

On January 17, 1997, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') [1] filed a proposed rule change with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] to adopt Rule 6.89 governing the use by PCX Members and Member Organizations (''Members'') of proprietary brokerage order routing terminals (''Terminals'') on the options floor of the Exchange. On March 30, 1998, and June 5, 1998, respectively, the Exchange filed Amendments 1 [4] and 2 [5] with the Commission.

Notice of the proposal was published for comment and appeared in the **Federal Register** on February 18, 1997.[6] Two comment letters were received on the proposed rule change.[7] The PCX responded to IB's comment letter.[8] This order approves the Exchange's proposal, including Amendments No. 1 and 2 on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to adopt rules governing Terminals that Members may use on the options floor of the Exchange. The rules include specific provisions on Exchange approval of

[1] The Exchange changed its name from the Pacific Stock Exchange to the PCX subsequent to the filing of this proposed rule change. For record-keeping purposes the file number will remain SR–PSE–97–02.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] *See* Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to David Sieradzki, Attorney, Division of Market Regulation (''Division''), Commission, dated March 27, 1998 (''Amendment No. 1''). In Amendment No. 1, the Exchange makes three substantive changes to the proposal. First, the Exchange states that approval to use Terminals on the floor of the Exchange will not be granted on an issue by issue basis. Instead, the Exchange will approve the use of any Terminal system that does not interfere with any Exchange-sponsored hand-held terminals, POETS, or any other equipment on the floor. Subject to those conditions, once the Exchange has approved a Member or Member Firm to use a Terminal, the approval is not restricted to particular options trading crowds. Second, the Exchange amends the market making restriction in Section 4(d)(3) to make the definition of market making consistent with the definition of market making in PCX's Exchange-sponsored hand-held terminal filing (SR–PCX–97–28) and Section 3(a)(38) of the Act. *See* Securities Exchange Act Release No. 39970 (May 7, 1998), 63 FR 26662 (May 13, 1998) and 15 U.S.C. 78c(a)(38). Third, the Exchange removes provisions designating the proposal as a pilot program. finally, the Exchange modifies the format of the proposal so that it will be a change to the text of the Rules of the Exchange, rather than a written policy.

[5] *See* Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to David Sieradzki, Attorney, Division, commission, dated June 3, 1998 (''Amendment No. 2''). Amendment No. 2 makes one non-substantive change to the text of the Rule, removing a reference to the fact that the Exchange intends to roll out its own brokerage order routing system. In addition, the Exchange clarified, through an internal cross-reference, that any decision to terminate approval for a Terminal system under PCX rule 6.89(g) would be based on the factors set forth in PCX rule 6.89(b).

[6] *See* Securities Exchange Act Release No. 38270 (February 11, 1997), 62 FR 7286 (February 18, 1997).

[7] Letter from Earl H. Nemser, Managing Director, Interactive Brokers, LLC (''IB''), to Jonathan G. Katz, Secretary, Commission, dated March 11, 1997; letter from Earl H. Nemser, The Timber Hill Group, LLC (''Timber Hill''), to Chairman Levitt, Commissioners Hunt, Unger, Carey and Johnson, Commission, dated June 8, 1998. In further support of its March 11 comment letter, on August 15, 1997, IB supplemented its comment letter with a working paper entitled ''Affirmative Obligations of Market Makers: An Idea Whose Time Has Passed?'' Letter from Bradford L. Jacobowitz, General Counsel, IB, to Jonathan G. Katz, Secretary, Commission, dated August 14, 1997.

[8] Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Jonathan G. Katz, Secretary, Commission, dated April 21, 1997.

Terminals; restrictions on Members' use of Terminals; exchange inspection and audit; exchange liability; and termination of exchange approval.

Exchange Approval

Proposed Rule 6.89 specifies that Members must obtain prior Exchange approval to use any proprietary brokerage order routing terminals on the options floor. Once the Exchange grants approval to a Member to use Terminals, the Member may do so in all trading crowds. To request such approval, Members must submit a letter of application to the Exchange specifying the make, model number, functions, and intended use of the equipment, and must also provide additional information upon the request of the Exchange. The rule further provides that the format of any orders to be transmitted over the Terminals must also be pre-approved by the Exchange.

PCX Rule 6.89(b) states that, in considering the approval of an application, as well as whether a previously issued approval should be withdrawn, the Exchange will take into account such factors as: (1) the physical size of the Terminal; (2) space available at the post where the Terminal is to be used; (3) telecommunication, electrical and radio frequency requirements; (4) Terminal characteristics and capacity; and (5) any factors that the Exchange considers relevant in the interest of maintaining fair and orderly markets, the orderly and efficient conduct of Exchange business, the maintenance and enhancement of competition, the ability of the Exchange to conduct surveillance of the use of the Terminal and the business transmitted through it, the adequacy of applicable audit trails, and the ability of the Terminal to interface with other Exchange facilities.

PCX Rule 6.89(c) provides that Members must report to the Exchange every proposed material change in functionality of a Terminal and every proposed change in the use of a Terminal. It further provides that Members must not implement any such proposed changes unless and until they have been approved by the Exchange, and that Members must also promptly file with the Exchange supplements to their applications whenever the information currently on file becomes inaccurate or incomplete for any reason.

Restrictions on Use of Terminals

PCX Rule 6.89(d) sets forth four restrictions applicable to Members' use of Terminals on the options floor. The first restriction is that Members may receive brokerage orders in the trading crowd via Terminals, but must represent such orders in the trading crowd by open outcry in a manner that is consistent with Exchange rules.

The second restriction states that when a Member executes an order that was received over a Terminal, the Member must fill out and time stamp a trading ticket within one minute of the execution. Exchange rules on record keeping and trade reporting are unchanged.

The third restriction states that Terminals may be used to receive brokerage orders only, and that Terminals may not be used to perform a market making function. it states that any system used by a Member to operate a Terminal must be separate and distinct from any system that may be used by a member or any person associated with a Member in connection with market making functions. It further states that, for the purpose of this subsection, orders initiated from off the floor of the Exchange that are not counted as ''Market Maker transactions'' within the meaning of PCX Rule 6.32 and that do not constitute a Member, on a regular and continuous basis, simultaneously representing orders to buy and sell options contracts in the same series for the account of the same beneficial holder shall not be deemed to be a market making function.

The Exchange believes that if Terminals were permitted to be used to perform market making functions from off the floor of the Exchange, it may become undesirable for Exchange market makers to continue to assume the costs and obligations associated with being a registered market maker, which in turn could harm the liquidity and quality of the Exchange's market. The Exchange is particularly concerned that off-floor market making effectively would establish a market making structure devoid of affirmative market making obligations that could result in less deep and liquid markets during periods of market stress, when off-floor Terminal market makers would not be required to continue making markets. Moreover, the Exchange believes that surveillance of market making through the Terminals currently would be particularly difficult.

The Exchange intends to interpret the term ''market making'' in accordance with its traditional definition as defined under the Act, *i.e.*, holding one's self out as being willing to buy and sell a particular security on a regular or continuous basis.[9] The definition of market making would not capture parties who enter orders on one side of the market, nor would it capture parties who enter two-sided limit orders on occasion. A party would not be deemed to be engaging in market making unless it regularly or continuously holds itself out as willing to buy and sell securities.

The fourth restriction in PCX Rule 6.89(d)(4) states that no Member or any person associated with a Member may use for the benefit of such Member or any person associated with such Member information about any brokerage order in the Terminal system until that information has been disclosed to the trading crowd. Accordingly, prior to acting on information displayed on a Terminal by placing an order or making or changing a bid or offer on the Exchange or in any other securities or futures market to the benefit of the Member, the Member must disclose information displayed on a Terminal to the trading crowd. The Exchange believes that this restriction will help to ensure that Members using Terminals trade on the same terms and conditions as other market participants and do not receive any trading advantages such as the ability to interact with orders transmitted through the Terminals without first disclosing those orders to the trading crowd.

Inspection and Audit

PCX Rule 6.89(e) states that the operation and use of all aspects of the Terminal and all orders entered through the Terminal are subject to inspection and audit by the Exchange at any time upon reasonable notice. It further provides that Members must furnish to the Exchange such information concerning the Terminal as the Exchange may from time to time request upon reasonable notice, including without limitation an audit trail identifying transmission, receipt, entry, execution, and reporting of all orders. For the purpose of this subsection, a notice of at least twenty-four hours shall be deemed to be reasonable (however, shorter periods may be provided in appropriate circumstances).

Exchange Liability

PCX Rule 6.89(f) states that neither the Exchange nor its directors, officers, employees or agents shall be liable to a member, a Member's employees, a Member's customers or any other person for any loss, damage, cost, expense or liability arising from the installation, operation, relocation, use of, or inability to use a Terminal on the floor of the Exchange (including any failure, malfunction, delay, suspension, interruption, or termination).

[9] *See* 15 U.S.C. 78c(a)(38).

Termination of Approval

PCX Rule 6.89(g) provides that the Exchange may at any time determine to terminate approvals for the installation and use by Members of Terminals on the floor of the Exchange or at particular trading posts, as long as the Exchange gives 30 days notice to such Member(s). However, any such decision to terminate its approval of the installation or use of Terminals on the floor of the Exchange must be based on certain specified factors.[10] It further provides that a Member's approval to use a Terminal may also be summarily terminated by the Exchange, once notice has been provided to the affected Member, if: (1) any statement by such Member in its application or any supplement thereto is inaccurate or incomplete; (2) such Member has failed to comply with any provision of this Rule; or (3) the operation of the Terminal is causing operational difficulties on the floor of the Exchange, and the Member has failed to cure the same within seven calendar days following the giving of notice (or such shorter period of time as the Exchange may deem appropriate if it determines the circumstances have created a situation requiring a shorter period). It states that Members must immediately stop using their Terminals and must remove such Terminals from the floor of the Exchange upon the termination of approval pursuant to this subsection, and that nothing in this subsection shall be construed as a waiver of or limitation upon whatever right Members may otherwise have to seek appropriate relief pursuant to PCX Rule 11.[11]

In its filing, the Exchange noted that, except in certain minor respects, the proposed Rule is similar to an approved rule change of the Chicago Board Options Exchange (''CBOE'') relating to the use of proprietary brokerage order routing terminals on the CBOE floor.[12]

[10] These factors include the physical size of the terminal, space available at the post where the Terminal is to be used, telecommunication, electrical and radio frequency requirements, and Terminal characteristics and capacity. *See* Amendment No. 1, *supra* note 4.

[11] PCX Rule 11.7 provides due process protections for persons who have been aggrieved by Exchange action. It gives such persons an opportunity to be heard and to have the complaint reviewed by the Exchange.

[12] *See* Securities Exchange Act Release No. 38054 (December 16, 1996), 61 FR 67365 (December 20, 1996). The Commission notes that the CBOE proposal authorized the use of hand-held order routing terminals in the S&P 500 (''SPX'') crowd to trade SPX options only. The current PCX filing concernsthe use of Terminals on a floor-wide basis.

III. Summary of Comments

A. IB Comment Letter

In its comment letter, IB expressed support for the proposal's aim to introduce Terminals to the options floor, but objected for several reasons to the Exchange prohibiting a Terminal from being used to transmit two-sided orders. IB requested that the Commission, pursuant to the National Securities Markets Improvement Act of 1996 (''NSMIA''), ''use its * * * exemptive powers and supervisory authority over the [Exchange] to * * * modify the proposed rule to eliminate unreasonable restrictions * * * and then to direct its implementation forthwith.''

First, IB argued that Section 105 of NSMIA permits the Commission to provide an exemption in order to permit the immediate use of hand-held technology on the PCX options floor, without imposing the restrictions suggested by the PCX proposal. Second, IB argued that the Exchange's proposal must be rejected because it does not sufficiently analyze the proposal's impact on efficiency and competition as required by Section 106 of NSMIA. Third, IB argued that a floor-wide prohibition on the use of Terminals for two-sided orders would place an unreasonable burden on competition. IB noted that, in proposing its market making restriction, the Exchange improperly relied on the Commission's approval of the CBOE proposal relating to Terminals used by the SPX options trading crowd. IB believes that approval of the restriction for that one options class should not act as a precedent for a floor-wide policy as proposed by PCX, and should be re-examined by the Commission. In particular, IB noted the important differences in the liquidity of the SPX option and the various PCX products. Fourth, IB argued that the proposed restrictions on two-sided orders must be rejected because the Exchange did not appropriately assess whether the restriction's resulting burden on competition was justified as reasonable and appropriate, and whether the public interest could otherwise be protected by a more competitive alternative. Fifth, IB argued that the use of Terminals for two-sided orders would not deprive market makers of the advantages afforded to them and would not discourage them from meeting their market making obligations. IB noted that it believes that as new products are listed on the various exchanges, market makers will have the financial incentive to continue to make markets. In addition, IB noted that if the Exchange restricts the use of Terminals to transmit two-sided orders to the trading floor, the liquidity of the markets and the investing public will suffer during periods of market stress. Sixth, IB argued that the Exchange should have considered less restrictive alternatives such as requiring non-market makers who use Terminals for the submission of two-sided orders to assume market maker obligations through the use of Terminals. Seventh, IB argued that the Exchange should not be (1) permitted to limit the use of proprietary Terminals when it implements its own brokerage order routing system; or (2) deny the use of Terminals summarily,[13] or on an ''issue-by-issue'' basis without setting out an objective standard.[14] IB noted that to develop a proprietary order routing system requires a large capital investment. Further, IB believes that by denying the use of Terminals in this manner, the Exchange discourages development of better systems, deprives the public of the benefits of market efficiencies created by new technology, is inconsistent with Commission policy to encourage development of innovative trading systems and services, and has not been shown to justify the resulting burdens on competition. Finally, IB argued that the PCX proposal unnecessarily mandates the manual writing and time stamping of paper tickets. IB noted that it believes that an electronic audit trail is more accurate and more efficient than paper tickets and more consistent with Commission policy and NSMIA.

B. PCX Response Letter

The PCX response to IB's comment letter stated that without the market making restriction, an off-floor market maker could avoid all affirmative market making obligations and have significant trading advantages over on-floor market makers. Among other things, on-floor market makers are required to: (1) trade with public customers at the disseminated best bid or offer,[15] (2) maintain fair and orderly markets,[16] (3) maintain price continuity by dealing from their own accounts under certain circumstances,[17] and (4) log on to the Exchange's Auto-Ex system when circumstances warrant it. In this context, the Exchange notes that if a market maker had the freedom to leave

[13] The Commission notes that a member would have the right to appeal any decision to deny approval to use a Terminal or suspend a member from using a Terminal pursuant to PCX Rule 11.7, *Hearings and Review of Committee Action.*

[14] *See infra* note 31.

[15] *See* PCX Rule 6.86.

[16] *See* PCX Rule 6.37(a).

[17] *See* PCX Rule 6.37(b).

the floor and perform market making through a Terminal, many would do so to avoid the obligations of being a market maker. This could ultimately result in a significant reduction of liquidity on the Exchange's options trading floor. Accordingly, the Exchange believe IB's proposal would compromise the continued viability of its markets.

Next, the Exchange contends that allowing off-floor market making would, in effect, create an entirely new category of floor trader. The Exchange notes that the IB proposal to allow off-floor market making was never presented to the Options Floor Trading Committee for approval. The Exchange also requests that, if the Commission does approve IB's proposal, that the Commission do so uniformly across options exchanges to prevent one exchange from being at a competitive disadvantage to another.

The Exchange also addresses IB's contention that the Exchange unjustifiably relies on the Commission's prior approval of a similar CBOE filing that included a market making restriction because the prior proposal dealt with heavily traded issues while the trading volume on the PCX is considerably smaller. The Exchange states that ''the question of whether Terminals should initially be permitted in trading crowds with low volume or trading crowds with high volume should be left to the discretion of the [Options Floor Trading Committee], which is in the best position to make such a determination because of its diverse composition of industry representatives.''

The Exchange makes several arguments in response to IB's request that the Commission ''uses its * * * exemptive powers and supervisory authority over the [Exchange] to * * * modify the proposed rule to eliminate unreasonable restrictions. First, the Exchange argues that Congress has not indicated that Section 105 of NSMIA should be used in the manner that IB suggests. The Exchange believes that Congress intended that Section 105 be used to allow the exchanges to use automated trading systems without filing a proposed rule change or that the exemption refers to the Commission's ability to exempt certain electronic trading systems from having to be registered under the Act as national securities exchanges. Second, the Exchange argues that even if Section 105 were to apply, IB has failed to meet the statutory requirements that the exemption be ''necessary or appropriate in the public interest'' and ''consistent with the protection of investors'' because, among other things, it could undermine the Exchange's market making system and result in less deep and liquid markets. The Exchange also believes that surveillance would be particularly difficult and that IB has not met the burden under NSMIA that the exemption be necessary or appropriate because IB still has the choice of putting a market maker in the trading crowd. Third, the Exchange notes that the Commission has yet to use its exemptive authority under Section 105 and recommends that the Commission use caution before doing so. Fourth, the Exchange believes that the Commission has previously engaged in a ''rigorous'' analysis of the issues in this matter. Specifically, the Commission has previously considered comment letters and responses in connection with similar rule filings of the American Stock Exchange and the CBOE. Fifth, in response to IB's argument that the Exchange should not be permitted to limit the use of proprietary Terminals when it implements its own brokerage order routing system, the Exchange states that ''as long as an applicant's proprietary trading system does not cause operational problems on the trading floor, the applicant will not be arbitrarily denied the privilege of operating its Terminals on the floor[.]'' Finally, with regard to IB's objection that written, time-stamped tickets would be required under the rules relating to Terminals, the Exchange notes that such tickets are needed, at this time, not only for audit trail purposes, but also for purposes of verifying compared trades and reconciling uncompared trades.

C. Timber Hill Comment Letter

In its comment letter, Timber Hill urges the Commission to consider the issue of prohibiting the use of Terminals to perform a market making function. Timber Hill asserts that, due to the impact of the proposed market making restriction on competition and the use of technology, NSMIA requires that the restriction must be supported by an actual basis in fact, and not merely by possibilities derived from an outdated theoretical construct. Further, Timber Hill argues that the Commission should not rely on its prior approval of a similar market making restriction in a proposal by the CBOE without reanalyzing the issue in light of NSMIA.

IV. Commission Finding and Conclusions

Section 6(b)(5) of the Act[18] requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principals of trade, remove impediments to and perfect the mechanism of a free and open market, and in general to protect investors and the public interest. Section 6(b)(7) of the Act[19] requires that the rules of an Exchange be in accordance with Section 6(d) of the Act,[20] and in general provide a fair procedure for the disciplining of members and the prohibition or limitation by an exchange of a person's access to services offered by the exchange. Section 6(b)(8) of the Act[21] requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Section 11A(a)(1)(C)(ii) of the Act[22] states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure fair competition among brokers and dealers. For the reasons set forth below, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Sections 6(b)(5), 6(b)(7), 6(b)(8), and 11A(a)(1)(C) of the Act.[23]

The Commission believes that the PCX's proposal should foster coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest by expediting and making more efficient the process by which members can receive and execute options orders on the floor of the Exchange. Because Terminals will be allowed to be used by all brokers and dealers in all trading crowds, provided that they comply with the terms and conditions as set forth in the proposal, the proposal also will promote fair competition among brokers and dealers and facilitate transactions in

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78f(b)(7).

[20] 15 U.S.C. 78f(d). Section 6(d) of the Act, among other things, requires that an exchange, in any proceeding to determine whether a member should be disciplined, bring specific charges, notify such member of and provide him with an opportunity to defend himself against such charges, and keep a record. *Id.*

[21] 15 U.S.C. 78f(b)(8).

[22] 15 U.S.C. 78k–1(a)(1)(C).

[23] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78f(b). As discussed below, the proposed rule will likely expedite and make more efficient the process by which members can receive and execute options orders on the floor of the Exchange. In addition, the Commission discusses the proposed rule's effect on competition below.

options on the Exchange. Finally, although IB and Timber Hill have set forth a number of objections to the market making restriction, for the reasons discussed below, the Commission believes that these objections have been adequately addressed and finds that the market making restriction is consistent with the Act.

As described above, PCX Rule 6.89(d)(3) provides that no floor broker may knowingly use a Terminal, on a regular and continuous basis, to simultaneously represent orders to buy and sell options contracts in the same series for the account of the same beneficial holder. The Rule further provides that if the Exchange determines that a person or entity has been sending, on a regular and continuous basis, orders to simultaneously buy and sell option contracts in the same series for the account of the same beneficial holder, the Exchange may prohibit orders for the account of such person or entity from being sent through the Exchange's Member Firm Interface (''MFI'') [24] for such period of time as the Exchange deems appropriate.

The Commission finds that the market making restriction is consistent with the Act for the following reasons. The Commission believes that the PCX's restriction on market making through the use of Terminals has been effected in a clear and reasonable manner that is not ambiguous or overbroad, and that takes into account regulatory and market impact concerns, including those relating to quote competition and price discovery.[25] Notably, the Exchange's proposal does not bar all two-sided limit orders. Instead it only restricts the acceptance of two-sided limit orders placed by the same beneficial holder in the performance of a market making function. The distinction between market making and brokerage activity is well established among market participants. Moreover, the language of PCX Rule 6.89(d)(3) expressly restricts a floor broker from, on a regular and continuous basis, simultaneously representing orders to buy and sell options contracts in the same series for the account of the same beneficial holder, not the occasional entry of two-sided limit orders. This definition of market making activity is consistent with the definition of market maker under the Act, which states that a market maker ''holds himself out as being willing to buy and sell [a] security for his own account on a regular or continuous basis.''[26] Thus, the market making restriction on Terminal use for routing limit orders is the minimum necessary for the Exchange to ensure that Terminals are not used for off-floor market making.

IB alleges that the market making restriction places an unreasonable burden on competition. As the Commission has previously stated in approving market making restrictions similar to that being adopted by PCX, the Commission does not believe it unreasonable for a market to determine that the introduction of unregulated market making through Terminals may undermine its market maker system and potentially create disincentives for market makers to remain on an exchange trading floor.[27] Accordingly, any burden on competition that arguably exists from PCX's restriction on using Terminals for market making is, in the Commission's view, justified as reasonable and appropriate to ensure adequate regulation of the PCX market.[28]

The Commission also does not believe that restricting market making activity through Terminals constitutes an unreasonable restriction on the introduction of new technology onto the floor of the Exchange in violation of NSMIA, as alleged in the IB and Timber Hill Comment Letters. The Commission believes that it is within the business judgment of an Exchange to determine the manner in which new technologies are introduced onto its trading floor provided that the limitations do not constitute an unreasonable burden on competition and are otherwise consistent with the Act.

In addition, the Commission has considered the impact of the Exchange's market making restriction on efficiency and competition. While the proposal may impose a burden on competition by limiting how Terminals may be used on the floor, the Commission does not believe such burden to be unreasonable. As discussed above, the Commission believes that the PCX's restriction on market making through the use of Terminals has been effected in a clear and reasonable manner that is neither ambiguous nor overbroad, and that takes into account regulatory and market impact concerns. Further, the Commission notes that the impact on competition of the current proposal is limited by the fact that the Exchange's own hand-held order routing terminal program was approved by the Commission with an identical market making restriction.[29] In response to IB's request that the Commission use its exemptive authority under Section 105 of NSMIA to permit the use of Terminals for market making, the Commission agrees with the Exchange that Congress did not intend that Section 105 be used in the manner that IB suggests. Section 105 of NSMIA states that the Commission ''by rule, regulation, or order may conditionally or unconditionally exempt any person, security, or transaction, * * * from any provision or provisions of this title or of any rule or regulation thereunder[.]'' [30] The rules IB requests relief from are the rules of the PCX, not the Act or rules or regulations under the Act. Accordingly, the Commission does not believe that it is appropriate to grant the relief IB requests under Section 105 of NSMIA.

Further, the Commission believes the PCX has adequately addressed the other issues raised by IB. First, PCX has amended its proposal so that under PCX Rule 6.89(g), termination of the Exchange's approval of Terminals can only occur under certain specified circumstances, rather than without cause.[31] In addition, while the Exchange has retained the right to summarily terminate its approval of a member's Terminal use, such summary action can also only be taken under certain

[24] The MFI is an electronic order delivery and reporting system that allows member firms to route orders for execution by the automatic execution feature of POETS as well as to route limit orders to the Options Public Limit Order Book. Orders that do not reach those two destinations are defaulted to a member firm booth. MFI also provides member firms with instant confirmation of transactions to their systems. Member firms may access POETS by establishing an MFI mainframe-to-mainframe connection.

[25] *Cf.*, Securities Exchange Act Release No. 25842 (June 23, 1988), 53 FR 24539 (approving certain restrictions on the use of telephones on the floor of the New York Stock Exchange), *aff'd per curiam*, 866 F.2d 47 (2d Cir. 1989).

[26] 15 U.S.C. 78c(a)(38).

[27] *See* Securities Exchange Act Release No. 38054 (December 16, 1996), 61 FR 67365 (December 20, 1996)(order approving SR–CBOE–95–48).

[28] While the Commission recognizes that, as IB contends, there may be ways to address the regulatory issues presented by off-floor market making through the use of floor broker hand-held terminals, the Act does not dictate that any particular approach be taken. The Commission believes that the manner in which the Exchange has chosen to address the regulatory issues presented by off-floor market making reflects the considered judgment of the PCX regarding the attributes of Exchange membership and the organization of its trading floor, and is a fair exercise of its powers as a national securities exchange.

[29] *See* Securities Exchange Act Release No. 39970 (May 7, 1998), 63 FR 26662 (May 13, 1998) (order approving SR–PCX–97–28).

[30] P.L. 104–290; 110 Stat. 3416.

[31] The Commission notes that the Exchange, in Amendment No. 1 to the proposed rule change, sets forth objective standards on which the decision to terminate an approval to use Terminals would be based and stating that approval to use Terminals would be given on a floor-wide, rather than on an issue-by-issue basis. *See* Amendment No. 1, *supra* note 4.

circumstances.[32] Further, upon either type of termination action, the PCX proposal provides certain appeal rights of the termination decision. The Commission believes that the appeal procedures ensure adequate due process for termination under PCX Rule 6.89, consistent with Sections 6(b)(7)[33] and 6(d)[34] of the Act. In this regard, we note that a member aggrieved by an Exchange decision to terminate its prior terminal approval could seek relief pursuant to PCX Rule 11. These provisions provide specific procedures to seek Exchange hearing and review for persons aggrieved by actions of the Exchange including terminating or enforcing the terms of PCX Rule 6.89.[35]

With respect to the use of written order tickets, the Exchange has represented that such tickets are needed, at this time, not only for audit trail purposes, but also for purposes of verifying compared trades and reconciling uncompared trades. The Commission believes that it is reasonable for the Exchange to require the use of written order tickets for those purposes.

In conclusion, the Commission believes that the proposed rule will make the process by which members can receive approval for using Terminals more transparent and fair. In addition, the use of Terminals should also make options trading on the floor of the Exchange more efficient. Finally, for the reasons stated above, the Commission believes that the market making prohibition on the use of the Terminals adequately balances the potential benefits to be derived from the use of Terminals with the regulatory issues that are raised in connection with the potential use of Terminals for market making.

The Commission finds good cause for approving Amendments 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 changes the language in proposed Commentary .02 to Rule 6.67 to indicate that orders received through proprietary hand held terminals will be considered to be in writing for the purposes of PCX Rule 6.67. Commentary .02, as originally proposed, applied only to Exchange-Sponsored Terminals. Amendment No. 1 ensures that all hand-held terminal systems, regardless of whether they are Exchange sponsored or proprietary will have the same regulatory requirements. Amendment No. 2 clarifies the proposal to indicate, through an internal cross-reference, what factors the Exchange will consider when determining whether or not to revoke approval for the use of a terminal. As a result, the Commission does not believe that Amendments 1 and 2 raise any new regulatory issues. Accordingly, the Commission believes there is good cause, consistent with Sections 6(b)(5) and 19(b)(2)[36] of the Act, to approve Amendments 1 and 2 to the Exchange's proposal on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendments 1 and 2 including whether the amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–PSE–97–02 and should be submitted by November 18, 1998.

In view of the above, the Commission finds that the proposal is reasonable and is consistent with the Act, and, in particular, Sections 6(b)(5), 6(b)(7), 6(b)(8), and 11A(a)(1)(C)(ii) of the Act.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[36] that the proposed rule change (File No. SR–PSE–97–02) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[37]

[FR Doc. 98–28850 Filed 10–27–98; 8:45 am]

BILLING CODE 8010–01–M

[32] Under PCX Rule 6.89(g), the Exchange can summarily terminate approval of the use of Terminals when (1) a statement in the Member's application is inaccurate or incomplete; (2) such Member has failed to comply with any provision of PCX Rule 6.89; and (3) the operation of the Terminal causes operational difficulties on the floor of the Exchange. *See* Amendment No. 1, *supra* note 4.

[33] 15 U.S.C. 78f(b)(7).

[34] 15 U.S.C. 78f(d).

[35] *See supra* note 13.

[36] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[36] 15 U.S.C. 78s(b)(2).

[37] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before December 28, 1998.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, SW, Suite 5000, Washington, DC 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: ''Marketing Data Form''.

Type of Request: New Collection.

Form No: 2079.

Description of Respondents: U.S. Small Businesses.

Annual Responses: 25.

Annual Burden: 42.

Comments: Send all comments regarding this information collection to, Tanya Galery-Smith, Export Development Specialist, Office of International Trade, Small Business Administration, 409 3rd Street SW, Suite 8000, Washington, DC 20416. Phone No: 202–205–7268.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 98–28846 Filed 10–27–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3138]

State of Alabama; Amendment #2

In accordance with information received from the Federal Emergency Management Agency, the above-numbered Declaration is hereby amended to include Choctaw and

Lowndes Counties, Alabama as a disaster area due to damages caused by Hurricane Georges.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Autauga, Dallas, and Sumter in the State of Alabama, and Lauderdale in the State of Mississippi. All other counties contiguous to the above-named primary counties have been previously declared.

This declaration is further amended to establish the incident period as beginning on September 25, 1998 and continuing through October 6, 1998.

All other information remains the same, i.e., the deadline for filing applications for physical damage is November 29, 1998 and for economic injury the termination date is June 30, 1999.

The number for economic injury in the State of Mississippi is 9A4200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 16, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–28843 Filed 10–27–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3143]

State of Kansas

As a result of the President's major disaster declaration on October 14, 1998, I find that Johnson, Seward, and Wyandotte Counties in the State of Kansas constitute a disaster area due to damages caused by severe storms, flooding, and tornadoes which occurred October 1 through October 8, 1998. Applications for loans for physical damages may be filed until the close of business on December 13, 1998, and for loans for economic injury until the close of business on July 14, 1999 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Douglas, Franklin, Haskell, Leavenworth, Meade, Miami, and Stevens in the State of Kansas; and Beaver and Texas in the State of Oklahoma may be filed until the specified date at the above location. Any contiguous counties not listed herein have been covered by a separate declaration for the same occurrence.

The interest rates are:

	Percent
Physical Damage:	
Homeowners With Credit Available Elsewhere	6.875
Homeowners Without Credit Available Elsewhere	3.437
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 314311 and for economic injury the numbers are 9A4000 for Kansas and 9A4100 for Oklahoma.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 20, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–28845 Filed 10–27–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3142]

State of Missouri

As a result of the President's major disaster declaration on October 14, 1998, I find that Carroll, Clay, and Jackson Counties in the State of Missouri constitute a disaster area due to damages caused by severe storms and flooding which occurred October 4 through October 11, 1998. Applications for loans for physical damages may be filed until the close of business on December 13, 1998, and for loans for economic injury until the close of business on July 14, 1999 at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Caldwell, Cass, Chariton, Clinton, Johnson, Lafayette, Livingston, Platte, Ray, and Saline in the State of Missouri may be filed until the specified date at the above location. Any contiguous counties not listed herein have been covered by a separate declaration for the same occurrence.

The interest rates are:

	Percent
Physical Damage:	
Homeowners With Credit Available Elsewhere	6.875
Homeowners Without Credit Available Elsewhere	3.437
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 314211 and for economic injury the number is 9A3900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 20, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–28844 Filed 10–27–98; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Rescission of Social Security Acquiescence Ruling 86–17(9)

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Rescission of Social Security Acquiescence Ruling (AR) 86–17(9)—*Owens* v. *Schweiker, 692 F.2d 80 (9th Cir. 1982).*

SUMMARY: In accordance with 20 CFR 404.985(e) and 402.35(b)(2), the Commissioner of Social Security gives notice of the rescission of Social Security AR 86–17(9).

EFFECTIVE DATE: This notice of rescission is effective November 27, 1998.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1695.

SUPPLEMENTARY INFORMATION: A Social Security AR explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our

interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of the case or is unsuccessful on further review.

As provided by 20 CFR 404.985(e)(4), a Social Security AR may be rescinded as obsolete if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of the circuit court holding for which the AR was issued.

On May 21, 1986, we published AR 86–17(9) to reflect the holding in *Owens* v. *Schweiker,* 692 F.2d 80 (9th Cir. 1982) (see 52 FR 29441, 29442 (August 7, 1987)), that SSA, for purposes of determining a surviving child's entitlement to benefits under section 216(h)(2)(A) of the Act, must apply the State law of intestate succession in effect at the time of SSA's determination or decision at any level of administrative review.

Concurrent with the rescission of this Ruling, we are publishing our final regulation adding a new paragraph (b)(4) to § 404.355 of Social Security Regulations No. 4 (20 CFR 404.355), to provide that, in determining whether an applicant has inheritance rights as the natural child of a deceased insured individual, SSA applies the version of the State law in effect when SSA makes its final decision on the application for benefits. The amended regulation further provides that, if the child does not qualify as a child under the State inheritance law in effect at the time of our final adjudication, but would qualify under the version of that law in effect when the insured individual died or any version of that law in effect at any time between the first month of the child's potential entitlement and our final decision on the child's claim, we will apply the version of the State's inheritance law that is most beneficial to the child. Because the change in the regulation adopts the *Owens* court's holding on a nationwide basis when the State law in effect when we render our final decision on the claim is most beneficial to the child, we are rescinding AR 86–17(9).

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance)

Dated: October 20, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

[FR Doc. 98–28708 Filed 10–27–98; 8:45 am]

BILLING CODE 4190–29–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority.

TIME AND DATE OF MEETING: 2 P.M. (EDT), Friday, October 23, 1998.

PLACE OF MEETING: Tennessee Valley Authority (TVA), Knoxville Office Complex, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

AGENDA ITEM: A—Budget and Financing.

1. Authorization to retire Federal Financing Bank Bonds

SUPPLEMENTARY INFORMATION: The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires that a meeting be called at the time set out above and that no earlier announcement of this meeting was possible.

FOR MORE INFORMATION: Please call TVA Media Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available through TVA's Washington Office at (202) 898–2999.

Edward S. Christenbury,

General Counsel and Secretary to the Corporation.

[FR Doc. 98–28994 Filed 10–26–98; 12:44 pm]

BILLING CODE 8120–08–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Initiation of a Review To Consider the Designation of the Republic of Gabon as a Beneficiary Developing Country Under the GSP; Solicitation of Public Comments Relating to the Designation Criteria

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and solicitation of public comment with respect to the eligibility of the Republic of Gabon for the GSP program.

SUMMARY: This notice announces the initiation of a review to consider the designation of the Republic of Gabon as a beneficiary developing country under the GSP program and solicits public comment relating to the designation criteria by December 10, 1998.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., Room 518, Washington, DC 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION: The government of the Republic of Gabon has requested that it be granted eligibility for beneficiary status under the GSP program. The Trade Policy Staff Committee (TPSC) has initiated a review to determine if the Republic of Gabon should be designated as a beneficiary developing country. A country may not be designated a GSP beneficiary developing country, absent a finding that such designation would be in the economic interests of the United States, if any one of several elements are found, including: the participation by the country in a commodity cartel that causes serious disruption to the world economy; the provision by the country of preferential treatment to products of other developed countries which has a significant adverse effect on U.S. commerce; the expropriation by the country of U.S.-owned property without compensation; a failure by the country to enforce arbitral awards in favor of U.S. persons; the support by the country of international terrorism; or a failure by the country to take steps to protect internationally recognized worker rights. Other factors taken into account in determining whether a country will be designated a beneficiary developing country include: the extent to which the country has assured the United States that it will provide market access for U.S. goods; the extent to which the country has taken action to reduce trade-distorting investment practices and policies; and the extent to which the country is providing adequate and effective protection of intellectual property rights. The criteria for designation are set forth in full in section 502 of the Trade Act of 1974, as amended (19 U.S.C. 2462).

Interested parties are invited to submit comments regarding the eligibility of Gabon for designation as a GSP beneficiary developing country. Submission of comments must be made in English in 14 copies to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee, and be received in Room 518 at 600 17th Street, NW., Washington, DC 20508, no later than 5 p.m. on Thursday, December 10, 1998. Except for submissions granted ''business confidential'' status pursuant to 15 CFR 2003.6, information and comments submitted regarding Gabon will be subject to public inspection by appointment with the staff of the USTR Public Reading Room. For an appointment, please call Ms. Brenda Webb at 202/395–6186. If the document contains business confidential information, 14 copies of a nonconfidential version of the

submission along with 14 copies of the confidential version must be submitted. In addition, the submission should be clearly marked ''confidential'' at the top and bottom of each page of the document. The version which does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each page (either ''public version'' or ''non-confidential'').

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 98–28873 Filed 10–27–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. *This publication represents the quarter ending on September 30, 1998,* This publication ensures that the agency is in compliance with statutory indexing requirements.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel for Litigation (AGC–400), Federal Aviation Administration, 400 7th Street, SW., Suite PL 200–A, Washington, DC 20590; telephone number: (202) 366–4118.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes containing identifying information regarding materials required to be made available or published 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the **Federal Register** (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the decision and orders issued by the Administrator under the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR Part 13, Subpart G.

The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a cumulative subject-matter index and digests organized by order number. The indexes are published on a quarterly basis (i.e., January, April, July, and October.)

The FAA first published these indexes and digests for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that only the subject-matter index would be published cumulatively and that the order number index would be non-cumulative. The FAA announced in a later notice that the order number indexes published in January would reflect all of the civil penalty decisions for the previous year. 58 FR 5044; 1/19/93.

The previous quarterly publications of the indexes have appeared in the **Federal Register** as follows:

Dates of quarter	Federal Register publication
11/1/89–9/30/90	55 FR 45984; 10/31/90.
10/1/90–12/31/90 ..	56 FR 44886; 2/6/91.
1/1/91–3/31/91	56 FR 20250; 5/2/91.
4/1/91–6/30/91	56 FR 31984; 7/12/91.
7/1/91–9/30/91	56 FR 51735; 10/15/91.
10/1/91–12/31/91 ..	57 FR 2299; 1/21/92.
1/1/92–3/31/92	57 FR 12359; 4/9/92.
4/1/92–6/30/92	57 FR 32825; 7/23/92.
7/1/92–9/30/92	57 FR 48255; 10/22/92.
10/1/92–12/31/92 ..	58 FR 5044; 1/19/93.
1/1/93–3/31/93	58 FR 21199; 4/19/93.
4/1/93–6/30/93	58 FR 42120; 8/6/93.
7/1/93–9/30/93	58 FR 58218; 10/29/93.
10/1/93–12/31/93 ..	59 FR 5466; 2/4/94.
1/1/94–3/31/94	59 FR 22196; 4/29/94.
4/1/94–6/30/94	59 FR 39618; 8/3/94.
7/1/94–12/31/94	60 FR 4454; 1/23/95.
1/1/95–3/31/95	60 FR 19318; 4/17/95.
4/1/95–6/30/95	60 FR 36854; 7/18/95.
7/1/95–9/30/95	60 FR 53228; 10/12/95.
10/1/95–12/31/95 ..	61 FR 1972; 1/24/96.
1/1/96–3/31/96	61 FR 16955; 4/18/96.
4/1/96–6/30/96	61 FR 37526; 7/18/96.
7/1/96–9/30/96	61 FR 54833; 10/22/96.
10/1/96–12/31/96 ..	62 FR 2434; 1/16/97.
1/1/97–3/31/97	62 FR 24533; 5/2/97.
4/1/97–6/30/97	62 FR 38339; 7/17/97.
7/1/97–9/30/97	62 FR 53856; 10/16/97.
10/1/97–12/31/97 ..	63 FR 3373; 1/22/98.
1/1/98–3/31/98	63 FR 19559; 4/20/98.
4/1/98–6/30/98	63 FR 37914; 7/14/98.

Availability of Decisions and Orders. The civil penalty decisions and orders, and the indexes and digests are available in FAA offices. In addition, the Administrator's civil penalty decisions have been published by commercial publishers (Hawkins Publishing Company and Clark Boardman Callahan) and are available on computer online services (Westlaw, LEXIS, Compuserve and FedWorld). A list of the addresses of the FAA offices where the civil penalty decisions may be reviewed and information regarding these commercial publications and computer databases appear at the end of this notice.

Accessibility through the Internet. Information regarding the accessibility over the Internet of documents contained in the FAA Civil Penalty Docket in non-security cases in which the complaint was filed on or after December 1, 1997, is set forth at the end of this notice.

Civil Penalty Actions—Orders Issued by the Administrator

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[This index includes all decisions and orders issued by the Administrator from July 1, to September 30, 1998.]

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6/16/98—CP96NE0294
98–12—David G. Stout
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98–13—Air St. Thomas
6/16/98—CP97SO0007
98–14—Larry's Flying Service
7/3/98—CP97AL0002
98–15—James K. Squire
7/13/98—CP97WP0007
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5 U.S.C.:

504	90–17 Wilson; 91–17 & 92–71 KDS Aviation; 92–74, 93–2 & 93–9 Wendt; 93–29 Sweeney; 94–17 TCI; 95–27 Valley Air; 96–22 Woodhouse.
552	90–12, 90–18 & 90–19 Continental Airlines; 93–10 Costello.
554	90–18 Continental Airlines; 90–21 Carroll; 95–12 Toyota.
556	90–21 Carroll; 91–54 Alaska Airlines.
557	90–20 Degenhardt; 90–21 Carroll; 90–37 Northwest Airlines; 94–28 Toyota.
705	95–14 Charter Airlines.
5332	95–27 Valley Air.
11 U.S.C.:	
362	91–2 Continental Airlines.
28 U.S.C.:	
2412	93–10 Costello; 96–22 Woodhouse.
2462	90–21 Carroll.
49 U.S.C.:	
5123	95–16 Mulhall; 96–26 & 97–1 Midtown Neon Sign; 98–2 Carr.
40102	96–17 Fenner.
44701	96–6 Ignatov; 96–17 Fenner.
44704	96–3 America West Airlines; 96–15 Valley Air.
46110	96–22 Woodhouse; 97–1 Midtown Neon Sign.
46301	97–1 Midtown Neon Sign; 97–16 Mauna Kea; 97–20 Werle.
46303	97–7 Stalling.
U.S.C. App:	
1301	
(31) (operate)	93–18 Westair Commuter.
(32) (person)	93–18 Westair Commuter.
1356	90–18 & 90–19, 91–2 Continental Airlines.
1357	90–18, 90–19 & 91–2 Continental Airlines; 91–41 [Airport Operator]; 91–58 [Airport Operator].
1421	92–10 Flight Unlimited; 92–48 USAir; 92–70 USAir; 93–9 Wendt.
1429	92–73 Wyatt.
1471	89–5 Schultz; 90–10 Webb; 90–20 Degenhardt; 90–12, 90–18 & 90–19 Continental Airlines; 90–23 Broyles; 90–26 & 90–43 Waddell; 90–33 Cato; 90–37 Northwest Airlines; 90–39 Hart; 91–2 Continental Airlines; 91–3 Lewis; 91–18 [Airport Operator]; 91–53 Koller; 92–5 Delta Airlines; 92–10 Flight Unlimited; 92–46 Sutton-Sautter; 92–51 Koblick; 92–74 Wendt; 92–76 Safety Equipment; 94–20 Conquest Helicopters; 94–40 Polynesian Airways; 96–6 Ignatov; 97–7 Stalling.
1472	96–6 Ignatov.
1475	90–20 Degenhardt; 90–12 Continental Airlines; 90–18, 90–19 & 91–1 Continental Airlines; 91–3 Lewis; 91–18 [Airport Operator]; 94–40 Polynesian Airways.
1486	90–21 Carroll; 96–22 Woodhouse.
1809	92–77 TCI; 94–19 Pony Express; 94–28 Toyota; 94–31 Smalling; 95–12 Toyota.

Civil Penalty Actions—Orders Issued By The Administrator

Digests

(The digest includes all decisions and orders issued by the Administrator from July 1, 1998 to September 30, 1998.)

The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of the decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from July 1, 1998, to September 30, 1998. The FAA will publish non-cumulative supplements to this compilation on a quarterly basis (e.g., April, July, October, and January of each year).

These digests do not constitute legal authority, and should not be cited or relied upon as such. The digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

In the Matter of Larry's Flying Service

[Order No. 98–14 (7/3/98)]

Reconsideration denied. The document filed by Larry's Flying Service is construed as a petition for reconsideration. However, as a petition for reconsideration, it must be denied because: (1) it was late-filed and good cause for the lateness was not demonstrated; and (2) the petition fails to state the alleged errors in FAA Order No. 98–4 and the grounds that support the petition for reconsideration.

In the Matter of James Squire

[Order No. 98–15 (7/13/98)]

Extension granted. Complainant's request for time to file a reply brief is granted. Respondent did not serve a copy of the appeal brief on Complainant. The manager of the Adjudication Branch forwarded a copy of the appeal brief to Complainant. The due date of the reply brief should be calculated from the date on which the appeal brief was forwarded to Complainant. Complainant sought an extension of 1 extra day. Because of the timeliness of the request and the limited amount of time requested, the extension is granted.

In the Matter of Blue Ridge Airlines

[Order No. 98–16 (8/13/98)]

Order to Show Cause Issued. The date on the certificate of service attached to Blue Ridge Airline's notice of appeal is almost a week before the deadline, but the postmark date is more than two weeks *after* the deadline. Ordinarily, the filing date under the Rules of Practice (specifically, 14 CFR 13.210) is simply the date on the certificate of service, but

here the large discrepancy between the certificate of service and the postmark demands an explanation. As a result, Blue Ridge Airlines is ordered to show cause, on or before September 14, 1998, why the discrepancy exists. Failure to file a response, on or before September 14, 1998, will result in the dismissal of Blue Ridge Airline's appeal, leaving only Complainant's appeal to be decided.

In the Matter of Blue Ridge Airlines

[Order No. 98–17 (9/11/98)]

Notice of Appeal Accepted as Timely. In an earlier order (Order No. 98–16), Blue Ridge Airlines was ordered to show cause why there was a large discrepancy between the date on the certificate of service attached to Blue Ridge Airlines' notice of appeal and the postmark date on the envelope. Blue Ridge Airlines has filed a timely response in which its Chief Executive Officer (CEO) attests that Blue Ridge Airlines mailed the notice of appeal on time. Blue Ridge Airlines' CEO points out that the post office may have delayed processing the envelope containing the notice of appeal. Under the circumstances, Blue Ridge Airlines' notice of appeal is accepted as timely.

Notice of Appeal Construed as Brief. Although Blue Ridge Airlines failed to perfect its appeal by filing an appeal brief, its notice of appeal contains sufficient information and argument to meet the requirements for an appeal brief. Complainant FAA is granted 35 days to file a reply brief.

Commercial Reporting Services of the Administrator's Civil Penalty Decisions and Orders

1. *Commercial Publications:* The Administrator's decisions and orders in civil penalty cases are available in the following commercial publications:

Civil Penalty Cases Digest Service, published by Hawkins publishing Company, Inc., P.O. Box 480, Mayo, MD, 21106, (410) 498–1677;

Federal Aviation Decisions, Clark Boardman Callaghan, a subsidiary of West Information Publishing Company, 50 Broad Street East, Rochester, NY 14694, 1–800–221–9428.

2. *CD–ROM.* The Administrator's orders and decisions are available on CD–ROM through Aeroflight Publications, P.O. Box 854, 433 Main Street, Gruver, TX 79040, (806) 733–2483.

3. *On-Line Services.* The Administrator's decisions and orders in civil penalty cases are available through the following on-line services:

- Westlaw (the Database ID is FTRAN–FAA).
- LEXIS [Transportation (TRANS) Library, FAA file].
- Compuserve.
- FedWorld.

Docket

The FAA Hearing Docket is located at FAA Headquarters, 800 Independence Avenue, SW, Room 926A, Washington, DC, 20591 (tel. no. 202–267–3641.) The clerk of the FAA Hearing Docket is Ms. Stephanie McClain. All documents required to be filed in civil penalty proceedings must be field with the FAA Hearing Docket Clerk at the FAA Hearing Docket. (See 14 CFR 13.210.) Materials contained in the dockets of any case not containing sensitive security information (protected by 14 CFR Part 191) may be viewed at the FAA Hearing Docket.

In addition, materials filed in the FAA Hearing Docket in non-security cases in which the complaints were filed on or after December 1, 1997, are available for inspection at the Department of Transportation Docket, located at 400 7th Street, SW, Room PL–401, Washington, DC, 20590, (tel. no. 202–366–9329.) While the originals will be retained in the FAA Hearing Docket, the DOT Docket will scan copies of 1997, into their computer database. Individuals who have access to the Internet can view the materials in these docket using the following Internet address: http://dms.dot.gov.

FAA Offices

The Administrator's decisions and orders, indexes, and digests are available for public inspection and copying at the following location in FAA headquarters:

FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A, Washington, DC 20591; (202) 267–3641

These materials are also available at all FAA regional and center legal offices at the following locations:

Office of the Regional Counsel for the Aeronautical Center (AMC–7), Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73125; (405) 954–3296

Office of the Regional Counsel for the Alaskan Region (AAL–7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AL 99513; (907) 271–5269

Office of the Regional Counsel for the Central Region (ACE–7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426–5446

Office of the Regional Counsel for the Eastern Region (AEA–7), Eastern Region Headquarters, JFK International Airport, Federal Building, Jamaica, NY 11430; (718) 553–3285

Office of the Regional Counsel for the Great Lakes Region (AGL–7), 2300 East Devon Avenue, Suite 419, Des Plaines, IL 60018; (708) 294–7108

Office of the Regional Counsel for the New England Region (ANE–7), New England Region Headquarters, 12 New England Executive Park, Room 401, Burlington, MA 01803–5299; (617) 238–7050

Office of the Regional Counsel for the Northwest Mountain Region (ANM–7), Northwest Mountain Region Headquarters, 1601 Lind Avenue, SW, Renton, WA 98055–4056; (425) 227–2007

Office of the Regional Counsel for the Southern Region (ASO–7), Southern Region Headquarters, 1701 Columbia Avenue, College Park, GA 30337; (404) 305–5200

Office of the Regional Counsel of the Southwest Region (ASW–7), Southwest Region Headquarters, 2601 Meacham Blvd., Fort Worth, TX 76137–4298; (817) 222–5087

Office of the Regional Counsel for the Technical Center (ACT–7), Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 485–7087

Office of the Regional Counsel for the Western-Pacific Region (AWP–7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Lawndale, CA 90261; (310) 725–7100

Issued in Washington, DC on October 16, 1998.

James S. Dillman,

Assistant Chief Counsel for Litigation.

[FR Doc. 98–28832 Filed 10–27–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Prepare an Environmental Impact Statement for Lihue Airport, Lihue, Kauai, HI

AGENCY: Federal Aviation Administration.

ACTION: Notice of intent to prepare an Environmental Impact Statement and hold three (3) scoping meetings for Lihue Airport, Lihue, Kauai, Hawaii.

SUMMARY: The Federal Aviation Administration (FAA), in cooperation with the State of Hawaii, Department of Transportation, Airports Division is issuing this notice to advise the public

that an Environmental Impact Statement (EIS) will be prepared for proposed improvements at Lihue Airport. To ensure that all significant issues related to the proposed actions are identified, one (1) public scoping meeting will be held on Kauai, and two (2) combined governmental agency and public scoping meetings will be held (one on Kauai, one on Oahu).

FOR FURTHER INFORMATION CONTACT: David J. Welhouse, Airport Planner, HNL–621, Federal Aviation Administration, Honolulu Airports District Office, Box 50244, Honolulu, Hawaii 96850–0001, Telephone (808) 541–1243. Comments on the scope of the EIS should be submitted to the address above and must be received no later than Friday, December 4, 1998.

SUPPLEMENTARY INFORMATION: The FAA in cooperation with the State of Hawaii, Department of Transportation, Airports Division will prepare a joint Environmental Impact Statement (EIS) for proposed improvements at Lihue Airport in accordance with the requirements of the National Environmental Policy Act of 1969, as amended, and Chapter 343, Hawaii Revised Statutes, as revised.

The Joint Lead Agencies will be the Federal Aviation Administration (FAA) and the State of Hawaii, Department of Transportation, Airports Division. The proposed improvements at Lihue Airport include, but are not limited to:

1. Extend the Strengthen Runway 17/35 from 6,500 feet up to 10,000 feet. Relocate the Instrument Landing System (ILS) and Approach Lighting System (ALS) on Runway 35.
2. Expand passenger terminal, gates, aircraft parking apron, and auto parking lot.
3. Acquire approximately 48 acres to ensure compatible land use.
4. Acquire approximately 155 acres for airport development.
5. Expand air cargo facility.
6. Expand fuel farm.

ALTERNATIVES: Alternatives to be considered include:

1. Extend and strengthen Runway 17/35 from 6,500 ft. up to 10,000 ft.; expand passenger terminal, gates, apron, auto parking lot, air cargo facility, and fuel farm; acquire land for airport development and to ensure compatible land use (preferred alternatives).
2. Alternative expansion at Lihue Airport such as different runway lengths.
3, Alternative modes of travel.
4. Utilization of other existing State airports.
5. No action.

Comments and suggestions are invited from Federal, State, and local agencies, and other interested parties to ensure that the full range of issues related to these proposed projects are addressed and all significant issues are identified. Written comments and suggestions concerning the scope of the EIS may be mailed to the FAA informational contact listed above and *must be received no later than Friday, December 4, 1998.*

PUBLIC SCOPING MEETINGS: To facilitate receipt of comments, one (1) public scoping meeting and two (2) combined governmental agency and public scoping meetings will be held to solicit input from the public and various Federal, State, County, and local agencies which have jurisdiction by law or have specific expertise with respect to any environmental impacts associated with the proposed projects. The first meeting will be held on Thursday, November 19, 1998, for governmental agencies and the public located on Kauai in the Kauai War Memorial Convention Hall at 2:00 p.m., HST. The second meeting will be held on Thursday, November 19, 1998, for the public at the Kauai War Memorial Convention Hall at 7:00 p.m., HST. The third meeting will be held on Monday, November 23, 1998, for governmental agencies and the public located on Oahu in the Hawaii Department of Transportation, Airports Division conference room at Honolulu International Airport Interisland Terminal at 9:00 a.m., HST.

Issues in Hawthorne, California on October 16, 1998.

Herman C. Bliss,

Manager, Airports Division Western-Pacific Region.

[FR Doc. 98–28828 Filed 10–27–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4510]

General Motors Corporation, Receipt of Application for Decision of Inconsequential Noncompliance

General Motors Corporation (GM) has determined that certain 1998 and 1999 GM passenger cars were not in full compliance with 49 CFR 571.110, Federal Motor Vehicle Safety Standard (FMVSS) No. 110, ''Tire selection and rims,'' and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' GM has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Paragraph S4.3(b) of FMVSS No. 110 states that each vehicle shall have a placard, permanently affixed to the glove compartment door or an equally accessible location, that displays the designated seating capacity, in terms of the total number of occupants and the number of occupants for each seat location.

From May 3, 1998 to August 6, 1998 GM produced 303,936 U.S. passenger cars with errors in the occupant capacity numbers on the tire information placard. GM stated that the errors were caused by unforeseen changes in the computer program that generates the labels. The programming error resulted in the incorrect numbers for the center and rear positions. However, the correct number was provided for the front position. The following table summarizes the information on the subject placard:

	Front	Center	Rear	Total
As produced	2	2	0	3
Correct	2	0	3	5

GM supports its application for inconsequential noncompliance with the following statements:

1. The vehicle capacity weight, recommended cold tire inflation pressure, and recommended tire size designation information were not affected by the programming change and that information is correct on the placards of the subject vehicles;

2. Occupant capacity information is provided to help customers avoid exceeding tire load limits. These errors will not contribute to overloading because the correct vehicle weight capacity is provided. The seating capacity is understated. The correct tire pressure information is also provided and the tire load limit will not be exceeded with all seating positions occupied; and

3. A customer would look at the number of seats and the number of safety belts in a car to determine its capacity, rather than look at the placard. If a customer does read the seat capacity numbers on the tire placard, it will be obvious that the numbers are incorrect because the sum of the seat numbers will not equal the total number of the label. It is unlikely that anyone will be confused about the seat capacity of these cars after looking at the seats and safety belts.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 27, 1998.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: October 21, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–28896 Filed 10–27–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of renewal—VA/IRS/SSA Match Program.

SUMMARY: Pursuant to 5 U.S.C. 552a, the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct on Matching programs, notice is hereby given of the conduct of an Internal Revenue Service (IRS) computer match. Previous matches with the IRS verified the self-reported income data of nonservice-connected veterans. The proposed expanded match encompasses those categories of veterans who are zero percent service-connected (non-compensable) receiving treatment for their nonservice-connected condition. Expanded veterans records included to conform to Pub. L. 104–262, Veterans Health Care Amendments Act.

EFFECTIVE DATE: The notice will be effective 30 days after publication in the **Federal Register**, (November 27, 1998), unless comments dictate otherwise.

ADDRESSES: Comments or inquiries may be mailed to the Chief Information Office, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Janice E. Wheeler, Program Analyst, Health Eligibility Center Policy Division, Office of the Chief Information Officer, (202) 273–6276.

SUPPLEMENTARY INFORMATION: The Veterans Health Administration (VHA) has a statutory obligation (see 38 U.S.C.) to collect income information from certain veterans applying for medical care and to utilize that income data to determine the appropriate eligibility category for the applicant's medical care. Pub. L. 104–262 (Veterans Health Care Eligibility Reform Act of 1996) requires zero percent non-compensable, service-connected veterans seen for their nonservice-connected condition(s) complete a ''Means Test.'' The purpose of completing the Means Test is to determine if the veteran's income level allows VA to provide cost-free care for their nonservice-connected conditions. Pub. L. 101–508 (Omnibus Reconciliation Act of 1990) authorizes VHA to verify income data reported by nonservice-connected medical care applicants.

The goal of these matches is to validate social security numbers and to obtain IRS/SSA earnings data needed for the income verification process. For the information of all concerned, a summary report of the VHA matching program describing the computer matches follows. The VA records involved in the match are patient medical records maintained in the ''Patient Medical Record, VA 24VA136.'' The IRS records are from the Wage and Information Returns (IRP) Master File, Privacy Act System TreasIRS 22.061. The SSA records are from the Earnings Recording and Self-Employment Income system, SSA/OSR 09–0–059. In accordance with 5 U.S.C. 552a(o)(2), copies of the computer matching report are being sent to both Houses of Congress. These matches are expected to commence no sooner than 30 days after publication of this notice in the **Federal Register**, (November 27, 1998), or 40 days after copies of this notice and the agreement are submitted to Congress and the Office of Management and Budget.

This renewal of the original matching agreement expires on December 31, 1999. It may be extended by the involved Data Integrity Boards (DIB) for a twelve month period provided all agencies involved certify to the DIBs, within three months of the termination date of the original match, that the matching program will be conducted without change and the matching programs have been conducted in compliance with the original matching agreement. The matches will not continue past the legislative authorized date to obtain this information.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

[FR Doc. 98–28805 Filed 10–27–98; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Wednesday
October 28, 1998

Part II

Environmental Protection Agency

40 CFR Parts 60, 61, 63, and 65
Consolidated Federal Air Rule (CAR): Synthetic Organic Chemical Manufacturing Industry; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, 63, and 65

[AD–FRL–6173–4]

RIN 2060–AG28

Consolidated Federal Air Rule (CAR): Synthetic Organic Chemical Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: This action proposes a consolidated Federal air rule for the Synthetic Organic Chemical Manufacturing Industry (SOCMI). This proposed rule consolidates major portions of the following new source performance standards (NSPS) and national emission standards for hazardous air pollutants (NESHAP) applicable to storage vessels, process vents, transfer operations, and equipment leaks within the SOCMI: 40 CFR part 60, subparts A, Ka, Kb, VV, DDD, III, NNN, and RRR; 40 CFR part 61, subparts A, V, Y, and BB; and 40 CFR part 63, subparts A, F, G, and H. The proposed rule is intended to pull together applicable Federal SOCMI rules into one integrated set of rules in order to simplify, clarify, and improve implementation of the existing rules with which source owners or operators must comply. The consolidated rule is an optional compliance alternative for SOCMI sources; sources may simply continue to comply with existing applicable rules or choose to comply with the proposed consolidated rule. The effect of this consolidation will be to improve understandability, reduce burden, clarify requirements, and improve implementation and compliance.

DATES: *Comments.* Comments must be received on or before January 11, 1999.

Public Hearing. A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed SOCMI CAR. If anyone contacts EPA requesting to speak at a public hearing by November 27, 1998, a public hearing will be held on December 14, 1998, beginning at 9:30 a.m. Persons interested in attending the hearing should notify Yvonne Chandler, (919) 541–5627, to verify that a hearing will occur. If a hearing is held, the docket will remain open for 30 days after the hearing for the submission of rebuttal or supplementary information as provided by section 307(d)(5) of the Clean Air Act (Act).

Request to Speak at a Hearing. Persons wishing to present oral testimony must contact Yvonne Chandler, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, N.C., 27711, telephone number (919) 541–5627 by November 27, 1998.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (MC–6102), Attention, Docket No. A–96–01, 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 below in the **FOR FURTHER INFORMATION CONTACT** section.

Comments on the proposal may also be submitted electronically by sending electronic mail (e-mail) to: 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 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (A–96–01). No Confidential Business Information (CBI) should be submitted through electronic mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

Docket. A docket, No. A–96–01, containing information considered by EPA in development of the proposed standards for the CAR, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday except for Federal holidays at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street SW, Washington, DC 20460 [phone: (202) 260–7548]. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Colyer, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, N.C., 27711, telephone number (919) 541–5262, fax number (919) 541–0942, or e-mail: colyer.rick@epamail.epa.gov.

Technology Transfer Network. The Technology Transfer Network (TTN) is a network of EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free except for the cost of a phone call. Dial (919) 541–5472 for modems up to 14,400 bits per second (bps). The TTN is also accessible through the Internet at ''http://ttnwww.rtpnc.epa.gov.'' If more information on the TTN is needed, call the HELP line at (919) 541–5384.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in reading the preamble to the proposed SOCMI CAR.

I. Regulated Entities and Background Information

A. Regulated Entities

The regulated category and entities potentially affected by this action include:

Category	Examples of regulated entities
Industry ..	Synthetic organic chemical manufacturing industry units. For example, producers of benzene, toluene, or any other chemical listed in table 1 of 40 CFR part 63, subpart F, and any other chemical manufacturing process unit identified in an applicable subpart that references the use of this part. Producers of polypropylene, polyethylene, polystyrene, or poly(ethylene terephthalate). Producers of vinyl chloride and polyvinyl chloride. Volatile organic compound storage vessels. Benzene storage vessels. Benzene transfer operations. Equipment (valves, pumps, connectors, etc.) in benzene service.

This table is not intended to be exhaustive, but rather, to provide a guide for entities likely to qualify to implement this action. This table lists the types of entities that EPA is now aware could potentially qualify to implement this action. To determine whether your facility will qualify to implement this action, you should carefully examine the applicability criteria in 40 CFR part 60 subparts Ka, Kb, VV, DDD, III, NNN, and RRR; 40 CFR part 61, subparts V, Y, and BB; and 40 CFR part 63, subparts F, G, and H. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Background Information

Over the past 25 years, EPA has issued a series of Federal air regulations, many of which affect the same plant site. As a result, many facilities are now subject to multiple Federal rules applying to different emission points. Each rule has its own emission control requirements as well as monitoring, recordkeeping, and reporting requirements. Although these rules were developed for different purposes, under different statutory authorities, and apply to different pollutants, they may impose many duplicative or near duplicative requirements on a plant site, thus complicating implementation of and compliance with these rules.

On March 16, 1995 President Clinton and Vice President Gore announced several initiatives aimed at reinventing environmental regulation. One of those initiatives was to consolidate Federal air rules, so that all Federal air rules for any single industry would be incorporated into a single rule. This rule would consist of ''* * * one set of emission limitations, monitoring, and recordkeeping and reporting requirements.''

The EPA selected the Federal air rules applying to the SOCMI for a pilot project to study the feasibility and practical implications of consolidating and streamlining existing rules, and to establish a workable process for consolidation that can then be applied to other consolidation efforts in the future. The SOCMI was selected as the pilot because of the large number of similar Federal air regulations that can apply at a single location. The SOCMI is subject to NSPS and NESHAP under the Act, as well as to Resource Conservation and Recovery Act (RCRA) air standards. The rules for a given type of emission point require application of controls with similar control efficiencies and include similar design, equipment, or operating standards. However, the standards differ in their applicability and in some of their control, monitoring, recordkeeping, and reporting requirements. Additionally, both the SOCMI and State air pollution control agencies have expressed great interest in consolidation of applicable Federal air requirements to the extent possible for easier incorporation into title V operating permits.

For these reasons, EPA believes that consolidation of the requirements of the various rules into one rule would greatly benefit both the industry and government enforcement agencies. It is believed that such consolidation would improve compliance and enforceability and reduce resource needs.

II. Considerations in Rule Development

A. Goals and Objectives

The following goals and objectives were established for developing this proposed consolidation:

(1) Reduce regulatory burden by consolidating and simplifying requirements and eliminating duplicative requirements.

(2) Facilitate implementation and compliance by making the requirements easier to understand and incorporating streamlined compliance approaches from the most recent rules.

(3) Consolidate the present system of Federal air rules that apply to SOCMI facilities into a single rule without compromising environmental protection and enforceability by maintaining the same applicability and the same or greater emission control levels as the underlying rules.

It is not EPA's intent to alter the applicability of the underlying rules. Thus, only sources already subject to an underlying rule would be affected by the CAR. Likewise, no source subject to an underlying rule would become exempt under the CAR. In addition, regardless of which eligible sources choose to comply with the CAR, implementation of the CAR will not result in greater emissions. Rather, greater emission reductions would be likely since all sources choosing to comply with the CAR would be raised to the same level of control. It is anticipated that, due to the burden reduction afforded by the CAR, sources will choose to comply with the CAR despite potential increases in stringency over some provisions in the underlying rules.

As a basis for the consolidation effort, EPA recognized that strategies and approaches to regulating specific types of emission points, such as storage tanks or equipment leaks, have evolved and improved over the 25 years of SOCMI rule development. For the most part, the referencing subparts have not been substantially revised since promulgation, other than administrative changes. In developing the CAR, EPA has focused on provisions that reflect the most current and effective approaches to emission control as well as the clearest and most concise language. Burden reduction was also a major theme in the consolidation process, and each provision was examined closely for potential burden reduction. Particular scrutiny was given to provisions dealing with monitoring, recordkeeping, and reporting. Moreover,

reducing the number of applicable rules, in and of itself, is a source of additional burden reduction. The EPA believes that creation of a consolidated air rule around these goals and objectives will lead to improved compliance and implementation for the SOCMI industry.

B. Participation

The EPA's strategy for consolidation included significant participation by affected parties outside the Agency. The EPA approached the Chemical Manufacturers Association (CMA), which represents the SOCMI, to discuss the concept of a consolidated SOCMI rule and to contribute ideas for establishing such a rule. The CMA readily supported the concept of consolidation and volunteered resources to assist in the project. Air pollution agencies in States where the majority of SOCMI facilities are located and national environmental groups were also invited. Some States and environmental groups declined direct involvement due to resource constraints and also due to the fact that the applicability of the underlying rules would not change, and the overall stringency of the underlying rules would not be diminished.

In addition, an extended group of other interested parties consisting of representatives from industries with similar emissions and emission points as the SOCMI, environmental groups, and State agencies was kept informed through correspondence and meetings. This extended group was briefed and asked to provide input periodically during development of the proposed CAR. Industries and organizations represented in this group would not necessarily be affected by the CAR but are interested in the outcome to determine whether a similar consolidation effort would be beneficial for their interests. This group includes the following interested parties:

- State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officials (STAPPA/ALAPCO) and other State air pollution agencies.
- Synthetic Organic Chemical Manufacturers Association.
- Natural Resources Defense Council.
- American Petroleum Institute.
- Independent Liquid Terminals Association.
- National Petroleum Refiners Association.
- Society of Plastics Institute.

No groups have been purposely excluded from the process, and comment on this proposal is welcome from any interested party.

The EPA convened meetings with affected parties on an as-needed basis—roughly once every one to two months. At the earlier meetings, goals, objectives, and basic principles of consolidation were formulated. Subsequent meetings addressed technical issues, comparisons of similar provisions, enforcement issues, and identification of burden reduction opportunities. Ultimately, the work group provided well balanced and informed input for EPA to develop a technically feasible and enforceable consolidated rule.

III. Summary of the CAR

This section of the preamble provides a general overview of the CAR. More detailed discussions and rationale for the CAR's provisions are included in sections IV, V, and VI of this preamble.

A. Scope

One of the first decisions required for the consolidation effort addressed which regulations would be consolidated. Many options were considered, but EPA eventually decided to limit the scope of the pilot SOCMI CAR to the Federal regulations listed in table 1. These are the Federal Clean Air Act rules that affect the SOCMI and that are consolidated in the CAR. The EPA determined that this scope was broad enough to provide significant benefits, but well defined enough to ensure a reasonable chance of success as a pilot project.

TABLE 1.—SCOPE: RULES CONSOLIDATED IN THE SOCMI CAR

40 CFR part 60, subparts:
A: General Provisions
Ka: Petroleum Liquids Storage [a]
Kb: Volatile Organic Liquid Storage [a]
VV: SOCMI Equipment Leaks [a]
DDD: Certain Polymers and Resins Process vents [a]
III: SOCMI Air Oxidation Process Vents [a]
NNN: SOCMI Distillation Process Vents [a]
RRR: SOCMI Reactor Process Vents [a]
40 CFR part 61, subparts:
A: General Provisions
V: Equipment Leaks (for benzene and vinyl chloride) [a]
Y: Benzene Storage [a]
BB: Benzene Transfer [a]
40 CFR part 63, subparts:
A: General Provisions
F: SOCMI Applicability
G: SOCMI Storage, Transfer, and Process Vents [a]
H: SOCMI Equipment Leaks [a]

[a] These subparts contain proposed language that refers readers to the SOCMI CAR as an optional means of compliance. Thus, these subparts are referred to as "referencing subparts."

Synthetic Organic Chemical Manufacturing Industry rules under other authorities (for example, RCRA), proposed rules, and rules potentially subject to significant changes (for example, wastewater hazardous organic NESHAP) were not included in this pilot effort. The EPA's intent was to keep the rule development process manageable in order to develop a practical CAR in a reasonable amount of time. If the SOCMI CAR is widely perceived as useful to industry and to enforcement agencies, EPA will consider these other SOCMI rules for consolidation at a later date.

The EPA also considered the following rules for similar inclusion: 40 CFR part 60, subparts GGG for petroleum refinery equipment leaks and KKK for onshore natural gas processing equipment leaks, and 40 CFR part 63, subpart I for certain processes subject to the negotiated regulation for equipment leaks. Although these rules do refer subject sources to the CAR's referencing subparts, they do not cover SOCMI sources. Therefore, EPA decided not to allow sources subject to these rules to comply with the CAR. This decision reflects EPA's decision to limit the coverage of the CAR to better assess the effects, enforcement, and implementation of the consolidation.

The vast majority of facilities affected by the rules in table 1 are SOCMI facilities; but some rules also affect non-SOCMI sources. For example, 40 CFR part 60, subparts Ka and Kb apply to storage vessels within SOCMI process units as well as those in non-SOCMI applications such as refineries and bulk storage facilities. Subpart DDD of 40 CFR part 60 (for certain polymers and resins production process vents) was included in the consolidation because these production units are often located at the same facilities as SOCMI units. The process vents for these production units are often shared, and the control methods and requirements are virtually identical. The consolidated part 61 subparts for equipment leaks and for benzene storage and transfer also apply to both SOCMI and non-SOCMI facilities. The consolidated part 63 rules apply solely to SOCMI facilities. The CAR is designed primarily for SOCMI processes, although co-located non-SOCMI sources might also take advantage of the CAR under certain circumstances. Section III of this preamble includes further discussion of which sources may choose to comply with the CAR.

The EPA is also proposing consolidated general provisions for the CAR by combining applicable requirements from the 40 CFR parts 60,

61, and 63 general provisions. These consolidated general provisions would become applicable once a source becomes subject to the CAR. General provisions are included in the consolidation so that the CAR will contain all relevant provisions, with certain noted exceptions, for sources complying with the CAR.

B. Overview of the CAR

The CAR is being proposed as a new part, 40 CFR part 65, since the rules being consolidated are located across three different parts of 40 CFR (parts 60, 61, and 63). The proposed CAR comprises subparts A through G of part 65. Part 65 will contain any future consolidated Federal air rules, as well.

The CAR is proposed as an optional compliance method for sources that are subject to one of the referencing subparts. The term ''referencing subpart(s)'' is used throughout 40 CFR part 65 and refers to the SOCMI regulations subject to the footnote in table 1. The CAR is designed to include all or most of the applicable provisions for a source that chooses to use the CAR as a compliance method. Sources that are not eligible or that choose not to comply with the CAR will continue to comply with the applicable referencing subparts with no change in compliance requirements.

Compliance with the CAR is allowed on a SOCMI CAR unit (SCU) basis. An SCU is analogous to the types of process units defined in the referencing subparts, and was developed specifically to describe the collection of equipment and emission points that are eligible to choose the CAR as a compliance method. The term ''SOCMI CAR unit'' is defined in the proposed part 65 general provisions (Subpart A) and is further described in section IV. A of this preamble. Under certain conditions, emission points that are not part of an SCU, but are subject to one of the referencing subparts, may also choose to comply with the CAR. These conditions are further described in section IV.A.

Applicability

The CAR does not alter applicability for any source. Sources may choose to comply with the CAR only when they are sources subject to a referencing subpart and specifically referred to the CAR by that subpart. Conversely, emission points or equipment that are not subject to any referencing subparts can not become subject through any provision in the CAR.

Along with the proposed CAR, today's notice proposes changes to the referencing subparts. These proposed changes add ''pointers'' to the CAR in each referencing subpart. The pointers are additions to the applicability sections that specify which sources may take advantage of the CAR and which subparts of part 65 would apply to each type of emission point.

New sources that become subject to a referencing subpart will consult the applicability provisions of that referencing subpart to determine eligibility to comply with the CAR. If a new source is part of an SCU that is implementing the CAR, the new source must also implement the CAR, or the entire SCU (existing and new components) must opt not to implement the CAR and comply with the applicable referencing subpart(s) instead. Further discussion of SCUs and options for choosing to comply with the CAR is presented in section IV.A of this preamble.

Subparts of the CAR

Figure 1 illustrates the structure of the CAR subparts. Subpart A contains the CAR's general provisions, which apply to all sources complying with the CAR. The general provisions cover applicability and definitions; the general requirements for compliance, performance tests, monitoring, recordkeeping, and reporting; administrative subjects. Note that some general requirements pertaining to Continuous Parameter Monitoring Systems (CPMS) are located in subpart G of the CAR.

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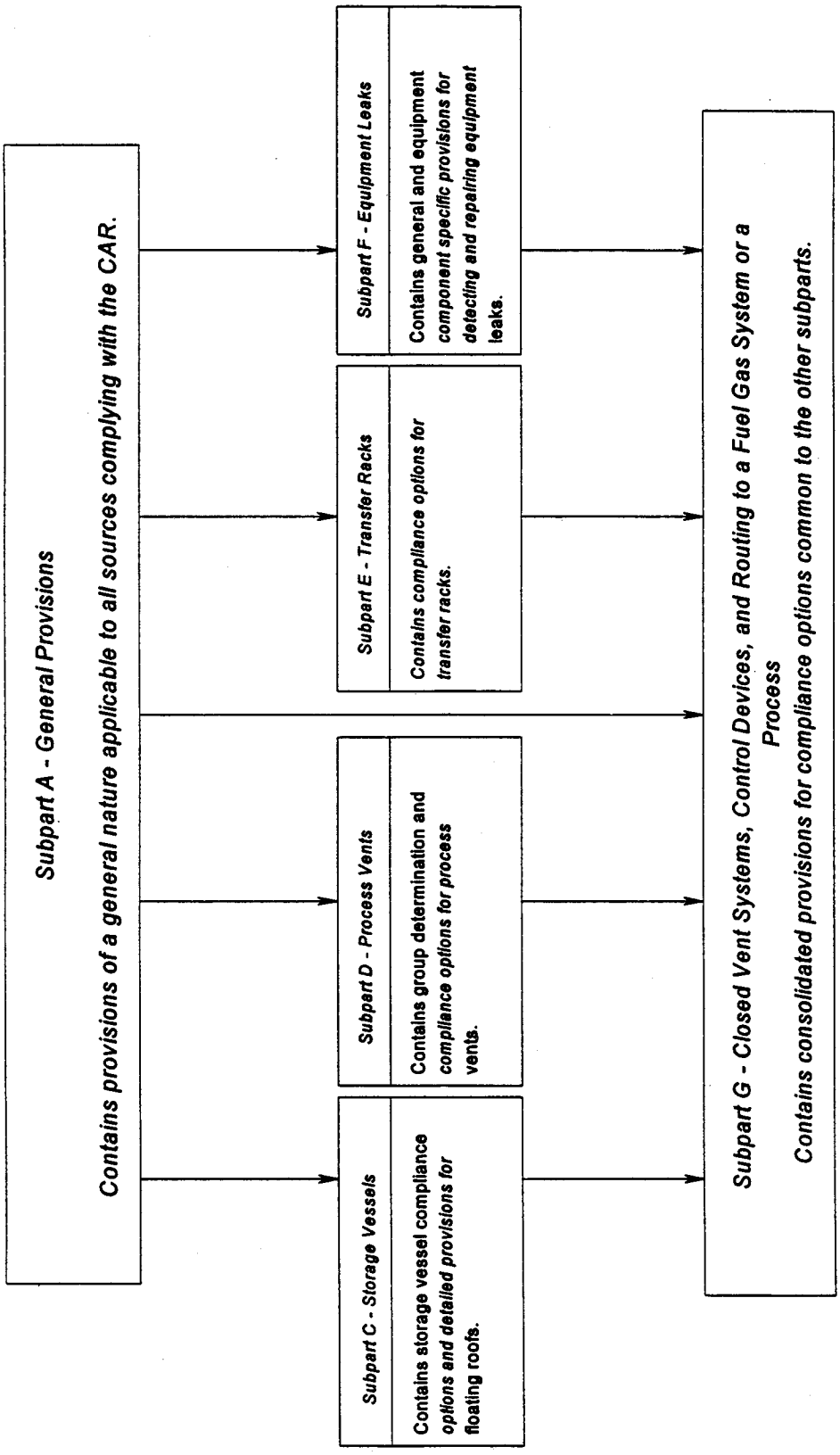

Figure 1. Structure of the CAR.

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Each of subparts C through F outlines the compliance options for a particular type of emission point. (Subpart B is reserved.)

- Subpart C—storage vessels,
- Subpart D—process vents,
- Subpart E—transfer racks, and
- Subpart F—equipment leaks.

Subparts C through F also contain the emission control requirements for some of these compliance options, and the associated compliance, monitoring, recordkeeping, and reporting requirements specific to those control options. However, if an owner or operator chooses to comply by either (1) a closed-vent system and add-on control device, or (2) routing to a fuel gas system or to a process as a compliance option, the source is further referred to subpart G. Subpart G contains the emission control requirements for closed-vent systems, control devices, and routing to a fuel gas system or process, including the associated testing, monitoring, data handling, reporting and recordkeeping requirements, and general requirements related to CPMS.

IV. How the CAR Works and Its Structure

The CAR is an optional compliance method for sources subject to the referencing subparts listed in table 1 of this preamble. The CAR is designed so that, once an owner or operator has chosen to comply with the CAR for a particular source, most of the relevant provisions for that source are contained in part 65. Compliance with the CAR is allowed for the collection of equipment that meets the definition of an SCU. In addition, sources that are not part of an SCU may also choose to comply with the CAR if they are (1) subject to one of the referencing subparts, and (2) located at the same plant site with an SCU that is complying with the CAR. Therefore, an owner or operator of a SOCMI facility may choose to comply with the CAR for all or some of the regulated sources subject to the referencing subparts at the facility.

This section of the preamble describes who can use the CAR, what part of a facility can comply with the CAR, and how the parts of the facility that can comply with the CAR are delineated. The rationale for these decisions is also explained.

A. How the CAR Works

Figures 2a and 2b present a thought process that might typically be used by an owner or operator when determining whether the CAR is right for their facility. This section of the preamble steps through these figures and each of their decision points. In doing so, how the CAR works and the rationale behind the CAR and it's facets are described.

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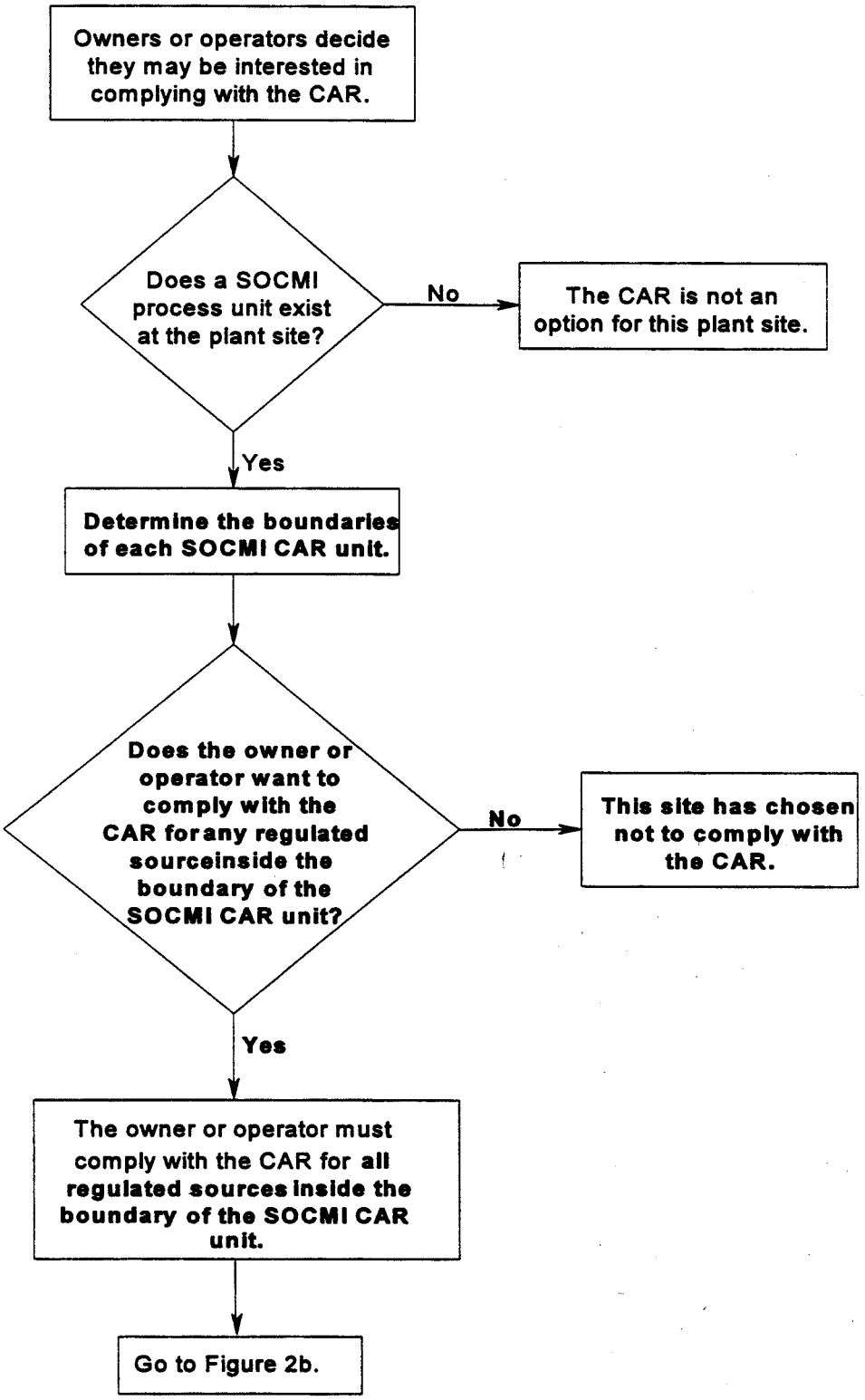

Figure 2a. How the CAR works, Part 1.

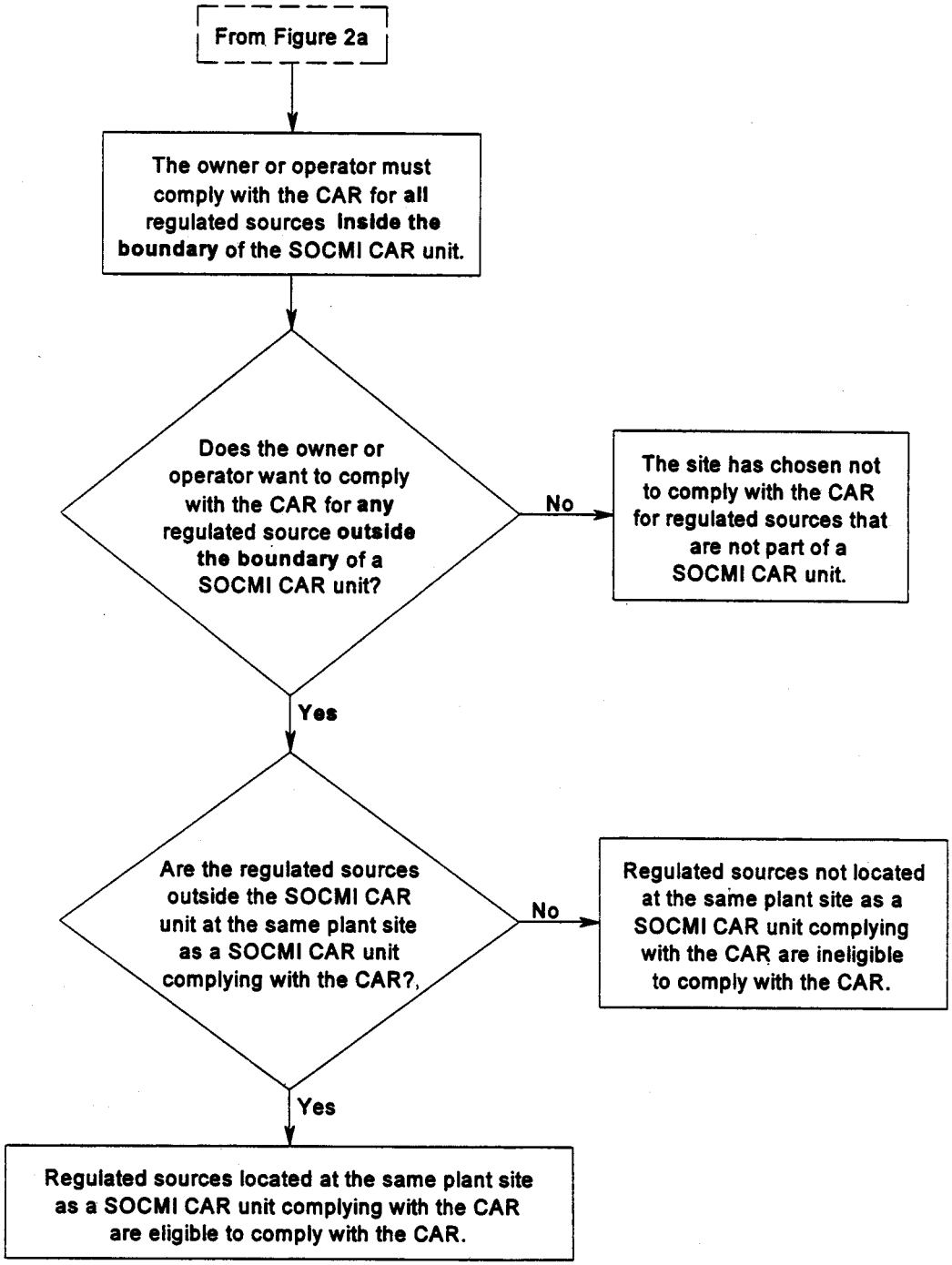

Figure 2b. How the CAR works, Part 2.

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What Is SOCMI?

As shown in figures 2a and 2b, once an owner or operator decides that the CAR may be of interest (i.e., they are subject to some referencing subparts and are wondering what the next step is), the first consideration would be whether or not the facility is a SOCMI facility. As discussed previously, the CAR only applies to SOCMI facilities. In the CAR, a SOCMI facility is considered any facility that is subject to 40 CFR part 60, subpart III, NNN, or RRR or the HON; or a facility that would have been subject to subpart III, NNN, or RRR had construction of the regulated source commenced after the applicability date of one of these rules.

In determining what should constitute a SOCMI facility in the CAR, EPA decided that a SOCMI facility should be any facility that considers itself part of that industry. The EPA reasoned that a facility would consider itself a SOCMI facility if it was subject to any of the SOCMI rules. The SOCMI rules are: 40 CFR part 60, subparts III, NNN, RRR, and VV (the NSPS), and 40 CFR part 63, subparts G and H [the Hazardous Organic NESHAP (HON)]. Defining a SOCMI facility as any facility that is subject to one of these rules is a simple matter. However, EPA also reasoned that some facilities may not have triggered a SOCMI NSPS or the HON but would consider themselves SOCMI because of the chemicals they produce. For example, crotonic acid is a chemical that is regulated as part of the SOCMI under 40 CFR part 60, subparts VV, III, and NNN, but not regulated as part of the SOCMI under the HON. Thus, a facility producing crotonic acid may not trigger the NSPS rules, but still would consider itself part of the SOCMI because it produces a SOCMI chemical. Therefore, EPA also considered facilities to be SOCMI facilities if they could trigger a SOCMI NSPS with a modification or reconstruction. The EPA considered this a reasonable decision since many non-SOCMI facilities could easily make a change that would trigger a SOCMI NSPS. The EPA decided that this concept would best be represented in the SOCMI definition based upon the construction date of the facility. This concept is handled in the definition with the following phrase: ''* * * if construction of the regulated source had commenced after the applicability date of the SOCMI NSPS.''

What Is a SOCMI CAR Unit?

The basic unit for determining CAR applicability is the SCU. This new term is needed in order to clearly designate and describe the particular combination of emission points that are eligible to comply with the CAR. The definition of SCU is modeled after the definition of ''chemical manufacturing process unit (CMPU)'' in the HON. The proposed CAR defines an SCU as the equipment assembled and connected by pipes or ducts to process raw materials and to manufacture an intended product. The definition goes on to explain that the basic component of an SCU is:

- A process vent subject to 40 CFR part 60, subpart III, NNN, or RRR (the referencing subparts that are NSPS for SOCMI process vents); or
- Equipment subject to 40 CFR part 60, subpart VV (the referencing subpart that is the NSPS for SOCMI equipment leaks);
- A CMPU that is subject to the SOCMI HON.

Without at least one of these basic components, there is no SCU. The SCU also includes storage vessels, transfer operations, and equipment leak emission points that are associated with an SCU and are also subject to a referencing subpart. The EPA reasoned that in making the CAR optional and thereby providing more flexibility to industry, they might increase the complexity of implementing the CAR for regulatory authorities. This is because inspectors would have to know all of the referencing subparts and the CAR, and also understand which rule the facility had chosen to comply with for each emission point. To offset this potential increase in complexity, EPA decided that facilities would have the option to comply with the CAR, but must do so at least on a process unit basis so as to include a significant portion of the facility.

A process unit is a small enough collection of emission points and equipment to provide operational flexibility to the facility, but is a large enough collection to avoid confusion and undue burden for regulatory authorities. Furthermore, SOCMI facilities are typically managed on a process unit basis. Therefore, identifying process units and complying with the same monitoring, recordkeeping, and reporting requirements by process unit would be consistent with existing management activities. However, since the term ''process unit'' has many different meanings and connotations across the referencing subparts, EPA decided it would be better to define a new term for the CAR—SCU was chosen.

Assigning Equipment to a SOCMI CAR Unit

All storage vessels, process vents, or transfer racks connected to or operating with an SCU are not necessarily part of that SCU. Whether or not particular emission points or equipment are part of an SCU is determined by the assignment procedures prescribed in the proposed CAR general provisions. Assignment procedures are prescribed for emission points that are commonly shared between SCUs; these include storage vessels, transfer racks, and distillation columns which have process vents. In general, these assignment procedures follow common sense decisions as to the primary purpose of the equipment. For example, if a storage tank is dedicated to an SCU, then it is clearly part of that SCU. Similarly, if the storage vessel is shared among SCUs and other process units, its predominant use determines its assignment. The assignment procedures are used to draw the SCU boundary lines at the plant site. They are modeled after the assignment procedures in the HON.

An additional HON provision included in the CAR provides flexibility for equipment leak sources. If items of equipment (for example, pumps, valves, connectors) that are assigned to a particular SCU are managed by different administrative organizations from the rest of the SCU, those items of equipment may be reassigned to a similarly administered SCU.

Many existing NESHAP also contain assignment procedures for determining applicability on a process unit basis. Under the CAR, therefore, for SCUs that are also one of the following types of process units, the boundary or defined limit of the SCU defaults to that established for the following types of process units:

- CMPU as defined in the HON,
- Elastomer product process unit (EPPU) as defined in 40 CFR part 63, subpart U;
- Thermoplastic product process unit (TPPU) as defined in 40 CFR part 63, subpart JJJ;
- Petroleum refinery product process unit (PRPU) as defined in 40 CFR part 63, subpart CC.

Transfer operations will still need to be assigned to EPPUs, TPPUs, and PRPUs using the CAR's assignment procedures, since the rules in which these process units are defined do not include procedures for assigning transfer operations to process units.

A CMPU that is subject to the HON is, by definition, an SCU. The other types of process units noted above (EPPU, TPPU, and PRPU) would be an SCU only if they include a process vent or equipment that is subject to one of the SOCMI NSPS referencing subparts (*i.e.*, 40 CFR part 60, subpart III, NNN,

RRR, or VV), or that would have been subject to one of these referencing subparts had construction begun after the SOCMI NSPS subparts' respective applicability dates.

Opting To Comply With the CAR

As shown on figures 2a and 2b, once the facility determines the SCU boundaries, the next consideration is whether or not compliance with the CAR is desirable for any part of the SCU. In making this decision, the facility must keep in mind that compliance with the CAR is allowed an SCU basis only. Therefore, if the facility operator decides that complying with the CAR would be beneficial for any part of the SCU (for example, the storage vessels), either all regulated sources of the SCU must comply with the CAR, or all must regulated sources continue to comply with their respective applicable referencing subpart. Within an SCU, owners or operators may not choose to comply with the CAR for some emission points while continuing to comply with the referencing subparts for other emission points. Furthermore, if a facility operator has chosen to comply with the CAR for a particular SCU, then all existing and new regulated sources that are subject to referencing subparts must comply with the CAR. This includes any future additions to the SCU or any changes that trigger new source requirements.

In some circumstances, the CAR can apply to non-SOCMI emission points or equipment. The proposed CAR allows non-SOCMI emission points that are (1) subject to one of the referencing subparts, and (2) located at a plant site with an SCU that is complying with the CAR to also comply with the CAR. For example, a petrochemical plant containing one or more SCUs would also include a number of non-SOCMI emission points, such as petroleum or petroleum products storage vessels, or non-SOCMI benzene transfer racks. These non-SOCMI emission points would be subject to the same rules being consolidated for the SOCMI industry, such as 40 CFR part 60, subparts Ka, Kb, or Y, and 40 CFR part 61, subparts BB and V. Therefore, the source operator would be allowed to apply the CAR to any or all such affected non-SOCMI emission points, thus consolidating and simplifying an otherwise complex monitoring, recordkeeping, and reporting management system.

The EPA wants to ensure that, if a facility chooses to implement the CAR, a significant portion of the facility is included. The EPA intends to encourage the use of the CAR but without causing confusion concerning applicability. By requiring, at a minimum, an entire SCU to implement the CAR before non-SOCMI points can opt in, a reasonable balance is established to allow non-SOCMI points into the CAR. The EPA decided that, if a facility has made the decision to use the CAR, it should have the additional benefit of using the CAR for other emission points or equipment at the facility that are subject to a referencing subpart. This is a logical decision since control equipment and closed-vent systems often are shared among emission points or across SCU boundaries. In addition, EPA reasoned that this decision would facilitate implementation, because if more emission points are complying with the CAR at a facility, then fewer regulations will apply to the site, and fewer differences will exist in compliance, and recordkeeping and reporting methods used at the site.

Furthermore, since this rule has been developed solely for the SOCMI, to allow compliance for individual emission points with no SOCMI sources at the same site would both complicate enforcement and make the success of the consolidation effort more difficult to assess.

The general provisions of the CAR also allow a facility to cease to implement the CAR. In such cases, the regulated source becomes subject to the applicable referencing subparts. These procedures will be further discussed in section VI.B.

B. Structure of the CAR

Because the CAR would consolidate existing regulations from 40 CFR parts 60, 61, and 63, a new part 65 was created to contain the consolidated rule. Part 65 will contain the SOCMI CAR, as well as any future rule that consolidates Federal air rules for other industries.

The CAR has been developed as a set of subparts containing all the required elements relevant to a source owner or operator who chooses to comply with the CAR. Each subpart applies to a specific type of emission point or aspect of regulation. The general provisions (subpart A) address the administrative aspects of the regulation (for example, where to send reports, timing of periodic reports, definitions, how to request an alternative means of emission limitation), and those provisions which are widely applicable to all sources (for example, prohibitions and operation and maintenance requirements). Subpart C (storage tanks), subpart D (process vents), subpart E (transfer operations), and subpart F (equipment leaks) contain the compliance options and all the specific requirements for each of those types of emission points.

Subpart G contains all the provisions on closed-vent systems and control devices, including testing, monitoring, data handling, reporting and recordkeeping, and CPMS provisions. This was created as a stand alone subpart because provisions in each of the referencing subparts for closed-vent systems and control devices are very similar. By consolidating all of these provisions, much overlap, duplication, and minor changes in monitoring, recordkeeping, and reporting will be eliminated, and the requirements will be standardized.

Much consideration was given to the structure of the CAR. The EPA assessed the pros and cons of numerous options, but concluded the most workable approach is a modular CAR. This modular approach is designed such that once a source operator decides to comply with the CAR, all or most applicable provisions would be contained in the CAR. The source operator would not need to refer to the referencing subpart after applicability is established, unless specifically directed to do so in the CAR. For example, a process vent subject to 40 CFR part 60, subpart NNN (distillation NSPS) would be referred to subpart D of the CAR for applicable process vent requirements. If controls are required, the source would subsequently be referred to the CAR subpart G for closed-vent systems and control devices, and would not need to refer further to subpart D. Subpart G, for closed-vent systems and control devices, contains all the provisions needed to comply if a vent is routed to a control device. As noted in section VI.B of this preamble, sources complying with the CAR are subject to the CAR's general provisions (subpart A) and also to a few clearly noted provisions in the general provisions to the referencing subparts.

The CAR is also structured within each of the subparts to facilitate function and ease of use. The proposed CAR has been written with a more ''user-friendly'' approach, and the subparts more clearly delineate the requirements that would apply to each plant function. For example, the proposed storage vessel provisions contain distinct requirements for design, operation, inspection, and repair for each kind of storage vessel. This is intended to simplify tasks for the design group or the inspection group at the plant, and to avoid each group having to search the entire regulation for relevant requirements. The CAR's structure facilitates the consolidation of all recordkeeping and reporting activities into one system. Chemical plants subject to numerous NSPS and

NESHAP could combine multiple environmental management systems tracking multiple regulations into a single, simplified compliance effort.

V. Amendments to the Referencing Subparts

Along with the proposed CAR, today's notice also proposes changes to the referencing subparts. The proposed changes add ''pointers'' in the applicability sections of each referencing subpart. (The referencing subparts are indicated in table 1.) The pointers specify which regulated sources may take advantage of the CAR and which subparts of 40 CFR part 65 apply to each type of emission point. This section of the preamble outlines the amendments to the referencing subparts and how EPA implemented the decisions regarding the CAR in the referencing subparts.

A. General Concepts

The CAR uses the term ''regulated source'' to refer to whatever collection of equipment at a stationary source is regulated by a referencing subpart. For example, for 40 CFR part 60, subpart III, the regulated source is a process vent from an air oxidation unit; and for 40 CFR part 60, subpart VV, the regulated source is defined as equipment components at a process unit. The term ''regulated source'' is defined in the proposed CAR and is used throughout the CAR to refer to all of the equipment and emission points that are regulated by the applicable referencing subparts at a plant site. The term is used throughout this preamble in the same way.

The CAR does not alter applicability for any regulated source. In order not to alter the applicability of the referencing subparts, the pointer paragraphs are placed after the applicability paragraphs of the referencing subpart. Language such as ''storage vessels subject to this subpart'' is used in the pointer paragraphs to emphasize that only the emission points that are subject to the referencing subparts are eligible to comply with the CAR.

It is important to note that this is also true for equipment subject to the equipment leak rules. The HON rule covers more equipment types (for example, agitators) than 40 CFR part 60, subpart VV and 40 CFR part 61, subpart V. It is EPA's intention that facilities choosing to comply with the CAR in place of 40 CFR part 60, subpart VV or 40 CFR part 61, subpart V, but which are not subject to the HON, would comply with the CAR only for the equipment types subject to the applicable parts 60 and 61 rules. For example, the CAR's provisions for additional equipment types covered by the HON (for example, agitators) would not apply to sources referenced to the CAR from 40 CFR part 60, subpart VV only. This concept prevents equipment that was not subject to requirements under a referencing subpart from becoming subject to those requirements solely due to CAR implementation.

Except for process vents, EPA decided to provide the CAR as a means of compliance only for emission points where emission reduction is required by the referencing subparts. The requirements for emission points where emission reduction is not required vary widely and are usually associated with establishing the applicability of the referencing subpart; examples of these requirements include records of vapor pressure for stored liquids, or records of the type of liquid transferred. These records are kept to show that any changes made have not caused an emission point to become subject to emission reduction. Therefore, with the exception of process vents as discussed below, only emission points subject to emission reduction under a referencing subpart are eligible to comply with the CAR. In addition, all efforts were made to not cross reference back and forth from the CAR to the referencing subparts; cross referencing would have been necessary to consolidate the requirements for emission points not subject to emission reduction.

An exception was made for process vents, however; all process vents subject to a referencing subpart can use the CAR to comply. This decision was made because in the process vent rules, the applicability cutoffs that determine whether emission reduction is required are very similar. The CAR incorporates the total resource effectiveness (TRE) index value calculation and other parameters used to determine whether a process vent must be controlled, monitored, or neither.

B. Description of Amendments

The main pointer paragraph in each referencing subpart specifies that an owner or operator may choose to comply with the CAR for all of the emission points that are part of an SCU and that require control under that subpart. Each main pointer paragraph specifies which requirements of the referencing subpart are satisfied by the CAR. The pointer refers to the applicability criteria so that only emission points subject to emission reduction are eligible to comply with the CAR, except for the process vent referencing subparts, as discussed above. The pointer paragraph also specifies the applicable subpart of the CAR. For example, a referencing subpart applicable to storage vessels would specify that 40 CFR part 65, subpart C can be used to comply.

In 40 CFR part 61, subpart BB, the language clearly states that railcars and tank truck loading racks are eligible to use the CAR for compliance, but marine vessel loading racks are not eligible. The EPA decided not to include marine vessel loading in the CAR, because, at the time the scope of the CAR was determined, standards for marine vessels were not finalized. (Since the CAR scope was set, National Emission Standards for Marine Tank Vessel Loading Operations, 40 CFR part 63, subpart Y, were finalized.) Also, the rules for marine vessel loading racks are different enough from railcar and tank truck loading that it was not possible to consolidate these requirements with the railcar and tank truck requirements.

Also proposed in most of the referencing subparts is a new paragraph labeled ''Alternative means of compliance—affected source basis.'' This provision specifies that an owner or operator may choose to comply with the CAR for emission points subject to emission reduction under the given referencing subparts that are not part of an SCU but are located at the same plant site as an SCU that is complying with the CAR; these are non-SOCMI emission points covered by a referencing subpart. This paragraph is not necessary for the referencing subparts that apply solely to the SOCMI (40 CFR part 63, subparts G and H, 40 CFR part 60, subparts III, NNN, RRR, and VV) because sources subject to one of these rules are, by definition, always a part of an SCU.

It should be noted that the proposed amendments to 40 CFR part 61, subpart V specify that if an owner or operator chooses to have equipment at a process unit comply with the CAR for a process unit that is not in a SCU but that is located at the same plant site as an SCU complying with the CAR, then all of the equipment within that unit must comply with the CAR. The EPA decided that all the equipment at a process unit must comply because it would be too confusing for implementation if individual equipment was allowed to comply with the CAR.

The proposed additions to the referencing subparts also specify that the CAR's general provisions, 40 CFR part 65, subpart A, supersede most of the provisions in the referencing subparts' general provisions (i.e., 40 CFR part 60, subpart A, 40 CFR part 61, subpart A, and 40 CFR part 63, subpart A). The provisions of the referencing subparts' general provisions that are not superseded are listed. These provisions

pertain to applicability, reconstruction, modification, and pre-startup activities. It is clarified that provisions which were required to be met prior to implementing the CAR remain in force. For instance, if a facility was required under the referencing subparts' general provisions to conduct a performance test, but the performance test had not been conducted, the facility would still be required to conduct the performance test even if it chooses to comply with the CAR. The facility would also be subject to any enforcement action that would apply for not meeting the requirements of the rule—the CAR does not rescind any past obligations.

The proposed amendments also specify that opting to use the CAR is an ''all or nothing'' decision for the regulated sources contained in an SCU. They state that the owner or operator must also comply with the CAR for all emission points that are part of the SCU and that are subject to any of the referencing subparts. For example, if an owner or operator of an SCU has storage vessels in that SCU that are subject to the requirements of 40 CFR part 60, subpart Kb (the NSPS for Volatile Organic Liquid Storage Vessels), and that owner or operator decides to comply with the CAR for those storage vessels instead of subpart Kb, then all of the equipment, process vents, transfer operations, or storage vessels that are part of that SCU must comply with the requirements in the CAR.

Additional amendatory language is added to subpart V of 40 CFR part 61 because certain sources are referred to subpart V from 40 CFR part 61, subparts F and J. Subparts F and J apply to equipment in vinyl chloride or benzene service, respectively. Therefore, the proposed amendments to 40 CFR part 61, subpart V specify that owners or operators of equipment subject to 40 CFR part 61, subparts F or J also may choose to comply with the CAR. All of the proposed amendments in 40 CFR part 61, subpart V allowing the choice to comply with the CAR would also apply to 40 CFR part 61, subparts F and J sources. These provisions include choosing to comply with the CAR on an SCU basis for all equipment and emission points at an SCU, and choosing to comply with the CAR on a regulated source basis for equipment or emission points at the same plant site as an SCU complying with the CAR.

The EPA is allowing the CAR compliance option for sources subject to 40 CFR part 61, subparts F and J primarily because these subparts refer subject sources to part 61, subpart V, and these sources are often part of SCUs. Non-SOCMI sources subject to subparts F and J can implement the CAR, but only if there is an SCU on site implementing the CAR.

In addition to the proposed CAR-related amendments to 40 CFR part 60, subpart VV and 40 CFR part 61, subpart V, several other amendments to these rules are being proposed with today's action. These additional proposed amendments are not necessary for implementation of the CAR; rather, they would update the rules to reflect current safety and clarity improvements for equipment leak rules. Section XI of this preamble provides details on these proposed amendments.

VI. Summary of the Proposed Rule and Significant Decisions in Rule Consolidation

A. Basis for the CAR (Optional Implementation)

The CAR is being proposed as an optional compliance alternative. Several different approaches for the CAR were considered, including mandatory compliance for SOCMI sources subject to the consolidated subparts, with varying phase-in schedules. Different options were also explored that allowed optional compliance for some sources and mandatory for others. However, the optional compliance approach reflected in the proposed CAR optimizes the benefits for affected sources while assuring that stringency will not be compromised. The CAR provides significant benefits to sources, as described in this section and section X of this preamble, primarily through burden reduction, simplification, and clarification. Implementing agencies will realize complementary benefits in that, for sources complying with the CAR, compliance requirements will be simplified and clarified, records and reports will be considerably consolidated, and compliance determination will be more straightforward. Because both the industry and enforcement personnel would be dealing with a single rule with consistent requirements, conflicting interpretations and misunderstandings should be reduced.

On the other hand, despite the potential benefits of the CAR, if EPA were to make the CAR mandatory, a significant burden in the short term might be created as sources made the transition to the CAR. The EPA recognizes that some SOCMI plant sites subject to only one or two of the referencing subparts would derive limited or no benefit from the consolidated rule. Chemical plants with a small number of regulated emission points (for example, a few storage tanks) and a well-established compliance plan could incur an added burden if required to become familiar with and implement the CAR. Some plants have data handling, monitoring, recordkeeping, and reporting systems in place for the requirements and format of the existing rules; the added initial cost to comply with the CAR could be significant compared to the benefit. The relative costs and benefits realized by plants would depend on several factors, including the size of the plant, the number of regulations that currently apply, the company's perception of benefits, and long-term burden reductions that would accrue from compliance with the CAR.

In addition, if EPA were to make compliance with the CAR mandatory, it would create a conflict between maintaining current stringency levels and striving for simplicity and consolidation. To avoid increasing the stringency of applicable requirements for any affected source, the CAR would either have to consolidate at the lowest common denominator (i.e., least stringent provisions), or consist of a collection of provisions of different stringencies. The former solution is environmentally unacceptable, and the latter solution results in an overly complex rule that forfeits many of the benefits of consolidation.

In order for the CAR provisions to be at least as stringent as the underlying rules and to also achieve complete consolidation, it was necessary to select the most stringent of the referencing subparts as the basis for the CAR. In this case, the HON was deemed to include the most stringent control options. Although several other referencing subparts contain the same control requirements (for example, for process vents), the HON provides additional compliance flexibility in many cases. This flexibility has been adopted in the CAR.

The Agency concluded that the presumption of a mandatory CAR was inconsistent with a simplification. Sources can choose to implement the CAR or continue to implement the underlying subparts, depending on their situation and what they see as more advantageous.

Enforcement representatives supported the simplicity of the CAR over the numerous existing rules. The benefit to enforcement personnel is not as great for an optional CAR as it would be for a mandatory CAR, since the implementing agency would still need to support implementation and enforcement of the underlying rules as well as the CAR. However, the implementation burden will be eased at

those sources that choose the CAR. In addition, sources implementing the CAR may increase their emission reductions since the CAR will be more stringent for some emission points.

The EPA weighed the advantages and disadvantages of the various approaches and concluded that an optional CAR with one set of requirements would be the most workable and acceptable.

As the development of the CAR proceeded, the provisions in each of the referencing subparts were carefully assessed for relative stringency as well as for the relative merits of the language and presentation of the requirements. The EPA concluded that the HON provided the best starting point for developing consolidated provisions for the CAR as an optional compliance mechanism. The HON was promulgated in 1994 (with several subsequent amendments) and reflects an improved understanding of control approaches for the SOCMI. Furthermore, the control provisions of the HON, in general, represent the most stringent and comprehensive pollution control requirements of the referencing subparts consolidated in the CAR. Therefore, they provide the most appropriate level of control for the CAR, given EPA's objective of not compromising stringency in consolidation. In addition, where the HON and another subpart apply to the same emission point, the HON requirements generally override those of the other subpart, with some exceptions.

Over the years during which the referencing subparts were promulgated, EPA and the SOCMI have continuously enhanced their understanding of emission control technology for SOCMI sources. Development of the HON benefitted from this enhanced understanding and from significant industry input regarding the operation of SOCMI facilities. Because the HON was developed to reflect a refined approach to regulating the SOCMI, it reflects substantial burden reduction, clarity of language, and flexibility in compliance options.

The EPA strives to continually reduce the compliance burden associated with regulations promulgated under the Act. As both EPA and State agencies have gained experience with and understanding of compliance and enforcement issues, EPA's regulatory approaches have evolved to incorporate more streamlined and flexible compliance approaches. The HON provisions include many elements of flexibility that substantially reduce the compliance burden. The HON language also makes explicit many requirements that are implied in the other referencing subparts. Such clarifications promote consistent compliance and enforcement and, in some cases, constitute a burden reduction by eliminating guesswork and uncertainty.

While the HON reflects an updated approach to SOCMI regulation, many of the basic elements of the referencing subparts are still very similar to the HON. For storage vessels, the provisions in 40 CFR part 60, subpart Kb and 40 CFR part 61, subpart Y are very similar to the corresponding HON provisions (40 CFR part 63, subpart G). The most significant differences among storage vessel provisions occur between the HON and 40 CFR part 60, subpart Ka. However, there are markedly fewer sources subject to subpart Ka than to the other storage vessel subparts consolidated.

Likewise, the HON's provisions for process vents are very similar to those in all of the consolidated process vent rules. In fact, the performance standards are virtually the same across all consolidated process vent regulations. The CAR's provisions for transfer operations consolidate 40 CFR part 61, subpart BB and the HON transfer operation provisions (40 CFR part 63, subpart G). The HON provisions provide increased compliance flexibility over subpart BB without compromising stringency.

Equipment leak provisions in the CAR are also based on the HON language but include some significant improvements. These improvements do not change stringency but enhance the simplicity, clarity, and ''user-friendliness'' of the provisions. Subpart G of the CAR, the closed-vent system and control device provisions, represents a different approach to the order and presentation of regulatory requirements. While the CAR subpart G is based on the HON's language, its organization and structure are different in that the closed-vent system and control device requirements for all emission points (i.e., storage, transfer, process vents, and equipment leaks) with associated closed-vent system and control devices are all presented in one consolidated subpart.

While the HON has provided a good starting point for the CAR, the consolidation effort included substantial modification to some of the HON language as well as important additions and deletions. Many of the modifications are clarifications of HON language or changes that incorporate CAR terminology. All provisions in each of the referencing subparts were assessed and compared for consolidation. In some cases, language from a referencing subpart other than the HON was deemed more appropriate for the CAR. The following sections of this preamble (VI.B through VI.H) provide a detailed description of each subpart of the CAR and the significant decisions regarding (1) changes to HON language, and (2) the ramifications of using the HON language for sources referenced from 40 CFR parts 60 and 61. Also noted are instances where language from referencing subparts other than the HON is used.

B. General Provisions

The part 65 general provisions consolidate the general provisions applicable to SOCMI sources from subparts A of 40 CFR parts 60, 61, and 63. In addition, provisions in the HON, 40 CFR part 63 subparts, F and G, that are general in nature are also consolidated in the part 65 general provisions. These particular provisions are designated in the HON as overriding the corresponding requirements in the part 63 general provisions. These overriding provisions apply to SOCMI sources and therefore were consolidated in the proposed CAR general provisions. (The HON overrides are listed in table 3 of 40 CFR part 63, subpart F).

The consolidated general provisions focus on administrative aspects and broad requirements that are generally applicable to all sources complying with the CAR, such as definitions, operation and maintenance requirements, general recordkeeping and reporting procedures, and compliance determination. Also included are administrative provisions concerning availability of information, state authority, delegation, circumvention, addresses for report submittal, and incorporation by reference. Although the general provisions to the referencing subparts contain provisions regarding add-on control equipment, testing, and monitoring, these types of requirements are consolidated in the CAR's subpart G as described in section III.B of this preamble.

Consolidated general provisions for the CAR eliminate much of the complexity of the general provisions to the HON. In the CAR general provisions, an ''override'' table for general provisions, such as that in the HON, is not necessary, since all applicable provisions have been brought into, or are referenced in, the CAR. All of the applicable provisions that are general in nature are contained in one CAR subpart, eliminating the complexity inherent in the HON where general requirements are contained in three different subparts (40 CFR part 63 subparts A, F, and G). Non-applicable requirements have been eliminated. For example, no continuous emissions

monitoring system (CEMS), opacity, or particulate matter provisions are included in the CAR since they are not applicable, thus reducing the amount of text that must be read and understood.

Although every effort has been made to make the CAR a stand-alone rule, as noted in section IV above, there are certain requirements in the general provisions to the referencing subparts that are not addressed in part 65 and that still remain applicable to sources complying with the CAR. Requirements dealing with pre-startup activities, applicability, modification, and reconstruction are still governed by the underlying general provisions in 40 CFR parts 60, 61, and 63. The part 65 general provisions include a table (table 1 of 40 CFR part 65, subpart A) specifying the paragraphs and sections in each part's general provisions that still apply to sources complying with the CAR. Since the CAR does not alter the applicability of any of the underlying subparts, these general provisions regarding applicability must also remain applicable.

In addition, owners and operators who choose to comply with the CAR are still obligated to fulfill requirements that applied while they were complying with a referencing subpart. For example, if a facility is required by a referencing subpart to complete a performance test, opting to comply with the CAR does not remove the requirement to conduct a performance test or protect the source from enforcement actions for not completing the test.

Discussion in the following paragraphs highlights the primary differences between the general provisions for the proposed CAR and those for the referencing subparts.

Applicability

Regulated sources may comply with the CAR only if they are subject to one of the referencing subparts and are specifically referenced to part 65. Further discussion of eligibility to comply with the CAR and how the eligibility is presented in the referencing subparts is contained in sections IV.A and V of this preamble, respectively.

The applicability provisions also include requirements for implementation of the CAR. An implementation schedule is required and must be established either through a title V permit application or permit modification for title V sources, or in the Initial Notification of Part 65 Applicability for non-title V sources. In either case, the implementation schedule can not extend for more than 3 years, and the provisions prohibit any gaps in compliance between complying with the referencing subpart and implementing the CAR. A maximum of a 3-year implementation period is allowed because there will be some facilities that will need time to install equipment or otherwise prepare for compliance with the CAR for some individual emission points. In these cases, the facility can begin taking advantage of many of the burden reductions by complying with the CAR for most emission points while preparing for compliance for a few emission points. These few emission points would continue to comply with the appropriate referencing subpart. Many facilities will be able to comply with the CAR with few adjustments or additions at their facility, and a 3-year implementation schedule will not be necessary.

As described above in section IV.A, new sources that become subject to a referencing subpart must consult the applicability provisions in that referencing subpart to determine eligibility to comply with the CAR. New regulated sources (for example, storage vessels or distillation vents) that are part of an SCU that is complying with the CAR would also have to comply with the CAR, or the entire SCU (including the new regulated source) would have to opt not to comply with the CAR. For new sources choosing upon startup to comply with the CAR instead of the applicable referencing subpart, the implementation date is at initial startup.

The proposed CAR also provides for owners or operators deciding to no longer comply with the CAR and to comply, instead, with the applicable referencing subpart(s). Title V sources must propose a transition date in a title V permit amendment; non-Title V sources may propose a transition date in a periodic report or in a separate notice. The provisions requiring compliance on an SCU basis would still apply, and owners or operators must make the transition to the referencing subparts for an entire SCU, not for individual emission points. The transition must ensure that no gaps in compliance occur; the SCU must be in full compliance at all times with either the CAR or the applicable referencing subparts.

Definitions: General

The CAR consolidates the definitions from the 12 referencing subparts, 40 CFR part 63, subpart F and the general provisions of 40 CFR parts 60, 61, and 63 into one definition section. In developing the definitions for the CAR, EPA assessed all of the definitions in the referencing subparts and all of the definitions in the applicable general provisions. Many terms defined in the CAR have been defined in one or more of these subparts. In some cases, slight variations exist in definitions for which no substantive difference was intended. The EPA recognized that multiple definitions for the same term or phrase has led to confusion in the past. Therefore, a single set of definitions was developed for implementing the CAR and is included in the proposed general provisions.

Since the HON language provides the basis for the CAR, the HON definitions are used in the CAR for most terms. However, definitions have been added or modified in the CAR for several reasons. New terms have been defined either to reduce wordiness and redundant language, or to designate a single term to replace many similar terms from all the referencing subparts. In some cases, definitions from the HON have been modified to improve clarity or to make requirements more explicit. A few terms in the CAR are taken from referencing subparts other than the HON.

The goal of consolidating definitions in the CAR general provisions was to provide clear definitions and to avoid using different words to mean the same thing. The more recent SOCMI rules elaborate on definitions to avoid misinterpretation or implementation problems that arose in earlier rules. The newer definitions expand and elucidate, but they do not change the original intent of the rule. The more significant definition changes and additions are noted as follows.

Definitions: New

Several terms not defined in any of the referencing subparts or their general provisions are introduced in the CAR. Some of these terms incorporate important concepts that need to be defined for the CAR; these include the following.

A new definition for ''empty or emptying'' for storage vessels was added for clarification. This definition helps to clarify when a storage vessel is considered empty. In particular, lowering the stored liquid level so that a floating roof rests on its legs, as necessitated by normal operations, is not considered emptying. Further discussion of issues associated with the emptying of storage vessels is presented in the Storage Vessel section of this preamble (section VI.C).

A new definition for ''low throughput transfer racks'' was added to clarify requirements for these racks that are subject to the closed-vent systems and control device requirements. Low throughput transfer racks require a

design evaluation, while high throughput transfer racks require a performance test.

The term ''closed-vent system shutdown'' was added to the CAR to distinguish a shutdown affecting a closed-vent system from a shutdown affecting a process unit. Different requirements apply for process unit shutdowns and for closed-vent system shutdowns, and the two terms therefore need to be distinguished.

Several new terms were added to the CAR to provide a single general term to replace several different terms used in the referencing subparts. These include the following.

Definitions for ''regulated material,'' ''in regulated material service,'' and ''regulated source'' were created for the CAR to generalize the pollutant [volatile organic compounds (VOC), total organic compounds (TOC), hazardous air pollutants (HAP), etc.] and the source (affected facility, affected source, etc.) being regulated. The referencing subparts specify the regulated pollutant(s) and define the source, either in the title of the standard or in the applicability provisions prior to referring sources to the CAR. Therefore, while the term used in the CAR is new, pollutants and sources regulated in the referencing subparts do not change in the CAR.

''Process unit'' and ''process vent'' are defined in the CAR to encompass the definitions from all of the referencing subparts. The definition of ''process unit'' includes the equipment specified by the definition of ''chemical manufacturing process unit'' in the CAR. The CAR also provides a definition for the ''process unit'' which is to be used when there is no definition for the term in the referencing subpart.

''SOCMI CAR Unit'' was added to the CAR definitions to describe the boundary of the entity subject to the CAR. A detailed discussion concerning SCUs is included in section IV.B of this preamble.

Other new terms were defined in the CAR to reduce wordiness or redundancy. A new definition for ''control system'' was added to simplify language referring to control devices and their associated closed-vent system. A control system is simply the combination of a closed-vent system and a control device. Using a single term to include both closed-vent systems and control devices simplifies the language.

Three new definitions were added to describe internal and external floating roof failures: ''failure, EFR'', ''failure, IFR type A'', and ''failure, IFR type B.'' Two new definitions were added to describe which process vents require monitoring and which ones do not: ''Group 2A process vents'' and ''Group 2B process vents.'' Adding these definitions avoids having to repeat lengthy text describing the specific floating roof failures or the two types of Group 2 process vents each time they are referred to in the regulation.

Definitions: Modified HON Definitions

Many of the definitions incorporated from the HON have been modified, primarily for clarity of language or to specify the particular types of emission points (for example, equipment leaks) to which a term applies. The modifications to the HON definitions are described as follows.

To comply with the HON process vent requirements, an owner or operator has several compliance options, one of which is to collect and route process vent emissions to a control device. There are two broad categories of control devices, combustion devices (such as a boiler or incinerator) and recapture devices (such as a condenser or absorber). Absorbers, condensers, and carbon adsorbers are often used as recovery devices designed to return recovered material to the process; if the recovered material from these devices is disposed of, then the device qualifies as a recapture device and can be used as a control device.

The HON contains similar definitions for ''control device'' in both subparts F and G. The CAR definition is based on the HON definitions, which include language stating that for process vents in general, a product recovery device can not be used as the control device if the owner or operator is complying by routing emissions to a control device. Recovery devices are equipment normally used for the purpose of recovering chemicals for fuel value, use, reuse, or for sale; control devices, on the other hand, are equipment that reduce emissions of regulated material to the atmosphere through combustion or some other means.

The CAR includes additional language in the control device definition clarifying that some particular recovery devices can be considered control devices. This requirement is the same in the HON, however, the HON does not clarify it in the control device definition. In summary, a recovery device is allowed to be considered a control device for process vents if (1) it was installed prior to 1993, (2) it is the last recovery device before venting to the atmosphere, (3) it is capable of meeting the 98 percent reduction standard, but it is not capable of achieving the 20 parts per million (ppm) standard, and (4) the recovery device must comply with control device requirements if the recovered material is disposed. The use of recovery devices with process vents is further discussed in section VI.E of this preamble.

In the definition of ''equipment,'' the CAR includes new language clarifying that the definition applies only to equipment leak provisions. The word ''equipment'' is used in a more general sense in other subparts.

The CAR definition of malfunction differs from the HON in that it includes monitoring equipment as equipment to which the malfunction provisions apply. The HON definition of malfunction incudes air pollution control equipment, process equipment, or a process, but does not include monitoring requirement.

In the definition of ''open-ended valve or line,'' the reference in the HON definition to ''pressure relief valves'' was changed to simply ''relief valves'' since it is intended to also include relief valves that do not necessarily relieve pressure.

The definition of ''organic monitoring device'' is taken from the HON but has been modified to clarify that an organic monitoring device can be used at locations other than at an exiting recovery device.

Process heaters and boilers both are types of enclosed combustion devices. General requirements for enclosed combustion devices, as well as specific requirements for process heaters versus boilers, are contained in the CAR. When comparing the process heater definitions in the referencing subparts confusion exists as to which enclosed combustion devices are process heaters and which are boilers. The ''process heater'' definition in the CAR is based on the HON definition, but the phrase ''enclosed combustion'' is added for clarity. In addition, the CAR adds language specifically including heating water as a secondary function of a process heater. The HON definition could have been interpreted to exclude heating water as a function of process heaters.

In the CAR, the HON definition of ''recapture device'' was modified to clarify that, for purposes of monitoring, recordkeeping, and reporting, recapture devices are subject to the same provisions as recovery devices. The same sentence was added to the definition of ''recovery device'' to reinforce this clarification.

The definitions of ''repair'' and ''first attempt at repair'' are very similar to the HON definitions but were modified in the CAR to clarify that the definitions apply to equipment leak requirements

and not to other emission points such as storage vessels.

Similarly, the definition of ''set pressure'' is from the HON subpart H but is clarified in the CAR to specify that it applies only to equipment leak provisions.

''Routed to a process or route to a process'' is defined as it is in the HON subpart H, except that in the CAR the phrase ''by hard-piping or a closed-vent system'' is deleted. Emissions vented to a process are not considered to be vented through a closed-vent system and therefore are not subject to the closed-vent system requirements. This change is made for clarification and consistency with the CAR's use of the closed-vent system terminology, and it does not affect the intent or the regulatory requirements. Striking ''by hard-piping'' allows flexibility in the types of equipment (i.e., ductwork) that can be used to route to a process.

The CAR's definition of ''closed-vent system'' is taken from the definition in subpart G of the HON, but changes were also made to this definition to help clarify which equipment is included in a closed-vent system and, therefore, subject to the closed-vent system requirements. The CAR definition of closed-vent system excludes systems that transport gas or vapors back to a process. Under the CAR, a closed-vent system is a system routing vapors to a control device; piping that routes vapors back to a process is not considered a closed-vent system. The CAR definition of ''closed-vent system'' also has additional language added to exclude vapor collection systems that are part of a tank truck or rail car, and to clearly describe where the system begins on transfer racks. It should be noted that the phrase ''open to the atmosphere'' does not include air or inert gas intakes for systems where gas make-up is needed to prevent pulling a vacuum.

The CAR definition of ''run'' for a performance test combines the definitions from the general provisions of 40 CFR parts 60, 61, and 63. As such, it adds language to the HON definition clarifying that a run may be either intermittent or continuous, within the limits of good engineering judgement.

The definition ''temperature monitoring device'' is changed in the CAR to require an accuracy of ±1.2 degrees Celsius, as opposed to ±0.5 degrees Celsius in the HON. The EPA believes, based on investigations undertaken in this effort, that temperature monitoring devices with the ±1.2 degrees Celsius accuracy are more widely available, are in place at more plant sites, and are adequate for demonstrating compliance.

The definition of ''total resource effectiveness index value or TRE index value'' as defined in the HON was modified in the CAR to better describe the purpose of the index. This modified definition is considered more useful for compliance purposes.

The definition of ''total organic compounds'' is similar to the definitions in the referencing subparts. One aspect of the definition, however, could not be consolidated. Total organic compounds, or TOC, is a term in the TRE index value equations. As discussed in more detail under the process vent section (see section VI.D), the TRE index value determination cannot be consolidated because of the different approaches presented in the HON and the non-HON process vent referencing subparts. To maintain the necessary distinction for TRE index value determinations, the TOC definition in the CAR states that, for the non-HON referencing subparts, TOC does not include compounds ''that the Administrator has determined do not contribute appreciably to the formation of ozone.''

A few definitions in the CAR are taken from referencing subparts other than the HON because the terms are not defined in the HON. These include, for example, ''distance piece'' from 40 CFR part 60, subpart VV and ''stuffing box pressure'' from 40 CFR part 61, subpart V. These are useful terms in the CAR and definitions for them are considered helpful for understanding equipment leak provisions.

As HON definitions were incorporated into the CAR, some editing was required to remove references to specific provisions in the HON. Generally, the references to HON provisions were edited to refer to the corresponding provision in the CAR, or in some cases, the definitions were edited to incorporate the meaning or context of the referenced provision. For example, a definition for ''initial startup'' has been developed for the CAR to specify the point of initial startup for various cases and situations. This definition encompasses all of the different situations described in the referencing subparts that entail an ''initial startup.'' These include new or reconstructed sources as well as certain specified additions or changes not defined by the referencing subparts as a new source. The CAR definition of ''initial startup'' incorporates the description of additions and changes from § 63.100(l) and (m) of the HON that would trigger an ''initial startup.''

Definitions: Changes to Definitions of 40 CFR Parts 60 and 61

The use of HON definitions as the basis for the CAR implies changed definitions for sources referred from the other referencing subparts. In general, these differences do not constitute substantive changes to the rule, but provide improvements in clarity and simplification of requirements. For example, some of the CAR terms, while not defined in the part 60 and 61 referencing subparts or their general provisions, are used in their regulatory language (for example, initial startup). Other terms defined in the CAR introduce new concepts that were not needed in the part 60 and 61 referencing subparts. For example, the CAR provides new means of compliance such as fuel gas systems and vapor balancing systems; therefore, these terms are defined in the CAR. However, most of the differences in definitions between the CAR and the non-HON referencing subparts result from the CAR incorporating a HON definition that is different from the corresponding non-HON definition. The more significant definition changes relative to the non-HON referencing subparts are as follows.

The CAR incorporates the HON definition of ''alternative test method'' which requires that alternative test methods be validated using Method 301 of appendix A of 40 CFR part 63. Method 301 validation, a more recently developed approach unavailable to older rules, is not required by the non-HON referencing subparts. The EPA now uses Method 301 to validate proposed alternative test methods. Therefore, requiring its use by the regulated source simply ensures consistency in evaluating alternative methods, and will codify what is already being done.

In 40 CFR part 60, subpart DDD and 40 CFR subpart 61, subpart BB, the definition of ''car seal'' includes the regulatory requirement to replace a broken car-seal with a new seal. In general, definitions are not appropriate locations for enforceable requirements. Therefore, the CAR adopted the definition from the HON and 40 CFR part 60, subpart RRR. The requirement for replacing broken car-seals is included in the closed-vent system provisions of subpart G of the CAR.

The CAR's definition of ''closed-vent system'' is taken from the definition in subpart G of the HON but has additional language added to exclude vapor collection systems that are part of a tank truck or rail car, and to clearly describe the system boundaries for transfer racks.

The CAR definition differs from those found in 40 CFR part 60, subparts III, NNN, and RRR with respect to this clarification for vapor systems.

The CAR includes the definition of ''continuous parameter monitoring system'' from part 63. This term replaces the ''monitoring device'' definition in part 60 and is used for consistency; it does not constitute a change in monitoring requirements.

The CAR's definition of ''connector'' is taken from the HON and explicitly excludes certain types of connectors that are included under the definitions of ''connector'' in 40 CFR part 60, subpart VV and 40 CFR part 61 subpart V. The CAR excludes joined fittings that are welded completely around the circumference and, for purposes of recordkeeping and reporting, inaccessible fittings and ceramic or ceramic lined fittings.

''Halogenated vent stream or halogenated stream'' is defined in 40 CFR part 60, subparts III, NNN, and RRR based on parts per million by volume (ppmv) of halogenated compounds in the stream (20 ppmv or greater). The CAR incorporates the HON definition, which defines a halogenated stream on the basis of mass emission rate of halogen atoms (0.45 kilograms per hour). Further discussion of issues associated with determination of halogenated vent streams is included in section VI.D of this preamble.

The CAR definition of ''liquids dripping'' is taken from the HON subpart H. It is more explicit than the definitions in 40 CFR part 60, subpart VV and 40 CFR part 61, subpart V in that it includes examples of what constitutes indications of liquids dripping.

''Process unit shutdown'' is defined in all of the referencing subparts for equipment leaks. The CAR uses the definition from the HON subpart H, which differs from the other referencing subparts in clarifying when a process unit shutdown has occurred. The CAR definition explicitly states that a process unit shutdown has occurred only when (1) the shutdown is planned, (2) it occurs under appropriate safety constraints, and (3) repairs can be effected. Furthermore, a ''process unit shutdown'' has not occurred if the shutdown is (1) unplanned, and (2) lasts for too short a time for process material to be cleared from the process unit, and results in greater emissions than would occur with delay of repair.

The CAR definitions of certain control devices include several changes relative to the referencing subparts. The basic definition of ''boiler'' is similar across all the process vent referencing subparts. However, the definition in 40 CFR part 60, subpart RRR and the HON contain additional language stating that ''boiler'' does not include incinerators. The HON definition also states that ''boiler'' does include industrial furnaces. The CAR definition includes both these additions (incinerators are not boilers, industrial furnaces are boilers) as well as a third addition stating that process heaters are not boilers.

The CAR's definition of ''incinerator'' is unmodified from the HON. The definition in 40 CFR part 60, subparts III and NNN, and 40 CFR part 61, subpart BB specifically state that an incinerator ''does not extract energy in the form of stream or process heat.'' However, the CAR definition clarifies that there can be a recovery section to an incinerator as long as it is a separate section that is not manufactured or assembled as a single unit with the combustion section. The CAR definition also clarifies, relative to subparts DDD and III that an incinerator can use auxiliary fuel to heat waste gas.

The CAR definition of ''process heater'' provides a similar clarification that, although heating water can not be the primary function of a process heater, heating water or generating steam can be a secondary function.

The definitions of ''repair'' and ''first attempt at repair'' are consistent with those in 40 CFR part 60, subpart VV and 40 CFR part 61, subpart V, but they include additional language from the HON stating that monitoring to verify repair is required as part of the repair.

The definition of ''start up'' is taken from the HON. It clarifies what is included in ''start-up'' definitions in parts 60 and 61 by specifying some examples of equipment and activities included in start up.

Compliance With Standards and Operation and Maintenance Requirements

In § 65.3, the CAR general provisions consolidate provisions regarding compliance with operation and maintenance requirements. These provisions are consistent with the provisions in 40 CFR part 63. The main source of burden reduction and clarity improvements for these provisions lies in the fact that provisions contained in 40 CFR part 63 subparts A, F, G, and H have been consolidated in one location. Small wording changes were made for clarity and to modify text to fit the CAR structure. For example, the HON states that use of acceptable operation and maintenance procedures can be determined based on (among other things) a startup, shutdown, and malfunction plan. The CAR provisions clarify that the startup, shutdown, and malfunction plan is optional for equipment leaks, unless the equipment is equipped with a control device, in which case a startup, shutdown and malfunction plan is required. The startup, shutdown and malfunction plan would be used to determine acceptable operation and maintenance procedures only in cases where such a plan is required. Other clarifying language consists of more descriptive paragraph titles and introductory sentences clearly indicating which standards are addressed in each subsection.

The CAR's provisions on compliance are also organized differently from the HON. The CAR contains all compliance requirements together at the beginning of this section (§ 65.3), and moves the detailed requirements for performance tests and the startup, shutdown, and malfunction plan (which are included within the HON compliance section) to their own separate subsections. With this arrangement, provisions in the CAR are easy to locate by section and subsection headings.

In reviewing the operation and maintenance provisions for consolidation, EPA noted that the HON does not specify that monitoring must be conducted during startup, shutdown, and malfunction. Of course, if the monitor itself is malfunctioning, monitoring would not be required, assuming that any minimum data availability requirements are met. While the HON makes reference to monitoring data for periods of startup, shutdown, and malfunction in the provisions regarding excursions that occur during such periods, there are no explicit requirements that such monitoring take place. Therefore, in the CAR, EPA explicitly requires that monitors must be in operation except when they are malfunctioning or except to avoid damage caused by contemporaneous startup, shutdown, or malfunction with other equipment. The EPA's discussions with industry representatives indicate that there have been differing interpretations regarding monitoring during startup, shutdown, and malfunction, but that requirements to monitor during these periods would not substantially increase the monitoring burden. Without data from periods of startup, shutdown, and malfunction EPA can not determine the extent of an exceedance where normal operation has been misidentified as a startup, shutdown, or malfunction. Nor would EPA have the data to compare the effectiveness of techniques to minimize emissions during such episodes. As a result, monitoring data for periods of

startup, shutdown, and malfunction are considered essential and are explicitly required in the CAR.

The EPA has also clarified what provisions do not apply during startup, shutdown, and malfunction. The HON broadly states that the provisions of 40 CFR part 63, subparts F, G, and H do not apply during startup, shutdown, and malfunction. This has been clarified in the CAR to specify that it is the emission standards and established parameter ranges that do not apply during startup, shutdown, and malfunction. The EPA reasoned that this more specific reference more accurately reflects the intent of the rule.

Recordkeeping

The recordkeeping section of the CAR general provisions sets forth basic requirements related to duration of records retention, and availability and accessibility of records. Again, a primary benefit of these provisions is that they merge all the general recordkeeping and reporting provisions for all regulated sources into one place. While the requirements are substantially the same as those in the HON, burden reductions are achieved through simplification, clarification, and elimination of redundancy.

The CAR requirements for records retention are clearer than those in the referencing subparts in that they explicitly state record retention times for title V sources (5 years) and non-title V sources (2 years, unless a referencing subpart specifies otherwise.) While the 5-year retention time for title V sources applies for all records required under the Act, retention time for title V sources is not stated explicitly in the 40 CFR part 60 and 61 general provisions.

The provisions for where the retained records must be kept is one of very few instances in the CAR where the requirements are not consolidated. In this case, two different provisions are given: one that applies to sources that are subject to the HON and a second provision that applies to sources subject to the 40 CFR parts 60 and 61 referencing subparts. The provision that applies to HON sources is from the HON. It states that records must be retained on site for 6 months and must be accessible within 2 hours. For the remaining 4 and ½ years, the records may be retained offsite. The provision that applies to the 40 CFR parts 60 and 61 sources states that records must be retained on site for 2 years, but may be retained off site for the remaining 3 years. The HON provision resulted from the settlement agreement for the HON litigation. The EPA considers it important to retain this provision as revised under the litigation for HON sources. For this provision, EPA considers that it is not appropriate to expand the applicability beyond the HON. The EPA is concerned that allowing records to be stored offsite after 6 months will make it difficult for an inspector to determine compliance. Under the HON, EPA has allowed records to be taken off site after 6 months to determine how well this approach works and to assess whether any inspection issues arise. At this time, EPA does not have sufficient information to warrant expanding the scope of this provision. Therefore, a different provision is provided for non-HON referencing subparts.

Reporting

The reporting requirements in the CAR general provisions pertain to reports that are required for all or most complying sources. Notifications and reports that are specific to particular emission points are addressed in the subparts for each particular type of emission point. The general provision reporting requirements include a Notification of Initial Startup, an Initial Notification of Part 65 Applicability for non-title V sources, and an Initial Compliance Status Report.

Notification of Initial Startup is required within 15 days after initial startup for any regulated source that has implemented the CAR at initial startup. The notification under the CAR is similar to the initial notification in the referencing subparts.

Initial Notification of Part 65 Applicability is the only new separate report required in the CAR. It is required for non-title V sources and must include identification of each subject emission point and its applicable part 65 subpart, and a proposed implementation schedule. As an alternative to ''identifying each emission point,'' the process unit containing the emission points can be identified along with the kind of emission point in the process unit that will comply. Title V sources are not required to submit this notification since this information would be included in their title V permit application or modification request.

The Initial Compliance Status Report is required for all new regulated sources complying with the CAR and is due within 240 days after the applicable compliance date set in the referencing subpart, or 60 days after the initial performance test, whichever is earlier. The contents of the Initial Compliance Status Report pertain primarily to performance tests and are different for each type of emission point. The reporting requirements are therefore specified in the applicable subpart. Since sources may be required to conduct more than one performance test, the CAR allows the information on each performance test to be submitted separately, 60 days after each test is completed. The CAR allows more time to submit the performance test than the referencing subparts because the CAR will affect more emission points at a facility. The EPA deemed it appropriate to allow more time to complete all of the performance tests and reports.

The general provisions reporting requirements also specify the timing and frequency of periodic reports. Only semiannual periodic reports are required. The CAR has clarified and simplified when the periodic reports are due and what the reporting period is. The CAR allows more time (60 days after the end of each 6-month period) for periodic reports than the NSPS general provisions (30 days), because the combined report required by the CAR will be larger and will take more time to prepare. The CAR's periodic reports, like those in the HON, cover multiple emission points; the 60 day reporting date is taken from HON.

The CAR has greatly simplified the language regarding report submittal. The CAR's provisions on where to send reports are based on the HON, but reduce six paragraphs of text to one short paragraph. The HON requires that all reports be sent to EPA Regional Offices, and also to State agencies once authority has been delegated to the State. Since reports generally must now be sent to both offices under title V, the CAR simply requires that all reports be submitted to the relevant Regional Office and State agency. The CAR also includes a new provision allowing Regional Offices to waive reporting to EPA.

Another new provision in the CAR allows an owner or operator to submit semiannual reports on the same schedule as the title V periodic reports. Furthermore, if a semiannual report requires the same information as that submitted with a title V report, the semiannual report need only reference the title V report for the information. In addition, a source owner or operator can arrange with the Administrator a common schedule for reporting, and may, upon approval, adjust the postmark or time period deadline to coincide with state reporting schedules. This added flexibility for reporting schedules can reduce the number and frequency of report submittal for sources complying with the CAR.

Startup, Shutdown, and Malfunction

In general, owners and operators choosing to comply with the CAR, including non-HON sources, are required to develop and implement a written plan for operating and maintaining the source during periods of startup, shutdown, and malfunction. These provisions are based on the startup, shutdown, and malfunction requirements from the 40 CFR part 63 general provisions and the HON (§§ 63.151 and 63.152 of 40 CFR part 63, subpart G). Changes have been made to fit the CAR format, but the intent and purpose of the startup, shutdown, malfunction plan have been maintained as in part 63. As with the HON, this plan is optional for equipment complying with subpart F of the CAR (the equipment leak provisions), except that it is mandatory for equipment equipped with a control device. However, any control devices used for compliance with the equipment leaks provisions are subject to subpart G of the CAR, rather than subpart F, and therefore require a written plan for startup, shutdown and malfunction.

The general provisions for parts 60 and 61 do not require a startup, shutdown, and malfunction plan. However, the ultimate effect of the CAR plan is to reduce the reporting burden associated with startup, shutdown and malfunction. As long as a startup, shutdown, or malfunction is handled according to the plan, sources need only report that the event occurred. The report can be submitted as a semiannual notice, or it can be submitted as part of the periodic report. This procedure replaces the part 60 and 61 requirements to submit detailed reports for each startup, shutdown, and malfunction. Therefore, even though the plan must be maintained, the CAR potentially reduces the total number and complexity of the reports.

The CAR does not adopt the 40 CFR part 63 general provision requirement that the startup, shutdown, and malfunction plan be incorporated into the source's title V permit. In keeping with the memorandum ''Incorporation of Startup, Shutdown, Malfunction Plans into Sources' Title V Permits'' from the Director of OAQPS to Regional Air Directors (January 18, 1996), regarding incorporation of the startup, shutdown, and malfunction plan into title V permits, the CAR clarifies that the plan must be maintained on-site but not necessarily incorporated by reference into a title V permit. The permit must, however, include the enforceable requirement to have a plan and to maintain the plan on-site. Since the plan is required to be periodically updated, incorporation by reference would make a title V permit modification necessary for each revision to the plan and would, therefore, be counter-productive.

The CAR also contains revised provisions regarding reasons for finding a startup, shutdown, malfunction plan to be inadequate and requiring that it be revised. Plans are considered inadequate under the HON if they fail to provide for the operation of the regulated source during startup, shutdown, and malfunction to minimize emissions to at least the levels required by all relevant standards. However, EPA decided that emissions during startup, shutdown, and malfunction, while needing to be minimized in accordance with good air pollution control practice, can not always be minimized to the levels required by the standards. It is impractical, as well as contradictory with other provisions, to expect sources to continually meet applicable emission standards while experiencing a startup, shutdown, or malfunction. Plans under the CAR must only provide that emissions be minimized to the extent practical in a manner consistent with good air pollution control practices.

Although the provisions of 40 CFR 63.6(e)(1)(i) of subpart A are not included in the CAR, these provisions are likely to be required in future rulemakings. These provisions state:

> At all times, including periods of startup, shutdown, and malfunction, owners or operators shall operate and maintain any affected source, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by all relevant standards.

The HON, as it was revised by 62 FR 2721, January 17, 1997 specifically overrides this provision of the part 63 general provisions. The CAR incorporates the HON provisions because it is the simplest approach that upholds the language negotiated in the HON litigation settlement, and EPA has applied it to part 60 and part 61 sources for simplicity and consistency. It should be noted that the HON, through the general provisions [40 CFR 63.6(e)(3)(vii)(B)], requires that the startup, shutdown, and malfunction plan include provisions specifying how an owner or operator will ''provide for the operation of the source (including associated air pollution control equipment) during a startup, shutdown, or malfunction event in a manner consistent with good air pollution control practices * * *'' The CAR incorporates this provision. The HON also requires that during a startup, shutdown, and malfunction ''* * * the owner or operator shall implement, to the extent reasonably available, measures to prevent or minimize excess emissions to the extent practical.'' This provision acts to replace the provisions of 40 CFR 63.6(e)(1)(i) of subpart A in the HON and the CAR. However, EPA believes that explicitly requiring operation consistent with good air pollution control practices at all times is not unreasonable and is likely to continue to be required in future rulemakings.

Certain provisions in the part 63 general provisions regarding immediate reporting of periods of startup, shutdown, and malfunction have not been included in the CAR. These provisions require an immediate report of any actions taken during a startup, shutdown, or malfunction that are not consistent with the startup, shutdown, or malfunction plan. The EPA determined that such reports appear to be inconsistent with provisions from subpart G of the HON requiring that such actions be reported in the periodic report rather than an immediate report. The CAR incorporates the provisions from the HON subpart G, since they require reports that are sufficient to ensure continuous compliance and are potentially less burdensome. The CAR also allows startup, shutdown, and malfunction reports, title V periodic reports, and CAR periodic reports to be submitted together.

A semi-annual summary report of the occurrences and durations of each startup, shutdown, and malfunction during which excess emissions occur is required by the CAR general provisions. The report is the companion to the records specified in §§ 65.162(a) and 65.163(c) of the CAR, which not only require records of occurrences and durations, but also provide for other records associated with startup, shutdown, and malfunction (such as a record that the procedures in the startup, shutdown, and malfunction plan were followed). The summary report is required if, during a semi-annual reporting period, (1) the total duration of periods of inoperation or malfunction of a CPMS is equal to or greater than 5 percent of the total operating time for the reporting period, or (2) the total duration of periods of startup, shutdown, and malfunction during which excess emissions occur for a regulated source are equal to or greater than 1 percent of that regulated source's operating time for the reporting period. This summary report is included in the startup, shutdown, and malfunction report, which can be included in the periodic report. The HON does not

specify that this information be submitted with the startup, shutdown, and malfunction report. The EPA considers this an important addition to the start-up, shutdown, and malfunction provisions, because it would highlight when a startup, shutdown, and malfunction condition exists for a significant amount of time, and would also indicate a condition that happens frequently during a semi-annual period. Nevertheless, this is a substantial burden reduction from the referencing NSPS, which require detailed reports on the causes of excess emissions and summary reports when the total duration of excess emissions for the reporting period is less than 1 percent of the total operating time for the reporting period, and when CPMS downtime is less than 5 percent of the total operating time for the reporting period.

Waivers and Alternatives

The CAR consolidates the mechanism for requesting alternatives and waivers for monitoring, recordkeeping, and reporting. These provisions describe what is required of the applicant, and the procedures for approval or denial of the alternative or waiver. The CAR specifically allows alternatives for recordkeeping as well as monitoring, while the referencing subparts general provisions specify alternative monitoring methods only.

The CAR also includes procedures for requesting approval of an alternative means of emission limitation for design, equipment, work practice, or operational standards, as do specific subparts in part 60, the part 61 general provisions, and the HON. The CAR's language is based on language from the HON, subpart F, but the CAR clarifies that alternative means of emission limitation are not applicable to performance standards. Performance standards do not specify a means to limit emissions, so any means is already acceptable.

The CAR general provisions include consolidated administrative requirement sections on ''Availability of Information and Confidentiality,'' ''State Authority,'' ''Prohibited Activities and Circumvention,'' and ''Incorporation by Reference.'' The CAR includes minor wording changes and clarifications to the part 63 language; for example, in the prohibitions provisions, the prohibition on failing to report is eliminated and replaced throughout the CAR with the specific requirements to report.

C. Storage Vessel Provisions

The storage vessel provisions consolidate the requirements of 40 CFR part 60, subparts Ka (petroleum liquids storage) and Kb (volatile organic liquids storage), 40 CFR part 61, subpart Y (benzene storage), and 40 CFR part 63, subpart G (HON storage). The referencing subparts will direct storage vessels to subpart C of the CAR, which specifies the compliance options for storage vessels. Subpart C contains the control requirements for floating roofs only. Subpart C references subpart G for the control requirements for control devices (including flares) and routing to a process or fuel gas system. This split in requirements facilitates consolidation and reduces text. For example, the flare provisions do not have to be listed in multiple places in the CAR. This structure clarifies and simplifies the referencing subparts which may present the flare requirements on different bases, in different formats, and in multiple locations (including the individual general provisions).

There are several compliance options for storage vessels, but not all storage vessels qualify for all options. Owners and operators of storage vessels containing liquid with a low (less than 76.6 kilo-Pascal) maximum true vapor pressure have the option to comply by using an internal floating roof (IFR), external floating roof (EFR), or an EFR converted into an IFR. Storage vessels under the CAR equipped with floating roofs are only required to comply with the provisions in subpart C of the CAR. However, there are other control options available to all storage vessels, including: (1) routing emissions through a closed-vent system to a flare or control device, and (2) routing emissions to a process or fuel gas system. Those vessels equipped with a closed-vent system or that have emissions routed to a process or fuel gas system must also comply with subpart G of the CAR. For those vessels, subpart C specifies a 95 percent reduction control efficiency for control devices and it provides for 240 hours per year downtime for planned routine maintenance of flares or control devices. In addition, subpart C clarifies that the performance requirements for flares and control devices do not apply during planned routine maintenance or control system malfunctions.

An allowance for downtime for planned routine maintenance of control devices is contained in both 40 CFR part 61, subpart Y and the HON. The downtime allowance is included in the CAR in subpart C, while an associated record is required with the other control device records in subpart G. The 40 CFR part 60, subparts Ka and Kb do not include this allowance.

Subpart Y of 40 CFR part 61 and the HON storage vessel provisions provide downtime for planned routine maintenance for all storage vessel control devices. The HON allows 240 hours per year and subpart Y allows 72 hours per year. The EPA believes that for SOCMI storage vessels, it is acceptable to allow 240 hours per year downtime for routine maintenance for control devices, thus providing operational flexibility without creating a significant potential for environmental degradation. The EPA maintains that it may be appropriate for storage vessels associated with other industries to be allowed less downtime depending on the use and maintenance activities of the industry.

New CAR Structure and Other Significant Changes From the HON

This section identifies the rationale and benefit of the structure of the CAR storage vessel provisions. It also outlines the significant differences between the storage vessel provisions in the referencing subparts and those in the CAR. In some cases, the CAR clarifies the language adopted from the HON; in others, HON concepts have been extended to the other storage vessel rules. While the CAR incorporates the HON storage vessel provisions, the CAR provisions have been structured to better match procedures and operations at a plant. The CAR structure is a new approach to all of the referencing subparts. At a plant site, the personnel responsible for designing or re-designing storage vessels are not typically the same personnel responsible for operating the vessels. Likewise, different personnel are in charge of inspecting vessels, and they may not be the same personnel that repair the vessels. In addition, plant environmental staff may be in charge of keeping records and making reports although they have no other storage vessel responsibilities.

Based on industry suggestions, the provisions for IFRs and EFRs are organized into design, operation, inspection, repair, and recordkeeping and reporting requirements. This more closely reflects how plant personnel actually function in complying with the referencing subparts and the modular format is clearer for each audience. Storage vessel operators, for example, do not necessarily need to be familiar with the inspection requirements.

The CAR also clarifies the storage vessel requirements of the referencing subparts by specifying how floating roofs should be monitored. While the HON provisions, which form the basis of CAR provisions, require only annual inspection of floating roofs, industry representatives were concerned that the

requirement in each of the referencing subparts that IFRs and EFRs must float at all times implies that continuous monitoring is required; however, no explicit provisions are provided for demonstrating continuous compliance. The EPA does not consider continuous monitoring necessary to ensure that roofs remain floating at all times; EPA considers annual observation to be adequate. The CAR requires that roofs be inspected for floating status during an annual inspection and at any other time the roof is viewed. This clarification was deemed necessary to provide a practical means to ensure that IFRs and EFRs float at all times, and it provides a means of achieving the environmental protection intended by the referencing subparts in a manner that is potentially less burdensome to the industry.

Another clarification to the referencing subparts incorporated into the CAR is the operating requirement to empty a tank whenever the roof is resting on the leg supports. All the storage vessel referencing subparts state that when the roof rests on the leg supports, the process of filling, emptying, or refilling the vessel shall be continuous and accomplished as soon as possible. This has been interpreted to mean that the liquid level in a vessel can be dropped below the leg level only when the vessel is to be completely emptied. This can result in either: (1) an effective ''loss'' of available tank capacity if the owner or operator maintains the level at an adequate margin above the leg supports to prevent fluctuations without resting the roof on the legs, or (2) a requirement to completely empty the vessel if fluctuations lower the liquid level below the leg level. Emptying a vessel would increase the vapor space between the roof (as it rests on the leg supports) and the liquid level, thus increasing emissions. Emptying a vessel can also result in significant expense in maintaining extra tanks or barges to handle the emptied liquid.

The intent of the provision in the referencing subparts is to prevent the liquid level from rising and falling while the roof is resting on the supports. While the roof is on the supports, fluctuations in the liquid level generate emissions by increasing the vapor space between the roof and the liquid level as the liquid level falls, and then pushing these vapors out of the vessel as the level rises. Emissions are minimized if the vapor space is minimized. Not requiring emptying the tank if the liquid level falls below the roof supports would minimize the vapor space. Emissions are also minimized when the liquid level is raised during a continuous fill to a point where the roof is again floating, without an intervening drop in the liquid level. The CAR language is a revision of the language in the referencing subparts which requires only that once the roof is resting on the legs, the process of filling or refilling must be continuous and done as soon as practical. The CAR definition of ''empty'' or ''emptying'' is also clarified to specify that when the liquid level drops below the roof supports during normal operation, the event is not considered emptying. Therefore, none of the provisions that must occur upon emptying are triggered. (The note in the HON provisions to this effect is not needed with the clarifications in the CAR.)

Since resting the roof on its leg supports while the tank is in service is not a common occurrence, this revision is unlikely to significantly affect emissions, but the revision provides operational relief to the owner or operator when unforeseen inventory problems force the liquid level to drop below the leg supports. It should be noted that a new recordkeeping requirement has been created to document when this occurs [§ 65.47(e)]. However, the benefits of added operating flexibility and of the clarified language, which helps avoid interpretation conflicts, far outweigh the slight additional burden of creating a new record.

Another significant burden reduction for storage vessels concerns time extensions for repair and for seal gap measurements of unsafe vessels. Under several of the referencing subparts, a vessel is required to be repaired within 45 days if failures (as defined for storage vessel floating roofs) are found during the vessel inspection. If the vessel cannot be repaired within 45 days, a single extension of up to 30 days to empty the vessel and remove it from service may be requested from the Administrator. The provisions in the proposed CAR allow up to two extensions of up to 30 calendar days each without prior Administrator approval. The source operator is only required to document the basis for the extension and retain records of repairs and report them in the next periodic report. Extending the exemptions from the HON to all storage vessels complying with the CAR creates a consistent approach to compliance. Allowing extensions for repair creates operational flexibility without significantly affecting emissions.

The CAR also incorporates the HON's more flexible provisions for instances where performing seal gap measurement may be unsafe. The source operator is allowed up to two extensions of up to 30 days each to empty and remove a vessel from service once it is determined to be unsafe. The referencing subparts other than the HON do not include special provisions for instances where performing seal gap measurements would be unsafe. Allowing extensions for safety purposes incorporates that latest ''common sense'' approach to seal gap measurement procedures.

The concept of an EFR converted into an IFR is contained in the HON but is not included in the other storage vessel referencing subparts. No additional requirements are specified in the HON. Instead, it clarifies which EFR requirements and which IFR requirements apply to these storage vessels. The CAR incorporates this clarification by including a special section for converted storage vessels. The section points out which provisions should be followed, but does not otherwise contain additional requirements. This clarification incorporates the most current approach to control and better represents situations that can occur in the industry.

Other Changes From the Referencing Subparts

Several burden reducing changes were made to the recordkeeping and reporting provisions for storage vessels. The changes from the referencing subparts create a consolidated program that will increase clarity and compliance while reducing industry burden. These changes are discussed below.

The proposed CAR provides for 90 days as the time within which gap measurements would be required once a vessel that had been out of service for over 1 year is refilled. The HON and 40 CFR part 61, subpart Y also allow 90 days; however, 40 CFR part 60, subparts Ka and Kb specify 60 days. Therefore, the 90 day allowance would provide a burden reduction for part 60 storage vessels complying with the CAR.

The timing of reports for storage vessels has been standardized in subpart C of the CAR. For both the prior notice of gap measurements and notice of vessel filling or refilling, the CAR retains the same 30-day requirement included in each of the referencing subparts. However, the CAR requires results of defect inspections, seal gap measurement results, and seal gap exceedences to be reported in the periodic semiannual report, as they are in the HON. These reports in 40 CFR part 60, subparts Ka and Kb, and 40 CFR part 61, subpart Y are required either 30

or 60 days after the inspection, depending on the regulation. The CAR's consolidated submittals provide a reporting burden reduction for 40 CFR part 60, subparts Ka and Kb, and 40 CFR part 61, subpart Y sources.

Notifications for refilling a vessel that has been emptied and notifications prior to seal gap measurement of EFR's are required as in the HON. However, where these notifications are also sent to a State or local agency, a copy to EPA is not required. In reviewing the use of these notifications, EPA determined that the States and local agencies used the reports to observe refilling in cases where they are the delegated authority. The State or local agency may also waive these notifications.

The proposed CAR provisions require less information for seal gap measurement reports than the HON does. For example, for EFR seal gap measurements, sources would not be required to report raw data or calculations of each measurement, as specified in the HON provisions. Only the result of the gap measurement calculations that indicate noncompliance are required under the CAR; vessels with seal gap measurements that are in compliance need only be listed. Because the more detailed raw data would still be retained as an onsite record, EPA believes that reporting it would be unnecessary.

Records of inspections have also been streamlined in the proposed CAR. For example, 40 CFR part 60, subpart Kb requires sources to record the condition of each component inspected. The CAR requires only a record that the inspection has been performed on a specific vessel, the date of inspection, and a reference to the type of inspection performed. These records could consist of a simple checklist of subject storage vessels with dates entered for particular inspections performed. The proposed CAR requires a description of the condition of a component only if a problem is detected.

Additional Requirements Resulting From the Consolidated Program

This section details the provisions of the CAR that are based on the HON language and that introduce changes to the other referencing subparts. These changes, which may impose additional burden, primarily to subpart Ka tanks, as detailed below, should be considered in relation to all the positive advantages of consolidating the design requirements as well as those previously discussed for storage vessel complying with the CAR.

The requirements for storage vessels previously complying with 40 CFR part 60, subpart Ka are significantly different under the CAR. These differences primarily include design requirements for floating roofs and the allowance for a vapor mounted seal for an EFR. Modeled after the HON provisions, the CAR design specifications require a secondary seal above a vapor mounted seal for an IFR, and they do not allow vapor mounted seals for an EFR. Subpart Ka of 40 CFR part 60 allows vapor mounted seals for EFRs and does not specify types of seals for IFRs. In general, it is expected that storage vessels subject to 40 CFR part 60, subpart Ka will require upgrading in order to comply with the CAR's floating roof design requirements.

Other differences include the CAR's requirements for seal gap measurement and IFR inspection and repair procedures. Owners and operators with storage vessels subject to 40 CFR Part 60, subpart Ka are required to have ''no gaps'' in the secondary seal, but the rule does not provide any explicit procedures for determining compliance. The CAR's explicit procedures provide clarity. Likewise, the CAR's explicit requirements for repair procedures and time frames are now included for storage vessels previously complying with 40 CFR part 60, subpart Ka. Similarly, subpart Ka of 40 CFR part 60 does not specify any IFR inspection or repair provisions. The explicit CAR provisions, based on the HON, are new to sources subject to 40 CFR part 60, subpart Ka. Another design requirement that would be new to these storage vessels is the CAR provision requiring that covers on the roof be gasketed.

Design requirements for guide poles are found in the HON and are used in the CAR. The CAR requires gasketed caps on unslotted guide poles (except for antirotational devices equipped with a welded cap) and gasketed floats (or other devices) on slotted guide poles. Both of these requirements are new to 40 CFR part 60, subparts Ka and Kb and 40 CFR part 61, subpart Y.

D. Process Vent Provisions

The process vent provisions consolidate the process vent requirements of 40 CFR part 60, subparts III (air oxidation process vents), NNN (distillation vents), and RRR (reactor vents), and part 63, subpart G (HON process vents). The process vents subpart in the CAR, subpart D, provide significant opportunity for consolidation because the process vent referencing subparts are similar in their structure and requirements.

Subpart D of the CAR contains all the provisions for the performance standards; determining if control, monitoring, or neither is required; TRE index value determinations; process changes; and monitoring, reporting, and recordkeeping for vents that comply without the use of either a recovery or control device. Vents that comply by using recovery or control devices are also subject to subpart G of the CAR for further provisions regarding operation, monitoring, recordkeeping and reporting for control and recovery devices. This section discusses subpart D of the CAR; section V.G and H discuss subpart G of the CAR.

Language Clarification and Consolidation

This section presents the rationale and use of some of the terminology used in the process vents subpart of the CAR. It points out the initial confusion or repetitive language in the referencing subparts as well as the changes proposed in the CAR. The control requirements for vents are the same across all the referencing subparts and each also has provisions for using TRE index values for classifying vents into three categories, as follows: control required, no control required but monitoring required, or no control required and no monitoring required. While the performance standards for vents are the same in the referencing subparts, the language used to describe the three vent classifications is not. The 40 CFR part 60 rules use long text descriptions that cite TRE index value, concentration, and flow rate to describe each vent classification every time the language refers to a vent classification. The HON uses ''Group 1'' and ''Group 2'' to distinguish process vents where control is and is not required, but the HON also uses long descriptions whenever Group 2 is mentioned to describe if monitoring is required or not. These different approaches not only create confusion but also significantly expand the language.

The CAR expands on the HON terms that describe each vent classification by establishing nomenclature for each classification. Process vents where control is required are referred to as ''Group 1.'' Process vents where control is not required but monitoring is required are referred to as ''Group 2A.'' Process vents where neither control nor monitoring are required are referred to as ''Group 2B.'' This change allows for less overall text and makes the rule easier to read and understand, thereby resulting in better compliance and facilitating enforcement. The consistent terminology for these vents throughout the CAR also reduces confusion in recordkeeping and reporting and makes classification of specific vents easier.

The remainder of this section will refer to process vents by using the Group 1, Group 2A, and Group 2B terminology to indicate the vent classification specified by the CAR or by the referencing subparts.

Consolidation of Requirements

This section discusses which process vent provisions and approaches in the referencing subparts were consolidated to create the CAR process vent subparts. The significant changes, including discussions of the rationale and benefits of the changes, are highlighted below.

The consolidated requirements for process vent group determination is summarized in table 2. Several vent characteristics (TRE index value, flow rate, and concentration) are used in the referencing subparts to determine group status. However, variability exists across the referencing subparts in the values that are used for these characteristics. Where possible the CAR has consolidated these criteria to propose a rule that is consistent for all vents.

TABLE 2.—THE CAR PROCESS VENT GROUP DETERMINATIONS

Vent stream characteristic	Group assignment		
	1	2A	2B
Total resource effectiveness (TRE)	≤1.0	>1.0 to 4.0	>4.0.
	and	and	or
Flow rate	≥0.011 scmm	≥0.011 scmm	<0.011 scmm.
	and	and	or
Pollutant concentration[a]	≥300 ppmv TOC	≥300 ppmv TOC	<300 ppmv TOC.
	≥50 ppmv HAP	≥50 ppmv HAP	<50 ppmv HAP.
Control	Control required	No control; monitor required	No control and no monitoring.

[a] Process vents subject only to 40 CFR part 60 subpart III or 40 CFR part 63, subpart G are not eligible for the 300 ppmv TOC concentration cutoff. Process vents subject to 40 CFR part 63, subpart G are eligible for the 50 ppmv HAP concentration cutoff. Process vents subject to only the 40 CFR part 60, subparts are not eligible for the 50 ppmv HAP concentration cutoff.

Each of the process vent subparts being consolidated used a TRE index value to determine group status. The 40 CFR part 60 rules and the HON use similar parameters (for example, flow rate, heating value) but different coefficients in the equations, yielding different TRE index values. The CAR contains a single equation along with accompanying tables containing all the needed coefficients. The coefficients vary depending on process vent stream parameters and the referencing part (HON or NSPS). The single equation eliminates the need to duplicate in the CAR many pages of equations from the referencing subparts. While the new equation looks different from those in the referencing subparts, it yields the same TRE index values and, therefore, does not change any applicability determinations.

The different coefficients for the HON and the NSPS rules are necessary to avoid altering the stringency of the referencing subparts. The TRE index equations essentially are used to determine whether or not a particular vent stream is cost-effective to control (in terms of cost per unit of pollution reduced). The coefficients of the TRE equation vary because source category specific decisions were made pertaining to acceptable levels of cost-effectiveness in each rule. Consolidating to a single set of coefficients would change the TRE index value and, therefore, change the applicability criteria of the referencing subparts.

There are some minor differences among the referencing subparts in the provisions regarding the numerical levels for TRE index value, flow rate, and concentration that are used in determining group status (Group 1, Group 2A, or Group 2B).

Group 2A vents are required to monitor certain parameters to ensure that the TRE index value remains above 1.0 (a TRE index value of less than 1.0 indicates that control is required). Two of the referencing subparts, 40 CFR part 60, subparts NNN and RRR, specify a TRE index value criterion of 8.0, below which monitoring is required; these are Group 2A vents. The two other referencing subparts have a Group 2A TRE index value criterion of 4.0. Statistically, there is a chance that the actual TRE index value could fluctuate during normal operation to less than 1.0 if the calculated TRE is less than the Group 2A criterion. This is why monitoring is required for Group 2A process vents (i.e., to ensure that the TRE index value does not fall below the 1.0 criterion).

After reviewing the development history of these cutoffs for each rule, EPA determined that the probability of the TRE fluctuating from a value in the range of 4.0 to 8.0 to less than 1.0 is small compared to the probability of it fluctuating from a value in the range of 1.0 to 4.0 to less than 1.0. In the CAR, EPA proposes a TRE index value cutoff of 4.0 for consistency. Thus, vents with TRE index values greater than 4.0 (i.e., Group 2B) would not have to monitor. This consolidation would result in no impact on emissions because the vents in question were never subject to control requirements; they were only subject to monitoring requirements.

The low flow rate criterion for Group 2B status was similarly consolidated in the CAR. The cutoffs in the referencing subparts range from 0.005 standard cubic meters per minute (scmm) in the HON to 0.008 scmm in 40 CFR part 60, subpart NNN to 0.011 scmm in 40 CFR part 60, subpart RRR. Subpart III of 40 CFR part 60 does not contain a low flow rate criterion. The EPA proposes to use 0.011 scmm in the CAR. Based upon an analysis of EPA's process vent database, EPA concluded that the population of process vents with a flow rate between 0.005 and 0.011 scmm would be very small. This data analysis is documented in more detail in the following memorandum available in the Docket: ''Process Vent Applicability Criteria,'' from Greg DeAngelo, Eastern Research Group, to Rick Colyer, EPA, dated July 17, 1998. In the case of air oxidation vents (i.e., those subject to 40 CFR part 60, subpart III), EPA believes that no vents will have flow rates below 0.011 scmm because of the high flow rates in the vent streams from these unit operations.

The low concentration cutoff for Group 2B status also was consolidated. Based on an analysis of EPA process vent database, EPA considered it appropriate to extend the 300 ppmv TOC low concentration cutoff from 40 CFR part 60, subpart RRR to subpart NNN sources, but did not apply the cutoff to subpart III sources. Air oxidation process vents subject to 40 CFR part 60, subpart III can have low

concentrations but very high flow rates that could potentially result in significant mass emissions of regulated pollutant even at low concentrations. The 50 ppmv HAP concentration cutoff was retained for 40 CFR part 63, subpart G sources because the concentration cutoff is in terms of HAP and no direct, consistent relationship can be established between HAP and TOC emissions given the many different types of processes across the industry.

Another concept that was taken from the HON and used in the CAR is the procedures for monitoring a Group 2A process vent that meets the Group 2A criteria without the use of a recovery device. In other words, the process vent has the characteristics of a Group 2A process vent ''naturally,'' without the addition of a recovery device. In this case, because the standard monitoring parameters for recovery devices do not apply, the CAR specifies that the owner or operator should determine the appropriate parameters to monitor. Under this case-by-case determination, the proposed monitoring parameters, monitoring schedule, and recordkeeping and reporting procedures would be submitted to the Administrator for approval and then become the provisions for the process vent. This concept is a clarification to the part 60 rules, which do not address process vents that are Group 2A ''naturally.''

Engineering Assessment

The CAR allows the use of engineering assessment in lieu of testing to determine vent characteristics. Engineering assessment is allowed when determining vent stream flow rate and concentrations and TRE index value for verifying Group 2B status. Halogenated vent stream status can also be determined using engineering assessment. Compared to testing, engineering assessment is a less burdensome approach to determining vent stream characteristics. Allowing engineering assessment for verifying Group 2B status does not decrease environmental protection because any process vent with an estimated TRE index value between 1.0 and 4.0 must be tested and is potentially subject to control. Using engineering assessment for process vents with a TRE index value above 4.0 also allows facilities to focus attention on vents where control or monitoring is expected to be required.

Engineering judgement is allowed in the process vent referencing subparts of part 60 only for TRE index value determination after a process change is made, but it is not allowed for the initial determination of vent characteristics. Also, the specifications included in the CAR of what an engineering assessment entails, and the examples of engineering assessment, are not in the process vent NSPS.

The HON does not allow the use of engineering judgement for the initial determination of concentration and flow rate to verify Group 2B status. These vents would have to be tested to evaluate the concentration or flow rate. The CAR allows engineering assessment for the initial determination of low concentration and flow rate. The EPA has determined that engineering assessment is appropriate for these low concentration and/or low flow rate streams. This assessment is available for review by an inspector who can always request that a test be conducted if needed.

Other Burden Reductions

There are several other minor provisions based on HON provisions that are consolidated in the CAR for consistency, simplicity, or to provide burden reduction. They are discussed below.

As in all the referencing subparts, the CAR requires that the group status of the process vent must be evaluated whenever a process change is made. The part 60 rules list examples of process changes, and these lists are similar to the examples in the HON, except that the HON list includes changes in production rates as an example of a process change. The CAR includes production rate changes as examples of process changes.

Likewise, the CAR includes the HON provisions regarding where to locate the sampling site for purposes of determining the vent stream characteristics. The CAR approach essentially specifies that the sampling site should be located after the last recovery device but prior to the control device inlet (and prior to release to the atmosphere). In addition to this same requirement, the part 60 process vent referencing subparts also provide sampling site provisions for streams that are mixed prior to venting to a control device. In these provisions, calculations are required to back-calculate the effect of the control device on the individual streams that are mixed. The EPA determined that this back-calculation was not necessary, because a determination of the efficiency for the control device to reduce the mixed stream is a good indication of the efficiency to reduce emissions from individual streams. These 40 CFR part 60 provisions, therefore, were not adopted in the CAR.

The net heating value equation in the CAR specifies that the concentrations of the individual compounds are to be determined on a wet basis. All of the process vent referencing subparts and the general provisions of 40 CFR parts 60 and 63 contain a net heating value equation, but the equation is presented in several different forms across the rules with respect to whether or not the concentration component of the equation is on a wet or dry basis. Some equations specify wet basis, but some equations specify dry basis and include a correction for the water vapor content of the vent stream. With the exception of 40 CFR part 60, subpart III, all the equations are mathematically equivalent, so the results are the same. In subpart III, the equation is given in the wet basis form, but the provisions do not require that it be on a wet basis. Because industry input indicated that the wet basis form for the equation is more prevalent, the wet basis form is used in the CAR and the concentration is required to be on a wet basis. This is a possible change for 40 CFR part 60, subpart III since some owners or operators subject to subpart III may have been calculating net heating value using concentration on a dry basis in the equation meant for wet basis concentrations. These owners or operators would therefore need to recalculate the net heating value under the CAR.

A change has been proposed to subpart III, however, specifying that the concentration should be on a wet basis (62 FR 45369, August 27, 1997). Note that this **Federal Register** citation refers to changes in test methods; the actual text of the proposed amendment to subpart III is in the air docket at A–97–12 or on the web at http://www.epa.gov/ttn/emc. Once this change is final, subpart III and the CAR will be consistent on this issue.

The HON has a requirement to report which criteria (TRE index value, concentration, or flow rate) a process vent meets to qualify as a Group 2B vent and to report the test results (if any) accompanying the determination. Under the CAR, records of test information must be maintained, but no reports are required. The report is required only to identify which vents are Group 2B. It does not have to list which criteria each vent meets. This reporting requirement operates in conjunction with the CAR's approach to reporting process changes. If a process change is made that does not result in upgrading the group status (for example, Group 2B to Group 2A), then only a statement to that effect is required. This is a burden reduction because if a process vent that meets

Group 2B status for one criterion now meets Group 2B status for a different criterion following a process change, only a brief report would be required rather than test results, engineering assessments, or the like. All records of calculations after a process change are still required to be kept.

Halogenated Vent Streams

Some concerns may exist in the consolidated process vent rules for halogenated process vents subject to 40 CFR part 60, subparts III, NNN, or RRR but not subject to the HON. Two separate but related issues exist: (1) whether a vent stream is halogenated, and (2) how to control a halogenated vent stream.

The TRE index value is a function of whether the vent stream is halogenated or nonhalogenated. The CAR and all of the referencing subparts direct the owner or operator to use one set of coefficients to make the TRE index value calculation for a halogenated vent stream, while another set of coefficients must be used to make the TRE index value calculation for a nonhalogenated vent stream. The CAR provisions consolidate the definition of a halogenated vent stream using the HON definition. The definition specifies that when the mass emission rate of halogen atoms contained in the organic compounds is equal to or greater than 0.45 kilogram per hour, the process vent stream is considered halogenated.

This is potentially an important issue for process vents subject to one of the part 60 process vent referencing subparts, because those rules define halogenated streams differently. A stream is considered halogenated if it contains 20 ppmv or greater halogens (versus 0.45 kilograms per hour under the CAR). The consolidation of this definition in the CAR could result in a halogenated vent in the NSPS rules becoming a nonhalogenated vent in the CAR, or vice versa. With the different set of coefficients for calculating TRE index values for halogenated and nonhalogenated vent streams, this could change the TRE index value of a vent and, therefore, the group status. If a group status changes as a result of the CAR, a different control and/or monitoring requirement may be triggered.

The EPA believes this is an insignificant difference because only a small subset of vents might have different halogenated status under the CAR versus the NSPS process vent rules. Also, the majority of sources subject to the process vent NSPS are also subject to the HON. Therefore, this difference would have little effect on rule applicability.

The HON provisions for process vents also include additional control requirements for halogenated Group 1 process vents, while the other referencing subparts do not specify any additional control. The HON prohibits flaring of halogenated vents and specifies that a halogen reduction device must be used if the process vent is to be combusted. The proposed CAR includes the HON provisions regarding flares and halogen reduction devices for combusted halogenated Group 1 process vents. Based on industry input, EPA believes that halogenated vents are very rarely flared because the flare tip corrodes under these conditions.

These are substantial changes from the 40 CFR part 60 rules (especially the possibility of requiring the installation of a halogen reduction device such as a scrubber) that may prove to be an impediment to some sources that otherwise may wish to use the CAR. The EPA believes that the total population of process vents that contain halogens, are Group 1, and are subject to a 40 CFR part 60 rule, but that are not subject to the HON is small. The EPA specifically requests comment on this issue.

E. Transfer Rack Provisions

The transfer rack provisions consolidate the transfer rack requirements of 40 CFR part 61, subpart BB (benzene transfer operations), and 40 CFR part 63, subpart G (HON transfer racks). Transfer racks complying through the use of a control device are referred to subpart G of the CAR, thereby eliminating much of the regulatory text contained in the transfer sections of the referencing subparts.

The CAR transfer provisions are based on the transfer provisions of the HON. The only significant change relative to the HON provisions involves elimination of a recordkeeping requirement. The HON requires that records be kept of liquids transferred through each transfer rack. The EPA has determined that this record is not necessary for transfer racks complying with the CAR. The intent of the record in the HON was to determine if the liquids being transferred triggered the HON control requirements for the transfer rack. Since control is required for all transfer racks complying with the CAR, this record is not needed.

The primary benefit of using the CAR for transfer racks subject to 40 CFR part 61, subpart BB is to extend the same compliance options of the HON to non-major SOCMI sources subject to subpart BB.

The HON allows vapor balancing as an alternative to the installation of a control device. The process of vapor balancing consists of returning vapors expelled from the vehicle being loaded through vapor lines to the storage vessel being emptied. This option is not contained in 40 CFR part 61, subpart BB. Vapor balancing is an option under the HON because EPA determined that it reduces emissions by at least 98 percent and is therefore an acceptable alternative to a control device. Consequently, vapor balancing is included in the CAR to provide flexibility for non-major SOCMI sources subject to subpart BB.

In addition, the CAR clarifies the definitions of vapor balancing and closed-vent system. Vapor balancing systems are not subject to the closed-vent system equipment leak provisions. Previously, the referencing subparts used different approaches and terminology, creating confusion about whether or not an individual section of the transfer rack was part of the process or part of the closed-vent system. The consolidated definitions clarify the issue. See the discussion of the definitions in section VI.B of this preamble for more information.

''Vapor collection system'' is the term used in the referencing subparts to describe the equipment that collects and transports transfer rack emissions. Throughout the CAR, uniform language is adopted that refers to this type of equipment as ''closed-vent systems.'' This standardization, along with the revised definitions, further clarifies which sections of the transfer rack are included in the closed-vent system and which are process piping.

The HON also introduces two other compliance alternatives that can be used for transfer racks, neither of which are included in 40 CFR part 61, subpart BB. Emissions from transfer racks can be routed either to a process or to a fuel gas system. These options are consistent with EPA's current approach to emissions control and provide operational flexibility while maintaining environmental protection. During the development of the HON, EPA determined that both of these alternatives reduce emissions by at least 98 percent and are therefore acceptable alternatives to a control device. Therefore, these two options are included in the CAR's provisions for transfer racks.

The CAR allows two alternatives for demonstrating leak tightness for tank trucks and rail cars. Source operators may rely on either a Department of Transportation tank certification for tank trucks and railcars, or Method 27

test results and documentation. The HON allows both of these alternatives, recognizing that either is an acceptable means of demonstrating leak tightness of tank trucks and railcars. However, because it was drafted prior to the DOT certification program, 40 CFR part 61, subpart BB does not make this choice available for transfer racks and specifies only Method 27. Allowing this alternative in the CAR provisions provides a potential for burden reduction because owners and operators of tank trucks and railcars are already required to keep the DOT certifications under DOT regulations. Under the CAR they do not have to perform Method 27 in addition to keeping the DOT certification. This alternative provides for a significant reduction in recordkeeping burden in 40 CFR part 61, because subpart BB required several ancillary records related to Method 27 to be kept by the owner or operator of the transfer rack. These records are not necessary in conjunction with the much simpler records needed for the DOT certifications.

The HON also allows an owner or operator to use a control device to reduce the organic concentration of transfer rack emissions to 20 ppmv, (on a dry basis, corrected to 3 percent oxygen) as an alternative to reducing emissions by 98 percent. However, 40 CFR part 61, subpart BB does not provide this alternative, so the CAR includes this option as a means of flexibility for transfer rack compliance.

Achieving a 98 percent reduction of a vent stream that initially has a very low concentration can be infeasible or unreasonably costly. Allowing a 20 ppmv concentration in addition to a 98 percent reduction provides operational flexibility without compromising environmental protection. This is an example of extending the more up-to-date procedures of the HON to sources subject to 40 CFR part 61, subpart BB.

The CAR adopts the control requirements of the HON for halogenated transfer rack vent streams. These requirements are similar to those discussed in section VI.D of this preamble for halogenated process vents. These are new requirements for transfer racks subject to 40 CFR part 61, subpart BB. The EPA does not expect the new requirement to affect many vent streams because few transfer racks that are subject to 40 CFR part 61, subpart BB will contain halogens in sufficient quantity to be considered halogenated by the CAR.

F. Equipment Leak Provisions

The proposed CAR's equipment leaks provisions consolidate the equipment leaks requirements of 40 CFR part 60, subpart VV (SOCMI equipment leaks), 40 CFR part 61, subpart V (the generic equipment leak requirements for 40 CFR part 61, subparts F [vinyl chloride] and J [benzene]), and part 63, subpart H (HON equipment leaks).

Applicability of the CAR's equipment leak requirements is determined by applicability provisions in the referencing subparts. These provisions specify the components that would be subject to the CAR. The provisions of the CAR apply only to those components that are subject to the referencing subparts and are specifically referred to the CAR. The CAR does not alter the applicability of the referencing subpart. For example, the equipment leak provisions of subpart VV of 40 CFR Part 60 state that subject equipment includes all pumps, valves, compressors, pressure relief devices, sampling connection systems, open-ended lines, and connectors that contain or contact a process fluid that is at least 10 percent VOC by weight. When the CAR is applied, only those same components would be subject to the provisions in the CAR. Thus, even though the CAR contains provisions for agitators, the agitator provisions would not apply to a source subject only to 40 CFR part 60, subpart VV, because agitators are not covered by 40 CFR part 60, subpart VV.

This section of the preamble discusses the CAR provisions for alternative monitoring for valves, connector monitoring, the overall improvements to the structure of the equipment leaks provisions in the CAR, provisions from the HON that were clarified or improved through incorporation into the CAR, and significant changes between the provisions of 40 CFR part 60, subpart VV and 40 CFR part 61, subpart V and those contained in the CAR.

Alternative Monitoring Program for Valves

The most significant difference between the equipment leaks provisions in the CAR and those in the referencing subparts is the CAR's innovative approach for monitoring valves for leaks. The CAR alternative monitoring program can significantly reduce the amount of burden associated with monitoring valves for leaks without increasing the emissions of regulated pollutants to the environment. The valve monitoring program is discussed below.

The premise for the CAR alternative monitoring program is that industry data and experience have shown that, at some facilities, some valve populations tend to leak more frequently than others. The referencing subparts require valve monitoring on a process unit basis, such that a certain number of valves that tend to leak frequently may continually force all of the valves in the process unit to be monitored frequently. Separate process units can qualify for less frequent monitoring if the percent leaking valves in the process unit falls to a small enough number. The CAR alternative monitoring program extends this concept by allowing subgrouping, within or across process units, to determine the valves that must be monitored. Each subgroup correlates to a specific monitoring frequency based on the percent leaking in that subgroup.

Under the CAR alternative, the owner or operator can place valves that are expected to leak more frequently into one subgroup. Because these valves leak more frequently they would be monitored more frequently. Then, the valves in the other subgroups can qualify for less frequent monitoring because the valves that leak more frequently will not be included in their percent leaking calculations. This is conceptually the same as the current programs which allow different monitoring frequencies for different process units, in that the performance of a given process unit does not disqualify another process unit from less frequent monitoring. The primary difference in the CAR alternative monitoring program is that subgrouping can be based on site-specific factors other than process unit boundaries.

The main benefit of the CAR alternative monitoring program is to allow facilities to focus on valves that tend to leak, while relieving the burden of monitoring valves that tend not to leak and achieving essentially the same level of environmental protection provided by the referencing subparts. The cost of monitoring, which is a significant burden to the industry, is thereby reduced without creating a greater potential for negative environmental impact.

Several safeguards have been built into the CAR alternative monitoring program to ensure that the level of environmental protection does not deteriorate. First, to initially qualify for the CAR alternative monitoring program, the overall performance of all valves in the alternative monitoring program must be less than 2 percent leakers. Also, if the overall performance of the valves in the alternative monitoring program fails to meet the program's required 2 percent leak rate, as determined through semi-annual performance checks, the entire population of valves in the alternative monitoring program would revert to the

original valve monitoring program. As a result, each process unit would revert to the monitoring frequency dictated by the percent leaking valves observed. This may also introduce monthly monitoring for many valves. The EPA considers this possibility a significant incentive for owners or operators to maintain good performance at plant sites employing the subgrouping program.

In addition, valves with less than one year of monitoring data (or valves not monitored within the last 12 months) must initially be placed into the most frequently monitored subgroup. Provisions to restrict switching valves between subgroups are included to prevent circumvention. These provisions, discussed below, ensure that valves cannot be moved back and forth between subgroups to hide or diminish the impact of leaking valves on the percent leaking valves calculations.

Under the proposed alternative, a valve can be moved into a less frequently monitored subgroup only when data have been collected that demonstrate that the valve has not leaked during the entire monitoring period of the subgroup to which it is moving (for example, no leaks for the past 12 months before moving a valve into an annually monitored subgroup). Therefore, valves with a demonstrated lower incidence of leaks can migrate into the longer monitoring period subgroups. Because even a few leaking valves in a subgroup can disqualify the subgroup for the longer monitoring periods, it is anticipated that owners and operators will be very cautious when considering whether or not to move suspect valves into the longer monitoring period subgroup.

To move a valve into a more frequently monitored subgroup, the valve must have been monitored during the most recent monitoring period for the group it is moving from, and it must have had its monitoring results included with the group from which it is moving. The intent of this safeguard is to prevent leaking valves from being shuttled out of a subgroup to protect that subgroup from triggering a more frequent monitoring period.

The placement and subsequent reassignment of valves into subgroups is a decision that will be made on a case-by-case basis by the owners and operators. The alternative program takes advantage of the knowledge of the process that the owner or operator possesses. At a given facility, for example, valves operating under certain temperatures or valves located adjacent to certain pieces of equipment may be more likely to leak. No single set of criteria can be applied to the entire industry, as the characteristics of valves that are more likely to leak at one facility may not be the same at another facility.

Some additional records and items to include in the periodic reports are necessary for this program to ensure compliance. These records and reporting items consist essentially of recording which valves are initially assigned to each subgroup, which valves have subsequently been reassigned, and the results of the semiannual performance checks. The burden associated with retaining these records and making these reports is far outweighed by the savings in reduced monitoring.

The other aspect of the valve program is the ability to earn longer monitoring periods with good performance. The HON currently allows a series of extended monitoring periods based on improved performance, culminating with an annual monitoring period for process units with less than 0.5 percent leaking valves. The CAR equipment leaks subpart introduces an additional 2-year monitoring period for process units with less than 0.25 percent leaking valves. This extended monitoring period would be available to valves whether or not the owner or operator chooses to use the alternative subgrouping program for compliance. Since 0.25 percent of a typical valve population (either a process unit under the base monitoring program or a subgroup under the CAR alternative monitoring program) is a very small number of leaking valves, EPA considers this change a logical extension of the original monitoring periods specified in the HON. Furthermore, it has the potential to substantially reduce monitoring costs without increasing long-term emissions to the environment.

Revised Monitoring Program for Connectors

Another major difference between the CAR and the referencing subparts is the approach taken to control equipment leak emissions from connectors. The HON is the only referencing subpart with connector monitoring provisions, but the CAR's approach to connector monitoring requires much less frequent monitoring for SCUs with good performance histories.

For connectors, as for valves, the monitoring periods have been extended. The HON is the only referencing subpart that specifies periodic monitoring for connectors, and it contains provisions for extending the monitoring period to once every 4 years if the percentage of leaking connectors is less than 0.5 percent. The CAR extends the HON concept to an 8-year monitoring period for process units with less than 0.25 percent leaking connectors, while introducing connector monitoring to sources previously complying with the sensory monitoring requirements of 40 CFR part 61, subpart V and 40 CFR part 60, subpart VV. This approach for connectors applies on an SCU basis; subgrouping similar to the alternative valve monitoring program is not allowed.

The EPA believes that the extended 8-year monitoring period is warranted for connectors which can achieve and maintain a leak rate of less than 0.25 percent. The lower threshold will forbid any poorly performing connectors from qualifying. In addition, connectors are static pieces of equipment without any moving parts. They are much less likely to leak than dynamic pieces of equipment like pumps and valves.

As a safeguard built into the provisions allowing an 8-year monitoring frequency, the CAR requires at least half of the connectors to be monitored within the first 4 years. The process unit must have less than 0.35 percent leaking connectors to remain in the 8-year program; failing the percent leak criteria means the owner or operator must monitor the rest of the values within the next 6 months. The result of this monitoring will then determine the new monitoring period. The 0.35 percent criterion was selected so that, if 0.35 percent (or more) of the first half of the connectors leak, the overall connector population will be monitored, and the overall results will be used to determine the monitoring frequency.

The changes for valves and connectors introduce concepts designed not only to significantly reduce the burden of complying with equipment leak inspections but also to maintain environmental protection. The EPA believes that the safeguards incorporated into the new programs for valves and connectors are sufficient to meet both of these goals.

CAR Structure

Some of the improvement to the CAR subpart F entails restructuring with the intent to isolate and emphasize the different provisions in a manner more consistent with typical plant operation. For example, monitoring for leaks and leak repair are presented separately because the personnel at a plant site responsible for these two activities are not necessarily the same. In addition to creating a ''user-friendly'' format, the other goal of restructuring is to avoid repetition of requirements. Equipment

identification provisions, for example, are presented once rather than duplicated for each equipment type discussed.

In general, the equipment leaks subpart of the CAR is structured in the following manner. Provisions common to all equipment types (such as equipment identification, monitoring for leaks, and leak repair) are consolidated and presented once, at the beginning of the subpart. Following these provisions are component-by-component standards (for example, for valves and for pumps). After the standards sections, the subpart contains alternatives for batch units and for enclosed process units as well as recordkeeping and reporting requirements for all equipment.

The general benefit of this structure is that plant personnel need to be familiar with only the portions of the subpart that affect them. Personnel responsible only for component repair, for example, can refer to two or three sections in the subpart and do not have to read all of the sections. A discussion of some of the more specific benefits of structure improvements follows.

Two sections have been created through restructuring: ''Instrument and Sensory Monitoring for Leaks'' and ''Leak Repair.'' This restructuring is intended to more closely relate the structure of the equipment leaks subpart to the way plants are configured and operated. The referencing subparts contain the leak detection and repair provisions for each type of component within the section for that component. EPA believes that significant consolidation and simplification can be achieved by combining the leak detection and leak repair provisions into one set of provisions, since they are very similar or identical for the different types of components. Instrument leak detection procedures are the same across the components, including the method used, calibration, monitoring procedure, and leak identification.

The same is true for leak repair procedures. All of the referencing subparts include provisions for repair within 15 days (first attempt within 5 days), removal of leak identification, delay of repair, and recordkeeping. Many of the CAR's recordkeeping provisions are contained in the new leak detection and repair sections because the personnel detecting and repairing the leaks are generally the same ones who create and maintain the records. Only leak detection and repair specific to individual components or situations are retained in the individual sections addressing those components.

An additional restructuring was achieved by creating a parallel construction for the equipment component sections which have similar types of provisions. The standards for valves, pumps, connectors, agitators, pressure relief devices in liquid service, and instrumentation systems are broken into parallel paragraphs addressing compliance schedule, leak detection, percent leaking component calculations, and leak repair, where these provisions are applicable. Any special provisions for that component follow the standardized paragraphs. A consistent structure for these sections enables the owner or operator to more easily understand the requirements for each component and facilitate the owner or operator's compliance activities.

For consistency and clarity, all owners or operators controlling equipment leak emissions with closed-vent systems and control devices or by routing to a process or to a fuel gas system are also subject to subpart G of the CAR. Subpart F of the CAR specifies 95 percent or greater control efficiency for control devices before referring all three of these compliance options to subpart G. Subpart G then provides the consistent, consolidated procedures for the control device or routing emissions to a process or fuel gas system.

Clarifications and Improvements From the HON

In addition to consolidating primarily on the HON requirements, the CAR makes some significant clarifications, changes, and improvements to the HON provisions. These issues, some of which also constitute changes for sources referenced from the other two equipment leaks referencing subparts, are discussed in more detail below. This section discusses changes to provisions taken from the HON. In cases where the HON and the non-HON requirements are substantially identical, the discussion in this section is equally applicable to all three referencing subparts. When the discussion applies to all three equipment leak referencing subparts instead of only the HON, the discussion is specially noted.

Identification of subject equipment has been simplified for all sources complying with the CAR. It is not necessary to individually identify each piece of equipment, as long as equipment subject to the CAR can be distinguished from other equipment through means of a plant site plan, log entries, process unit boundaries, or another method. This does not preclude the use of individual equipment identification, but it does offer flexibility and the opportunity for burden reduction as a source does not have to track a complex numbering scheme for compliance. For example, the CAR simplifies identification of connectors by allowing them to be identified by grouping or area. Closed-vent systems and control devices, pressure relief devices, and instrumentation systems must be identified, but the CAR provisions do not specify particular formats. The referencing subparts, on the other hand, require lists of identification numbers for individual pieces of equipment; the CAR is more flexible and thus reduces the recordkeeping burden. Such flexibility, however, does not relieve an owner or operator's responsibility for the ability to locate components at the plant site.

Regarding unsafe-to-monitor or difficult-to-monitor equipment, the HON requires owners or operators to develop a written plan for monitoring the equipment, but does not explicitly require the monitoring. The CAR clarifies that monitoring of the equipment is required according to the written plan that is developed.

The CAR clarifies that compressors designated as operating with an instrument reading less than 500 ppm, as well as pressure relief devices, are subject to a performance standard as opposed to a work practice standard with respect to instrument monitoring. Thus, if a compressor is monitored using Method 21 and an instrument reading of 500 ppm or greater is detected, it is a violation of the standard. If a pressure relief device is monitored 5 days after a pressure release and an instrument reading of 500 ppm or greater is detected, it is also a violation of the standard. These are clarifications, not changes, from the HON.

The CAR maintains the HON provisions with respect to the monitoring instrument specifications and calibration procedure. However, the CAR includes provisions for adjusting instrument readings for instruments that cannot meet the Method 21 performance criteria. The CAR also allows calibration with gases other than methane or n-hexane where the instrument does not respond to either of these compounds.

Provisions in all three referencing subparts require monitoring only when equipment is in regulated material service, in service of an acceptable surrogate VOC, or in service of any other detectable material. The CAR does not include the ''acceptable surrogate VOC'' phrase because it is redundant and confusing in relation to ''any other detectable material.''

As discussed earlier in this section, the HON and the CAR allow owners or operators to monitor valves and

connectors less frequently when the percentage of leaking components is low. Monitoring data collected prior to implementation of a referencing subpart can be used to qualify initially for less frequent monitoring, even if the data were obtained with minor departures from the CAR's monitoring procedures and methods. The CAR further clarifies the original HON language by indicating that (1) earlier data may be used only for initial qualification, and (2) this provision includes initially qualifying for annual monitoring. The original HON language was unclear whether older data could be used all the time, and whether old data could be used to qualify initially for annual monitoring. Both CAR clarifications are consistent with EPA's determination of the original HON intent.

The CAR clarifies language dealing with repair of leaks. Leaks must be repaired within 15 days of detection, unless the leak qualifies for delay of repair. Provisions in all three referencing subparts allow for delay of repair ''* * * if the repair is technically infeasible without a process unit shutdown.'' This language potentially discourages any attempts at repair between the 15th day after detection and the next process unit shutdown, since a successful repair within that period would then disqualify one from the original delay of repair. Some equipment leaks legitimately qualify for delay of repair, yet they can be repaired after the 15-day repair deadline and before the next process unit shutdown. These repairs can be effected by continued repeat attempts over time until the leak is repaired. In order to eliminate the potential disincentive to attempt repair of leaks after the fifteenth day, the CAR revises the wording of this provision to state that delay of repair is allowed if repair ''within 15 days after a leak is detected'' is technically infeasible without a process shutdown.

The CAR adds some flexibility for calculation of percent leaking valves by allowing the calculation for either a single process unit or a group of process units. Owners or operators must commit to one of these approaches by their CAR implementation date, and perform all subsequent percent leaking calculations on the same basis. The basis may be changed through revision of the operating permit or other appropriate notification.

The CAR also simplifies the calculation procedure by not incorporating a partial credit for removed valves. Industry representatives indicated that this credit was little used and overly complicated the equation. The simplified equation, along with the reduction in burden associated with the alternative monitoring programs and the extended monitoring periods, outweighs any negative aspects of not including the complex procedures necessary to use the credit for removed valves.

Another complicated procedure from the HON was not incorporated into the CAR. In order to provide a credit for removed and allowed nonrepairable connectors, the HON contains multiple equations for determining the percent leaking connectors and contains complicated recordkeeping and testing provisions. Based on industry comment that these credits complicated the procedures, added recordkeeping burden, and were seldom used, the EPA decided not to include them in the CAR.

The CAR does not incorporate the valve quality improvement program (QIP) found in the HON. The goals of the QIP and of the CAR's subgrouping procedures are the same—to focus attention and effort on poorly performing valves. Owners and operators are expected to be able to subgroup their valves such that valves with continuing problems will be re-assigned into a single subgroup (which will likely be subject to quarterly or monthly monitoring). The additional focus and financial incentives for improvement inherent in the CAR make the QIP for valves unnecessary.

The pump section has also been improved and clarified. The CAR clarifies that documentation of weekly visual checks need only include a record that the check was conducted; pump-by-pump documentation is not required. The CAR also clarifies what constitutes leak repair when indications of liquid dripping are observed during the visual inspection. ''Repaired'' in this situation means that the indications of liquid dripping have been eliminated. In addition, an owner or operator may show that the liquids dripping are not process fluid (for example, the liquids dripping are condensate).

The CAR replaces the term ''agitator'' with ''agitator seal'' to more accurately convey the intent of the requirement. The agitator itself is not subject to leaking; rather, the agitator seal is subject to leaking.

The CAR incorporates the HON's alternative provisions for batch processes and modifies these provisions to allow additional flexibility regarding the required use of pressure measurement devices. The HON requires a device with a precision of ±2.5 millimeters of mercury in the range of the test pressure and the capability to measure pressures as high as the relief set pressure of the pressure relief device. Under the CAR, when such a device is not reasonably available, owners and operators may use an alternative pressure measurement device if the duration of the test is extended as specified.

Significant Changes From the Non-HON Equipment Leak Referencing Subparts

This section summarizes the significant differences between the equipment leak provisions of 40 CFR part 61, subpart V and 40 CFR part 60, subpart VV and those of the CAR. Some of the changes that are also clarifications and improvements from the HON are discussed in the preceding section.

The CAR's equipment leaks provisions do not apply to equipment in vacuum service. While 40 CFR part 61, subpart V and 40 CFR part 60, subpart VV require a record of equipment in vacuum service, the CAR follows the approach in the HON and does not specify this record. Also, the CAR exempts equipment that is intended to be in regulated material service less than 300 hours per calendar year, as the HON does. Although there is an identification record associated with this exemption, having the exemption is a net burden reduction for 40 CFR part 61, subpart V and 40 CFR part 60, subpart VV sources complying with the CAR.

The CAR also incorporates the HON clarification that equipment not containing process fluids is not subject to the equipment leak provisions. When 40 CFR part 61, subpart V and 40 CFR part 60, subpart VV were drafted, rules typically did not explicitly state what did not apply. These non-HON equipment leak referencing subparts are intended to apply only to equipment containing process fluids; the rules do not, however, explicitly exempt equipment that does not contain process fluids. Since the drafting of these rules, the EPA's philosophy has shifted and this explicit clarification from the HON has been used in the CAR.

Provisions regarding alternative means of emission limitation were consolidated into one set of requirements. The CAR requires public notice in the **Federal Register** if the Administrator approves an alternative means of emission limitation. This public notice is not specifically required in 40 CFR part 61, subpart V, but public notice is required by section 112 of the Act.

Sources subject to the non-HON equipment leak referencing subparts would benefit from the general identification requirements of the CAR, which allow whatever identification scheme makes the most sense at a given

facility. However, the CAR introduces some new component-specific identification provisions for these sources, such as special identifications for pressure relief devices or instrumentation systems. The CAR language provides a net burden decrease associated with equipment identification.

Although 40 CFR part 61, subpart V and 40 CFR part 60, subpart VV include procedures that are considered to comprise first attempt at repair for leaking valves, these subparts do not contain parallel procedures for first attempt at repair for leaking pumps. HON language is used in the CAR to clarify what is meant by first attempt at repair for pumps.

An additional burden reduction and clarification is achieved by incorporating the HON definition of ''repair'' with the leak repair requirements. Both 40 CFR part 61, subpart V and 40 CFR part 60, subpart VV require valve monitoring for two successive months before the leaking valve identification can be removed. The CAR follows the HON language and allows the removal of the identification after the valve is ''repaired,'' which by definition includes follow-up monitoring.

The CAR also adopts the HON provisions for records of delay of repair, allowing owners and operators to develop written procedures for delay of repair and to simply cite relevant sections of their written procedures as the record of reason for delay. In addition, the CAR includes the HON's exemption for unsafe-to-repair connectors.

Provisions contained in the CAR for connectors are taken from the HON. These include periodic instrument monitoring with a leak definition of 500 ppm; less frequent monitoring for good performance; special provisions for difficult-to-monitor or unsafe-to-monitor connectors; and exemptions from monitoring, recordkeeping, and reporting requirements for inaccessible, ceramic, or ceramic-lined connectors.

For sampling connection systems, the CAR contains flexible language from the HON allowing purged process fluid to be collected, stored, and transported to one of several systems or facilities. One option from the HON [transporting the purged process fluid to a National Pollutant Discharge Elimination System (NPDES) Group 1 wastewater stream or to an NPDES-permitted facility] is allowed in the CAR for HON sources only. As explained in more detail in section XI, sources subject to 40 CFR part 61, subpart V cannot be eligible for this option because the option requires an absence in the stream of particular organic HAP listed on table 9 of 40 CFR part 63, subpart G; however, any source subject to 40 CFR part 61, subpart V will contain benzene or vinyl chloride, two of the compounds listed in table 9. This option is not allowed for sources subject to 40 CFR part 60, subpart VV because purged materials for these sources may contain VOC species which are not HAP, and thus, were not evaluated along with the organic HAP species when the option was developed for the HON.

G. Closed-Vent Systems, Control Devices, and Routing to a Fuel Gas System or a Process

Subpart G of the CAR addresses the closed-vent system control devices, and routing vent streams to fuel gas systems or process equipment. Subpart G consolidates requirements from all of the storage vessel, process vent, transfer rack, and equipment leak referencing subparts (including the general provisions and continuous process vent provisions from 40 CFR part 60, subpart DDD).

Subpart D of the CAR does not consolidate the process vent provisions of 40 CFR part 60, subpart DDD with those of 40 CFR part 60, subparts III, NNN, RRR and the HON because these subparts differ in terms of the applicability criteria for control. Subpart DDD of 40 CFR part 60 differs from the NSPS and the HON in that it does not use TRE index value, flow, or concentration to determine if control is required for the vent. Also, subpart DDD does not have provisions included in the NSPS and the HON requiring monitoring for vents that are not required to be controlled. The control requirements for subpart DDD process vents, however, are essentially identical to those in 40 CFR part 60, subparts III, NNN, RRR, and the HON and were able to be consolidated in subpart G of the CAR.

The EPA has significantly restructured these provisions from all of the referencing subparts. Table 3 summarizes the sections of subpart G of the CAR. After short applicability, definition, and standards sections (§§ 65.140 to 65.142), subpart G is organized as follows: §§ 65.143 to 65.156 addresses the requirements for equipment, operating, performance tests (or compliance determinations for flares) and monitoring for closed-vent systems, for routing to a fuel gas system or process, and for each type of recovery or control device specified in the referencing subparts (for example, flares, incinerators, absorber); §§ 65.157 to 65.158 addresses performance test and flare compliance determination requirements and procedures; and §§ 65.159 to 65.165 addresses data handling, CPMS, recordkeeping, and reporting requirements for closed-vent systems, recovery and control devices, and routing to a fuel gas system or process.

TABLE 3.—STRUCTURE OF 40 CFR PART 65, SUBPART G

Section	Content
65.140	Applicability.
65.141	Definitions
65.142	Standards (roadmap to subpart G).
65.143	Closed-vent systems requirements.
65.144	Routing to fuel gas systems and processes.
65.145– 65.155	Control and recovery devices requirements
65.156	General monitoring requirements
65.157– 65.158	Performance test and flare compliance determination requirements and procedures.
65.159– 65.163	Data handling and recordkeeping.
65.164– 65.166	Notifications and reports.

The standard section, § 65.142 of subpart G of the CAR, acts as a roadmap to subpart G. All of the CAR subparts reference a specific paragraph of § 65.142. These paragraphs outline the specific sections of subpart G that apply to a given situation.

In addition to the overall restructuring, the individual device sections (§§ 65.145—65.155) are organized in the same general manner: sections begin with a discussion of equipment and operating requirements, are followed by paragraphs discussing flare compliance determinations or performance test requirements, and conclude with paragraphs discussing monitoring requirements. This makes it easier to find specific information on the device of interest.

A number of decisions were made by EPA in the consolidation of these provisions. These decisions are discussed below in subsections that are in the order that they appear in subpart G of the CAR. Decisions made in the consolidation of subpart G provisions on monitoring, recordkeeping, and reporting provisions associated with closed-vent systems, control and recovery devices, and routing to a fuel gas system of a process are discussed in section VI.H.

Closed-Vent Systems

The language in the HON provides the basis for language in subpart G. The primary change to the HON closed-vent

system language is the restructuring to meet the format used elsewhere in the CAR. That is, in this case, to separate the provisions into equipment and operating requirements (including by-pass monitoring), inspection requirements, inspection procedures, and leak repair provisions. Specific clarifications to the HON language are discussed below.

Clarifying improvements were made to the consolidated closed-vent system inspection procedures. For example, the HON requires that the calibration gas be no more than 2000 ppm higher than the leak definition. This requirement in the HON is given in a generic section, to apply to various leak definitions. Since the leak definition for closed-vent systems is 500 ppmv, the CAR specifies a calibration gas concentration limit of 2500 ppm for multiscale instruments for closed-vent systems. In addition, the HON requires that an instrument response factor, if used, to be based on the mathematical average response factor for the given process fluid. Since the process fluid composition can vary considerably, EPA reduced the burden of this provision in the CAR by specifying the response factor be based on a representative response factor, which could apply to a family of process fluids. This avoids numerous response factor calculations for process fluids that are only marginally different in composition.

The CAR does not adopt a HON requirement to inspect storage vessel closed-vent systems during filling of the vessel. Pressure in a storage vessel closed-vent system, and therefore potential leaks of regulated material, is not a function of filling, since storage vessels are designed to relieve at low pressures. This requirement is not found in any of the other referencing subparts.

The HON transfer operations has a provision that repairs must be made no later than 15 calendar days after the leak is detected or at the beginning of the next transfer loading operation. The EPA decided, as a clarification, to extend this concept to all emission points, that is, that repair can be extended longer than 15 days if the closed-vent system is not in use. The proposed CAR requires repair no later than 15 calendar days or at the beginning of the next introduction of vapors to the system.

Several aspects of the HON that are adopted in the CAR provide clarity and, in some cases, burden reductions, relative to the other referencing subparts. A summary of the significant changes from the other referencing subparts follows.

The CAR clarifies that closed-vent systems must be operating at all times when emissions are vented to them. Although this requirement is explicitly stated in 40 CFR part 60, subparts VV and DDD, and 40 CFR part 61, subpart V it is only implied in the other referencing subparts that it is necessary to have the closed-vent system in operation when emissions are vented to it. The requirement derives from the general provisions requirements in each part to ''* * * operate and maintain any affected facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practices * * *'' Also, a similar requirement for control devices is stated in many rules. Explicitly stating the requirement improves all the rules by making the compliance requirements clear.

For equipment in a closed-vent system that can divert the stream away from the control device and to the atmosphere, the owner or operator is required to either (1) install, maintain, and operate a flow indicator that takes a reading at least every 15 minutes, or (2) to secure the bypass line valve in the non-diverting position with a car-seal or a lock-and-key type configuration. The HON exempts certain equipment (pressure relief valves needed for safety purposes, low leg drains, high point bleeds, analyzer vents, and open-ended valves or lines) from these requirements. The EPA has incorporated this exemption into the CAR as a clarification for the non-HON referencing subparts.

The closed-vent system provisions of 40 CFR part 60, subpart DDD, and 40 CFR part 61, subpart BB require the owner or operator to car-seal open all inline valves in a closed-vent system (valves leading to the control device). The other referencing subparts present this requirement by specifying either flow indicators or car-sealed closed valves on all lines diverting the stream away from the control device and to the atmosphere. For consistency, the car-sealed closed or flow indicator approach is followed in the CAR.

The CAR requires bypass monitoring. Instead of bypass monitoring for lines that can divert the vapors in a closed-vent system away from the control device to the atmosphere, 40 CFR part 60, subparts III and NNN contain process vent flow monitoring provisions prior to the control device. The CAR does not allow this method of monitoring for bypasses. The EPA decided that the methods used by the HON and many of the other referencing subparts are more relevant. Monitoring the vent flow does not ensure that bypasses are not taking place. Regulated sources currently using flow monitors under 40 CFR part 60, subparts III and NNN would have to switch to bypass monitoring in order to use the CAR. Furthermore, this change will be a significant burden reduction for many sources. Many process vents not subject to the HON but subject to 40 CFR part 60, subparts III and NNN, are routed to control devices subject to the HON through common closed-vent systems which are subject to the HON. These vents can, under the CAR, perform only the bypass monitoring requirements of the HON instead of also having their vent flow measured under 40 CFR part 60, subparts III and NNN.

The language used in the closed-vent system inspection provisions of the CAR are based on the more recent work practice approach of the HON and 40 CFR part 60, subpart VV for closed-vent system inspections. The requirement to ''operate with no detectable emissions'' as stated in 40 CFR part 60, subpart Kb and 40 CFR part 61, subpart Y, and the requirement of 40 CFR part 60, subpart Ka to ''collect all VOC vapors and gases discharged from the storage vessel'' are not included in the CAR. The EPA concluded that the HON work practice inspection language was more specific and easier for enforcement and compliance, while achieving the intent of the referencing subparts.

The CAR also retains the distinction between hardpiping and ductwork made in the HON and 40 CFR part 60, subpart VV closed-vent system inspection provisions. Hardpiping and ductwork have different leak inspection requirements. This distinction does not exist in 40 CFR part 61, subparts V, Y and BB. Also, HON provisions covering situations where it is unsafe or difficult to inspect the closed-vent system were applied to the CAR.

Fuel Gas Systems and Processes

Fuel gas systems consist of piping and control systems that gather gaseous streams and return them to combustion devices for use as fuel gas. For such systems, the CAR adopted the equipment and operating requirements as well as compliance determination procedures from the HON.

The EPA reasoned that the explicit HON provisions for routing emissions to a process or to a fuel gas system should be allowed in the CAR when the owner or operator chooses or is required to comply with storage vessel, transfer, or equipment leak control requirements. The emission point types covered by the HON are the same as those covered by the referencing subparts. While developing the HON, EPA determined

that routing emissions to a fuel gas system or process provides sufficient control, in most cases in excess of 98 percent reduction. None of the non-HON referencing subparts explicitly allowed this option. (See 61 FR 43703, August 26, 1996, for further discussion of this issue.)

Note that the option of routing to a fuel gas system or to a process is not provided for process vents in the CAR, since, based on the CAR's definition of process vents, these vent streams are not considered to be process vents unless or until they are vented to the atmosphere.

Non-Flare Control Devices for Storage Vessels and Low-Throughput Transfer Racks

The HON was used as the basis for the CAR language for this section. The structure is similar to the other sections of subpart G with an equipment and operating requirements, a design evaluation or performance test requirements, and a monitoring requirement paragraph. Although the language is based on the HON, it is important to note that this section represents a consolidation of HON storage vessel and HON low-throughput transfer rack provisions. Low-throughput transfer racks are racks that transfer less than a total of 11.8 million liters per year of liquid containing regulated materials.

The storage vessel and HON low-throughput transfer rack provisions are very similar. The only differences are: (1) the HON storage vessel provisions require a design evaluation and the HON transfer provisions allow a choice between a design evaluation or performance test; and (2) the low-throughput transfer rack provisions in the HON require the monitoring parameters and ranges to be identified, as does the HON storage vessel provision, but it also requires specific monitoring devices to be installed depending on the control device being used.

The CAR allows a choice of a design evaluation or performance test for both storage vessels and transfer racks. The EPA reasoned that a performance test could be used in place of a design evaluation since it is more definitive than a design evaluation in many cases. The CAR clarifies the HON transfer monitoring provisions by consolidating the provisions of the HON storage vessels. Also, EPA clarifies in the CAR that when a performance test is conducted the facility can specify the parameters to be monitored and their appropriate ranges. Continuous monitoring is not required for either storage vessels or transfer racks unless this is specifically required in the monitoring plan which identifies the parameters to be monitored and the monitoring range. This is as required in the HON storage vessel provisions and a clarification to the transfer rack provisions.

The storage vessel subparts, 40 CFR part 60, subpart Kb and 40 CFR part 61, subpart Y, do not allow for a performance test instead of a design evaluation, so the CAR provides a flexibility that was previously unavailable in these rules. The performance test/design evaluation options are summarized below:

(1) The owner or operator may choose to do a design evaluation instead of a performance test to set the monitoring parameters. The requirements for determining the monitoring parameters were taken from the HON—the owner or operator chooses the parameters, the ranges, and the monitoring frequency based on site-specific information, manufacturer's specifications, engineering judgment, or other significant information.

(2) The owner or operator may vent to a shared control device that must comply with the performance testing requirements of the CAR. The requirements for this case are taken from the HON. There are minimal records and reports for this case, because the facility is already keeping records and submitting reports for the other emission point that shares the control device. The EPA reasoned that requiring just the performance test instead of the design evaluation would be acceptable, as the performance test provides the information necessary to assure the control device can perform at the level needed to meet the standard.

(3) The owner or operator may choose to do a performance test instead of a design evaluation. This is the new option under the CAR; it is not contained in any of the referencing subparts except for the HON transfer rack provisions. This option applies the provisions for determining parameter ranges as described in the option for storage vessels and low-throughput transfer racks conducting a design evaluation on a non-shared control device (option 1).

Subpart BB of 40 CFR part 61 does not provide for a design evaluation instead of performance test for low-throughput transfer racks. The EPA reasoned that performance tests should not be required for subpart BB low-throughput transfer racks for the same reason that they are not required for HON low-throughput transfer racks. At this low level of throughput it is difficult to organize a performance test because of the infrequent loading of tank trucks or railcars. (See Hazardous Air Pollutant Emissions from Process Units in the Synthetic Organic Chemical Manufacturing Industry—Background Information for Final Standards. Volume 2A: Comments on Process Vents, Storage Vessels, Transfer Operations, and Equipment Leaks. Final IS. EPA–453/R–94–003a. pp 4–13—4–14.) Also, EPA recognizes that many of the subpart BB transfer racks at a SOCMI facility will be subject to the HON. Therefore, this provision is already available to these subpart BB transfer racks.

Subpart Ka of 40 CFR part 60 requires submission of a monitoring plan for control devices (including flares), but it contains no requirements to monitor per the plan or to report. The CAR storage vessel non-flare control device provisions are more prescriptive than the subpart Ka provisions, but EPA believes that there are very few subpart Ka storage vessels using closed-vent systems and control devices for compliance. In the spirit of consolidation, and noting that the CAR is a compliance alternative, the design evaluation and compliance determination provisions are based on the HON language.

Provisions in the HON, 40 CFR part 60, subpart Kb, and 40 CFR part 61, subpart Y, all provide the equivalent of a design evaluation in the case where storage vessel vapors are controlled by a non-flare control device. The CAR language, as based on the HON, has several details required in the design evaluation that are not required in subparts Kb and Y. Specifically these details pertain to information that must be included in the design evaluation given the type of device. For instance, the CAR specifies for enclosed combustors that, if applicable, the design evaluation must include the autoignition temperature of the stream being combusted, the flow rate, the combustion temperature and the residence time. The CAR also specifies the information required for carbon adsorbers and condensers. Subparts Kb and Y do not contain these details. The EPA is requiring these details in the CAR because these are the pieces of information that would be contained in a design evaluation whether it be for a HON or subpart Kb or Y storage vessel. By specifying these as requirements, the CAR is clearer and will avoid miscommunications when design evaluations are prepared.

Subpart Kb of 40 CFR part 60 and 40 CFR part 61, subpart Y require a minimum residence time of 0.75 seconds and a minimum temperature of

816° C for enclosed combustion devices. Enclosed combustion devices with temperature and residence time greater than or equal to these minimums need only indicate in the documentation that this condition exists and no other documentation is required. The CAR has the same provision but uses a minimum temperature of 760° C and a minimum residence time of 0.5 seconds, as does the HON. The EPA chose the HON values to incorporate in the CAR because it was determined under the HON that these values are appropriate to obtain the necessary emissions reduction. Also, by using the HON values, the enclosed combustors meeting the minimums in subparts Kb and Y would also meet the minimums under the HON.

The requirement in 40 CFR part 60, subpart Kb and part 61, subpart Y to include in the design evaluation report the manufacturer's design specifications for the control device was not incorporated into the CAR because most controls are not purchased as a package; other requirements in the CAR will provide sufficient reports of the control device specifications.

Non-Flare Control Devices Used to Control Equipment Leaks

A section of subpart G of the CAR contains the equipment, operating, and monitoring requirements for non-flare control devices used to control equipment leak emissions. Very similar language is used in all three equipment leaks referencing subparts. This section clarifies that a performance test is not required for control devices used only to control emissions from equipment leaks.

The requirement to operate the control device at all times when emissions are vented to them is explicitly contained only in 40 CFR part 60, subpart VV, but the requirement can be inferred for the other subparts as outlined above in the general closed-vent system discussion.

Flares

Equipment and operating provisions for flares are consolidated into this section of the CAR from many referencing subparts, including the general provisions from 40 CFR parts 60 and 63. The flare equipment and operating requirements, flare compliance determination procedures, and monitoring provisions are consolidated, as discussed below.

The EPA identified that the HON requirement for pilot flame monitoring could be read to call for monitoring of each pilot flame, which was not the intent of the HON. The wording was clarified to require a device capable of ''detecting that at least one pilot flame is present.'' The EPA also decided that to increase the flexibility of the rule, flare flame monitoring would be allowed as it is allowed in 40 CFR part 60, subpart DDD. Any outage of the flame or pilot flame would be reportable under the CAR.

The HON language is used in the CAR for clarification on performing the Method 22 visible emission tests for flare compliance determinations at transfer operations with loading cycles of less than 2 hours. The observation under Method 22 is required to extend for 2 hours. Under the CAR, the observation can be conducted for the complete loading cycle for loading cycles less than 2 hours. Subpart BB of 40 CFR part 61 does not have this provision.

The heating value formula for flares from 40 CFR part 60 general provisions is used throughout the CAR because this equation is believed to be the most prevalent in use. Using the part 60 general provisions equation consolidates and clarifies the equations, which were presented in the various referencing subparts with different terms, different formats, and on different bases (wet or dry). The various equations, however, all yield the same results if correctly applied, but the different representations caused confusion. The heating value equation for part 60 process vents, for example, was changed from a dry to a wet basis to be identical to the part 60 general provisions equation. Note that a ''D'' variable instead of a ''C'' variable for concentration is used in this equation to distinguish net heating value concentration from another concentration variable used in earlier equations in the CAR.

The CAR includes a requirement that is essentially the same as provisions in 40 CFR part 60, subpart DDD requiring flare flame or pilot monitors to be operated during any flare compliance determination. This is a common sense provision that is not explicitly stated elsewhere, and it is included in the CAR for consistency and clarity.

Incinerators

For the most part, the HON language was used as the basis for the incinerator provisions in the CAR. Incinerator operating requirements from 40 CFR part 60, subparts VV and DDD were used in the CAR to explicitly require that incinerators shall be operated at all times when emissions are vented to them. The actual part 60 requirements specify that the incinerators shall be operated at all times when emissions may be vented to them. This was clarified in the CAR to read ''are vented to them'' because the part 60 requirement could be interpreted to require continuous operation of the device even when not receiving emissions. In addition, while this requirement is not explicitly stated in the HON for incinerators, it is an implied general control device requirement that the control device must be operating. This provision has been added to all the control device sections but is only mentioned here.

In addition, a provision from the NSPS process vent rules (40 CFR part 60, subparts DDD, III, NNN, and RRR) was included in the incinerator section. This provision specifies what should be done if an owner or operator decides to replace an existing control device with another control device. The HON does not specify what should be done in this case, and the NSPS language specifies that the notice be made 90 days before the change. The NSPS language was used in the CAR, but modified to state that the notification of the change must only be made prior to the change. This notification can be included in an amendment to a title V permit or, if title V is not applicable, in a separate notice that can be part of a periodic report. The addition of this provision adds clarity. This provision was added to every control device section but is only mentioned here.

To clarify when initial performance tests are required, the CAR added language regarding incinerator performance test requirements. The HON language exempting an owner or operator from the requirement to conduct a performance test if the incinerator burns hazardous waste and meets the requirements of RCRA was included in the CAR for all sources subject to performance test requirements. The EPA has determined that these incinerators are adequately tested under the RCRA program. (61 FR 43708, August 26, 1996) This exemption also applies to design evaluations and performance tests for storage vessels and low-throughput transfer racks and is included in the section of subpart G regarding non-flare control devices used on storage vessels and low-throughput transfer racks.

Boilers and Process Heaters

Although the HON language for boiler and process heater requirements was used for the basis of the requirements in the CAR, 40 CFR part 60, subparts DDD, III, NNN and 40 CFR part 61, subpart BB contain essentially the same requirements for boilers (subpart RRR of 40 CFR part 60 contains requirements identical to the HON.) One exception is

that some of the referencing subparts do not contain the exemptions from performance tests and from monitoring for vents introduced as primary fuel or for boilers or process heaters larger than 44 MW. An exemption from performance testing and monitoring when the vent stream is mixed with the primary fuel, or for boilers or process heaters larger than 44 MW, was taken from the HON and included in the CAR. The basis for this decision by EPA to allow these exemptions is contained in Reactor Processes in the Synthetic Organic Chemical Manufacturing Industry—Background Information for Promulgated Standards (EPA–450/3–90–016b). This document explains that a vent stream introduced with the primary fuel would be expected to have an emissions reduction greater than 98 percent because temperatures are higher when the vent stream is passed through the flame front. The EPA has also outlined in this document that large boilers and process heaters are expected to achieve an emission reduction greater than 98 percent. These exemptions also apply to design evaluations and performance tests for storage vessels and low-throughput transfer racks and is included in the section of subpart G regarding non-flare control devices used on storage vessels and low-throughput transfer racks.

The requirement in 40 CFR part 61, subpart BB and in 40 CFR part 60, subparts DDD, III, and NNN for records to be kept of the periods of boiler or process heater operation is not included in the CAR. The record of boiler or process heater periods of operation is not necessary as it is a safety hazard to introduce gas into an idle combustion device. Therefore, vent streams are not expected to be vented to the boiler or process heater unless the device is operating, so a record of when the device is or is not operating is not needed.

Absorbers, Condensers, and Carbon Adsorbers Used as Control or Final Recovery Devices

Subpart G of the CAR covers absorbers, condensers, and carbon adsorbers in four sections of the subpart. Section 65.150 covers absorbers as control devices, § 65.151 covers condensers as control devices, and § 65.152 covers carbon adsorbers as control devices, and § 65.153 covers all three devices when they are used as final recovery devices. The recovery device section (§ 65.153) is specifically for devices that are used as final recovery devices on Group 2A process vents. When these devices are used as control devices (i.e., a recapture device on a Group 1 process vent, or a recovery or recapture device on a transfer rack) §§ 65.150 through 65.152 apply, as applicable.

Very few changes were made to the HON language for these devices, except for the restructuring of provisions (discussed in sections IV.B and VI.A of this preamble), the addition of the NSPS process vent provision on changing control devices and the requirement to be operating at all times when emissions are vented to them (both discussed in this section under incinerators). Changes to the other referencing subparts are discussed below.

Subpart BB of 40 CFR part 61 for benzene transfer operations does not contain provisions for condensers and absorbers. It does allow carbon adsorbers equipped with organic monitoring devices to be used. In the CAR, the absorber and condenser provisions are available for all referencing subparts, including subpart BB.

In addition, under 40 CFR part 61, subpart BB for benzene transfer operations, only organic monitors could be used for determining compliance with the standard when using a carbon adsorber. Under 40 CFR 60, subpart DDD, only organic monitors could be used for determining compliance with the standard when using an absorber, condenser, or carbon adsorber for control of a continuous process vent. In the CAR, as in the HON, either an organic monitoring device or a regenerative stream flow monitoring device is allowed for carbon adsorbers; an organic monitoring device or a condenser exit temperature monitoring device is allowed for condensers; and an organic monitoring device, or a scrubbing liquid temperature monitoring device and a specific gravity monitoring device is allowed for absorbers.

Halogen Scrubbers and Other Halogen Reduction Devices

Halogen reduction device requirements have been consolidated into one section rather than listed in the individual control device sections. These HON requirements have been included in the CAR for all process vents and transfer operations. The other referencing subparts did not have specific halogen vent stream requirements, so the CAR is potentially introducing some additional requirements for halogenated vent streams subject to the non-HON referencing subparts, if the owner or operator chooses to comply with the CAR.

Other Control Devices

This section (§ 65.155) of subpart G outlines the requirements for control devices other than those specified in §§ 65.147 through 65.154. The CAR differs from 40 CFR part 60, subparts DDD, III, NNN, and RRR in that more detail is given in the CAR on the information that must be provided to the Administrator in order to obtain approval for other devices. Under the NSPS, the Administrator specifies the appropriate monitoring procedures for the device. Under the CAR, a plan is submitted that includes the proposed monitoring, reporting, and recordkeeping procedures. By providing more details on the information to be submitted and by allowing the facility to propose monitoring, EPA believes this will clarify the information needed and aid in communication during the process of reviewing these plans.

Subpart DDD of 40 CFR part 60 and 40 CFR part 61, subpart BB also contain a general duty requirement that specifies that the facility must ''provide the Administrator with information describing the operation of the control device * * * that would indicate proper operation and maintenance * * *'' for non-listed control devices. The EPA did not include the general duty requirement in the CAR in favor of the more specific monitoring requirements for non-listed control devices from 40 CFR part 63, general provisions, and the HON.

Under the CAR, approval authority for the monitoring recordkeeping, and reporting requirements for other control devices is delegated to the states as it is under the HON and part 61. Under the NSPS process vent referencing subparts, this authority is not delegated. The decision to delegate authority is consistent with state authority under title V. The EPA considered that authority should be delegated for this approval across all the rules in order to consolidate the provisions. Also, many of the facilities subject to the NSPS process vent referencing subparts are also subject to the HON, therefore the authority would already be delegated to the States in many instances.

H. Monitoring, Recordkeeping, and Reporting

This section describes the CAR provisions from subpart G regarding performance tests, monitoring, recordkeeping, and reporting requirements. These provisions are included in subpart G, rather than in the general provisions, because they are specific requirements for closed-vent systems, control and recovery devices,

and routing to a fuel gas system or process.

Many significant differences exist between the CAR provisions on monitoring, recordkeeping and reporting (which generally follow the HON provisions), and these same provisions in the non-HON referencing subparts. This section provides a brief description of the differences. For a more complete discussion of the HON recordkeeping program see the HON proposal preamble (57 FR 62608, December 31,1992), the promulgation preamble (59 FR 19407, April 22, 1994), and the Background document at promulgation (Hazardous Air Pollutant Emissions from Process Units in the Synthetic Organic Chemical Manufacturing Industry—Background Information for Final Standards, Volume 2E: Comments on Recordkeeping, Reporting, Compliance and Test Methods, EPA–453/R–94–003e).

Both the CAR and the part 60 and 61 subparts require monitoring of the same control device operating parameters. However, the CAR requires a site to justify and set site-specific operating parameter ranges for control and recovery devices. The site can set the operating parameter ranges to be the same as the NSPS established ranges. The control or recovery device operating parameters are monitored and if the monitoring results, on a daily average basis, fall outside the parameter range, then there is an excursion and it must be reported. The CAR allows one excused excursion before the excursion is considered a violation. The HON allows six excused excursions in the first semiannual reporting period (this would be in the first year of being subject to the HON), five excused excursion in the second semiannual reporting period, and so on, until one excused excursion is allowed in the sixth and all subsequent semiannual reporting periods.

The CAR provisions are different from the non-HON referencing subparts where specific monitoring ranges are given in the rules depending on the control or recovery device being used. In 40 CFR part 60 and 61, 3-hour averages are required of the monitored parameters. These 3-hour averages are compared to the monitoring ranges specified in the rules. If a 3-hour average is outside the range in the rule it must be reported, and the out-of-range values may trigger the Administrator to require another performance test. If the performance test indicates that the control or recovery device is not performing at the required level, the facility would be in violation.

The CAR allows owners or operators to use the ranges from the non-HON referencing subparts as the operating parameter ranges for the sources accustomed to those ranges; or, a source can justify a site-specific range. However, any excursions after the one excused excursion would be considered a violation.

One change made to these HON provisions in the CAR pertains to the records of continuous monitors. In the HON, the owner or operator has the option of maintaining a record of (1) each measured value, or (2) block average value for intervals up to 15-minute averages. The CAR also contains these options. In addition, a third option is given that allows retention of hourly average data and the most recent three valid hours of continuous records. The EPA decided to allow this option as a burden reduction, because many computer systems currently in use in the SOCMI industry only archive hourly data and ''over-write'' the raw data every few hours, because of the massive amount of storage that would be required to maintain records of data on a more frequent basis. Typical SOCMI process computer systems handle thousands of data points, so that even hourly records involve tens of thousands of data records each day. The CAR alternative has been provided to allow use of these existing systems without requiring installation of new computer systems or parallel paper (strip chart) systems. The EPA felt it was necessary to require the most recent three valid hours of records so that an inspector would have the necessary data to determine whether averages were correctly calculated. The EPA reasoned that 3 hours of data are sufficient for checking on potential programming error. By requiring the most recent 3 hours, the EPA ensures a randomness to the 3 hours of data available to check. The CAR specifies valid hours because an invalid hour of monitoring may not contain the necessary data for the average verification. By providing for adequate data to demonstrate that the hourly average is correctly calculated, no reduction in compliance assurance is anticipated and very large initial and ongoing costs for new recordkeeping systems are avoided for many SOCMI facilities.

The following paragraphs describe additional burden reductions and clarification changes made in the monitoring, recordkeeping, and reporting sections of subpart G.

General Monitoring Requirements

The CAR specifies which monitoring data must be kept and used for compliance when a primary CPMS and a backup are being used. This clarification is not explicit in parts 60 or 61.

The CAR adopts the requirements from 40 CFR parts 61 and 63 general provisions for the immediate repair or replacement of CPMS parts to correct routine malfunctions. These requirements are not in the general provisions of 40 CFR part 60. This requirement spells out good practices as required under 40 CFR 60.11(d) and 60.13(e) and (f), 40 CFR part 60, subpart A.

In addition to the provisions to request alternative monitoring and recordkeeping procedures allowed under all referencing subparts, the CAR, as does the HON, specifically allows nonautomated CPMS in certain situations. Although nonautomated CPMS are allowed, the provisions do require data to be collected, no less frequently than hourly. Therefore, EPA believes that nonautomated CPMS would be a real option only for facilities where the cost of automation would not be justifiable. A small batch operation is an example where the cost may not be justifiable.

Performance Tests and Flare Compliance Determination Requirements

The CAR allows 180 days to complete required performance tests, and 60 days to submit the report after the performance test. The general provisions to part 60 allow up to 180 days and the General Provisions to part 61 allow 90 days for conducting the performance test and submitting the report. The General Provisions to part 63 allow 180 days to conduct the performance test and 60 days to submit the report, while the HON specifies 150 days to conduct the test. The EPA adopted the time frame from the part 63 general provisions because it provides the greatest amount of time to conduct the performance test and prepare the report; this more expansive time frame is appropriate for the CAR, given the potentially large number of performance tests and reports that would need to be completed. The shorter length of time from part 61 would not be appropriate for the CAR because the CAR covers several emission point types, and the shorter time frame could make the organizing of the performance tests and the preparing of reports more difficult.

The referencing subparts do not clearly indicate what activities must be performed during a performance test for a flare. The CAR does not use the term ''performance test'' for flares; for the purposes of distinction and clarity, the

CAR refers to ''flare compliance determinations.'' Some HON provisions for performance tests should be included in the CAR's flare compliance determination, but many should not. The provisions that do apply are adopted from the performance test language in the HON, but are modified to apply to flares. Examples of the provisions that apply to flare compliance determinations are the provision that the Administrator may require a flare compliance determination at any time and the provision on flare compliance determination waivers. The EPA considers this a clarification.

The CAR excludes a provision from both 40 CFR part 61, subpart BB and the HON that requires a closed-vent system routing emissions from a transfer rack to a control device to be inspected prior to a performance test being conducted. The inspection is a leak detection inspection using Method 21. The EPA did not include this provision in the CAR because the closed-vent system is already under the requirement to be inspected initially and annually. This initial and periodic inspection is sufficient to ensure that the closed-vent system does not leak during the performance test. Also, closed-vent systems on other types of emission points are not required to be inspected prior to a performance test.

Sources are not required to conduct a performance test to comply with the CAR if a performance test has been conducted previously using the same test method required by the CAR and under the same operating conditions that currently exist. This exemption is not in any other referencing subparts other than the HON.

Additionally, the CAR allows performance tests and compliance determinations to be waived through written request to the Administrator if the Administrator determines that (1) the source is being operated in continuous compliance, (2) the source is operating under a compliance extension under 40 CFR part 63, or (3) the source is operating under a compliance waiver under 40 CFR part 61.

Performance Test Procedures

The CAR specifies that each performance test will consist of three separate runs using the applicable method; each run must be at least an hour in duration; and compliance will be determined using the arithmetic mean of the results of the three runs. This language is taken from the general provisions for 40 CFR part 60. The HON has similar language, but 40 CFR part 61 has no equivalent. Thus the CAR clarifies the requirements for part 61 sources.

The CAR requires that performance tests be conducted during ''maximum representative operating conditions for the process.'' It clarifies this requirement by specifying that, during the performance test, the control device may be operated at maximum or minimum representative operating conditions for monitored control device parameters, whichever results in lower emission reduction. The general provisions of 40 CFR parts 60 and 63 also require performance tests at maximum capacity and at representative operating conditions of the process. Subparts III, NNN, and RRR of 40 CFR part 60 require performance tests to be conducted at ''* * * full operating conditions and flow rates * * .'' The general provisions of 40 CFR part 61 require the performance test to be run ''* * * under such conditions as the Administrator shall specify * * *.'' None of the non-HON referencing subparts, nor any of the general provisions, contain the additional clarifying provisions that the control device may be operated under maximum or minimum representative operating conditions, whichever results in lower emission reduction. The CAR provisions represent the intent of all of the referencing subparts and add some additional clarity.

For transfer racks, the CAR provides details on how a performance test must be conducted for control devices capable of continuous vapor processing and for intermittent vapor processing systems. Subpart BB of 40 CFR part 61 does not specify these details for transfer racks and requires performance tests to be conducted over a complete loading cycle. The explicit provisions of the CAR are useful for transfer racks because loading a tank truck or railcar can take much longer than an hour. For long loading cycles it makes sense to base the test run on how the control device works instead of on the loading cycle.

The CAR clarifies the performance test requirements for a boiler or process heater with a design input capacity less than 44 MW that is used as a control device. The CAR requires the inlet sampling site to be located so that it measures the pollutant concentration in all vent streams and primary and secondary fuels. Therefore, the percent reduction is determined for all vent streams and primary or secondary fuels. This clarification is not in 40 CFR part 60, subpart DDD, III, or NNN.

Subpart BB of 40 CFR part 61 allows the use of Method 25B to determine concentration for calculating the percent reduction efficiency. The CAR does not allow this method because Method 25B can only be used when a primary constituent in the vent stream is assumed. In a consolidated rule for SOCMI, an industry that varies significantly on vent stream composition, a method that is not flexible can not be specified. Method 25B can always be requested as an alternative method, on a case-by-case basis.

For combustion devices that do not use supplemental combustion air, the CAR does not contain the provision in 40 CFR part 61, subpart DDD which specifies that the concentration shall not be corrected to 3 percent oxygen when calculating the percent reduction or outlet concentration. Rather, the CAR and all of the other referencing subparts require the concentration to be corrected to 3 percent oxygen for all combustion devices. The EPA requests comment on what effect this may have on subpart DDD sources.

Performance Test Records

The CAR includes the requirement for records to be kept of the location where a vent stream is introduced into a boiler or process heater. However, the CAR does not include the requirement contained in 40 CFR part 60, subpart DDD to also keep these records for incinerators. Subpart DDD is the only referencing subpart that has this requirement. Incinerators are required to have performance tests and continuous monitoring conducted. Conversely, boilers and process heaters that have their vent stream introduced with the primary fuel (in the flame zone) are not required to have performance tests or continuous monitoring conducted. Therefore, it is not necessary to locate where the vent stream is introduced in an incinerator for a determination of compliance, because performance tests and continuous monitoring are required. The EPA considers this a burden reduction.

The CAR requires records of the percent reduction or pollutant concentration to be determined at the outlet of the combustion device, on a dry basis corrected to 3 percent oxygen. While 40 CFR part 61, subpart BB does not explicitly require that the percent reduction be recorded for boilers less than 44 MW design input capacity, it is generally understood that these records are required. The CAR therefore clarifies the intent of subpart BB.

Non-Flare Control and Recovery Device Monitoring Records

The CAR reduces the requirements for CPMS calibration records by requiring only those records that are necessary to

determine the accuracy of the readings. The CAR requires retention of only the ''as found'' and ''as left'' readings whenever an adjustment is made that will effect the CPMS reading, and a ''no adjustment'' statement otherwise. Compared to referencing subpart language requiring retention of ''all'' calibration records, the CAR language significantly reduces the number of potential records that must be retained and adds clarity to what is needed.

Under the CAR, the option to use a data compression system for control and recovery device data handling is allowed. Owners or operators may request approval of an automated data compression recording system that does not record values at a set frequency, but records values that meet set criteria for variation from previously recorded values. Under the 40 CFR parts 60 and 61 referencing subparts, this data compression option was not previously offered. Although EPA does not generally recommend expanding the application of this data compression option until experience is gained with the impact of such record-reduction systems on compliance determinations and enforcement, this provision is extended in the CAR to 40 CFR parts 60 and 61 sources to provide HON sources this flexibility, which was previously provided to them, and to facilitate consolidation of the rules.

Other Records

Section 65.163 contains requirements for ''Other Records.'' Under the CAR, closed-vent systems that contain bypass lines keep only hourly records of flow indicator operation and diversion detection. Subpart RRR of 40 CFR part 60 requires ''continuous records.'' The EPA determined that continuous (i.e., 15-minute records) records are not necessary to ensure compliance in this case, but rather continuous monitoring with a record made once per hour indicating whether there was flow (and therefore, bypass) at any monitored time within the hour. Similarly, 40 CFR part 60, subpart DDD, RRR, and NNN require continuous records of pilot flame monitoring results, while the CAR requires hourly records like the HON and the 40 CFR parts 60 and 63 general provisions flare requirements.

The CAR does not include the provision from 40 CFR part 60, subparts DDD and RRR and 40 CFR part 61, subpart BB, and the HON transfer provisions that requires a description to be maintained of the vent stream. The description must contain a schematic recording of all valves and vent pipes that could vent the stream to the atmosphere. The EPA decided that this record would not be required in the CAR because of the burden associated with keeping a description with an up-to-date schematic. These types of descriptions are difficult to keep up-to-date because of the frequency with which the routing systems change. Also, the facility can explain the system at an inspector's request with the aid of other drawings, equipment leak records, and visually. An inspector could also request this description to be provided at the time of the inspection.

The CAR incorporates language from the HON which recognizes unsafe or difficult-to-inspect equipment in a closed-vent system which allows less frequent monitoring of such equipment. This allowance is not in 40 CFR part 61, subpart V. The CAR therefore provides some flexibility in dealing with this type of equipment.

For car seals, the CAR requires monthly visual inspection with records that indicate when a car-seal is broken. The 40 CFR part 60, subpart RRR requirement to record the serial numbers of car-seals and to maintain this record when car-seals are replaced is not in the CAR. Thus, the necessary record is whether a car-seal is broken and not exactly which car-seals are in place. Not having to record the serial numbers of all car-seals provides a burden reduction to subpart RRR sources.

When equipment leaks are detected in a closed-vent system, 40 CFR part 61, subpart V and 40 CFR part 60, subpart VV require records of information such as repair method, the signature of owner or operator, and expected date of successful repair. These requirements are not included in the CAR. In the spirit of consolidation, EPA considers that the records specified in § 65.163(a)(3) adequately document the necessary information for leaking equipment. The required records are: the instrument and the equipment identification number; the operator name, initials, or identification number; the date the leak was detected, the date of the first attempt at repair, the date of successful repair of the leak; maximum instrument reading measured after the leak is successfully repaired or determined to be nonrepairable; the reason for a delay of repair, if there is a delay; and copies of the periodic reports if records are not maintained on a computerized database.

The CAR includes requirements for records to be maintained of locations where a vent stream is introduced into the boiler or process heater, and of instances when this location is changed. This requirement is also included in the referencing subparts. However, as a burden reduction, the CAR does not contain the requirement in 40 CFR parts 60 and 61 to report this information. This information is helpful to the implementing agency if a change is made and the vent stream no longer will be introduced with the primary fuel; in these cases, a performance test may be necessary. If so, a notification and report of the performance test are required. Therefore, these cases will be reported. In the other situations, these records can be reviewed, as needed, at the facility.

The CAR provides additional flexibility regarding the notification to the Administrator that a performance test is being conducted. Although this flexibility is not currently provided in the referencing subparts, it is consistent with revisions proposed in 61 FR 47840, September 11, 1996 (Recordkeeping and Reporting Burden Reduction). The CAR specifies what should be done if there is a delay in conducting the scheduled performance test. The CAR requires the owner or operator to provide at least 7 days notice prior to the rescheduled date of the performance test, or to arrange a rescheduled date by mutual agreement with the Administrator. The EPA recognizes that unforeseen situations happen and that provisions for rescheduling are useful.

The CAR allows a request to be submitted at any time for the use of alternative test methods. The general provisions of 40 CFR part 61 includes time constraints on when an alternative test method may be requested (i.e., 30 days after the effective date or, for new sources, not later than with the notification of anticipated startup). Although all general provisions allow an alternative test method to be requested, the other general provisions do not specify a time frame within which the request must be submitted. The EPA considers it a clarification to not specify a time frame within which the request must be submitted, because an alternative test method may be requested for performance tests other than at startup. It is not necessary to have the test method approved 30 days after an effective date or by the notification of anticipated startup as long as it is approved in time to conduct the performance test on schedule.

VII. Delegation of the CAR to State Authorities

Many States have obtained delegation to implement and enforce the CAR's referencing subparts. These States' authority to implement and enforce the underlying NSPS or NESHAP rests on the State code, and the delegation of authority by EPA to the State in turn

rests on the State's ability to implement and enforce those Federal requirements.

By today's action, EPA is proposing to consolidate and somewhat revise certain provisions contained in parts 60, 61, and 63, for affected SOCMI sources, such that regulated sources would be allowed to comply with those newly revised provisions in the CAR. These regulatory revisions could result in the need for subsequent action at the State level to revise the State code and to submit an updated delegation request to EPA, which could then necessitate additional Federal administrative procedures, before the source could take advantage of the CAR and before the State could enforce it. State rulemaking and EPA action on delegation requests are time consuming, often taking several years. In the interim, the source may be unable to avail itself of the CAR benefits, because the CAR could apply at the Federal level while the NSPS and NESHAP continue to apply through the State's code until the State's code can be amended.

The EPA does not wish such a situation to impede adoption of the CAR by a source. Indeed, EPA encourages implementation of the CAR at the earliest possible date following promulgation of the final rule. A streamlined approach to implement the CAR under delegated State authorities is thus an important ingredient to the success of the rule consolidation effort.

In order to facilitate and expedite delegation and implementation of the CAR, EPA is taking two steps. First, EPA is proposing to recognize the CAR as an alternative compliance approach to the individual subparts being consolidated. This step, as discussed below, may allow sources in some States to begin to use the CAR immediately after promulgation while still remaining in compliance with the existing State code of regulations upon which delegation is based. The EPA believes this will be a useful approach for States that have the ability to recognize approved alternatives under the existing State regulations on which delegation rests. Second, to minimize administrative delays, EPA is proposing to waive the need for formal delegation of the CAR where the State is already delegated authority to implement the underlying NSPS or NESHAP subparts. Both of these proposed actions are discussed in more detail below.

A. Approval of the CAR as an Alternative Compliance Approach

The NSPS and NESHAP being consolidated in today's proposal, and the statutory authorities from which those rules stem, provide for the approval of alternative means of emission limitations and for appropriate alternative testing or monitoring methods as approved by the Administrator. To facilitate and expedite implementation, EPA is proposing to approve the CAR as a comprehensive alternative set of compliance requirements to the NSPS and NESHAP which it consolidates, specifically 40 CFR part 60 subparts A, Ka, Kb, VV, DDD, III, NNN and RRR; part 61 subparts A, V, Y, and BB; and part 63 subparts A, F, G, and H. This pre-approved alternative would be available for all sources to which the CAR applies.

The intent of this approval is to allow States and sources immediate use of the CAR, by providing a mechanism through which States can implement and enforce the CAR prior to undertaking additional State rulemaking. By designating the CAR as an approved alternative compliance approach under the existing NSPS and NESHAP, EPA seeks to provide a doorway within the existing State code and delegated authorities through which the CAR can be accessed, utilized, and enforced. This approach may eliminate or minimize the need for State rule revisions and delegation updates.

The Administrator is proposing approval of the CAR as an alternative means of compliance with the individual subparts listed above.

The CAR streamlines and revises much of the existing monitoring, record keeping, and reporting procedures of the underlying NSPS and NESHAP standards, without changing the basic control requirements or monitoring methods. Today's proposal is intended to simplify implementation of the standards, to reduce EPA, state, and industry burden in complying with the rules, and to facilitate compliance monitoring, while having no adverse effect on the accuracy, quality, and timeliness of the compliance monitoring data. EPA is proposing that all of the provisions of the CAR serve in whole as an alternative compliance approach for the subparts which it consolidates. To simplify implementation, the CAR can be used directly as an alternative compliance approach, without prior application or request to EPA. The CAR simply requires notification that the alternative approach would be implemented.

The EPA expects that comprehensive approval of the CAR as an alternative compliance approach for the existing NSPS and NESHAP which it consolidates will facilitate and expedite implementation by states and local agencies. EPA is today proposing to revise the underlying NSPS and NESHAP regulations such that the CAR would be recognized as an alternative approach to the existing NSPS and NESHAP provisions for sources opting into the CAR. However, EPA is aware that the unrevised NSPS and NESHAP regulations will, at least for an interim, remain the enforceable provisions in many states, absent state rulemaking to incorporate the CAR. The NSPS and NESHAP as they are currently adopted by the state also remain federally enforceable in those states where they form the basis of delegation by EPA to the state. Today's proposed action to approve the CAR as an alternative compliance approach clarifies EPA's intent that compliance with the CAR should serve to fulfill a source's obligations to comply with applicable NSPS and NESHAP consolidated therein, even in cases where the unrevised NSPS and NESHAP still reside in the state or local code. States may rely on this approval under the existing NSPS and NESHAP to allow sources expedited use of the CAR, and may enforce the CAR as an approved alternative compliance approach for the existing NSPS and NESHAP in accordance with the current delegation of authority to the state.

The EPA is providing notice and opportunity for comment on this proposed action to approve the CAR as an alternative compliance approach to 40 CFR part 60 subparts A, Ka, Kb, VV, DDD, III, NNN and RRR, part 61 subparts A, V, Y, and BB, and part 63 subparts A, F, G, and H. Comments are requested with regard to both the validity of this approval and to the usefulness of this mechanism for expediting implementation of the CAR.

B. Policy on Delegation of the CAR

Today's proposed rule was developed based on consolidating the existing requirements of Parts 60, 61, and 63 that apply to SOCMI, without changing the applicability or reducing the stringency of the existing regulations. For this reason, EPA believes that, where a State has been delegated authority to administer all of the applicable rules under Parts 60, 61, and 63, no further delegation of authority is necessary in order for such State to administer the CAR. The EPA therefore proposes to allow a State to administer the CAR without further action by EPA if such State has been delegated the authority to administer each of the applicable referencing subparts.

However, States that lack delegated authority to administer any of the referencing subparts that apply at a source that seeks to implement the CAR

must obtain such delegation prior to allowing that source to comply with the CAR.

The EPA requests comment on this proposed delegation policy.

VIII. Incorporating CAR Requirements Into the Title V Permit

Title V of the Act and EPA's operating permits regulations at 40 CFR part 70 require all ''applicable requirements'' (standards or requirements under the Act, as defined at 40 CFR part 70.2) to be included in the operating permit for any source that is required to have an operating permit. Since a permit can contain only the applicable requirements in effect at the time it was issued, or last revised, any newly-promulgated requirements (such as those in the CAR) would not be in the permit until the permit is revised to include them. Revising the permit is also necessary if a source adopts substitute requirements under the CAR, since without a permit revision, the source would be in non-compliance with the provisions of its operating permit. Consequently, once a source adopts the CAR, to the extent that the existing permit terms will be replaced or modified by provisions of the CAR, the permit must be revised to delete those permit terms and add the applicable CAR provisions. This section discusses the processes by which permits would be revised to incorporate provisions of the CAR.

Under 40 CFR part 70.7, operating permits may be revised through one of three mechanisms: administrative amendments, minor permit modifications, or significant permit modifications. The administrative amendment process is for: (1) changes that are trivial or administrative, such as typographical errors, or change of ownership; (2) changes that provide more frequent monitoring or reporting; (3) incorporating terms of preconstruction permits that meet the compliance requirements of section 70.6 and that were issued under a process that has been ''enhanced'' to provide EPA and public review; or (4) other changes similar to these that have been approved by EPA in a State part 70 program. Any change resulting from CAR requirements will add the CAR as an applicable requirement to the source's permit, and therefore, is not likely to be a trivial or administrative change. In addition, the CAR will usually require less rather than more frequent monitoring or reporting. Consequently, CAR requirements do not appear to be eligible as administrative amendments.

To determine if incorporation of CAR requirements qualifies as a minor permit revision, the type of change that might arise from the CAR must be evaluated against the relevant criteria of §§ 70.7(e)(2)(i)(A)(1) through (6). If the change does not meet any of these criteria (the criteria are written in the negative), the change may be made using the minor permit revision process; otherwise, it must use the significant permit revision procedures. To summarize the minor permit revision criteria, a minor permit revision is not allowed if the change: (1) violates an applicable requirement; (2) significantly changes existing monitoring, reporting, or recordkeeping; (3) establishes or changes case-by-case emissions limitations; (4) establishes a potential-to-emit limitation; (5) is a title I modification; or (6) is required by the permitting authority to be a significant permit modification. Criterion (2) is clearly the one criteria that might be triggered by incorporation of CAR requirements, since CAR requirements could change existing monitoring, reporting, or recordkeeping requirements in the permit. To determine if criterion (2) does apply, it is necessary to determine if incorporation of CAR requirements will result in a significant change to monitoring, reporting or recordkeeping requirements.

In terms of their significance to monitoring, recordkeeping or reporting requirements, changes from the CAR can be sorted into two broad categories, depending on the amount of discretion a source has in determining the new requirement. The first category comprises changes over which the source has little discretion in determining the monitoring, recordkeeping or reporting requirements. In most cases, the monitoring, recordkeeping and reporting requirements are established by the CAR, and once the source has decided to be covered by the CAR, it has no ability to change the requirements. For example, § 65.47(e) requires owners or operators of storage vessels using floating or external roofs to record when the roof was set on its legs and when it was refloated. This is a new record not previously required under any referencing storage vessel rule. As another example, § 65.44(c)(9)(ii) allows up to two 30-day extensions (after an initial 45 days) to empty and remove a storage vessel from service after the source finds that it is unsafe to perform gap seal measurements. Under subpart Kb of 40 CFR part 60 and subpart Y of 40 CFR part 61, the source was allowed one 30 day extension, which required prior approval [§ 60.113b(b)(4)(iii) and § 61.272(b)(4)(iii)]; extensions were not addressed under subpart Ka of 40 CFR part 60. Under the CAR (as in the HON), both the first and second 30-day extensions are available to the source without requesting prior approval by EPA; although documentation for why an extension is necessary must be maintained. Other examples include § 65.48(c)(2)(ii), which requires reporting of storage vessel seal gap measurement results, rather than all raw seal gap measurement data as required in subpart Kb of 40 CFR part 60, subpart Y of 40 CFR part 61, and subpart G of 40 CFR part 63 [§ 60.115b(b)(2), § 61.276(d)(1), and § 63.122(e)(1)]; or § 65.161(a)(3), which requires keeping records of the latest 3 hours of continuous (15-minute) monitoring data, rather than keeping records of all continuous monitoring data, as under the HON, see § 63.152(f)(2).

The examples given so far illustrate changes in which the source is adopting the CAR requirements in lieu of previous requirements, without changing or adding to the CAR requirements. Other requirements under the CAR, still within the first category, may require a source to determine monitoring requirements. For example, under § 65.148(c)(1), a facility using an incinerator to meet the 98 percent reduction requirement of § 65.63(a)(2) of subpart D for process vents, is required to monitor temperature within a range of temperature determined by the source. The source may establish, as part of its title V application, the parameter range that it will use, based on a performance test, or it may rely on prior performance tests or use an existing range or an established limit in a referenced subpart. In EPA's view, a change in a parameter range based on a relevant EPA-approved performance test is not a significant change, since the range is determined by the results of the test and cannot be set arbitrarily. In addition, the parameter to be monitored is set by the CAR, and is therefore outside the source's discretion.

Thus, EPA does not consider this first category of changes to be ''significant changes'' within the meaning of criterion (2) for minor permit revisions. The EPA interprets the criterion as requiring the significant permit revision process when a significant monitoring change is made in the permit revision process, and especially when the changes are source-specific monitoring changes involving significant judgment. The types of changes to monitoring requirements that EPA considers significant within the meaning of

criterion (2) include establishing equivalent SIP monitoring requirements, streamlining of redundant monitoring requirements, or significant changes to source-specific monitoring. The first category of CAR requirements should not have these characteristics, since the amount of judgment involved in establishing source-specific requirements such as parameter levels is not significant. There is also no requirement to demonstrate that these requirements are equivalent to existing requirements, as would be the case when establishing equivalent SIP requirements or streamlining.

The second category of changes involves significant discretion on the part of the source in determining monitoring, recordkeeping or reporting requirements. For example, under § 65.63(d) of subpart D, which applies to a group 2A process vent without a recovery device, a source is allowed to establish the parameters that it will monitor, and the parameter ranges, in order to maintain a TRE index value greater than 1.0. Another example is under § 65.162(e) of subpart G, which applies to sources who are directed under § 65.154(c)(2) or § 65.155(c)(1) to set unique monitoring parameters, or who request under § 65.156(e) approval to monitor a different parameter than those listed in relevant monitoring requirements of subpart G of the CAR.

If this second type of change were established for the first time through the permit revision process, EPA would consider it to be a significant change in monitoring under the meaning of criterion (2) of § 70.7(e)(2)(i)(A), since the source has significant discretion in establishing not only the parameter to be monitored, but the methods that are used in making that judgment. Establishing these kinds of monitoring requirements in the permit is similar to permit streamlining, equivalent SIP requirements, and other changes that involve significant judgment discussed above. In White Paper #2, EPA indicated that streamlining could be accomplished as part of the initial permit application or as a significant permit revision, both of which provide for EPA review of streamlined requirements. The current part 70 requires that equivalent SIP limits established in the permit must follow initial issuance, renewal, or significant permit revision procedures [See § 70.6(a)(1)(iii)].

If, however, EPA has approved unique or different monitoring requirements prior to the permit revision taking place, as may be the case under the CAR, EPA would consider the significant permit revision procedure to be unnecessary. For example, if EPA has approved a request to use alternative monitoring or recordkeeping procedures under § 65.7(b) and (c) of subpart A or § 65.162(d) of subpart G procedures, the source has no discretion but to comply with those alternative requirements once the Agency has granted approval. Consequently, the absence of discretion justifies the minor permit revision process, rather than the significant permit revision procedures.

Note that under the proposed changes to part 70 (60 FR 45529, August 31, 1995), incorporation of new requirements such as the CAR may be allowed under the proposed ''notice-only'' provisions, in which EPA and public review is not required, if the permit is incorporating previously-adopted requirements and if source-specific requirements are not being established through the permit. Incorporation either of provisions adopted in the CAR rule, or of source-specific requirements proposed by the source and approved by EPA after promulgation of today's rule (provided the permit process was not the vehicle for EPA approval) would likely be eligible for notice-only procedures under the concept outlined in the 1995 proposal. If EPA adopts the notice-only procedures, the procedures would be available once the State in which the source is located had incorporated the revised procedure into its permit program. Until then, the current part 70 permit procedures apply as outlined above.

IX. Extension of the Consolidation to Include the State Implementation Plan

The EPA recognizes that States have developed and incorporated into the State Implementation Plan (SIP) rules and requirements that affect many of the same emission units also subject to the referencing subparts being consolidated in today's proposal. Those regulations typically include reasonably available control technology (RACT) and other requirements designed for attainment and maintenance of national ambient air quality standards (NAAQS). Hence, even upon final promulgation of the CAR, in many areas SOCMI sources implementing the CAR still could remain subject to two separate sets of requirements—the CAR and State and federally-enforceable RACT requirements. Reduction of compliance burdens through consolidation of regulatory requirements could be greatly enhanced by expanding the benefits of today's proposal to address federally enforceable SIP requirements that apply to SOCMI sources.

In an effort to facilitate burden reduction for sources subject to state specific SIP requirements, EPA is proposing three actions. First, EPA is proposing to pre-approve the CAR as meeting the RACT requirement of the Act. Thus, with respect to SIPs that expressly allow for the approval of alternatives to existing RACT requirements by the State and EPA, additional EPA action will not be needed prior to implementation of the CAR by a specific source. The source will still need State approval of the CAR for that source prior to implementation. This pre-approval, discussed further below, would expedite the consolidation of the RACT requirement with other applicable requirements through implementation of the CAR since no additional EPA action would be necessary prior to implementation of the CAR. Second, based on EPA's proposal to pre-approve the CAR as meeting RACT, EPA is proposing a streamlined process for review and approval of SIP submittals that incorporate the CAR requirements. This action will expedite the process for incorporating into the SIP the CAR for purposes of complying with RACT requirements, particularly in states where the SIP does not already allow for the use of approved alternatives. Finally, EPA is recognizing the use of the title V permitting process as a mechanism through which the streamlining of overlapping requirements stemming from the SIP, NSPS, and NESHAP programs can be accomplished. Below, each of these mechanisms for expanding the benefits of the CAR rulemaking to encompass SIP requirements is discussed. First, however, a description of RACT and EPA's basis for pre-approving the CAR as RACT is provided.

A. Pre-Approval of the CAR as Meeting the Clean Air Act Reasonably Available Control Technology Requirement

For purposes of defining RACT, EPA has historically issued control techniques guidelines (CTGs). These CTGs are not regulatory in nature, but rather establish a presumptive norm for RACT. In other words, the CTGs, which are issued after an opportunity for public input, establish one or more methods of control or emission reduction levels that EPA deems as RACT-level control for certain operations. In developing the CTGs, EPA provides the scientific and technical documentation to support these controls as a RACT level of control. In developing RACT rules to be incorporated into a federally-approved SIP, a State can adopt the methods of

control specified in the CTG or establish other methods of control. To the extent the State relies on the control methods specified in the CTG, EPA will not undertake further analysis in determining that the State has established RACT-level of control for those sources. However, if a State elects to require other types of control, the State must provide the relevant scientific and technical information to demonstrate that the selected controls meet the underlying statutory RACT requirement.

Currently, EPA has issued six CTGs, shown in table 4, applicable to emission points at sources covered by the CAR. Pursuant to section 182(b)(2)(B) of the Act, States were required to submit RACT rules by November 15, 1992 for emission sources whose CTGs were issued prior to the 1990 Clean Air Act Amendments. Therefore, RACT rules for petroleum liquids in fixed roof and external floating roof tanks; manufacture of high-density polyethylene, polypropylene, and polystyrene resins; SOCMI and polymer manufacturing equipment leaks; and SOCMI air oxidation processes were due by November 15, 1992. For emission sources covered by CTG's issued after the 1990 Amendments, the EPA was required to establish a submittal date, pursuant to section 182(b)(2)(A) of the Act. The RACT rules for SOCMI distillation and reactor processes were required to be submitted by March 23, 1995, as stated in the **Federal Register** notice (59 FR 13717, March 23, 1994) announcing the submittal due date.

TABLE 4.—CONTROL TECHNIQUES GUIDELINES

Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks, EPA–450/2–77–036, December 1977.
Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks, EPA–450/2–78–047, December 1978.
Control of Volatile Organic Compound emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins, EPA–450/3–83–008, November 1983.
Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment, EPA–450/3–83–006, March 1984.
Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry, EPA–450/3–84–015, December 1984.
Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry, EPA–450/4–91–031, August 1993.

After State adoption, control measures are submitted to EPA for approval into the federally-enforceable SIP. Hence, once a State-enforceable measure is approved into the SIP, it becomes enforceable as a federal requirement.

In order to establish that provisions in the CAR are at least as stringent as RACT, it is necessary to understand the basis for RACT and the standards that constitute the CAR. The general requirement for RACT in nonattainment areas is found in section 172(c)(1) of the Act. Section 182 (a)(2)(A) and (b)(2) provide more specific requirements for stationary sources that emit volatile organic compound (VOC). The EPA has defined RACT as ''. . . the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility'' (44 FR 53761, September 17, 1979). These are control techniques that are widely used that can be readily applied to existing sources without unreasonable burden.

The ''reasonably'' available control technology reflected in SIP levels can be contrasted with the generally more stringent bases for the new source performance standards (NSPS) and national emission standards for hazardous air pollutants (NESHAP) which comprise the CAR. The NSPS, which apply to newly constructed stationary sources that emit criteria pollutants, are based on ''. . . the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated,'' (CAA section 111(a)(1)) or best demonstrated technology (BDT). This presumably (but not necessarily) higher level of control than RACT (which generally is developed for existing sources) can be justified for new, modified, or reconstructed sources, because such controls can be incorporated into the design of the source prior to construction, modification, or reconstruction, making it more technically and economically feasible than for existing sources that can have prohibitive design constraints or costs.

Prior to the 1990 Amendments, for NESHAP, the Act required the Administrator to ''. . . establish any such standard at the level which in his judgment provides an ample margin of safety to protect the public health from such hazardous air pollutant.'' 42 U.S.C. 7412(b)(1)(B). Although EPA policy has evolved over the years regarding the interpretation of this wording, it was generally accepted that the basis for the standards established would reflect at least the basis analogous to that established for NSPS, i.e. ''best controls'' considering the impacts.

The Act, as amended in 1990, provides that NESHAP must ''. . . require the maximum degree of reduction in emissions . . . that the Administrator, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable . . .'', or maximum achievable control technology (MACT), for short. The Act 112(d)(2). This basis is very similar to that for NSPS, as is evidenced by the statutory wording, and again generally reflects control at least as stringent as, if not more than, RACT.

The statutory language for setting NSPS and NESHAP clearly mandate a basis for those standards no less stringent, and conceivably more stringent, than that for RACT. An examination of the CTGs that apply to SOCMI reveal that the NSPS and NESHAP that form the basis for today's proposed CAR are all at least as stringent as the corresponding RACT requirements contained in the CTG's, especially since most of the CAR is based on the HON, which is the NESHAP applicable to the SOCMI.

In addition to the appropriate stringency qualifications, the CAR will be established through regulation, thus it is appropriate to augment the CTG's, which were issued after public notice and comment, with the CAR. Therefore, since EPA believes that the CAR is at least as stringent as the RACT established in the CTG and since this action fulfills the procedural requirements for establishing RACT, EPA is proposing to pre-approve the CAR as RACT.

B. EPA Approval of the CAR as an Alternative Compliance Measure for the State Implementation Plan

The EPA is aware that some State SIPs provide for the use of alternative emission limitations, control technologies, or monitoring methods for purposes of complying with the applicable SIP requirement. Use of such alternatives generally requires the prior approval of both EPA and the State to ensure that the alternative is equivalent to the method currently approved into the SIP. The EPA is proposing, based on its pre-approval of the CAR as meeting RACT, that where a SIP allows sources to adopt alternative means of control after approval by the State and EPA, no additional EPA approval will be required prior to the source implementing the CAR. In other words, EPA is proposing that a determination in the final CAR rule that the CAR is RACT for the relevant sources, will fulfill the EPA approval requirement in SIPs for adoption of alternative means of complying with a SIP-approved RACT requirement.[1] Therefore, if—in accordance with an alternative measures provision in an approved SIP—a source applied to a State, seeking to implement the CAR rather than the current SIP-approved RACT measures, the State could approve the use of the CAR as an alternative means of compliance and further EPA approval would not be necessary for the source to implement the CAR. In these cases—where the SIP expressly provides for the approval of alternative measures—this pre-approval should provide an expedited mechanism for using the CAR to consolidate SIP and Federal emission standards.

However, through this proposed action, EPA is not and cannot revise any specific SIP to include the CAR. Where a SIP allows approval of alternative means of compliance, the source must still receive State approval, consistent with the terms in the SIP, in order to use the CAR as an alternative means of compliance. Independent State approval is necessary because the State has retained the authority to determine whether alternative means of control meet the State-adopted RACT requirements. States have the authority under section 116 of the Clean Air Act to establish controls that exceed RACT. Therefore, although EPA is proposing that the CAR is at least equivalent to the presumptive RACT requirement in the existing CTGs, the State must have the opportunity to determine whether the CAR is an appropriate alternative to the measures that were adopted by the State and approved into the SIP. This determination is critical since a State may have adopted tighter means of control for purposes of attaining the NAAQS or meeting some other applicable requirement of the CAA (for example, 15 percent VOC reduction requirement).

For cases in which the SIP requirements are more stringent than the CAR as it would apply to specific sources, EPA recognizes that use of the CAR as an alternative to the SIP may jeopardize achievement or maintenance of the NAAQS. In those cases, EPA expects that the State would disapprove use of the CAR as an alternative means of compliance with the SIP.

In determining whether the CAR can be used as an alternative to the SIP, the State must consider whether the CAR requires control to an equal or higher degree than the emission limitations of the SIP. Because EPA, through this rulemaking, is establishing the compliance measures (monitoring, recordkeeping, and reporting) which correspond to a particular control option as sufficient to assure compliance with the presumptive RACT emission limitation, EPA believes that it will not be necessary for a State to compare the particular compliance measures of the SIP to the CAR in order to approve the CAR as an alternative if the State has adopted the presumptive measures that were provided in the CTG. Rather, the State may choose to restrict its review to the sufficiency of the control measures and emission limitations in the CAR, in order to provide for greater use of the burden reductions inherent in the compliance measures of today's proposed CAR.

The EPA believes that there will be few, if any, instances in which the CAR would serve to relax a previously applicable SIP requirement. However, since there may be limited cases where that could occur, EPA is seeking comment on whether a more rigorous SIP review process should be required in those few instances. Therefore, EPA is seeking comment on whether the State should be required to submit through the formal SIP revision process any state approval of the CAR where the CAR provides for fewer emission reductions than the previously-approved SIP.

Although a source may implement the CAR upon State approval, EPA is also proposing that the State subsequently submit the CAR for official incorporation into the SIP. The EPA is proposing that the State could make this submission through letter notice.[2] This process will serve to ensure that the applicable control requirement, i.e., the CAR, is reflected in the SIP. Without this process, the SIP would continue to indicate that the source was subject to the previously approved RACT limit. The letter notice will ensure that EPA is informed about the applicable SIP requirements for sources and will allow the Agency to fulfill its obligation to provide that information to the public (See for example The Act 110(h), 42 USC 7410(h)).

Since, at this point the incorporation of the CAR into the SIP will merely be a technical revision, EPA believes that letter notice is an acceptable procedure. Under the letter notice procedures, the State submits the revision by letter to EPA upon State approval of the CAR for a specific source or group of sources. The EPA would not need to undertake a lengthy notice-and-comment rulemaking process to incorporate the revision into the SIP. Rather, the regional office would notify the State and the source by letter that the SIP was being revised to reflect the submission. Periodically, each EPA Regional office would publish a notice in the **Federal Register** to notify the public of the SIP revisions that had been made. Furthermore, at that time, EPA would ensure that the federally-approved SIP reflected the CAR as the alternative means of compliance for the relevant source(s).

The EPA seeks comment on the validity and usefulness of this approach to extend consolidation of regulatory requirements to include SIP requirements.

C. Expedited State Implementation Plan Approvals for Incorporation of the CAR as a Reasonably Available Control Technology Compliance Option

In many cases the SIP explicitly provides an exclusive means of compliance with RACT. This exclusivity would preclude the use of the process proposed above since the SIP does not allow for an alternative means of compliance. In such cases, the State may utilize other options to address overlapping requirements between the SIP, NSPS, and NESHAP programs. One approach which the State could take would be to revise the regulations which form the basis of the SIP, either to include boilerplate

[1] EPA's pre-approval only applies if the State is approving the CAR as federally-promulgated. If the State wishes to approve an alternative that differs from the approved federal CAR, these streamlined procedures would not apply. Rather a full SIP revision request would be needed. However, as noted in section C., below, EPA might be able to use the direct final process in processing some SIP revisions.

[2] For further information on the letter notice process, see 55 FR 5829, February 16, 1990.

provisions for approved alternatives or to explicitly incorporate the CAR as a means of complying with RACT. EPA is proposing the use of measures described below in order to ensure that this SIP revision process would work quickly and effectively so that the CAR may be utilized as quickly as possible as a compliance tool.

Because EPA is proposing to determine through this action that the CAR is at least equivalent to presumptive RACT, EPA believes that there will be little need for public comment on a case-by-case basis as SIPs are revised to incorporate the federally-enacted CAR as an alternative means of compliance. However, it will be necessary for some States to revise their SIPs to include the CAR for this purpose. Therefore, such States would need to submit the CAR to EPA as a SIP revision. For States that submit the CAR, as finalized in the federal rules, EPA is proposing to use letter notice procedures to revise the SIP to incorporate the CAR. (Again, EPA seeks comment on whether a different process should be used where the CAR would relax the previously-approved SIP requirement.) However, if a State submits a rule that differs from that established through the final federal rulemaking on the CAR, EPA would need to undertake notice-and-comment rulemaking procedures in order to provide an opportunity for public participation.

Although EPA believes notice-and-comment rulemaking would be needed if the State-adopted rule differs from the federally-enacted CAR, in some instances, EPA might be able to utilize the existing ''direct final'' method of rulemaking in order to significantly expedite the rulemaking process. Under such a procedure, EPA publishes a proposed and final action simultaneously indicating that if no adverse comments are received, the final action will be effective 60 days following publication. If adverse comments are received, EPA will withdraw the final action, address the comments and subsequently publish a new final action in light of the comments received.[3]

D. Streamlining of Overlapping State Implementation Plan, New Source Performance Standards, and National Emission Standards for Hazardous Air Pollutants Requirements in the Title V Permitting Process

In addition to undertaking rulemaking to revise the SIP, or as an option to that approach, the State may wish to take advantage of the title V permitting process as a mechanism for addressing overlapping requirements. The process by which this may be accomplished is discussed in detail in EPA guidance entitled, ''White Paper Number 2 For Improved Title V Implementation,'' issued on March 5, 1996.

The White Paper Number 2 describes how a source may propose streamlining to distill or ''streamline'' multiple overlapping requirements into one set that will assure compliance with all requirements. According to the guidance, multiple emissions limits applying to an emission unit may be streamlined into one limit if that limit is at least as stringent as the most stringent limit. If no one requirement is clearly more stringent than the others, the applicant may synthesize the conditions of all the applicable requirements into a single new permit term that will assure compliance with all requirements. The streamlined monitoring, recordkeeping, and reporting requirements would generally be those associated with the most stringent emissions limit, providing they would assure compliance to the same extent as any subsumed monitoring. Thus, monitoring, recordkeeping, or reporting to determine compliance with subsumed limits would not be required where the source implements the streamlined approach.

It is important to emphasize that while streamlining may be initiated by either the applicant or the permitting authority, it can only be implemented where the permit applicant consents to its use.

X. Summary of Benefits and Other Impacts

The CAR contains a number of significant benefits to all parties; in fact, regulatory improvement benefitting all is the main purpose of the CAR, as described earlier in the discussion on goals and objectives. Many of the same benefits and features of the CAR help all the parties equally, while some are more beneficial to others. The benefits and improvements of the CAR are individually discussed in detail in section VI of this preamble. The most significant benefits afforded by the CAR include:

- Requirements in 3 different parts and 16 different subparts have been brought together into 1 set of requirements in a single part;
- Structure of the rule is designed with the ''end-user'' in mind;
- Monitoring requirements for equipment leaks have been greatly reduced and simplified; and
- Data handling burden has been greatly reduced due to requirements to keep only the most recent 3 hours of CPMS monitoring data.

The recordkeeping and reporting burden associated with the CAR reflects a substantial reduction in burden hours as compared to the referencing subparts. EPA has assessed the recordkeeping and reporting burden for the CAR and estimates a net reduction in burden of about 1700 hours per year for a representative chemical plant with 3 process units opting to use the CAR. Burden reduction is a function of the size and complexity of a plant site and will therefore vary for individual plant sites.

In addition, it is expected that the CAR will provide improved compliance and resource savings. By having a clearer, simpler, smaller, consistent set of rules, both industry and enforcement agencies will know better what is expected, and can concentrate on implementing and complying with the requirements instead of trying to understand provisions of several different rules. Because the rules can be much more easily implemented, there will be better compliance. By the same token, when the regulations are more easily implemented, with resulting better compliance, there will be less enforcement action and litigation, saving resources of both enforcement agencies and industry.

XI. Additional Amendments to Equipment Leak Referencing Subparts

Today's action includes some additional amendments to 40 CFR part 60, subpart VV and 40 CFR part 61, subpart V that are not necessitated by proposal of the CAR. Rather, these amendments are being proposed in order to clarify some specific provisions and to incorporate some provisions for safety consistent with the HON equipment leak provisions that have been amended several times in recent years. Today's proposed amendments would incorporate these same improvements into 40 CFR part 60, subpart VV and 40 CFR part 61, subpart V. The rationale for all of the proposed amendments remains the same as it was for amending the HON. Discussion of these HON amendments is found in preambles to the proposed amendments (59 FR 48175, September 20, 1994; 60 FR 18020, April 10, 1995; 61 FR 31435, June 20, 1996; and 62 FR 2721, January 17, 1997). The proposed amendments to 40 CFR part 60, subpart VV and 40 CFR part 61, subpart V consist of the following changes.

[3] For further information on the direct final process, see 59 FR 24054, May 10, 1994.

A. Closed-vent Systems and Control Devices

The language in 40 CFR part 60, subpart VV and 40 CFR part 61, subpart V defining CVS would be changed from ''systems * * * composed of piping'' to ''systems * * * composed of hard-piping [or] ductwork.'' Definitions of ''hard-piping'' and ''ductwork,'' taken from the HON, would be added to both 40 CFR part 60, subpart VV and 40 CFR part 61, subpart V to accommodate the amended definition of CVS. Definitions distinguishing between hard-piping and ductwork allow for a distinction to be made between the applicable inspection requirements.

The inspection requirements for CVS hard-piping and ductwork have been clarified in 40 CFR part 61, subpart V to be consistent with 40 CFR part 60, subpart VV and the HON. Closed-vent system ductwork must be inspected initially and annually thereafter using Test Method 21; CVS hard-piping must be inspected initially using Test Method 21, and then visually inspected annually thereafter. Prior to these amendments, there was no clear distinction made in 40 CFR part 61, subpart V between ductwork and hard-piping inspection requirements, and all conveyance systems had to be inspected annually using Method 21. However, EPA recognizes that systems constructed of hard-piping are extremely unlikely to leak, and therefore, annual Method 21 inspections are unnecessary for hard-piping. Further discussion about the inspection requirements for CVS ductwork versus CVS hard-piping is included in the **Federal Register** notice proposing this amendment for 40 CFR part 60, subpart VV (59 FR 36155, July 15, 1994) and in the **Federal Register** notice issuing the final HON (59 FR 19447, April 22, 1994).

The definitions of CVS in 40 CFR part 60, subpart VV and 40 CFR part 61, subpart V would also be modified for consistency with the HON to include systems that are routed back to a process. Similarly, provisions in both subparts that require a control device for pumps, compressors, or pressure relief devices would be amended to allow routing to a fuel gas system or routing back to a process in lieu of routing through a CVS to a control device.

B. Sampling Connection Systems

The HON provisions on the treatment of purge material would be added to 40 CFR part 60, subpart VV and 40 CFR part 61, subpart V. The added provisions would allow three additional control options for purge materials. These options include: (1) sending purge material to a hazardous waste treatment, storage, and disposal facility (TSDF), if it contains hazardous waste; (2) sending purge material to a facility permitted by a State to handle municipal or industrial solid waste, if it is not hazardous waste; or (3) sending the purge material to a waste management unit that is complying with the group 1 wastewater provisions of 40 CFR part 63, subpart G.

When EPA amended the HON with these three additional control options, the option to send purge material to a waste management unit that is complying with the HON Group 1 wastewater provisions included an exemption for streams that do not contain any organic HAP listed on table 9 of 40 CFR part 63, subpart G. This exemption is not included in the proposed amendments for 40 CFR part 60, subpart VV or 40 CFR part 61, subpart V. These two subparts address VOC, and benzene and vinyl chloride, respectively.

Table 9 was created to help define organic HAP of regulatory concern for the HON wastewater provisions. It therefore does not serve as an appropriate basis for exemption from VOC controls under 40 CFR part 60, subpart VV. Many regulated VOC are not HAP, and they have never been assessed for inclusion in table 9. No satisfactory substitute for table 9 exists for VOC. Moreover, table 9 is not an appropriate basis for exemption under 40 CFR part 61, subpart V because subpart V applies to streams containing benzene or vinyl chloride, and table 9 lists both of these compounds.

The EPA is not including the exemption because the circumstances associated with purge material in wastewater streams are not the same in these cases as were present with the HON amendment. For more discussion on how table 9 was developed see the Hazardous Air Pollutant Emissions from Process Units in the Synthetic Organic Chemical Manufacturing Industry—Background Information for Final Standards, Volume 2B: Comments on Wastewater (EPA–453/R–94–003b) section 3.2 The control options allowed in the proposed amendment meet the intent of the sampling connection system provisions, which is to ensure that purged material is captured and either returned to a process or destroyed, and offers additional compliance flexibility.

The HON definition of ''sampling connection systems'' would also be added to 40 CFR part 60, subpart VV and 40 CFR part 61, subpart V. Prior to this proposed amendment, neither subpart included a definition of this term. The addition would be made for clarity and would not effect the requirements in either subpart.

C. Standards for Control Devices and Recovery Systems

Provisions for recovery devices and enclosed combustion devices in 40 CFR part 60, subpart VV and 40 CFR part 61, subpart V would be amended to allow an exit concentration of 20 parts per million by volume (ppmv) as an alternative to the 95 percent control efficiency requirement. The 20 ppmv alternative standard was added to the HON provisions (61 FR 43698, August 26, 1996). The use of this option is provided for cases where there would be large amounts of dilution air, such as enclosed vented processes. The EPA considers the 20 ppmv alternative standards to be a reasonable design concentration for circumstances covered by these two subparts. For low concentration streams, it is difficult to obtain the 95 percent removal that is required. A 20 ppmv outlet concentration is obtainable for these streams. In addition, EPA reiterates that this proposed alternative standard will be allowed only in the cases where circumvention by dilution can reasonably be detected.

D. Safety Considerations

Several amendments made to the HON equipment leak provisions for safety reasons (60 FR 18073, April 10, 1995) are being proposed for 40 CFR part 60, subpart VV and 40 CFR part 61, subpart V. These amendments are being proposed for safety reasons and for consistency among equipment leak rules; they would exempt equipment from particular requirements (for example, inspections) if the required activity may pose a safety hazard. Use of these proposed exemptions will be strictly limited to equipment for which a real need could be reasonably argued.

Pumps would be exempt from monthly monitoring and weekly visual inspection requirements if such monitoring or inspection is unsafe. The owner or operator must maintain a written plan for monitoring and inspecting these pumps as frequently as possible under safe conditions. The associated recordkeeping requirements for inspection and monitoring would be amended accordingly.

Pressure relief devices equipped with a rupture disc upstream of the pressure relief device would be exempt from the requirement to operate with no detectable emissions. Owners and operators would have to replace these rupture discs as soon as is practical and

no later than 5 days after each pressure release.

Open-ended valves and lines would be exempt from the requirement to be closed or sealed if they are part of an emergency shutdown system, or if the open-ended valve or line contains material that would autocatalytically polymerize or cause a safety hazard if capped or sealed.

Any parts of a closed-vent system that are designated by the owner or operator as unsafe to inspect would be exempt from requirements for initial and annual inspection and monitoring. The owner or operator would have to maintain records of equipment so designated and a written plan for inspecting this equipment as often as possible under safe conditions.

Parts of a CVS that cannot be inspected without elevating the inspector more than 2 meters above a support surface could be designated difficult to inspect and thereby exempt from inspection and monitoring requirements. Equipment designated difficult to inspect must be part of a modified or reconstructed process unit or the owner or operator must designate no more than 3 percent of the CVS equipment difficult to inspect. Additionally, the owner or operator must maintain a written plan for inspecting the equipment at least every 5 years.

XII. Solicitation of Specific Comments

The Administrator solicits comments on all aspects of this proposal. Comments on specific technical features of the rule are solicited in section VI of this preamble as each topic is discussed. These technical features include:

- The introduction of halogen scrubbers for NSPS process vents;
- The validity and usefulness of the CAR's implementation mechanism;
- The EPA's proposed policy for delegation to States; and
- The CAR's provisions requiring correction to 3 percent oxygen for all combustion device concentration measurements.

The Administrator specifically requests comments on the usefulness of incorporating two features into the rule. First, should tables citing the provisions of the referencing subparts that still apply to owners and operators complying with the CAR be added to the CAR? And second, should a subgrouping program similar to that established for valve equipment leak monitoring [see § 65.106(b)(4)] be created for connector equipment leak monitoring?

In this section, the Administrator is also specifically requesting comments on the overall effectiveness of the proposed rule. Commenters should provide any available data and rationale to support their comments on each topic.

The Administrator specifically requests comments on how well the proposed rule meets the President's objectives of rule consolidation. The stated goal of the rule is articulated in the March 16, 1995 White House papers entitled, ''Reinventing Environmental Regulation,'' as follows:

> EPA will work with key industries, beginning with the chemical industry, to eliminate conflicting and overlapping Federal air compliance requirements. Deleting duplicative and confusing requirements will result in increased understanding by industry about emission limits and monitoring, recordkeeping and reporting requirements, and will reduce compliance costs—with no measurable loss of environmental protection. Subsequently, consolidation for other media will be undertaken, based on experience gained with air rules.

The successes of this pilot project for the chemical industry should be measured against the 10 principles for reinventing environmental regulation, which were listed in the President's March 16 policy, as follows:

> 1. Protecting public health and the environment are important national goals, and individuals, businesses and government must take responsibility for the impact of their actions.
>
> 2. Regulation must be designed to achieve environmental goals in a manner that minimizes costs to individuals, businesses, and other levels of government.
>
> 3. Environmental regulations must be performance-based, providing maximum flexibility in the means of achieving our environmental goals, but requiring accountability for the results.
>
> 4. Preventing pollution, not just controlling or cleaning it up, is preferred.
>
> 5. Market incentives should be used to achieve environmental goals, whenever appropriate.
>
> 6. Environmental regulation should be based on the best science and economies, subject to expert and public scrutiny, and grounded in values Americans share.
>
> 7. Government regulations must be understandable to those who are affected by them.
>
> 8. Decision making should be collaborative, not adversarial, and decision makers must inform and involve those who must live with the decisions.
>
> 9. Federal, State, tribal and local governments must work as partners to achieve common environmental goals, with non-Federal partners taking the lead when appropriate.
>
> 10. No citizen should be subjected to unjust or disproportionate environmental impacts.

The CAR addresses several of these principles (numbers 1, 2, 3, 6, 7, 8, and 9). Comments are requested on the following topics to evaluate how well the CAR embraces these principles and to identify specific changes that could be made to improve the benefits of consolidation.

- One intent of the CAR is to provide an end-user friendly structure to regulatory requirements. Would you want to see this structure repeated in future rulemakings? What could have been done better?
- One intent of the CAR is to update, clarify, and eliminate ambiguity in the regulatory requirements. Was this goal accomplished? What specific improvements could be made?
- One intent of the CAR is to provide for improved environmental results by clarifying and simplifying the set of regulations. Do you believe that the proposed rule will improve the level of compliance?
- One intent of the CAR is to reduce the overall regulatory compliance burden. The goal was to achieve burden reduction for all parties: EPA, the states, the public, and the regulated community. Will the proposed rule reduce burden? What further improvements can be made?
- One intent of the CAR is to have a single, consolidated set of requirements for the SOCMI Industry. Is the proposed single rule an improvement?
- One intent of the CAR is to reduce the amount of regulatory information that stakeholders must review to determine regulatory requirements in the SOCMI Industry. Has this goal been met?
- One intent of the CAR is to reduce the complexities of overlapping regulations among different Federal air programs. How well has this goal been met? What improvements could be made?
- One intent of the CAR is to provide a linear logic in proceeding through the regulatory requirements; i.e., start at the beginning of a rule and work your way as far into the regulation as is appropriate for the emission point. For example, if a section of the regulation does not apply to the emissions unit then everything necessary for achieving compliance should be identified at that regulation location and with no need to go deeper into the regulation to make sure that there is not an imbedded requirement (for example, a reporting requirement located near the end of a rule related to an exemption contained in an earlier section). How well was this goal met?
- The CAR constitutes a substantial re-organization of massive amounts of regulatory information. Underlying regulatory intent was intended to be

retained except where noted in this preamble. Has the reorganization of the information implied a change in substantive requirements or compliance expectations that has not been explicitly identified?

- The CAR is optional at the choice of the SOCMI owner/operator as an alternative compliance program for existing rules. Are the requirements for opting into CAR compliance and opting out of CAR compliance clear?

XIII. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to provide opportunity for interested persons to make oral presentations regarding the requirements in the proposed regulation in accordance with section 307(d)(5) of the Act. Persons wishing to make oral presentation on the proposed regulation 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 and Radiation Docket and Information Center at the address given in the **ADDRESSES** section of this preamble and should refer to Docket No. A–96–01. A verbatim transcript of the hearing and written statements will be available for inspection and copying during normal business hours at the EPA's Air and Radiation Docket and Information Center in Washington, DC (see **ADDRESSES** section of the preamble).

B. Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process.

C. Paperwork Reduction Act

The information collection requirements in these proposed rules have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by the EPA (ICR No. 1854.01) and copies may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, S.W.; Washington, DC 20460 or by calling (202) 260–2740.

Information is required to ensure compliance with the provisions of the proposed rules. If the relevant information were collected less frequently, the EPA would not be reasonably assured that a source is in compliance with the proposed rules. In addition, the EPA's authority to take administrative action would be reduced significantly.

The proposed rules would require that facility owners or operators retain records for a period of at least five years, which exceeds the three year retention period contained in the guidelines in 5 CFR 1320.6. The five year retention period is consistent with the provisions of the General Provisions of 40 CFR Part 63, and with the five year records retention requirement in the operating permit program under Title V of the CAA.

All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to the EPA policies set forth in Title 40, Chapter 1, Part 2, Subpart B, Confidentiality of Business Information. See 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 3999, September 8, 1978; 43 FR 42251, September 28, 1978; and 44 FR 17674, March 23, 1979. Even where the EPA has determined that data received in response to an ICR is eligible for confidential treatment under 40 CFR Part 2, Subpart B, the EPA may nonetheless disclose the information if it is ''relevant in any proceeding'' under the statute [42 U.S.C. 7414(C); 40 CFR 2.301(g)]. The information collection complies with the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular 108.

Information to be reported consists of emission data and other information that are not of a sensitive nature. No sensitive personal or proprietary data are being collected.

The estimated annual average hour burden for CAR is about 6,600 hours per respondent. The estimated annual average cost of this burden is about $255,000 for each of the estimated 100 (projected) respondents.

Reports are required on a semi-annual basis and as required, as in the case of startup, shutdown, and malfunction plans. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

Comments are requested on the EPA'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 ICRs to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, S.W., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, N.W., 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's between 30 and 60 days after October 28, 1998, a comment to OMB is best assured of having its full effect if OMB receives it by November 27, 1998. The final rules will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Executive Order 12866

Under Executive Order 12866 (58 FR 5173, October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to 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 the Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is a ''significant regulatory action.'' Therefore, the proposed regulation presented in this notice was submitted to the OMB for review as required. Any written comments from the OMB to EPA and any written EPA response to those comments will be included in the Docket listed at the beginning of this notice in the **ADDRESSES** section of this preamble.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.* (RFA), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency contends 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 would not have a significant impact upon a substantial number of small entities because it is an optional compliance method and does not introduce any new requirements. Sources, including small entities, may choose to comply with the proposed rule if they determine that it would be beneficial to do so.

Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 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, the EPA generally must prepare a written statement, including a cost-benefit analysis, for the 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 the 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 the 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 the 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 the 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 these rules do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate or the private sector in any one year. Thus, today's rules are not subject to the requirements of sections 202 and 205 of the UMRA.

The EPA has determined that these rules contain no regulatory requirements that might significantly or uniquely affect small governments. No small government entities have been identified that have involvement with these source categories and, as such, are not covered by the regulatory requirements of the proposed regulations.

G. Enhancing the Intergovernmental Partnership Under Executive Order 12875

In compliance with Executive Order 12875, EPA has involved States and local governments in the development of this rule. State and local air pollution control associations participated in the regulatory development and have provided regulatory review.

H. Clean Air Act

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. 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 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.

I. National Technology Transfer and Advancement Act

Under section 12 of the National Technology Transfer and Advancement Act of 1995, the EPA must consider the use of ''voluntary consensus standards,'' if available and applicable, when implementing policies and programs, unless it would be ''inconsistent with applicable law or otherwise impractical.'' The intent of the National Technology Transfer and Advancement Act is to reduce the costs to the private and public sectors by requiring federal agencies to draw upon any existing, suitable technical standards used in commerce or industry.

A ''voluntary consensus standard'' is a technical standard developed or adopted by a legitimate standards-developing organization. The Act defines ''technical standards'' as ''performance-based or design-specific technical specifications and related management systems practices.'' A legitimate standards-developing organization must produce standards by consensus and observe principles of due process, openness, and balance of interests. Examples of organizations that are regarded as legitimate standards-developing organizations include the American Society for Testing and Materials (ASTM), International Organization for Standardization (ISO), International Electrotechnical Commission (IEC), American Petroleum Institute (API), National Fire Protection Association (NFPA) and Society of Automotive Engineers (SAE).

The technical standards proposed with this notice are standards that have been proposed and promulgated under other rulemakings for similar source control applicability and compliance determinations. Since today's proposal does not involve the establishment or modification of technical standards, the requirements of the National Technology Transfer and Advancement Act do not apply.

J. Executive Order 13045

The Executive Order 13045 applies to any rule that EPA determines (1) ''economically significant'' as defined under Executive order 12866, and (2) the environmental health or safety risk addressed by the rule has a

disproportionate effect of children. If the regulatory action meets both criteria, the Agency must evaluate the environment health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

K. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Chemical manufacturing, Intergovernmental relations, Volatile organic compounds, Hazardous substances, Reporting and recordkeeping requirements, Incorporation by reference.

40 CFR Part 61

Environmental protection, Administrative practice and procedure, Air pollution control, Chemical manufacturing, Intergovernmental relations, Volatile organic compounds, Hazardous substances, Reporting and recordkeeping requirements, Incorporation by reference.

40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Chemical manufacturing, Intergovernmental relations, Volatile organic compounds, Hazardous substances, Reporting and recordkeeping requirements, Incorporation by reference.

40 CFR Part 65

Environmental protection, Administrative practice and procedure, Air pollution control, Chemical manufacturing, Intergovernmental relations, Volatile organic compounds, Hazardous substances, Reporting and recordkeeping requirements, Incorporation by reference.

Dated: September 28, 1998.

Carol M. Browner,

Administrator.

For the reasons cited in the preamble, the Environmental Protection Agency proposes to amend 40 CFR parts 60, 61, and 63 and to add 40 CFR part 65 as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7413, 7414, 7416, 7601 and 7602.

Subpart Ka—Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984

2. Section 60.110a is amended by revising paragraph (a), and adding paragraphs (c), (d), (e), and (f) to read as follows:

§ 60.110a Applicability and designation of affected facility.

(a) *Affected facility*. Except as provided in paragraph (b) of this section, the affected facility to which this subpart applies is each storage vessel with a storage capacity greater than 151,416 liters (40,000 gallons) that is used to store petroleum liquids for which construction is commenced after May 18, 1978.

* * * * *

(c) *Alternative means of compliance—SOCMI CAR unit basis.* Owners or operators may choose to comply with 40 CFR part 65, subpart C to satisfy the requirements of §§ 60.112a through 60.114a, as provided in paragraphs (e) and (f) of this section, for all storage vessels that are subject to this subpart that store petroleum liquids that, as stored, have a maximum true vapor pressure equal to or greater than 10.3 kPa (1.5 psia), and that are part of a SOCMI CAR unit. A SOCMI CAR unit is defined in 40 CFR 65.2 of subpart A. Other provisions applying to owners or operators who choose to comply with 40 CFR part 65 are provided in 40 CFR 65.1 of subpart A.

(d) *Alternative means of compliance—affected source basis.* Owners or operators may choose to comply with 40 CFR part 65, subpart C to satisfy the requirements of §§ 60.112a through 60.114a, as provided in paragraphs (e) and (f) of this section, for any storage vessels that are subject to this subpart that store petroleum liquids that, as stored, have a maximum true vapor pressure equal to or greater than 10.3 kPa (1.5 psia), and that are not part of a SOCMI CAR unit, but are located at the same plant site as a SOCMI CAR unit that is complying with 40 CFR part 65. A SOCMI CAR unit is defined in 40 CFR 65.2 of subpart A. Other provisions applying to owners or operators who choose to comply with 40 CFR part 65 are provided in 40 CFR 65.1 of subpart A.

(e) *Part 60 subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart C, as provided in paragraph (c) or (d) of this section, must also comply with §§ 60.1, 60.2, 60.5, 60.6, 60.14, 60.15, 60.16, and 60.7 (a)(1) and (a)(4) of subpart A for those storage vessels. All sections and paragraphs of subpart A of this part that are not mentioned in this paragraph do not apply to owners or operators of storage vessels complying with 40 CFR part 65, subpart C, except that provisions required to be met prior to implementing 40 CFR part 65 remain in effect. Owners and operators who choose to comply with 40 CFR part 65, subpart C, must comply with 40 CFR part 65, subpart A.

(f) *Comply on a SOCMI CAR unit basis.* When choosing to comply with any subpart of 40 CFR part 65 for any equipment, process vent, loading rack (transfer rack) or storage vessel in a SOCMI CAR unit, owners or operators must also comply with all applicable

subparts of 40 CFR part 65 for all equipment, process vents, loading racks (transfer racks) or storage vessels that are within the SOCMI CAR unit, that are subject to a CAR referencing subpart, and that are eligible to comply with the CAR. A SOCMI CAR unit and the CAR referencing subparts are defined in 40 CFR 65.2 of subpart A.

3. Section 60.115a is amended by revising paragraph (d)(2) as follows:

§ 60.115a Monitoring of operations.

* * * * *

(d) * * *

(2) The owner or operator of each storage vessel equipped with a vapor recovery and return or disposal system in accordance with the requirements of § 60.112a(a)(3) and (b), or a closed vent system and control device meeting the specifications of 40 CFR 65.42(b)(4), (b)(5), (c)(1), or (c)(2).

Subpart Kb—Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984

4. Section 60.110b is amended by adding paragraphs (e), (f), (g), (h), (i), and (j) as follows:

§ 60.110b Applicability and designation of affected facility.

* * * * *

(e) *Alternative means of compliance—SOCMI CAR unit basis.* Owners or operators may choose to comply with 40 CFR part 65, subpart C to satisfy the requirements of §§ 60.112b through 60.117b, as provided in paragraphs (g), (h), (i) and (j) of this section, for all storage vessels that are subject to this subpart that meet the specifications in paragraphs (e)(1) and (e)(2) of this section, and that are part of a SOCMI CAR unit. When choosing to comply with 40 CFR part 65, subpart C, as provided in paragraphs (g), (h), (i) and (j) of this section, the monitoring requirements of § 60.116b(c), (e), (f)(1), and (g) remain in effect. A SOCMI CAR unit is defined in 40 CFR 65.2, subpart A. Other provisions applying to owners or operators who choose to comply with 40 CFR part 65 are provided in 40 CFR 65.1 of subpart A.

(1) A storage vessel with a design capacity greater than or equal to 151 m^3 containing a VOL that, as stored, has a maximum true vapor pressure equal to or greater than 5.2 kPa, or

(2) A storage vessel with a design capacity greater than 75 m^3 but less than 151 m^3 containing a VOL that, as stored, has a maximum true vapor pressure equal to or greater than 27.6 kPa.

(f) *Alternative means of compliance—affected source basis.* Owners or operators may choose to comply with 40 CFR part 65, subpart C to satisfy the requirements of §§ 60.112b through 60.117b, as provided in paragraphs (g), (h), (i) and (j) of this section, for any storage vessels that are subject to this subpart, that meet the specifications in paragraphs (e)(1) and (e)(2) of this section, and that are not part of a SOCMI CAR unit, but are located at the same plant site as a SOCMI CAR unit that is complying with 40 CFR part 65. When choosing to comply with 40 CFR part 65, subpart C, as provided in paragraphs (g), (h), (i) and (j) of this section, the monitoring requirements of § 60.116b(c), (e), (f)(1), and (g) remain in effect. A SOCMI CAR unit is defined in 40 CFR 65.2 of subpart A. Other provisions applying to owners or operators who choose to comply with 40 CFR part 65 are provided in 40 CFR 65.1 of subpart A.

(g) *Part 60 subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart C, as provided in paragraphs (e) or (f) of this section, must also comply with §§ 60.1, 60.2, 60.5, 60.6, 60.14, 60.15, 60.16, and 60.7(a)(1) and (a)(4) of subpart A for those storage vessels. All sections and paragraphs of subpart A of this part that are not mentioned in this paragraph do not apply to owners or operators of storage vessels complying with 40 CFR part 65, subpart C, except that provisions required to be met prior to implementing 40 CFR part 65 remain in effect. Owners and operators who choose to comply with 40 CFR part 65, subpart C, must comply with 40 CFR part 65, subpart A.

(h) *Comply on a SOCMI CAR unit basis.* When choosing to comply with any subpart of 40 CFR part 65 for any equipment, process vent, loading rack (transfer rack) or storage vessel in a SOCMI CAR unit, owners or operators must also comply with all applicable subparts of 40 CFR part 65 for all equipment, process vents, loading racks (transfer racks) or storage vessels that are within the SOCMI CAR unit, that are subject to a CAR referencing subpart, and that are eligible to comply with the CAR. A SOCMI CAR unit and the CAR referencing subparts are defined in 40 CFR 65.2 of subpart A.

(i) *Internal Floating roof report.* If an owner or operator installs an internal floating roof and, at initial startup, chooses to comply with the CAR, as provided in paragraphs (e) or (f) of this section, a report shall be furnished to the Administrator stating that the control equipment meets the specifications of 40 CFR 65.43 of subpart C. This report shall be an attachment to the notification required by 40 CFR 65.5(b) of subpart A.

(j) *External Floating roof report.* If an owner or operator installs an external floating roof and, at initial startup, chooses to comply with the CAR, as provided in paragraphs (e) or (f) of this section, a report shall be furnished to the Administrator stating that the control equipment meets the specifications of 40 CFR 65.44 of subpart C. This report shall be an attachment to the notification required by 40 CFR 65.5(b) of subpart A.

5. Section 60.116b is amended by revising paragraph (g) as follows:

§ 60.116b Monitoring of operations.

* * * * *

(g) The owner or operator of each vessel equipped with a closed vent system and control device meeting the specification of § 60.112b or with emissions reductions equipment as specified in 40 CFR 65.42(b)(4), (b)(5), (b)(6), or (c) of subpart C is exempt from the requirements of paragraphs (c) and (d) of this section.

Subpart VV—Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry

6. Section 60.480 is amended by adding paragraph (e) to read as follows:

§ 60.480 Applicability and designation of affected facility.

* * * * *

(e) *Alternative means of compliance.* Owners or operators of equipment that is subject to this subpart may choose to comply with the provisions of 40 CFR part 65, subpart F to satisfy the requirements of §§ 60.482 through 60.487 of this subpart, as provided in paragraphs (e)(1) and (e)(2). When choosing to comply with 40 CFR part 65, subpart F, as provided in paragraphs (e)(1) and (e)(2), the requirements of §§ 60.482–1(a), 60.485(d), (e), and (f), and 60.486(i) and (j) apply. Other provisions applying to an owner or operator who chooses to comply with 40 CFR part 65 are provided in 40 CFR 65.1 of subpart A.

(1) *Part 60 subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart F must also comply with §§ 60.1, 60.2, 60.5, 60.6, 60.14, 60.15, 60.16, and 60.7(a)(1) and (a)(4) of subpart A of this part for that equipment. All sections and paragraphs of subpart A of this part that are not mentioned in this paragraph do not apply to owners or operators of

equipment subject to this subpart complying with 40 CFR part 65, subpart F, except that provisions required to be met prior to implementing 40 CFR part 65 remain in effect. Owners and operators who choose to comply with 40 CFR part 65, subpart F, must comply with 40 CFR part 65, subpart A.

(2) *Comply on a SOCMI unit basis.* When choosing to comply with any subpart of 40 CFR part 65 for any equipment, process vent, loading rack (transfer rack) or storage vessel in a SOCMI CAR unit, owners or operators must also comply with all applicable subparts of 40 CFR part 65 for all equipment, process vents, loading racks (transfer racks), or storage vessels that are within the SOCMI CAR unit, that are subject to a CAR referencing subpart, and that are eligible to comply with the CAR. A SOCMI CAR unit and the CAR referencing subparts are defined in 40 CFR 65.2 of subpart A.

7. Section 60.481 is amended by revising the definition of ''closed vent system'' and adding in alphabetical order the definitions of ''duct work,'' ''hard-piping,'' and ''sampling connection system,'' to read as follows:

§ 60.481 Definitions.

* * * * *

Closed vent system means a system that is not open to the atmosphere and that is composed of hard-piping, ductwork connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device or back to a process.

* * * * *

Duct work means a conveyance system such as those commonly used for heating and ventilation systems. It is often made of sheet metal and often has sections connected by screws or crimping. Hard-piping is not ductwork.

* * * * *

Hard-piping means pipe or tubing that is manufactured and properly installed using good engineering judgement and standards such as ANSI B31–3.

* * * * *

Sampling connection system means an assembly of equipment within a process unit used during periods of representative operation to take samples of the process fluid. Equipment used to take non-routine grab samples is not considered a sampling connection system.

* * * * *

8. Section 60.482–1 is amended by revising paragraph (a) to read as follows:

§ 60.482–1 Standards: General.

(a) Each owner or operator subject to the provisions of this subpart shall demonstrate compliance with the requirements of §§ 60.482–1 to 60.482–10 or 60.480(e) for all equipment within 180 days of initial startup.

* * * * *

9. Section 60.482–2 is amended by revising paragraphs (d)(1)(ii) and (f), and adding paragraphs (g) and (h) to read as follows:

§ 60.482–2 Standards: Pumps in light liquid service.

* * * * *

(d) * * *

(1) * * *

(ii) Equipment with a barrier fluid degassing reservoir that is routed to a process or fuel gas system connected by a closed vent system to a control device that complies with the requirements of § 60.482–10; or

* * * * *

(f) If any pump is equipped with a closed vent system capable of capturing and transporting any leakage from the seal or seals to a process or to a fuel gas system or to a control device that complies with the requirements of § 60.482–10, it is exempt from the paragraphs (a) through (e) of this section.

(g) Any pump that is designated, as described in § 60.486(f)(1), as an unsafe-to-monitor pump is exempt from the requirements of paragraph (a) of this section if:

(1) The owner or operator of the pump demonstrates that the pump is unsafe-to-monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (a) of this section; and

(2) The owner or operator of the pump has a written plan that requires monitoring of the pump as frequently as practicable during safe-to-monitor times.

(h) Any pump that is located within the boundary of an unmanned plant site is exempt from the weekly visual inspection requirement of paragraphs (a)(2) and (d)(4) of this section, and provided that each pump is visually inspected as often as practicable and at least monthly.

10. Section 60.482–3 is amended by revising paragraphs (b)(2) and (h) to read as follows:

§ 60.482–3 Standards: Compressors.

* * * * *

(b) * * *

(2) Equipped with a barrier fluid system degassing reservoir that is routed to a process or fuel gas system or connected by a closed vent system to a control device that complies with the requirements of § 60.482–10; or

* * * * *

(h) A compressor is exempt from the requirements of paragraphs (a) and (b) of this section, if it is equipped with a closed vent system to capture and transport leakage from the compressor drive shaft back to a process or fuel gas system or to a control device that complies with the requirements of § 60.482–10, except as provided in paragraph (i) of this section.

* * * * *

11. Section 60.482–4 is amended by revising paragraph (c), and adding paragraph (d) to read as follows:

§ 60.482–4 Standards: Pressure relief devices in gas/vapor service.

* * * * *

(c) Any pressure relief device that is routed to a process or fuel gas system equipped with a closed vent system capable of capturing and transporting leakage through the pressure relief device to a control device as described in § 60.482–10 is exempted from the requirements of paragraphs (a) and (b).

(d)(1) Any pressure relief device that is equipped with a rupture disk upstream of the pressure relief device is exempt from the requirements of paragraphs (a) and (b) of this section, provided the owner or operator complies with the requirements in paragraph (d)(2) of this section.

(2) After each pressure release, a rupture disk shall be installed upstream of the pressure relief device as soon as practicable, but no later than 5 calendar days after each pressure release, except as provided in § 60.482–9 of this subpart.

12. Section 60.482–5 is amended by adding paragraph (b)(4) to read as follows:

§ 60.482–5 Standards: Sampling connection systems.

* * * * *

(b) * * *

(4) Collect, store, and transport the purged process fluid to a system or facility identified in paragraph (b)(4)(i), (b)(4)(ii), or (b)(4)(iii) of this section.

(i) A waste management unit as defined in 40 CFR 63.111 of subpart G, if the waste management unit is subject to, and operated in compliance with the provisions of 40 CFR part 63, subpart G applicable to Group 1 wastewater streams.

(ii) A treatment, storage, or disposal facility subject to regulation under 40 CFR part 262, 264, 265, or 266; or

(iii) A facility permitted, licensed, or registered by a State to manage municipal or industrial solid waste, if

the process fluids are not hazardous waste as defined in 40 CFR part 261.

* * * * *

13. Section 60.482–6 is amended by adding paragraphs (d) and (e) to read as follows:

§ 60.482–6 Standards: Open-ended valves or lines.

* * * * *

(d) Open-ended valves or lines in an emergency shutdown system which are designed to open automatically in the event of a process upset are exempt from the requirements of paragraphs (a), (b) and (c) of this section.

(e) Open-ended valves or lines containing materials which would autocatalytically polymerize or, would present an explosion, serious overpressure, or other safety hazard if capped or equipped with a double block and bleed system as specified in paragraphs (a) through (c) of this section are exempt from the requirements of paragraphs (a) through (c) of this section.

14. Section 60.482–10 is amended by revising paragraphs (b) and (c) to read as follows:

§ 60.482–10 Standards: Closed vent systems and control devices.

* * * * *

(b) Vapor recovery systems (for example, condensers and absorbers) shall be designed and operated to recover the VOC emissions vented to them with an efficiency of 95 percent or greater, or to an exit concentration of 20 parts per million by volume, whichever is less stringent.

(c) Enclosed combustion devices shall be designed and operated to reduce the VOC emissions vented to them with an efficiency of 95 percent or greater, or to an exit concentration of 20 parts per million by volume, on a dry basis, corrected to 3 percent oxygen, whichever is less stringent or to provide a minimum residence time of 0.75 seconds at a minimum temperature of 816 °C.

* * * * *

15. Section 60.486 is amended by revising paragraphs (f) introductory text and (f)(1) to read as follows:

§ 60.486 Recordkeeping requirements.

* * * * *

(f) The following information pertaining to all valves subject to the requirements of § 60.482–7 (g) and (h) and to all pumps subject to the requirements of § 60.482–2(g) shall be recorded in a log that is kept in a readily accessible location:

(1) A list of identification numbers for valves and pumps that are designated as unsafe-to-monitor, an explanation for each valve or pump stating why the valve or pump is unsafe-to-monitor, and the plan for monitoring each valve or pump.

* * * * *

Subpart DDD—Standards of Performance for Volatile Organic Compound Emissions From the Polymer Manufacturing Industry

16. Section 60.560 is amended by adding paragraphs (j), (k), (l), and (m) to read as follows:

§ 60.560 Applicability and designation of affected facilities.

* * * * *

(j) *Alternative means of compliance—SOCMI CAR unit basis.* Owners or operators may choose to comply with 40 CFR part 65, subpart G for continuous process vents that are subject to this subpart, that meet the specifications in § 60.562–1(a)(1)(i)(A), (a)(1)(i)(B), or (a)(1)(i)(C) where control is required as determined in § 60.562–1(a)(1)(ii) and (a)(1)(iii), and that are part of a SOCMI CAR unit. The requirements of 40 CFR part 65, subpart G satisfy the requirements of paragraph (c) of this section and §§ 60.563 through 60.566, except for 60.565(g)(1) and (l). A SOCMI CAR unit is defined in 40 CFR 65.2 of subpart A. Other provisions applying to owners or operators who choose to comply with 40 CFR part 65 are provided in 40 CFR 65.1 of subpart A.

(k) *Alternative means of compliance—affected source basis.* Owners or operators may choose to comply with 40 CFR part 65, subpart G for continuous process vents that are subject to this subpart, that meet the specifications in § 60.562–1(a)(1)(i)(A), (a)(1)(i)(B), or (a)(1)(i)(C) where control is required as determined in § 60.562–1(a)(1)(ii) and (a)(1)(iii), and that are not part of a SOCMI CAR unit, but that are located at the same plant site as a SOCMI CAR unit that is complying with 40 CFR, part 65. The requirements of 40 CFR part 65, subpart G satisfy the requirements of paragraph (c) of this section and §§ 60.563 through 60.566, except for 60.565(g)(1) and (l). A SOCMI CAR unit is defined in 40 CFR 65.2 of subpart A. Other provisions applying to owners or operators who choose to comply with 40 CFR part 65 are provided in 40 CFR 65.1 of subpart A.

(l) *Part 60 subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart G, as provided in paragraphs (j) or (k) of this section, must also comply with §§ 60.1, 60.2, 60.5, 60.6, 60.14, 60.15, and 60.16, and 60.7(a)(1) and (a)(4) of subpart A for those process vents. All sections and paragraphs of subpart A of this part that are not mentioned in this paragraph do not apply to owners or operators of process vents complying with 40 CFR part 65, subpart G, except that provisions required to be met prior to implementing 40 CFR part 65 remain in effect. Owners and operators who choose to comply with 40 CFR part 65, subpart G, must comply with 40 CFR part 65, subpart A.

(m) *Comply on a SOCMI CAR unit basis.* When choosing to comply with any subpart of 40 CFR part 65 for any equipment, process vent, loading rack (transfer rack) or storage vessel in a SOCMI CAR unit, owners or operators must also comply with all applicable subparts of 40 CFR part 65 for all equipment, process vents, loading racks (transfer racks) or storage vessels that are within the SOCMI CAR unit, that are subject to a CAR referencing subpart, and that are eligible to comply with the CAR. A SOCMI CAR unit and the CAR referencing subparts are defined in 40 CFR 65.2 of subpart A.

17. Section 60.565 is amended by revising paragraphs (g) introductory text and (l) to read as follows:

§ 60.565 Reporting and recordkeeping requirements.

* * * * *

(g) Each owner or operator of an affected facility subject to the provisions of this subpart and seeking to demonstrate compliance with § 60.560(j) or § 60.560(k) or § 60.562–1 shall keep up-to-date, readily accessible records of:

* * * * *

(l) Each owner or operator subject to the provisions of this subpart shall notify the Administrator of the specific provisions of §§ 60.562, 60.560(d), or 60.560(e), as applicable, with which the owner or operator has elected to comply. Notification shall be submitted with the notifications of initial startup required by § 60.7(a)(3) or 40 CFR 65.5(b) of subpart A. If an owner or operator elects at a later date to use an alternative provision of § 60.562 with which he or she will comply or becomes subject to § 60.562 for the first time [i.e., the owner or operator can no longer meet the requirements of this subpart by complying with the uncontrolled threshold emission rate cutoff provision in § 60.560(d) or (e)], then the owner or operator shall notify the Administrator 90 days before implementing a change and, upon implementing a change, a performance test shall be performed as specified in § 60.564 or 40 CFR part 65, subpart A.

* * * * *

Subpart III—Standards of Performance for Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes

18. Section 60.610 is amended by adding paragraphs (d) and (e) to read as follows:

§ 60.610 Applicability and designation of affected facility.

* * * * *

(d) *Alternative means of compliance.* Owners or operators of process vents that are subject to this subpart may choose to comply with the provisions of 40 CFR part 65, subpart D to satisfy the requirements of paragraph (c) of this section and §§ 60.612 through 60.615 of this subpart, except § 60.615(a), as provided in paragraphs (d)(1), (d)(2) and (e) of this section. Other provisions applying to an owner or operator who chooses to comply with 40 CFR part 65 are provided in 40 CFR 65.1 of subpart A.

(1) *Part 60 subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart D must also comply with §§ 60.1, 60.2, 60.5, 60.6, 60.14, 60.15, 60.16, and 60.7(a)(1) and (a)(4) of subpart A of this part for those process vents. All sections and paragraphs of subpart A of this part that are not mentioned in this paragraph do not apply to owners or operators of process vents complying with 40 CFR part 65, subpart D, except that provisions required to be met prior to implementing 40 CFR part 65 remain in effect. Owners and operators who choose to comply with 40 CFR part 65, subpart D, must comply with 40 CFR part 65, subpart A.

(2) *Comply on a SOCMI CAR unit basis.* When choosing to comply with any subpart of 40 CFR part 65 for any equipment, process vent, transfer rack or storage vessel in a SOCMI CAR unit, owners or operators must also comply with all applicable subparts of 40 CFR part 65 for all equipment, process vents, transfer racks or storage vessels that are within the SOCMI CAR unit, that are subject to a CAR referencing subpart, and that are eligible to comply with the CAR. A SOCMI CAR unit and the CAR referencing subparts are defined in 40 CFR 65.2 of subpart A.

(e) *Compliance date.* Owners or operators who choose to comply with 40 CFR part 65, subpart D at initial startup shall comply with paragraph (d) of this section for each vent stream on and after the date on which the initial performance test is completed, but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated, or 180 days after the initial start-up, whichever date comes first.

19. Section 60.615 is amended by revising paragraph (a) to read as follows:

§ 60.615 Reporting and recordkeeping requirements.

(a) Each owner or operator subject to § 60.612 or § 60.610(d) shall notify the Administrator of the specific provisions of § 60.612 [§ 60.612 (a), (b), or (c)] or 40 CFR 65.63 of subpart D [40 CFR 65.63 (a)(1), (a)(2), or (a)(3)] with which the owner or operator has elected to comply. Notification shall be submitted with the notification of initial start-up required by § 60.7(a)(3) or 40 CFR 65.5(b) of subpart A as applicable. If an owner or operator elects at a later date to use an alternative provision of § 60.612 with which he or she will comply, then the Administrator shall be notified by the owner or operator 90 days before implementing a change and, upon implementing the change, a performance test shall be performed as specified by § 60.614 within 180 days.

* * * * *

Subpart NNN—Standards of Performance for Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry Distillation Operations

20. Section 60.660 is amended by adding paragraphs (d) and (e) to read as follows:

§ 60.660 Applicability and designation of affected facility.

* * * * *

(d) *Alternative means of compliance.* Owners or operators of process vents that are subject to this subpart may choose to comply with the provisions of 40 CFR part 65, subpart D to satisfy the requirements of paragraph (c)(4) and (c)(6) of this section and §§ 60.662 through 60.665 of this subpart, except § 60.665(a), as provided in paragraphs (d)(1), (d)(2) and (e). Other provisions applying to an owner or operator who chooses to comply with 40 CFR part 65 are provided in 40 CFR 65.1 of subpart A.

(1) *Part 60 subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart D must also comply with §§ 60.1, 60.2, 60.5, 60.6, 60.14, 60.15, 60.16, and 60.7 (a)(1) and (a)(4) of subpart A of this part for those process vents. All sections and paragraphs of subpart A of this part that are not mentioned in this paragraph do not apply to owners or operators of process vents complying with 40 CFR part 65, subpart D, except that provisions required to be met prior to implementing 40 CFR part 65 remain in effect. Owners and operators who choose to comply with 40 CFR part 65, subpart D, must comply with 40 CFR part 65, subpart A.

(2) *Comply on a SOCMI CAR unit basis.* When choosing to comply with any subpart of 40 CFR part 65 for any equipment, process vent, loading rack (transfer rack) or storage vessel in a SOCMI CAR unit, owners or operators must also comply with all applicable subparts of 40 CFR part 65 for all equipment, process vents, loading racks (transfer racks), or storage vessels that are within the SOCMI CAR unit, that are subject to a CAR referencing subpart, and that are eligible to comply with the CAR. A SOCMI CAR unit and the CAR referencing subparts are defined in 40 CFR 65.2 of subpart A.

(e) *Compliance date.* Owners or operators who choose to comply with 40 CFR part 65, subpart D, at initial startup shall comply with paragraph (d) of this section for each vent stream on and after the date on which the initial performance test is completed, but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated, or 180 days after the initial start-up, whichever date comes first.

21. Section 60.665 is amended by revising paragraphs (a) and (l)(6) to read as follows:

§ 60.665 Reporting and recordkeeping requirements.

(a) Each owner or operator subject to §§ 60.662 or 60.660(d) shall notify the Administrator or the specific provisions of § 60.662 [§ 60.662(a), (b), or (c)] or 40 CFR 65.63 of subpart D [40 CFR 65.63(a)(1), (a)(2), or (a)(3)] with which the owner or operator has elected to comply. Notification shall be submitted with the notification of initial start-up required by § 60.7(a)(3) or 40 CFR 65.5(b) of subpart A, as applicable. If an owner or operator elects at a later date to use an alternative provision of § 60.662 with which he or she will comply, then the Administrator shall be notified by the owner or operator 90 days before implementing a change and, upon implementing the change, a performance test shall be performed as specified by § 60.664 no later than 180 days from initial start-up.

* * * * *

(l) * * *

(6) Any change in equipment or process operation, as recorded under § 60.665(j) that increases the design production capacity above the low capacity exemption level in § 60.660(c)(5) and the new capacity resulting from the change for the

destination process unit containing the affected facility. These must be reported as soon as possible after the change and no later than 180 days after the change. These reports may be submitted either in conjunction with semiannual reports or as a single separate report. A performance test must be completed within the same time period to obtain the vent stream flow rate, heating value, and E_{TOC}. The performance test is subject to the requirements of § 60.8 of the General Provisions. Unless the facility qualifies for an exemption under the low flow exemption in § 60.660(c)(6), the facility must begin compliance with the requirements set forth in §§ 60.662 or 60.660(d).

* * * * *

Subpart RRR—Standards of Performance for Volatile Organic Compound Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes

22. Section 60.700 is amended by adding paragraphs (d) and (e) to read as follows:

§ 60.700 Applicability and designation of affected facility.

* * * * *

(d) *Alternative means of compliance.* Owners or operators of process vents that are subject to this subpart may choose to comply with the provisions of 40 CFR part 65, subpart D to satisfy the requirements of paragraphs (c)(2), (c)(4), and (c)(8) of this section and §§ 60.702 through 60.705 of this subpart, except § 60.705(a), as provided in paragraphs (d)(1), (d)(2) and (e). Other provisions applying to an owner or operator who chooses to comply with 40 CFR part 65 are provided in 40 CFR 65.1, of subpart A.

(1) *Part 60 subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart D must also comply with §§ 60.1, 60.2, 60.5, 60.6, 60.14, 60.15, 60.16, and 60.7(a)(1), (a)(2), and (a)(4) of subpart A of this part for those process vents. All sections and paragraphs of subpart A of this part that are not mentioned in this paragraph do not apply to owners or operators of process vents complying with 40 CFR part 65, subpart D, except that provisions required to be met prior to implementing 40 CFR part 65 remain in effect. Owners and operators who choose to comply with 40 CFR part 65, subpart D, must comply with 40 CFR part 65, subpart A.

(2) *Comply on a SOCMI CAR unit basis.* When choosing to comply with any subpart of 40 CFR part 65 for any equipment, process vent, loading rack (transfer rack), or storage vessel in a SOCMI CAR unit, owners or operators must also comply with all applicable subparts of 40 CFR part 65 for all equipment, process vents, loading racks (transfer racks), or storage vessels that are within the SOCMI CAR unit, that are subject to a CAR referencing subpart, and that are eligible to comply with the CAR. A SOCMI CAR unit and the CAR referencing subparts are defined in 40 CFR 65.2, subpart A.

(e) Owners or operators who choose to comply with 40 CFR part 65, subpart D at initial startup shall comply with paragraph (d) of this section for each vent stream on and after the date on which the initial performance test is completed, but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated, or 180 days after the initial start-up, whichever date comes first.

23. Section 60.705 is amended by revising paragraphs (a) and (l)(5) to read as follows:

§ 60.705 Reporting and recordkeeping requirements.

(a) Each owner or operator subject to §§ 60.702 or 60.700(d) shall notify the Administrator or the specific provisions of § 60.702 [§ 60.702(a), (b), or (c)] or 40 CFR 65.63 of subpart D [40 CFR 65.63(a)(1), (a)(2), or (a)(3)] with which the owner or operator has elected to comply. Notification shall be submitted with the notification of initial start-up required by § 60.7(a)(3) or 40 CFR 65.5(b) of subpart A, as applicable. If an owner or operator elects at a later date to use an alternative provision of § 60.702 with which he or she will comply, then the Administrator shall be notified by the owner or operator 90 days before implementing a change and, upon implementing the change, a performance test shall be performed as specified by § 60.704 no later than 180 days from initial start-up.

* * * * *

(l) * * *

(5) Any change in equipment or process operation, as recorded under § 60.705(i), that increases the design production capacity above the low capacity exemption level in § 60.700(c)(3) and the new capacity resulting from the change for the reactor process unit containing the affected facility. These must be reported as soon as possible after the change and no later than 180 days after the change. These reports may be submitted either in conjunction with semiannual reports or as a single separate report. A performance test must be completed within the same time period to obtain the vent stream flow rate, heating value, and ETOC. The performance test is subject to the requirements of § 60.8 of the General Provisions. Unless the facility qualifies for an exemption under any of the exemption provisions listed in § 60.700(c), the facility must begin compliance with the requirements set forth in § 60.702 or § 60.700(d).

* * * * *

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7413, 7414, 7416, 7601 and 7602.

Subpart V—National Emission Standard for Equipment Leaks (Fugitive Emission Sources)

2. Section 61.240 is amended by revising paragraph (a) and adding paragraphs (d), (e), (f), (g), (h), and (i) to read as follows:

§ 61.240 Applicability and designation of sources.

(a) The provisions of this subpart apply to each of the following sources that are intended to operate in volatile hazardous air pollutant (VHAP) service: pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, and control devices or systems required by this subpart.

* * * * *

(d) *Alternative means of compliance—SOCMI CAR unit basis.* Owners or operators may choose to comply with 40 CFR part 65, to satisfy the requirements of §§ 61.242–1 through 61.247, as provided in paragraphs (f) through (i) of this section, for all equipment that is subject to this subpart and that is part of a SOCMI CAR unit. When choosing to comply with 40 CFR part 65, the requirements of §§ 61.245(d), 61.246(i) and (j), and 61.247(a) and (f) still apply. A SOCMI CAR unit is defined in 40 CFR 65.2 of subpart A. Other provisions applying to owners or operators who choose to comply with 40 CFR part 65 are provided in 40 CFR 65.1 of subpart A.

(e) *Alternative means of compliance—affected source basis.* Owners or operators may choose to comply with 40 CFR part 65, to satisfy the requirements of §§ 61.242–1 through 61.247, as provided in paragraphs (f) through (i) of this section, for any equipment that is subject to this subpart and that is not part of a SOCMI CAR unit, but is located at the same plant site as a SOCMI CAR

unit that is complying with 40 CFR part 65. When choosing to comply with 40 CFR part 65, the requirements of §§ 61.245(d), 61.246(i) and (j), and 61.247(a) and (f) still apply. A SOCMI CAR unit is defined in 40 CFR 65.2 of subpart A. Other provisions applying to owners or operators who choose to comply with 40 CFR part 65 are provided in 40 CFR 65.1 of subpart A.

(f) *Surge control vessels and bottoms receivers.* For owners or operators choosing to comply with 40 CFR part 65 as provided in paragraphs (d) or (e) of this section, each surge control vessel and bottoms receiver subject to this subpart that meets the conditions specified in table 1 or table 2 of this subpart shall meet the requirements for storage vessels in 40 CFR part 65, subpart C; all other equipment subject to this subpart shall meet the requirements in 40 CFR part 65, subpart F.

(g) *Part 61 subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart C or F, as provided in paragraphs (d) or (e) of this section, must also comply with §§ 61.01, 61.02, 61.05 through 61.08, 61.11, 61.15, and 61.10(b) through (d) of subpart A for that equipment. All sections and paragraphs of subpart A of this part that are not mentioned in this paragraph do not apply to owners or operators of equipment subject to this subpart complying with 40 CFR part 65, subparts C or F, except that provisions required to be met prior to implementing 40 CFR part 65 still apply. Owners and operators who choose to comply with 40 CFR part 65, subpart C or F, must comply with 40 CFR part 65, subpart A.

(h) *Comply on a SOCMI CAR unit basis.* When choosing to comply with any subpart of 40 CFR part 65 for any equipment, process vent, loading rack (transfer rack) or storage vessel in a SOCMI CAR unit, owners or operators must also comply with all applicable subparts of 40 CFR part 65 for all equipment, process vents, loading racks (transfer racks) or storage vessels that are within the SOCMI CAR unit, that are subject to a CAR referencing subpart, and that are eligible to comply with the CAR. A SOCMI CAR unit the CAR referencing subparts are defined in 40 CFR 65.2 of subpart A.

(i) *Rules referencing this subpart.* Owners or operators referenced to this subpart from subpart F or J of this part may choose to comply with 40 CFR part 65 for all equipment listed in paragraph (a) of this section as provided in paragraph (d) or (e) of this section.

§ 61.241 [Amended]

3. Section 61.241 is amended by revising the definitions of *closed-vent system* and *equipment*, adding in alphabetical order the definitions of *duct work, hard-piping, maximum true vapor pressure, sampling connection system,* and *surge control vessel,* and removing the definition of *product accumulator vessel.*

§ 61.241 Definitions.

* * * * *

Closed-vent system means a system that is not open to atmosphere and that is composed of hard-piping, ductwork, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device or back to a process.

* * * * *

Duct work means a conveyance system such as those commonly used for heating and ventilation systems. It is often made of sheet metal and often has sections connected by screws or crimping. Hard-piping is not ductwork.

Equipment means each pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, surge control vessel, bottoms receiver in VHAP service, and any control devices or systems required by this subpart.

* * * * *

Hard-piping means pipe or tubing that is manufactured and properly installed using good engineering judgement and standards such as ANSI B31–3.

* * * * *

Maximum true vapor pressure means the equilibrium partial pressure exerted by the total organic HAP in the stored or transferred liquid at the temperature equal to the highest calendar-month average of the liquid storage or transfer temperature for liquids stored or transferred above or below the ambient temperature or at the local maximum monthly average temperature as reported by the National Weather Service for liquids stored or transferred at the ambient temperature, as determined:

(1) In accordance with methods described in American Petroleum Institute Publication 2517, Evaporative Loss From External Floating-Roof Tanks (incorporated by reference as specified in 40 CFR 63.14 of subpart A); or

(2) As obtained from standard reference texts; or

(3) As determined by the American Society for Testing and Materials Method D2879–83 (incorporated by reference as specified in 40 CFR 63.14 of subpart A); or

(4) Any other method approved by the Administrator.

* * * * *

Sampling connection system means an assembly of equipment within a process unit used during periods of representative operation to take samples of the process fluid. Equipment used to take non-routine grab samples is not considered a sampling connection system.

* * * * *

Surge control vessel means feed drums, recycle drums, and intermediate vessels. Surge control vessels are used within a process unit when in-process storage, mixing, or management of flow rates of volumes is needed on a recurring or ongoing basis to assist in production of a product.

* * * * *

4. Section 61.242–2 is amended by redesignating paragraph (g) as (h) and by revising paragraphs (a)(1), (d)(1)(ii), (d)(6)(iv), and (f), and by adding paragraph (g), and by revising newly redesignated paragraph (h) to read as follows:

§ 61.242–2 Standards: Pumps.

(a)(1) Each pump shall be monitored monthly to detect leaks by the methods specified in § 61.245(b), except as provided in § 61.242–1(c) and paragraphs (d), (e), (f) and (g) of this section.

* * * * *

(d) * * *

(1) * * *

(ii) Equipped with a barrier fluid degassing reservoir that is routed to a process or fuel gas system or connected by a closed-vent system to a control device that complies with the requirements of § 61.242–11; or

* * * * *

(6) * * *

(iv) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected. If there are indications of liquids dripping from the pump seal or the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined in paragraph (d)(5)(ii) of this section, a leak is detected.

* * * * *

(f) If any pump is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a process or fuel gas system or to a control device that complies with the requirements of § 61.242–11, it is exempt from the requirements of paragraphs (a) through (e) of this section.

(g) Any pump that is designated, a described in § 65.246(f)(1), as an unsafe-

to-monitor pump is exempt from the requirements of paragraph (a) of this section if:

(1) The owner or operator of the pump demonstrates that the pump is unsafe-to-monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (a) of this section; and

(2) The owner or operator of the pump has a written plan that requires monitoring of the pump as frequently as practicable during safe-to-monitor times.

(h) Any pump that is located within the boundary of an unmanned plant site is exempt from the weekly visual inspection requirement of paragraphs (a)(2) and (d)(4) of this section, and the daily requirements of paragraph (d)(5) of this section, provided that each pump is visually inspected as often as practicable and at least monthly.

5. Section 61.242–3 is amended by revising paragraphs (b)(2) and (h) to read as follows:

§ 61.242–3 Standards: Compressors.

* * * * *

(b) * * *

(2) Equipped with a barrier fluid system degassing reservoir that is routed to a process or fuel gas system or connected by a closed-vent system to a control device that complies with the requirements of § 61.242–11; or

* * * * *

(h) A compressor is exempt from the requirements of paragraphs (a) and (b) of this section if it is equipped with a closed-vent system to capture and transport leakage from the compressor drive shaft back to a process or to a fuel gas system or to a control device that complies with the requirements of § 61.242–11, except as provided in paragraph (i) of this section.

* * * * *

6. Section 61.242–4 is amended by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 61.242–4 Standards: Pressure relief devices in gas/vapor service.

* * * * *

(c) Any pressure relief device that is routed to a process or fuel gas system equipped with a closed-vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in § 61.242–11 is exempt from the requirements of paragraphs (a) and (b) of this section.

(d)(1) Any pressure relief device that is equipped with a rupture disk upstream of the pressure relief device is exempt from the requirements of paragraphs (a) and (b) of this section, provided the owner or operator complies with the requirements in paragraph (d)(2) of this section.

(2) After each pressure release, a rupture disk shall be installed upstream of the pressure relief device as soon as practicable, but no later than 5 calendar days after each pressure release, except as provided in § 61.242–10 of this subpart.

7. Section 61.242–5 is amended by revising paragraphs (a), (b) introductory text, (b)(1), (b)(2), and (c), and adding paragraph (b)(4) to read as follows:

§ 61.242–5 Standards: Sampling connecting systems.

(a) Each sampling connection system shall be equipped with a closed-purge, closed-loop, closed loop, or closed vent system, except as provided in § 61.242–1(c).

(b) Each closed-purge, closed-loop, or closed vent system as required in paragraph (a) of this section shall comply with the requirements specified in paragraphs (b)(1) through (b)(3) of this section:

(1) Return the purged process fluid directly to the process line; or

(2) Collect and recycle the purged process fluid; or

* * * * *

(4) Collect, store, and transport the purged process fluid to a system or facility identified in paragraph (b)(4)(i), (b)(4)(ii), or (b)(4)(iii) of this section.

(i) A waste management unit as defined in § 63.111 of 40 CFR part 63, subpart G, if the waste management unit is subject to, and operated in compliance with the provisions of 40 CFR part 63, subpart G applicable to Group 1 wastewater streams.

(ii) A treatment, storage, or disposal facility subject to regulation under 40 CFR part 262, 264, 265, or 266; or

(iii) A facility permitted, licensed, or registered by a State to manage municipal or industrial solid waste, if the process fluids are not hazardous waste as defined in 40 CFR part 261.

(c) In-situ sampling systems and sampling systems without purges are exempt from the requirements of paragraphs (a) and (b) of this section.

8. Section 61.242–6 is amended by adding paragraphs (d) and (e) to read as follows:

§ 61.242–6 Standards: Open-ended valves or lines.

* * * * *

(d) Open-ended valves or lines in an emergency shutdown system which are designed to open automatically in the event of a process upset are exempt from the requirements of paragraphs (a), (b) and (c) of this section.

(e) Open-ended valves or lines containing materials which would autocatalytically polymerize or, would present an explosion, serious overpressure, or other safety hazard if capped or equipped with a double block and bleed system as specified in paragraphs (a) through (c) of this section are exempt from the requirements of paragraphs (a) through (c) of this section.

9. Section 61.242–8 is amended by revising paragraph (a) to read as follows:

§ 61.242–8 Standards: Pressure relief devices in liquid service and flanges and other connectors.

(a) Pressure relief devices in liquid service and connectors shall be monitored within 5 days by the method specified in § 61.245(b) if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method, except at provided in § 61.242–1(c).

* * * * *

10. Section 61.242–9 is revised to read as follows:

§ 61.242–9 Standards: Surge control vessels and bottoms receivers.

Each surge control vessel and bottoms receiver shall be equipped with a closed-vent system capable of capturing and transporting any leakage from the vessel to a control device as described in § 61.242–11, except as provided in § 61.242–1(c).

11. Section 61.242–11 is amended by redesignating paragraph (g) as (m), redesignating paragraph (f)(3) as (g) introductory text and revising it, by redesignating paragraph (f)(4) as (g)(1) and revising it, by revising paragraphs (b), (c), and (f) and by adding paragraphs (g)(2), (h), (i), (j), (k), and (l), and by revising newly redesignated paragraph (m) to read as follows:

§ 61.242–11 Standards: Closed-vent systems and control devices.

* * * * *

(b) Vapor recovery systems (for example, condensers and absorbers) shall be designed and operated to recover the organic vapors vented to them with an efficiency of 95 percent or greater, or to an exit concentration of 20 parts per million by volume, whichever is less stringent.

(c) Enclosed combustion devices shall be designed and operated to reduce the VHAP emissions vented to them with an efficiency of 95 percent or greater, or to an exit concentration of 20 parts per million by volume, on a dry basis, corrected to 3 percent oxygen, whichever is less stringent, or to provide a minimum residence time of

0.50 seconds at a minimum temperature of 760 °C.

* * * * *

(f) Except as provided in paragraphs (i) through (k) of this section, each closed vent system shall be inspected according to the procedures and schedule specified in paragraphs (f)(1) and (f)(2) of this section.

(1) If the vapor collection system or closed vent system is constructed of hard-piping, the owner or operator shall comply with the requirements specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this section:

(i) Conduct an initial inspection according to the procedures in § 61.245(b); and

(ii) Conduct annual visual inspections for visible, audible, or olfactory indications of leaks.

(2) If the vapor collection system or closed vent system is constructed of ductwork, the owner or operator shall:

(i) Conduct an initial inspection according to the procedures in § 61.245(b); and

(ii) Conduct annual inspections according to the procedures in § 61.245(b).

(g) Leaks, as indicated by an instrument reading greater than 500 parts per million by volume above background or by visual inspections, shall be repaired as soon as practicable except as provided in paragraph (h) of this section.

(1) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected.

(2) Repair shall be completed no later than 15 calendar days after the leak is detected.

(h) Delay of repair of a closed vent system for which leaks have been detected is allowed if the repair is technically infeasible without a process unit shutdown or if the owner or operator determines that emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. Repair of such equipment shall be complete by the end of the next process unit shutdown.

(i) If a vapor collection system or closed vent system is operated under a vacuum, it is exempt from the inspection requirements or paragraphs (f)(1)(i) and (f)(2) of this section.

(j) Any parts of the closed vent system that are designated, as described in paragraph (k)(1) of this section, as unsafe-to-inspect are exempt from the inspection requirements of paragraphs (f)(1)(i) and (f)(2) of this section if they comply with the requirements specified in paragraphs (j)(1) and (j)(2) of this section:

(1) The owner or operator determines that the equipment is unsafe-to-inspect because inspecting personnel would be exposed to an imminent or potential danger as a consequence of complying with paragraphs (f)(1)(i) or (f)(2) of this section; and

(2) The owner or operator has a written plan that requires inspection of the equipment as frequently as practicable during safe-to-inspect times.

(k) Any parts of the closed vent system that are designated, as described in paragraph (l)(2) of this section, as difficult to inspect are exempt from the inspection requirements of paragraphs (f)(1)(i) and (f)(2) of this section if they comply with the requirements specified in paragraphs (k)(1) through (k)(3) of this section.

(1) The owner or operator determines that the equipment cannot be inspected without elevating the inspecting personnel more than 2 meters above a support surface; and

(2) The process unit within which the closed vent system is located is a new process unit, or the owner or operator designates less than 3.0 percent of the total number of closed vent system equipment as difficult-to-inspect; and

(3) The owner or operator has a written plan that requires inspection of the equipment at least once every 5 years. A closed vent system is exempt from inspection if it is operated under a vacuum.

(l) The owner or operator shall record the information specified in paragraphs (l)(1) through (l)(5) of this section.

(1) Identification of all parts of the closed vent system that are designated as unsafe-to-inspect, an explanation of why the equipment is unsafe-to-inspect, and the plan for inspecting the equipment.

(2) Identification of all parts of the closed vent system that are designated as difficult-to-inspect, an explanation of why the equipment is difficult-to-inspect, and the plan for inspecting the equipment.

(3) For each inspection during which a leak is detected, a record of the information specified in § 60.486(c).

(4) For each inspection conducted in accordance with § 61.245(b) during which no leaks are detected, a record that the inspection was performed, the date of the inspection, and a statement that no leaks were detected.

(5) For each visual inspection conducted in accordance with paragraph (f)(1)(ii) of this section during which no leaks are detected, a record that the inspection was performed, the date of the inspection, and a statement that no leaks were detected.

(m) Closed vent systems and control devices used to comply with provisions of this subpart shall be operated at all times when emissions may be vented to them.

12. Section 61.246 is amended by revising paragraphs (f) introductory text and (f)(1) to read as follows:

§ 61.246 Recordkeeping requirements.

* * * * *

(f) The following information pertaining to all valves subject to the requirements of § 61.242–27(g) and (h) and to all pumps subject to the requirements of § 61.242–2(g) shall be recorded in a log that is kept in a readily accessible location:

(1) A list of identification numbers for valves and pumps that are designated as unsafe to monitor, an explanation for each valve or pump stating why the valve or pump is unsafe to monitor, and the plan for monitoring each valve or pump.

* * * * *

13. Section 61.247 is amended by revising paragraph (a)(3), redesignating paragraph (a)(4) as paragraph (a)(5), and adding paragraphs (a)(4) and (f) to read as follows:

§ 61.247 Reporting requirements.

(a) * * *

(3) In the case of new sources which did not have an initial startup date preceding the effective date, the statement required under paragraph (a)(1) of this section shall be submitted with the application for approval of construction, as described in § 61.07 of subpart A.

(4) For owners and operators complying with 40 CFR part 65, subparts C or F, the statement required under paragraph (a)(1) of this section shall notify the Administrator that the requirements of 40 CFR part 65, subparts C or F are being implemented.

* * * * *

(f) For owners or operators choosing to comply with 40 CFR part 65, subparts C or F an application for approval of construction or modification, as required under §§ 61.05 and 61.07 of subpart A will not be required if:

(1) The new source complies with 40 CFR 65.106 through 65.115;

(2) The new source is not part of the construction of a process unit; and

(3) In the next semiannual report required by 40 CFR 65.120(b), the information in § 61.247(a)(5) is reported.

14. Tables 1 and 2 are added to part 61 at the end of subpart V. to read as follows:

TABLE 1.—TO PART 61, SUBPART V. SURGE CONTROL VESSELS AND BOTTOMS RECEIVERS AT EXISTING SOURCES

Vessel capacity (cubic meters)	Vapor pressure [1] (kilopascals)
75 ≤ capacity < 151	≥ 13.1
151 ≤ capacity	≥ 5.2

[1] Maximum true vapor pressure as defined in § 61.241 of this subpart.

TABLE 2.—TO PART 61, SUBPART V. SURGE CONTROL VESSELS AND BOTTOMS RECEIVERS AT NEW SOURCES

Vessel capacity (cubic meters)	Vapor pressure [1] (kilopascals)
38 ≤ capacity < 151	≥ 13.1
151 ≤ capacity	≥ 0.7

[1] Maximum true vapor pressure as defined in § 61.241 of this subpart.

Subpart Y—National Emission Standard for Benzene Emissions from Benzene Storage Vessels

15. Section 61.270 is amended by adding paragraphs (g), (h), (i), and (j) to read as follows:

* * * * *

(g) *Alternative means of compliance—SOCMI CAR unit basis.* Owners or operators may choose to comply with 40 CFR part 65, subpart C to satisfy the requirements of §§ 61.271 through 61.277, except for §§ 61.271(d) and 61.274(a), as provided in paragraphs (i) and (j) of this section, for all storage vessels that are subject to this subpart and that are part of a SOCMI CAR unit. A SOCMI CAR unit is defined in 40 CFR 65.2 of subpart A. Other provisions applying to owners or operators who choose to comply with 40 CFR part 65 are provided in 40 CFR 65.1 of subpart A.

(h) *Alternative means of compliance—affected source basis.* Owners or operators may choose to comply with 40 CFR part 65, subpart C to satisfy the requirements of §§ 61.271 through 61.277, except for §§ 61.271(d) and 61.274(a), as provided in paragraphs (i) and (j) of this section, for any storage vessels that are subject to this subpart and that are not part of a SOCMI CAR unit, but are located at the same plant site as a SOCMI CAR unit that is complying with 40 CFR part 65. A SOCMI CAR unit is defined in 40 CFR 65.2 of subpart A. Other provisions applying to owners or operators who choose to comply with 40 CFR part 65 are provided in 40 CFR 65.1 of subpart A.

(i) *Part 61 subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart C, as provided in paragraphs (g) or (h) of this section, must also comply with §§ 61.01, 61.02, 61.05 through 61.08, 61.11, 61.15, and 61.10(b) through (d) of subpart A for those storage vessels. All sections and paragraphs of subpart A of this part that are not mentioned in this paragraph do not apply for storage vessels complying with 40 CFR part 65, subpart C, except that provisions required to be met prior to implementing 40 CFR part 65 remain in effect. Owners and operators who choose to comply with 40 CFR part 65, subpart C must comply with 40 CFR part 65, subpart A.

(j) *Comply on a SOCMI CAR unit basis.* When choosing to comply with any subpart of 40 CFR part 65 for any equipment, process vent, loading rack (transfer rack) or storage vessel in a SOCMI CAR unit, owners or operators must also comply with all applicable subparts of 40 CFR part 65 for all equipment, process vents, loading racks (transfer racks) or storage vessels that are within the SOCMI CAR unit, that are subject to a CAR referencing subpart, and that are eligible to comply with the CAR. A SOCMI CAR unit and the CAR referencing subparts are defined in 40 CFR 65.2 of subpart A.

16. Section 61.271 is amended by revising paragraph (d) to read as follows:

§ 61.271 Emission standard.

* * * * *

(d) The owner or operator of each affected storage vessel shall meet the requirements of paragraph (a), (b), or (c) of this section or § 61.270(g) or (h) as follows:

(1) The owner or operator of each existing benzene storage vessel shall meet the requirements of paragraph (a), (b), or (c) of this section or § 61.270(g) or (h) no later than 90 days after September 14, 1989 with the exceptions noted in paragraphs (a)(5) and (b)(5), unless a waiver of compliance has been approved by the Administrator in accordance with § 61.11.

(2) The owner or operator of each benzene storage vessel upon which construction commenced after September 14, 1989 shall meet the requirements of paragraph (a), (b), or (c) of this section or § 61.270(g) or (h) prior to filling (i.e., roof is lifted off leg supports) the storage vessel with benzene.

(3) The owner or operator of each benzene storage vessel upon which construction commenced on or after July 28, 1988 and before September 14, 1989 shall meet the requirements of paragraph (a), (b), or (c) of this section or § 61.270(g) or (h) on September 14, 1989.

17. Section 61.274 is amended by revising paragraph (a) to read as follows:

§ 61.274 Initial report.

(a) The owner or operator of each storage vessel to which this subpart applies and which has a design capacity greater than or equal to 38 cubic meters (10,000 gallons) shall submit an initial report describing the controls which will be applied to meet the equipment requirements of §§ 61.271 or 61.270(g) or (h). For an existing storage vessel or a new storage vessel for which construction and operation commenced prior to September 14, 1989, this report shall be submitted within 90 days of September 14, 1989 and can be combined with the report required by § 61.10. For a new storage vessel for which construction or operation commenced on or after September 14, 1989, the report shall be combined with the report required by § 61.07 or 40 CFR 65.5(b) of subpart A. In the case where the owner or operator seeks to comply with § 61.271(c), with a control device other than a flare, this information may consist of the information required by § 61.272(c)(1).

* * * * *

Subpart BB—National Emission Standard for Benzene Emissions from Benzene Transfer Operations

18. Section 61.300 is amended by revising paragraph (c) and adding paragraphs (f), (g), (h), and (i) to read as follows:

§ 61.300 Applicability.

* * * * *

(c) *Comply with standards at each loading rack.* Any affected facility under paragraph (a) of this section shall comply with the standards in § 61.302 or as specified in paragraph (f) through (i) of this section if applicable at each loading rack that is handling a liquid containing 70 weight-percent or more benzene.

* * * * *

(f) *Alternative means of compliance—SOCMI CAR unit basis.* Owners or operators may choose to comply with 40 CFR part 65, subpart E to satisfy the requirements of §§ 61.302 through 61.306, as provided in paragraphs (h) and (i) of this section, for all tank truck or railcar loading racks that are subject to this subpart and that are part of a SOCMI CAR unit. Loading racks are referred to as transfer racks in 40 CFR part 65, subpart E. A SOCMI CAR unit is defined in 40 CFR 65.2 of subpart A.

Other provisions applying to owners or operators who choose to comply with 40 CFR part 65 are provided in 40 CFR 65.1 of subpart A. All marine vessel loading racks shall comply with the provisions in §§ 65.302 through 65.306.

(g) *Alternative means of compliance—affected source basis.* Owners or operators may choose to comply with 40 CFR part 65, subpart E to satisfy the requirements of §§ 61.302 through 61.306, as provided in paragraphs (h) and (i) of this section, for any tank trucks or railcar loading racks that are subject to this subpart and that are not part of a SOCMI CAR unit, but are located at the same plant site as a SOCMI CAR unit that is complying with 40 CFR part 65. Loading racks are referred to as transfer racks in 40 CFR part 65 of subpart E. A SOCMI CAR unit is defined in 40 CFR 65.2 of subpart A. Other provisions applying to owners or operators who choose to comply with 40 CFR part 65 are provided in 40 CFR 65.1 of subpart A. All marine vessel loading racks shall comply with §§ 65.302 through 65.306.

(h) *Part 61 subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart E, as provided in paragraphs (f) or (g) of this section, must also comply with §§ 61.01, 61.02, 61.05 through 61.08, 61.11, 61.15, and 61.10(b) through (d) of subpart A for those loading racks. All sections and paragraphs of subpart A of this part that are not mentioned in this paragraph do not apply to owners or operators of loading racks complying with 40 CFR part 65, subpart E, except that provisions required to be met prior to implementing 40 CFR part 65 remain in effect. Owners and operators who choose to comply with 40 CFR part 65, subpart E, must comply with 40 CFR part 65, subpart A.

(i) *Comply on a SOCMI CAR unit basis.* When choosing to comply with any subpart of 40 CFR part 65 for any equipment, process vent, loading rack (transfer rack) or storage vessel in a SOCMI CAR unit, owners or operators must also comply with all applicable subparts of 40 CFR part 65 for all equipment, process vents, loading racks (transfer racks) or storage vessels that are within the SOCMI CAR unit, that are subject to a CAR referencing subpart, and that are eligible to comply with the CAR. A SOCMI CAR unit and the CAR referencing subparts are defined in 40 CFR 65.2, of subpart A.

PART 63—NATIONAL EMISSION STANDARD 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.*

Subpart G—National Emission Standards for Organic Hazardous Air Pollutants From Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater

2. Section 63.110 is amended by adding paragraphs (i), (j), and (k) to read as follows:

§ 63.110 Applicability.

* * * * *

(i) *Alternative means of compliance.* Owners or operators of CMPU that are subject to § 63.100 of subpart F of this part may choose to comply with the provisions of 40 CFR part 65 as provided in paragraphs (i)(1), (i)(2), (i)(3), (j) and (k) of this section for all Group 1 and Group 2 process vents, Group 1 storage vessels, and Group 1 transfer operations that are part of the CMPU. Other provisions applying to owners or operators who choose to comply with 40 CFR part 65 are provided in 40 CFR 65.1, of subpart A. Group 1 and Group 2 wastewater streams, Group 2 transfer operations, Group 2 storage vessels, and in-process streams are not eligible to comply with 40 CFR part 65 and must continue to comply with the requirements of this subpart and subpart F of this part.

(1) For Group 1 and Group 2 process vents, 40 CFR part 65, subpart D satisfies the requirements of §§ 63.113 through 63.118, 63.148, 63.151, and 63.152 of this subpart and the requirements of §§ 63.102 and 63.103 of subpart F of this part.

(2) For Group 1 storage vessels, 40 CFR part 65, subpart C satisfies the requirements of §§ 63.119 through 63.123, 63.148, 63.151, and 63.152 of this subpart and the requirements of §§ 63.102 and 63.103 of subpart F of this part.

(3) For Group 1 transfer racks, 40 CFR part 65, subpart E satisfies the requirements of §§ 63.126 through 63.130, 63.148, 63.151, and 63.152 of this subpart and the requirements of §§ 63.102 and 63.103 of subpart F of this part.

(j) *Part 63 subpart A.* Owners or operators who choose to comply with 40 CFR part 65, as provided in paragraph (i) of this section, must also comply with the applicable general provisions of 40 CFR part 63 listed in table 1A of this subpart. All sections and paragraphs of subpart A of this part that are not mentioned in table 1A of this subject do not apply to owners or operators who choose to comply with 40 CFR part 65, except that provisions required to be met prior to implementing 40 CFR part 65 remain in effect. Owners and operators who choose to comply with a subpart of 40 CFR part 65 must comply with 40 CFR part 65, subpart A.

(k) *Comply on a SOCMI CAR unit basis.* When choosing to comply with any subpart of 40 CFR part 65 for any equipment, process vent, loading rack (transfer rack), or storage vessel in a CMPU, owners or operators must also comply with all applicable subparts of 40 CFR part 65 for all equipment, process vents, loading racks (transfer racks), or storage vessels that are within the CMPU, that are subject to a CAR referencing subpart, and that are eligible to comply with the CAR. A CMPU that is subject to § 63.100 of subpart F is a SOCMI CAR unit by definition. A SOCMI CAR unit and the CAR referencing subparts are defined in 40 CFR 65.2, of subpart A.

3. Table 1A is added to subpart G, immediately after table 1, to read as follows:

TABLE 1A. TO SUBPART G.—APPLICABLE 40 CFR PART 63 GENERAL PROVISION

40 CFR part 63 subpart A provisions for referencing subpart G
§ 63.1(a)(1), (a)(2), (a)(3), (a)(13), (a)(14), (b)(2) and (c)(4).
§ 63.2.
§ 63.5(a)(1), (a)(2), (b),(d)(1)(ii), (d)(3)(v), (d)(4),(e), (f)(2).
§ 63.6(a), (b)(3), (c)(5),(i)(1), (i)(2), (i)(4)(i)(A), (i)(5) through (i)(14), (i)(16) and (j).
§ 63.9(a)(2), (b)(4)(i)[a], (b)(4)(ii), (b)(4)(iii), (b)(5)[a], (c), (d).
§ 63.10(d)(4).
§ 63.12(b).

[a] The notifications specified in §§ 63.9(b)(4)(i) and (b)(5) shall be submitted at the times specified in 40 CFR part 65.

Subpart H—National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks

4. Section 63.160 is amended by adding paragraph (g) to read as follows:

§ 63.160 Applicability and designation of source.

* * * * *

(g) *Alternative means of compliance.* Owners or operators of equipment that is subject to § 63.100 of subpart F of this part may choose to comply with the provisions of 40 CFR part 65 to satisfy the requirements of §§ 63.162 through 63.182 of this subpart and §§ 63.102 and 63.103 of subpart F of this part, as provided in paragraphs (g)(1), (g)(2), and (g)(3). When choosing to comply with 40 CFR part 65, the requirements of § 63.180(d) of this subpart remain in effect. Other provisions applying to an owner or operator who chooses to comply with 40 CFR part 65 are provided in 40 CFR 65.1, of subpart A.

(1) *Surge control vessels and bottoms receivers.* For owners or operators choosing to comply with 40 CFR part 65, each surge control vessel and bottoms receiver subject to § 63.100 of subpart F of this part that meets the conditions specified in table 2 or table 3 of this subpart shall meet the requirements for storage vessels in 40 CFR part 65, subpart C; all other equipment subject to § 63.100 of subpart F of this part shall meet the requirements in 40 CFR part 65, subpart F.

(2) *Part 63 Subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subparts C or F for equipment subject to § 63.100 of subpart F of this part must also comply with the applicable general provisions of 40 CFR part 63 listed in table 4 of this subpart. All sections and paragraphs of subpart A of this part that are not mentioned in table 4 of this subpart do not apply to owners or operators of equipment subject to § 63.100 of subpart F of this part complying with 40 CFR part 65, subparts C or F, except that provisions required to be met prior to implementing 40 CFR part 65 remain in effect. Owners and operators who choose to comply with 40 CFR part 65, subparts C or F, must comply with 40 CFR part 65, subpart A.

(3) *Comply on a SOCMI CAR unit basis.* When choosing to comply with any subpart of 40 CFR part 65 for any equipment, process vent, loading rack (transfer rack) or storage vessel in a SOCMI CAR unit, owners or operators must also comply with all applicable subparts of 40 CFR part 65 for all equipment, process vents, loading racks (transfer racks), or storage vessels that are within the SOCMI CAR unit, that are subject to a CAR referencing subpart, and that are eligible to comply with the CAR. A SOCMI CAR unit and the CAR referencing subparts are defined in 40 CFR 65.2, of subpart A.

5. Table 4 is added to subpart H to read as follows:

TABLE 4 TO SUBPART H—APPLICABLE 40 CFR PART 63 GENERAL PROVISIONS

40 CFR part 63 subpart A provisions for referencing subpart H
§ 63.1(a)(1), (a)(2), (a)(3), (a)(13), (a)(14), (b)(2) and (c)(4).
§ 63.2.
§ 63.5(a)(1), (a)(2), (b), (d)(1)(ii), (d)(3)(v), (d)(4), (e), (f)(1) and (f)(2).
§ 63.6(a), (b)(3), (c)(5), (i)(1), (i)(2), (i)(4)(i)(A), (i)(5) through (i)(14), (i)(16) and (j).
§ 63.9(a)(2), (b)(4)(i)[a], (b)(4)(ii), (b)(4)(iii), (b)(5)[a], (c) and (d).
§ 63.10(d)(4).
§ 63.12(b).

[a] The notifications specified in § 63.9(b)(4)(i) and (b)(5) shall be submitted at the times specified in 40 CFR part 65.

6. Add part 65 to read as follows:

PART 65—CONSOLIDATED FEDERAL AIR RULE

Subpart A—General Provisions

Subpart B [Reserved]

Subpart C—Storage Vessels

Subpart D—Process Vents

Subpart E—Transfer Racks

Subpart F—Equipment Leaks

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—General Provisions

§ 65.1 Applicability.

(a) The provisions of this subpart apply to owners or operators expressly referenced to this part from a subpart of 40 CFR part 60, 61, or 63 for which the owner or operator has chosen to comply with the provisions of this part as an alternative to the provisions in the referencing subpart as specified in paragraphs (b) and (c) of this section.

(b) Owners or operators choosing to comply with a subpart of this part for any regulated source included in or assigned to a synthetic organic chemical manufacturing industry (SOCMI) consolidated air rule (CAR) unit must comply with all applicable subparts of this part for all other regulated sources that are included in or assigned to that SOCMI CAR unit and are subject to one of the referencing subparts. Any sources that become subject to a referencing subpart and that are part of a SOCMI CAR unit complying with this part must comply with this part.

(c) Owners or operators may choose to comply with this part for any regulated source that meets the specifications listed in paragraphs (c)(1) and (c)(2) of this section.

(1) The regulated source is located at the same plant site as a SOCMI CAR unit that is complying with this part, and

(2) The regulated source is subject to one of the following subparts: 40 CFR part 60, subparts DDD, Ka, or Kb, or 40 CFR part 61 subparts V, Y, or BB.

(d) Compliance with this part instead of the referencing subparts does not alter the applicability of the referencing subparts. This part applies to only the equipment, process vents, storage vessels, or transfer operations to which the referencing subparts apply. The CAR does not extend applicability to equipment, process vents, storage vessels, or transfer operations that are not regulated by the referencing subpart.

(e) The provisions of 40 CFR part 60, subpart A, 40 CFR part 61, subpart A, and 40 CFR part 63, subpart A that are listed in table 1 of this part still apply to owners or operators of regulated sources expressly referenced to this part. The owner or operator shall comply with the provisions in table 1 of this subpart in the column corresponding to the referencing subpart. All provisions of 40 CFR part 60, subpart A, 40 CFR part 61, subpart A, and 40 CFR part 63, subpart A not expressly referenced in table 1 do not apply and the provisions of this part apply instead, except that provisions which were required to be met prior to implementation of part 65 remain in force.

(f) *Implementation date.* Owners or operators who choose to comply with this part shall comply by the dates specified in paragraph (f)(1) or (f)(2) of this section, as applicable, and shall meet the requirement in paragraph (f)(3) of this section.

(1) Except as provided in paragraph (f)(2) of this section, owners or operators shall implement this part as specified in an implementation schedule established in a title V permit or, if the source is not a title V source, by a date established by agreement with the Administrator or delegated authority. The implementation schedule shall be proposed by the source in a title V permit application or amendment or, for non-title V sources, in the Initial Notification for part 65 Applicability as specified in § 65.5(c). The implementation schedule can not extend for longer than 3 years.

(2) For SOCMI CAR units or regulated sources that will comply with this part at initial startup instead of with the requirements of the referencing subpart or subparts, the implementation date shall be at initial startup or by the compliance date specified by the applicable referencing subpart(s).

(3) There shall be no gaps in compliance between compliance with the referencing subpart and compliance with this part.

(g) *Transitioning out of this part.* Owners or operators who decide to no longer comply with this part and to comply with the provisions in the referencing subpart instead, shall comply with paragraphs (g)(1) through (g)(3) of this section, as applicable.

(1) This transition shall be carried out on a date established in a title V permit or if the source is not a title V source, by a date established by agreement with the Administrator or delegated authority. The transition date shall be proposed in a title V permit amendment, or, for non-title V sources, in a periodic report or separate notice.

(2) There shall be no gaps in compliance between compliance with this part and compliance with the referencing subpart provisions.

(3) If an owner or operator decides to no longer comply with this part for a regulated source in a SOCMI CAR unit, then the owner or operator shall comply with the applicable referencing subparts for all regulated sources that are part of that SOCMI CAR unit.

(h) *Overlap with provisions of other subparts of this part.* When provisions of another subpart of this part conflict with the provisions of this subpart, the provisions of the other subpart shall apply.

(i) *Alternative to the assignment procedures.*

(1) If an owner or operator has an elastomer product process unit (EPPU), thermoplastic product process unit (TPPU), or a petroleum refinery process unit (PRPU) that is subject to 40 CFR part 60 subpart VV, III, NNN, or RRR, then the EPPU, TPPU, or PRPU is a SOCMI CAR unit, and the assignment procedures in paragraphs (j), (l), and (m) of this section need not be carried out. The assignment procedures in paragraph (k) for transfer racks must be followed. An EPPU is defined in 40 CFR part 63, subpart U. A TPPU is defined in 40 CFR part 63, subpart JJJ. A PRPU is defined in 40 CFR part 63, subpart CC.

(2) If an owner or operator has a chemical manufacturing process unit (CMPU) that is subject to 40 CFR 63.100 in subpart A or 40 CFR part 60, subparts VV, III, NNN, or RRR, then the CMPU is a SOCMI CAR unit, and the assignment procedures in paragraphs (j), (k), (l), and (m) of this section need not be carried out.

(j) *Storage vessel assignment procedures.* The owner or operator shall follow the procedures specified in paragraphs (j)(1) through (j)(5) of this section to determine whether a storage vessel is part of a SOCMI CAR unit.

(1) Where a storage vessel is dedicated to a SOCMI CAR unit, the storage vessel shall be considered part of that SOCMI CAR unit.

(2) Where a storage vessel is not used by a SOCMI CAR unit it can not be assigned to that SOCMI CAR unit.

(3) If a storage vessel is not dedicated to a SOCMI CAR unit, then the assignment of the storage vessel shall be determined according to the provisions in paragraphs (j)(3)(i) through (j)(3)(iii) of this section.

(i) If a storage vessel is predominately used by a SOCMI CAR unit, then that storage vessel shall be assigned to that SOCMI CAR unit. If a storage vessel is predominately used by a process unit that is not a SOCMI CAR unit or is not part of a SOCMI CAR unit, then that storage vessel shall not be assigned to a SOCMI CAR unit. Predominant use shall be determined as specified in paragraphs (j)(3)(i)(A) through (j)(3)(i)(C) of this section.

(A) If the greatest input into a storage vessel is from a SOCMI CAR unit that is located on the same plant site as that storage vessel, then that SOCMI CAR unit has the predominant use.

(B) If the greatest input into the storage vessel is from a process unit that is not a SOCMI CAR unit and that is located on the same plant site as that storage vessel, then that process unit has the predominant use.

(C) If the greatest input into the storage vessel is not from the same plant site as the storage vessel, then the predominant use is the process unit or SOCMI CAR unit on the same plant site that receives the greatest amount of material from the storage vessel.

(ii) If a storage vessel is shared among process units and SOCMI CAR units so that there is no single predominant use, the storage vessel shall be considered part of a SOCMI CAR unit unless the storage vessel has been assigned under a subpart of 40 CFR part 63 to a process unit that is not a SOCMI CAR unit. In these cases, the storage vessel shall be assigned as specified in the subpart of 40 CFR part 63. If a storage vessel is shared among more than one SOCMI CAR unit, the owner or operator may assign the storage vessel to any of the SOCMI CAR units.

(iii) If the predominant use of a storage vessel varies from year to year, then the assignment of the storage vessel shall be determined based on the utilization that occurred during the year preceding the date of the Title V permit establishing the implementation schedule specified in paragraph (f)(1) of this section, or the date of the initial notification of part 65 Applicability specified in paragraph (f)(1) of this section. This determination shall be reported as part of an operating permit application or as otherwise specified by the permitting authority.

(4) Where a storage vessel is located in a tank farm (including a marine tank farm), the assignment of the storage vessel shall be determined according to the provisions in paragraphs (j)(4)(i) through (j)(4)(iii) of this section. If a plant site does not include a SOCMI CAR unit, a storage vessel in a tank farm associated with a plant site can not be assigned to a SOCMI CAR unit.

(i) The storage vessel may only be assigned to a SOCMI CAR unit that utilizes the storage vessel and does not have an intervening storage vessel for that product (or raw material, as appropriate). With respect to any process unit or SOCMI CAR unit, an intervening storage vessel means a storage vessel connected by hard-piping to the process unit or SOCMI CAR unit and to the storage vessel in the tank farm so that product or raw material entering or leaving the process unit or SOCMI CAR unit flows into (or from) the intervening storage vessel and does not flow directly into (or from) the storage vessel in the tank farm.

(ii) If there is only one SOCMI CAR unit and no process unit at the plant site that meets the criteria of paragraph (j)(4)(i) of this section with respect to a storage vessel located at a tank farm, the storage vessel shall be assigned to that SOCMI CAR unit.

(iii) If there are two or more process units and/or SOCMI CAR units at the plant site that meet the criteria of paragraph (j)(4)(i) of this section with respect to a storage vessel located at a tank farm, whether the storage vessel is assigned to a SOCMI CAR unit shall be determined according to the provisions of paragraph (j)(3) of this section. The predominant use shall be determined among only those process units and SOCMI CAR units that meet the criteria of paragraph (j)(4)(i) of this section.

(5) If a storage vessel begins to receive material from (or send material to) another process unit or SOCMI CAR unit, or ceases to receive material from (or send material to) a SOCMI CAR unit, or if the assignment of the storage vessel has been determined according to the provisions of paragraph (j)(3) of this section and there is a change so that the predominant use may reasonably have changed, the owner or operator shall reevaluate the assignment of the storage vessel, and reassign if necessary.

(k) *Transfer rack assignment procedures.* The owner or operator shall follow the procedures specified in paragraphs (k)(1) through (k)(4) of this section to determine whether the arms and hoses in a transfer rack are part of a SOCMI CAR unit.

(1) Where a transfer rack is dedicated to a SOCMI CAR unit, the transfer rack shall be considered part of that SOCMI CAR unit.

(2) Where a transfer rack is not used by a SOCMI CAR unit it can not be assigned to a SOCMI CAR unit.

(3) If a transfer rack is not dedicated to a SOCMI CAR unit, then the assignment of the transfer rack shall be determined at each transfer arm or transfer hose according to the provisions in paragraphs (k)(3)(i) through (k)(3)(iv) of this section.

(i) Each transfer arm or transfer hose that is dedicated to the transfer of liquid material from a SOCMI CAR unit is part of that SOCMI CAR unit.

(ii) If a transfer arm or transfer hose is shared among SOCMI CAR units and/

or process units, and one of the SOCMI CAR units provides the greatest amount of the material that is loaded by that transfer arm or transfer hose, then the transfer arm or transfer hose is part of that SOCMI CAR unit. If a process unit that is not a SOCMI CAR unit or is not part of a SOCMI CAR unit provides the greatest amount of the material that is loaded by a transfer arm or transfer hose, then that transfer arm or transfer hose is not part of a SOCMI CAR unit.

(iii) If a transfer arm or transfer hose is shared among process units and SOCMI CAR units so that there is no single predominant use as described in paragraph (k)(2)(ii) of this section, then that transfer arm or hose shall be considered part of the SOCMI CAR unit unless the transfer arm or transfer hose has been assigned under a 40 CFR part 63 subpart to a process unit that is not a SOCMI CAR unit. In these cases, the transfer arm or transfer hose shall be assigned as specified in the 40 CFR part 63 subpart. If a transfer arm or transfer hose is shared among more than one SOCMI CAR unit, the owner or operator may assign the transfer arm or transfer hose to any of the SOCMI CAR units.

(iv) If the predominant use of a transfer arm or transfer hose varies from year to year, then the assignment of the transfer arm or transfer hose shall be determined based on the utilization that occurred during the year preceding the date of the Title V permit establishing the implementation schedule specified in paragraph (f)(1) of this section, or the date of the initial notification of part 65 Applicability specified in paragraph (f)(1) of this section. This determination shall be reported as part of an operating permit application or as otherwise specified by the permitting authority.

(4) If a transfer rack that was dedicated to a single process unit or SOCMI CAR unit begins to serve another process unit or SOCMI CAR unit, or if assignment was determined under the provisions of paragraph (k)(3) of this section and there is a change so that the predominant use may reasonably have changed, the owner or operator shall reevaluate the assignment of the transfer rack, transfer arm or transfer hose, and reassign if necessary.

(l) *Process vent assignment procedures.* The owner or operator shall follow the procedures specified in paragraphs (l)(1) through (l)(4) of this section to determine whether the process vent(s) from a distillation unit is/are part of a SOCMI CAR unit.

(1) Where a distillation unit is dedicated to SOCMI CAR unit, the process vents from that distillation unit shall be considered part of that SOCMI CAR unit.

(2) If a distillation unit is not used by a SOCMI CAR unit, the process vents from that distillation unit can not be assigned to a SOCMI CAR unit.

(3) If a distillation unit is not dedicated to a single SOCMI CAR unit, then the assignment of the process vents from that distillation unit shall be determined according to the provisions in paragraphs (l)(3)(i) through (l)(3)(iv) of this section.

(i) If the greatest input to the distillation unit is from a SOCMI CAR unit located on the same plant site, then the process vents from that distillation unit shall be assigned to that SOCMI CAR unit.

(ii) If the greatest input to the distillation unit is not provided from a process unit or SOCMI CAR unit that is located on the same plant site, then the process vents from the distillation unit shall be assigned to the SOCMI CAR unit located at the same plant site that receives the greatest amount of material from the distillation unit, unless a non-SOCMI process unit receives the greatest amount of material from the distillation unit. In this case, the process vents from the distillation unit shall not be assigned to a SOCMI CAR unit.

(iii) If a distillation unit is shared among process units and SOCMI CAR units so that there is no single predominant use, as described in paragraphs (l)(3)(i) and (l)(3)(ii) of this section, the process vents from the distillation unit shall be considered to be part of the SOCMI CAR unit unless the distillation unit has been assigned under a 40 CFR part 63 subpart to a process unit that is not a SOCMI CAR unit. In these cases, the process vents from the distillation unit shall be assigned as specified in the 40 CFR part 63 subpart. If a distillation unit is shared among more than one SOCMI CAR unit, the owner or operator may assign the process vents from the distillation unit to any of the CAR units.

(iv) If the predominant use of a distillation unit varies from year to year, then the assignment of the distillation unit shall be determined based on the utilization that occurred during the year preceding the date of the Title V permit establishing the implementation schedule specified in paragraph (f)(1) of this section, or the date of the initial notification of part 65 Applicability specified in paragraph (f)(1) of this section. This determination shall be included as part of an operating permit application or as otherwise specified by the permitting authority.

(4) If a distillation unit begins to serve another process unit or SOCMI CAR unit, or if assignment of the distillation unit was determined under the provisions of paragraph (l)(3) of this section and there is a change so that the predominant use may reasonably have changed, the owner or operator shall reevaluate the assignment of the process vents from the distillation unit, and reassignment if necessary.

(m) *Equipment assignment procedures.* If specific items of equipment (pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, surge control vessels, and bottoms receivers), that are part of a SOCMI CAR unit complying with this part, are managed by different administrative organizations (for example, different companies, affiliates, departments, divisions, etc.) those items of equipment may be aggregated with any SOCMI CAR unit within the plant site.

§ 65.2 Definitions.

All terms used in this part shall have the meaning given them in the Act and in this section. If a term is defined both in this section and in other parts that reference the use of this part, the term shall have the meaning given in this section for purposes of this part.

Act means the Clean Air Act (42 U.S.C. 7401 *et seq.*).

Administrator means the Administrator of the United States Environmental Protection Agency (EPA) or his or her authorized representative (for example, a State that has been delegated the authority to implement the provisions of this part).

Alternative test method means any method of sampling and analyzing for an air pollutant that is not a reference test or equivalent method and that has been demonstrated to the Administrator's satisfaction, using Method 301 in Appendix A of 40 CFR part 63 or approved by the Administrator prior to [date of publication of final rule in the **Federal Register**] to produce results adequate for the Administrator's determination that it may be used in place of a test method specified in this part.

Approved permit program means a State permit program approved by the Administrator as meeting the requirements of part 70 of this chapter or a Federal permit program established in this chapter pursuant to title V of the Act (42 U.S.C. 7661).

Automated monitoring and recording system means any means of measuring values of monitored parameters and creating a hard copy or computer record of the measured values that does not require manual reading of monitoring instruments and manual transcription of

data values. Automated monitoring and recording systems include, but are not limited to, computerized systems and strip charts.

Batch process means a process in which the equipment is fed intermittently or discontinuously. Processing then occurs in this equipment after which the equipment is generally emptied. Examples of industries that use batch processes include pharmaceutical production and pesticide production.

Batch product-process equipment train means the collection of equipment (for example, connectors, reactors, valves, pumps) configured to produce a specific product or intermediate by a batch process.

Boiler means any enclosed combustion device that extracts useful energy in the form of steam and is not an incinerator or a process heater. Boiler also means any industrial furnace as defined in 40 CFR 260.10.

Bottoms receiver means a tank that collects distillation bottoms before the stream is sent for storage or for further downstream processing.

By compound means by individual stream components, not carbon equivalents.

Car-seal means a seal that is placed on a device that is used to change the position of a valve (for example, from opened to closed) in such a way that the position of the valve cannot be changed without breaking the seal.

Closed-loop system means an enclosed system that returns process fluid to the process and is not vented to the atmosphere except through a closed vent system.

Closed-purge system means a system or combination of systems and portable containers to capture purged liquids. Containers must be covered or closed when not being filled or emptied.

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. A closed vent system does not include the vapor collection system that is part of any tank truck or railcar or the loading arm or hose that is used for vapor return. For transfer racks, the closed vent system begins at, and includes, the first block valve on the downstream side of the loading arm or hose used to convey displaced vapors.

Closed vent system shutdown means a work practice or operational procedure that stops production from a process unit or part of a process unit during which it is technically feasible to clear process material from a closed vent system or part of a closed vent system consistent with safety constraints and during which repairs can be effected. An unscheduled work practice or operational procedure that stops production from a process unit or part of a process unit for less than 24 hours is not a closed vent system shutdown. An unscheduled work practice or operational procedure that would stop production from a process unit or part of a process unit for a shorter period of time than would be required to clear the closed vent system or part of the closed vent system of materials and start up the unit, and would result in greater emissions than delay of repair of leaking components until the next scheduled closed vent system shutdown, is not a closed vent system shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping production are not closed vent system shutdowns.

Combustion device means an individual unit of equipment, such as a flare, incinerator, process heater, or boiler, used for the combustion of organic emissions.

Compliance date means the date by which a regulated source is required to be in compliance with a relevant standard, limitation, prohibition, or any federally enforceable requirement established by the Administrator (or a State with an approved permit program) pursuant to the Act.

Connector means flanged, screwed, or other joined fittings used to connect two pipelines or a pipeline and a piece of equipment. A common connector is a flange. Joined fittings welded completely around the circumference of the interface are not considered connectors for the purpose of this regulation. For the purpose of reporting and recordkeeping, connector means joined fittings that are not inaccessible, ceramic, or ceramic-lined (for example, porcelain, glass, or glass-lined) as described in § 65.108(e)(2) of subpart F of this part.

Continuous parameter monitoring system or *CPMS* means the total equipment that may be required to meet the data acquisition and availability requirements of this part used to sample, condition (if applicable), analyze, and provide a record of process or control system parameters.

Continuous record means documentation, either in hard copy or computer-readable form, of data values measured at least once every 15 minutes and recorded at the frequency specified in § 65.161(a) of subpart G of this part.

Continuous seal means a seal that is designed to form a continuous closure that completely covers the space between the wall of the storage vessel and the edge of the floating roof. A continuous seal may be a vapor-mounted, liquid-mounted, or metallic shoe seal. A continuous seal may be constructed of fastened segments so as to form a continuous seal.

Control device means any combustion device, recovery device, recapture device, or any combination of these devices used to comply with this part. Such equipment or devices include, but are not limited to, absorbers, carbon adsorbers, condensers, incinerators, flares, boilers, and process heaters. For process vents (as defined in this section), recapture devices are considered control devices but recovery devices are not considered control devices except for the recovery devices specified in § 65.63(a)(2)(ii). A fuel gas system is not a control device. For a steam stripper, a primary condenser is not considered a control device.

Control System means the combination of the closed vent system and the control devices used to collect and control vapors or gases from a regulated source.

Day means a calendar day.

Distance piece means an open or enclosed casing through which the piston rod travels, separating the compressor cylinder from the crankcase.

Double block and bleed system means two block valves connected in series with a bleed valve or line that can vent the line between the two block valves.

Ductwork means a conveyance system such as those commonly used for heating and ventilation systems. It is often made of sheet metal and often has sections connected by screws or crimping. Hard-piping is not ductwork.

Emission point means an individual process vent, storage vessel, transfer rack, wastewater stream, or equipment leak.

Empty or emptying means the removal of the stored liquid from a storage vessel. Storage vessels where stored liquid is left on the walls, as bottom clingage, or in pools due to bottom irregularities are considered empty. Lowering of the stored liquid level, so that the floating roof is resting on its legs, as necessitated by normal vessel operation (for example, when changing stored material or when transferring material out of the vessel for shipment) is not considered emptying.

Equipment means each of the following that is subject to control under the referencing subpart: pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system;

and any control devices or systems used to comply with subpart F of this part.

Equivalent method means any method of sampling and analyzing for an air pollutant that has been demonstrated to the Administrator's satisfaction to have a consistent and quantitatively known relationship to the reference method under specified conditions.

External floating roof or *EFR* means a pontoon-type (noncontact) or double-deck-type (contact) roof that is designed to rest on the stored liquid surface in a storage vessel with no fixed roof.

Failure, EFR (referred to as EFR failure) is defined as any time the external floating roof's primary seal has holes, tears, or other openings in the shoe, seal fabric, or seal envelope; or the secondary seal has holes, tears, or other openings in the seal or the seal fabric; or the gaskets no longer close off the stored liquid surface from the atmosphere; or a slotted membrane has more than 10 percent open area.

Failure, internal floating roof type A (referred to as IFR type A failure) means any time, as determined during visual inspection through roof hatches, in which the internal floating roof is not resting on the surface of the stored liquid inside the storage vessel and is not resting on the leg supports; or there is stored liquid on the floating roof; or there are holes, tears, or other openings in the seal or seal fabric; or there are visible gaps between the seal and the wall of the storage vessel.

Failure, internal floating roof type B (referred to as IFR type B failure) means any time, as determined during internal inspections, the internal floating roof's primary seal has holes, tears, or other openings in the seal or the seal fabric; or the secondary seal (if one has been installed) has holes, tears, or other openings in the seal or the seal fabric; or the gaskets no longer close off the stored liquid surface from the atmosphere; or a slotted membrane has more than 10 percent open area.

Fill or *filling* means the introduction of liquids into a storage vessel, but not necessarily to complete capacity.

First attempt at repair, for the purposes of subparts F and G of this part, means to take action for the purpose of stopping or reducing leakage of organic material to the atmosphere, followed by monitoring as specified in § 65.104(b) of subpart F of this part and § 65.143(c) of subpart G of this part, as appropriate, to verify whether the leak is repaired unless the owner or operator determines by other means that the leak is not repaired.

Fixed roof means a roof that is mounted (for example, permanently affixed) on a storage vessel in a stationary manner and that does not move with fluctuations in stored liquid level.

Flame zone means the portion of the combustion chamber in a boiler or process heater occupied by the flame envelope.

Floating roof means a roof consisting of an external floating roof or an internal floating roof that is designed to rest upon and is supported by the stored liquid, and is equipped with a continuous seal.

Flow indicator means a device that indicates whether gas flow is present in a line, or whether the valve position would allow gas flow to be present in a line.

Fuel gas means gases that are combusted to derive useful work or heat.

Fuel gas system means the offsite and onsite piping and flow and pressure control system that gathers gaseous stream(s) generated by onsite operations, may blend them with other sources of gas, and transports the gaseous stream for use as fuel gas in combustion devices or in-process combustion equipment, such as furnaces and gas turbines, either singly or in combination.

Group 1 process vent means a process vent for which the flow rate is greater than or equal to 0.011 standard cubic meter per minute (0.39 cubic feet per minute); the total concentration is greater than or equal to the appropriate value in table 1 of subpart D of this part, and the total resource effectiveness index value, calculated according to § 65.64(h) of subpart D of this part is less than or equal to 1.0.

Group 2A process vent means a process vent that is not Group 1 or Group 2B for which monitoring and recordkeeping are required to demonstrate a total resource effectiveness index value greater than 1.0.

Group 2B process vent means a process vent that is not Group 1 or Group 2A for which monitoring and recordkeeping are not required to demonstrate a total resource effectiveness index value greater than 4.0, or which are exempt from control requirements due to the vent stream's flow rate, regulated material concentration, or total resource effectiveness index value.

Halogenated vent stream or *halogenated stream* means, for purposes of this part, a vent stream determined to be halogenated by the procedures specified in § 65.83(b)(3) of subpart E of this part for transfer racks and in § 65.64(g) of subpart D of this part for process vents, as applicable.

Halogens and hydrogen halides means hydrogen chloride (HCl), chlorine (Cl_2), hydrogen bromide (HBr), bromine (Br_2), and hydrogen fluoride (HF).

Hard-piping means pipe or tubing that is manufactured and installed using good engineering judgment and standards, such as American National Standards Institute (ANSI) B31–3.

In food/medical service means that a piece of equipment in regulated material service contacts a process stream used to manufacture a Food and Drug Administration-regulated product where leakage of a barrier fluid into the process stream would cause any of the following:

(1) A dilution of product quality so that the product would not meet written specifications;

(2) An exothermic reaction that is a safety hazard;

(3) The intended reaction to be slowed down or stopped; or

(4) An undesired side reaction to occur.

In gas/vapor service means that a piece of equipment in regulated material service contains a gas or vapor when in operation.

In heavy liquid service means that a piece of equipment in regulated material service is not in gas/vapor service or in light liquid service.

In light liquid service means that a piece of equipment in regulated material service contains a liquid that meets the following conditions:

(1) The vapor pressure of one or more of the organic compounds is greater than 0.3 kilopascals at 20 °C (0.04 pounds per square inch at 68 °F);

(2) The total concentration of the pure organic compound constituents having a vapor pressure greater than 0.3 kilopascals at 20 °C (0.04 pounds per square inch at 68 °F) is equal to or greater than 20 percent by weight of the total process stream; and

(3) The fluid is a liquid at operating conditions. (Note: Vapor pressures may be determined by standard reference texts or American Society for Testing and Materials (ASTM) D–2879.)

In liquid service means that a piece of equipment in regulated material service is not in gas/vapor service.

In regulated material service means, for the purposes of the equipment leak provisions of subpart F of this part, equipment which meets the definition of ''in volatile organic compound service'', ''in volatile hazardous air pollutant service'', ''in benzene service'', ''in vinyl chloride service'', or ''in organic hazardous air pollutant service'' as defined in the referencing subpart.

In-situ sampling systems means nonextractive samplers or in-line samplers.

In vacuum service means that equipment is operating at an internal pressure that is at least 5 kilopascals (0.7 pounds per square inch) below ambient pressure.

Incinerator means an enclosed combustion device that is used for destroying organic compounds. Auxiliary fuel may be used to heat waste gas to combustion temperatures. Any energy recovery section present is not physically formed into one manufactured or assembled unit with the combustion section; rather, the energy recovery section is a separate section following the combustion section and the two are joined by ducts or connections carrying flue gas. This energy recovery section limitation does not apply to an energy recovery section used solely to preheat the incoming vent stream or combustion air.

Initial startup means, for new or reconstructed sources, the first time the source begins production. For additions or changes not defined as a new source by an applicable referencing subpart, initial startup means the first time additional or changed equipment is put into operation. Initial startup does not include operation solely for testing equipment. Initial startup does not include subsequent startup (as defined in this section) of process units following malfunctions or process unit shutdowns. Except for equipment leaks, initial startup also does not include subsequent startups (as defined in this section) of process units following changes in product for flexible operation units or following recharging of equipment in batch operation.

Instrumentation system means a group of equipment components used to condition and convey a sample of the process fluid to analyzers and instruments for the purpose of determining process operating conditions (for example, composition, pressure, flow). Valves and connectors are the predominant type of equipment used in instrumentation systems; however, other types of equipment may also be included in these systems. Only valves nominally 0.5 inches and smaller in diameter, and connectors nominally 0.75 inches and smaller in diameter are considered instrumentation systems for the purposes of subpart F of this part.

Internal floating roof or *IFR* means a roof that is designed to rest or float on the stored liquid surface (but not necessarily in complete contact with it) inside a storage vessel that has a fixed roof.

Liquid-mounted seal means a foam-or liquid-filled continuous seal mounted in contact with the stored liquid.

Liquids dripping means any visible leakage from a seal including dripping, spraying, misting, clouding, and ice formation. Indications of liquids dripping include puddling or new stains that are indicative of an existing evaporated drip.

Loading cycle means the time period from the beginning of filling a tank truck or railcar until flow to the control device ceases as determined by the flow indicator.

Low-throughput transfer racks means those transfer racks that transfer less than a total of 11.8 million liters per year (3.12 million gallons per year) of liquid containing regulated material.

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, monitoring equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions. Malfunctions that do not affect a regulated source or compliance with this part are not malfunctions for purposes of this part.

Metallic shoe seal or *mechanical shoe seal* means metal sheets that are held vertically against the wall of the storage vessel by springs, weighted levers, or other mechanisms and connected to the floating roof by braces or other means. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

Nonautomated monitoring and recording system means manual reading of values measured by monitoring instruments and manual transcription of those values to create a record. Nonautomated systems do not include strip charts.

Nonrepairable means that it is technically infeasible to repair a piece of equipment from which a leak has been detected without a process unit shutdown.

One-hour period means the 60-minute period commencing on the hour.

Onsite or *on-site* means, with respect to records required to be maintained by this part, that the records are stored at a location within a plant site that encompasses the regulated source. Onsite includes, but is not limited to, storage at the regulated source to which the records pertain, or storage in central files elsewhere at the plant site.

Open-ended valve or line means any valve except relief valves having one side of the valve seat in contact with process fluid and one side open to the atmosphere, either directly or through open piping.

Organic monitoring device means a device used to indicate the concentration level of organic compounds based on a detection principle such as infrared, photo ionization, or thermal conductivity.

Owner or operator means any person who owns, leases, operates, controls, or supervises a regulated source or a stationary source of which a regulated source is a part.

Part 70 permit means any permit issued, renewed, or revised pursuant to part 70 of this chapter.

Performance test means the collection of data resulting from the execution of a test method (usually three emission test runs) used to demonstrate compliance with a relevant emission standard as specified in the performance test section of the relevant standard.

Permit program means a comprehensive State operating permit system established pursuant to title V of the Act (42 U.S.C. 7661) and regulations codified in part 70 of this chapter and applicable State regulations, or a comprehensive Federal operating permit system established pursuant to title V of the Act and regulations codified in part 71 of this chapter.

Permitting authority means one of the following:

(1) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under part 70 of this chapter; or

(2) The Administrator, in the case of EPA-implemented permit programs under title V of the Act (42 U.S.C. 7661) and part 71 of this chapter.

Plant site means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

Polymerizing monomer means for purposes of this part, a compound which may form polymer buildup in pump mechanical seals resulting in rapid mechanical seal failure.

Pressure release means the emission of materials resulting from the system pressure being greater than the set pressure of the relief device. This release can be one release or a series of releases over a short time period.

Pressure relief device or valve means a device used to prevent operating pressures from exceeding the maximum allowable working pressure of the

process equipment. A common pressure relief device is a spring-loaded pressure relief valve. Devices that are actuated either by a pressure of less than or equal to 2.5 pounds per square inch gauge or by a vacuum are not pressure relief devices.

Primary fuel means the fuel that provides the principal heat input to the device. To be considered primary, the fuel must be able to sustain operation without the addition of other fuels.

Process heater means an enclosed combustion device that transfers heat liberated by burning fuel directly to process streams or to heat transfer liquids other than water. A process heater may, as a secondary function, heat water in unfired heat recovery sections.

Process unit means the equipment specified in the definitions of process unit or chemical manufacturing process unit in the applicable referencing subpart. If the referencing subpart does not define process unit, then, for the purposes of this part, process unit means the equipment assembled and connected by pipes or ducts to process raw materials and to manufacture an intended product.

Process unit shutdown means a work practice or operational procedure that stops production from a process unit or part of a process unit during which it is technically feasible to clear process material from a process unit or part of a process unit consistent with safety constraints and during which repairs can be effected. An unscheduled work practice or operational procedure that stops production from a process unit or part of a process unit for less than 24 hours is not a process unit shutdown. An unscheduled work practice or operational procedure that would stop production from a process unit or part of a process unit for a shorter period of time than would be required to clear the process unit or part of the process unit of materials and start up the unit, and would result in greater emissions than delay of repair of leaking components until the next scheduled process unit shutdown is not a process unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping production are not process unit shutdowns.

Process vent means a process vent or vent stream as they are defined in the referencing subpart.

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. For purposes of the monitoring, recordkeeping, and reporting requirements of this part, recapture devices are considered recovery devices.

Recovery device means an individual unit of equipment capable of and normally used for the purpose of recovering chemicals for fuel value (i.e., net positive heating value), use, reuse, or for sale for fuel value, use, or reuse. Examples of equipment that may be recovery devices include absorbers, carbon adsorbers, condensers, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units. For purposes of the monitoring, recordkeeping, and reporting requirements of this part, recapture devices are considered recovery devices.

Reference method means any method of sampling and analyzing for an air pollutant as specified in an applicable subpart, the appendices to 40 CFR part 60 or 63, or in appendix B of 40 CFR part 61.

Referencing subpart means 40 CFR part 60, subparts Ka, Kb, VV, DDD, III, NNN, and RRR; 40 CFR part 61, subparts V, Y, and B; and 40 CFR part 63, subparts G and H.

Regulated material, means for purposes of this part, the material regulated by the specific referencing subpart, including volatile organic liquids (VOL), volatile organic compounds (VOC), organic hazardous air pollutants (HAP's), benzene, vinyl chloride, or other chemicals or groups of chemicals.

Regulated source, for the purposes of this part, means the stationary source, the group of stationary sources, or the portion of a stationary source that is regulated by a relevant standard or other requirement established pursuant to this part, or 40 CFR part 60, 61, or 63.

Relief device or valve means a device or valve used only to release an unplanned, nonroutine discharge. A relief device or valve discharge can result from an operator error, a malfunction such as a power failure or equipment failure, or other unexpected cause that requires immediate venting of gas from process equipment in order to avoid safety hazards or equipment damage.

Repaired, for the purposes of subparts F and G of this part, means that equipment meets the following conditions:

(1) Is adjusted, or otherwise altered, to eliminate a leak as defined in the applicable section of this part; and

(2) Unless otherwise specified in applicable provisions of this part, is monitored as specified in § 65.104(b) of subpart F of this part and § 65.143(c) of subpart G of this part, to verify that emissions from the equipment are below the applicable leak definition.

Routed to a process or route to a process means the emissions are conveyed to any enclosed portion of a process unit where the emissions are predominantly recycled and/or consumed in the same manner as a material that fulfills the same function in the process and/or transformed by chemical reaction into materials that are not regulated materials and/or incorporated into a product; and/or recovered.

Run means one of a series of emission or other measurements needed to determine emissions for a representative operating period or cycle as specified in this part. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

Sampling connection system means an assembly of equipment within a process unit used during periods of representative operation to take samples of the process fluid. Equipment used to take nonroutine grab samples is not considered a sampling connection system.

Screwed (threaded) connector means a threaded pipe fitting where the threads are cut on the pipe wall and the fitting requires only two pieces to make the connection (i.e., the pipe and the fitting).

Secondary fuel means a fuel fired through a burner other than the primary fuel burner that provides supplementary heat in addition to the heat provided by the primary fuel.

Sensor means a device that measures a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

Set pressure means, for the purposes of subparts F and G of this part, the pressure at which a properly operating pressure relief device begins to open to relieve atypical process system operating pressure.

Shutdown means the cessation of operation of a regulated source (for example, chemical manufacturing process unit or a reactor, air oxidation reactor, distillation unit) and equipment required or used to comply with this part, or the emptying and degassing of a storage vessel. Shutdown is defined here for purposes including, but not limited to, periodic maintenance, replacement of equipment, or repair. Shutdown does not include the routine

rinsing or washing of equipment in batch operation between batches.

Simultaneous loading means, for a shared control device, loading of regulated materials from more than one transfer arm at the same time so that the beginning and ending times of loading cycles coincide or overlap and there is no interruption in vapor flow to the shared control device.

Single-seal system means, for purposes of subpart C of this part, a floating roof having one continuous seal. This seal may be a vapor-mounted, liquid mounted, or metallic shoe seal.

Specific gravity monitoring device means a unit of equipment used to monitor specific gravity and having a minimum accuracy of ±0.02 specific gravity units.

Startup means the setting into operation of a regulated source (for example, chemical manufacturing process unit or a reactor, air oxidation reactor, distillation unit, a storage vessel after emptying and degassing) and/or equipment required or used to comply with this part. Startup includes initial startup, operation solely for testing equipment, the recharging of equipment in batch operation, and transitional conditions due to changes in product for flexible operation units.

State means all non-Federal authorities, including local agencies, interstate associations, and statewide programs, that have delegated authority to implement the provisions of this part; the referencing subparts; and/or the permit program established under part 70 of this chapter. The term State shall have its conventional meaning where clear from the context.

Steam jet ejector means a steam nozzle that discharges a high-velocity jet across a suction chamber that is connected to the equipment to be evacuated.

Stuffing box pressure means the fluid (liquid or gas) pressure inside the casing or housing of a piece of equipment, on the process side of the inboard seal.

Surge control vessel means feed drums, recycle drums, and intermediate vessels. Surge control vessels are used within a process unit (as defined in the specific subpart that references this part) when in-process storage, mixing, or management of flow rates or volumes is needed to assist in production of a product.

Synthetic organic chemical manufacturing industry consolidated air regulation unit or SOCMI CAR unit means the equipment assembled and connected by pipes or ducts to process raw materials, and to manufacture intended products defined in 40 CFR part 60, subparts VV, III, NNN, and RRR, and in 40 CFR part 63, subpart F. A SOCMI CAR unit defines the boundary of equipment potentially subject to this part. A SOCMI CAR unit may consist of one or more unit operations. For the purpose of this subpart, SOCMI CAR unit includes air oxidation reactors and their associated product separators and recovery devices; reactors and their associated product separators and recovery devices; distillation units and their associated distillate receivers and recovery devices; associated unit operations; associated recovery devices; and any feed, intermediate and product storage vessels, product transfer racks, and connected ducts and piping. A SOCMI CAR unit includes pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, and control devices or systems. Except as provided in § 65.1(i), procedures for assigning storage vessels, transfer racks, distillation units and equipment to SOCMI CAR units are specified in § 65.1(j), (k), (l), and (m), respectively. A SOCMI CAR unit is identified by its primary product. If a SOCMI CAR unit is subject to both HON and an NSPS for VOC emissions from SOCMI, the SOCMI CAR unit shall be defined as the HON chemical manufacturing process unit. To be considered a SOCMI CAR unit one of the following must occur:

(1) It must include a process vent subject to 40 CFR part 60, subparts III, NNN, or RRR, or equipment subject to 40 CFR part 60 subpart VV;

(2) It must include a process vent that would be subject to 40 CFR part 60 subparts III, NNN, or RRR or equipment that would be subject to 40 CFR part 60 subpart VV if construction of the regulated source had commenced after the applicability date of the applicable SOCMI New Source Performance Standards; or

(3) It must be a chemical manufacturing process unit subject to 40 CFR 63.100 of subpart F, the Hazardous Organic National Emissions Standard for Hazardous Air Pollutants (HON).

Temperature monitoring device means a unit of equipment used to monitor temperature and having a minimum accuracy of ±1 percent of the temperature being monitored expressed in degrees Celsius or ±1.2 degrees Celsius (°C), whichever is greater.

Title V permit means any permit issued, renewed, or revised pursuant to Federal or State regulations established under 40 CFR part 70 or 71 to implement title V of the Act (42 U.S.C. 7661).

Total organic compounds or *TOC* means those compounds measured according to the procedures specified in § 65.64(c) of subpart D of this part, and § 65.158(b)(3)(ii)(A) of subpart G of this part, as applicable. Those compounds that the Administrator has determined do not contribute appreciably to the formation of ozone and that are specifically excluded from the definition of volatile organic compound at 40 CFR 51.100(s), are to be excluded for the purposes of measuring the hourly emission rate as required in § 65.64(f) of subpart D of this part for process vents subject to subpart III, NNN, or RRR of part 60.

Total resource effectiveness index value or *TRE index value* means a calculated value used to determine whether control is required for a process vent. It is based on process vent flow rate, emission rate of regulated material, net heating value, and corrosion properties (halogenated compound content), as quantified by the equations given under § 65.64(h) of subpart D of this part.

Vapor balancing system means a piping system that is designed to collect regulated material vapors displaced from tank trucks or railcars during loading and to route the collected regulated material vapors to the storage vessel from which the liquid being loaded originated, or to another storage vessel connected by a common header; or to compress and route to a process or a fuel gas system the collected regulated material vapors.

Vapor-mounted seal means a continuous seal that is mounted so that there is a vapor space between the stored liquid and the bottom of the seal.

Visible emission means the observation of an emission of opacity or optical density above the threshold of vision.

§ 65.3 Compliance with standards and operation and maintenance requirements.

(a) *Requirements.* (1) Except as provided in paragraph (a)(2) of this section, the emission standards and established parameter ranges of this part shall apply at all times except during periods of startup, shutdown (as defined in § 65.2), malfunction, or nonoperation of the regulated source (or specific portion thereof) resulting in cessation of the emissions to which this part applies. However, if a startup, shutdown, malfunction, or period of nonoperation of one portion of a regulated source does not affect the ability of a particular emission point to comply with the specific provisions to which it is subject, then that emission point shall still be required to comply with the applicable provisions of this part during the startup, shutdown, malfunction, or

period of nonoperation. For example, if there is an over pressure in the reactor area, a storage vessel in a chemical manufacturing process unit would still be required to be controlled in accordance with subpart C of this part. Similarly, the degassing of a storage vessel would not affect the ability of a process vent to meet the requirements of subpart D or G of this part.

(2) Subpart F of this part shall apply at all times except during periods of startup or shutdown (as defined in § 65.2), malfunction, process unit shutdown (as defined in § 65.2), or nonoperation of the regulated source (or specific portion thereof) in which the lines are drained and depressurized resulting in cessation of the emissions to which subpart F of this part applies.

(3) The owner or operator shall not shut down items of equipment that are required or utilized for compliance with requirements of this part during times when emissions are being routed to such items of equipment, if the shutdown would contravene requirements of this part applicable to such items of equipment. The owner or operator shall not shut down CPMS during times when emissions are being routed to the equipment that are being monitored by the CPMS. Paragraph (a)(3) of this section does not apply if the item of equipment or CPMS is malfunctioning or if the owner or operator must shut down the equipment to avoid damage due to a contemporaneous startup, shutdown, or malfunction of the regulated source or portion thereof.

(4) During startups, shutdowns, and malfunctions when the emission standards of this part do not apply pursuant to paragraphs (a)(1) through (a)(3) of this section, the owner or operator shall implement, to the extent reasonably available, measures to prevent or minimize excess emissions. For purposes of paragraph (a)(4) of this section, the term ''excess emissions'' means emissions in excess of those that would have occurred if there were no startup, shutdown, or malfunction and the owner or operator complied with the relevant provisions of this part. The measures to be taken shall be identified in the applicable startup, shutdown, and malfunction plan and may include, but are not limited to, air pollution control technologies, recovery technologies, work practices, pollution prevention, monitoring, and/or changes in the manner of operation of the regulated source. Backup control devices are not required but may be used if available. Paragraph (a)(4) of this section does not apply to Group 2A or Group 2B process vents.

(5) Malfunctions shall be corrected as soon as practical after their occurrence in accordance with the startup, shutdown, and malfunction plan required in § 65.6(a). Paragraph (a)(5) of this section does not apply to Group 2A or Group 2B process vents.

(6) Operation and maintenance requirements established pursuant to section 112 of the Act are enforceable independent of emissions limitations or other requirements in relevant standards.

(b) *Compliance determination procedures.* (1) *Parameter monitoring: compliance with operating conditions.* The parameter monitoring data for emission points that are required to perform continuous monitoring shall be used to determine compliance with the required operating conditions for the monitored control devices or recovery devices. For each excursion except for excused excursions, and as provided for in paragraph (b)(4)(iii)(B) of this section the owner or operator shall be deemed to have failed to have applied the control in a manner that achieves the required operating conditions.

(2) *Parameter monitoring: Excursions.* An excursion is not a violation and in cases where continuous monitoring is required the excursion does not count toward the number of excused excursions, if the conditions of paragraphs (b)(2)(i) or (b)(2)(ii) of this section are met. Nothing in paragraph (b)(2) of this section shall be construed to allow or excuse a monitoring parameter excursion caused by any activity that violates other applicable provisions of this part.

(i) During periods of startup, shutdown, or malfunction [and the source is operated during such periods in accordance with the source's startup, shutdown, and malfunction plan as required by § 65.6(a)], a monitoring parameter is outside its established range or monitoring data cannot be collected; or

(ii) During periods of nonoperation of the regulated source or portion thereof (resulting in cessation of the emissions to which the monitoring applies).

(3) *Operation and maintenance procedures.* Determination of whether acceptable operation and maintenance procedures are being used will be based on information available to the Administrator that may include, but is not limited to, monitoring results, review of operation and maintenance procedures (including the startup, shutdown, and malfunction plan, if applicable, required in § 65.6(a), as applicable), review of operation and maintenance records, inspection of the regulated source, and alternatives approved as specified in § 65.7.

(4) *Emissions standards.* Paragraphs (b)(4)(i) through (b)(4)(iii) of this section shall govern the use of data, tests, and requirements to determine compliance with emissions standards. Paragraphs (b)(4)(i) through (b)(4)(iii) do not apply to Group 2A or Group 2B process vents. Compliance with design, equipment, work practice, and operating standards, including those for equipment leaks, shall be determined according to paragraph (a)(3) of this section.

(i) *Performance test.* The Administrator will determine compliance with emission standards of this part based on the results of performance tests conducted according to the procedures specified in subpart G of this part, unless otherwise specified in a subpart of this part.

(ii) *Operation and maintenance requirements.* The Administrator will determine compliance with emission standards of this part by evaluation of an owner or operator's conformance with operation and maintenance requirements, including the evaluation of monitoring data, as specified in subparts of this part.

(5) *Design, equipment, work practice, or operational standards.* Paragraphs (b)(5)(i) and (b)(5)(ii) do not apply to Group 2A or Group 2B process vents.

(i) *Records and inspection.* The Administrator will determine compliance with design, equipment, work practice, or operational emission standards requirements by review of records, inspection of the regulated source, and other procedures specified in this part.

(ii) *Operation and maintenance.* The Administrator will determine compliance with design, equipment, work practice, or operational standards by evaluation of an owner or operator's conformance with operation and maintenance requirements as specified in paragraph (a) of this section, in other subparts of this part, and in applicable provisions of § 65.6(b).

(c) *Finding of compliance.* The Administrator will make a finding concerning a regulated source's compliance with an emission standard or operating and maintenance requirement as specified in paragraphs (a) and (b) of this section upon obtaining all the compliance information required by the relevant standard (including the written reports of performance test results, monitoring results, and other information, if applicable) and any information available to the Administrator needed to determine whether proper operation and maintenance practices are being used.

Standards in this part and methods of determining compliance are given in metric units followed by the equivalents in English units. The Administrator will make findings of compliance with the standards of this part using metric units.

(d) *Compliance times.* All terms that define a period of time for completion of required tasks (for example, weekly, monthly, quarterly, annually) unless specified otherwise in the section or paragraph that imposes the requirement refer to the standard calendar periods.

(1) Notwithstanding time periods specified for completion of required tasks, time periods may be changed by mutual agreement between the owner or operator and the Administrator as specified in § 65.5(h)(5) (for example, a period could begin on the compliance date or another date, rather than on the first day of the standard calendar period). For each time period that is changed by agreement, the revised period shall remain in effect until it is changed. A new request is not necessary for each recurring period.

(2) When the period specified for compliance is a standard calendar period, if the initial compliance date occurs after the beginning of the period, compliance shall be required according to the schedule specified in paragraphs (d)(2)(i) or (d)(2)(ii) of this section, as appropriate.

(i) Compliance shall be required before the end of the standard calendar period within which the compliance deadline occurs if there remain at least 3 days for tasks that must be performed weekly, at least 2 weeks for tasks that must be performed monthly, at least 1 month for tasks that must be performed each quarter, or at least 3 months for tasks that must be performed annually; or

(ii) In all other cases, compliance shall be required before the end of the first full standard calendar period after the period within which the initial compliance deadline occurs.

(3) In all instances where a provision requires completion of a task during each of multiple successive periods, an owner or operator may perform the required task at any time during the specified period provided the task is conducted at a reasonable interval after completion of the task during the previous period.

§ 65.4 Recordkeeping.

(a) *Maintaining notifications, records, and reports.* Except as provided in paragraph (b) of this section, the owner or operator of each regulated source subject to this part shall keep copies of notifications, reports, and records required by this part for the length of time specified in paragraphs (a)(1) or (a)(2) of this section, as applicable.

(1) If an owner or operator is required to operate under a title V permit, then all applicable notifications, reports, and records shall be maintained for at least 5 years, unless a subpart of this part specifies a longer period.

(2) If an owner or operator is not required to operate under a title V permit, then all notifications, reports, and records required by this part shall be maintained for at least 2 years. If a subpart of this part specifies records to be maintained for a period different than 2 years, then those records shall be kept for that period.

(b) *Copies of reports.* If an owner or operator submits reports to the applicable EPA Regional Office, the owner or operator is not required to maintain copies of those reports. If the EPA Regional Office has waived the requirement of § 65.5(g)(1) for submittal of copies of reports, the owner or operator is not required to maintain copies of the waived reports. Paragraph (b) of this section applies only to reports and not the underlying records which must be maintained as specified throughout this part.

(c) *Availability of records.* All applicable records shall be maintained in such a manner that they can be readily accessed and are suitable for inspection as specified in paragraph (c)(1) or (c)(2) of this section.

(1) Except as specified in paragraph (c)(2) of this section, records of the most recent 2 years shall be retained onsite or shall be accessible to an inspector while onsite. The records of the remaining 3 years, where required, may be retained offsite.

(2) For sources referenced to this part from 40 CFR part 63, subpart G or H, the most recent 6 months of records shall be retained on site or shall be accessible to an inspector while onsite from a central location by computer or other means that provides access within 2 hours after a request. The remaining 4 and one-half years of records, where required, may be retained offsite.

(3) Records specified in paragraph (c)(1) or (c)(2) of this section may be maintained in hard copy or computer-readable form including, but not limited to, on paper, microfilm, computer, computer disk, magnetic tape, or microfiche.

§ 65.5 Reporting requirements.

(a) *Required reports.* Each owner or operator of a regulated source subject to this subpart shall submit the reports listed in paragraphs (a)(1) through (a)(6) of this section, as applicable.

(1) A *Notification of Initial Startup* described in paragraph (b) of this section.

(2) An *Initial Notification for Part 65 Applicability* described in paragraph (c) of this section.

(3) An *Initial Compliance Status Report* described in paragraph (d) of this section.

(4) *Periodic reports* described in paragraph (e) of this section.

(5) *Other reports.* Other reports shall be submitted as specified elsewhere in this part.

(6) *Startup, shutdown, and malfunction reports* described in § 65.6(c) of this subpart.

(b) *Notification of Initial Startup*—(1) *Contents.* Any owner or operator of a regulated source which elects to comply with this part at initial startup shall send the Administrator written notification of the actual date of initial startup of a regulated source.

(2) *Due date.* The notification of the actual date of initial startup shall be postmarked within 15 days after such date.

(c) *Initial Notification for Part 65 Applicability.* Owners or operators of regulated sources that have been subject to a 40 CFR part 60, 61, or 63 standard and who have chosen to comply with this part and who are not operating the regulated source under an approved title V permit shall notify the Administrator. The notice shall include the information specified in paragraphs (c)(1) through (c)(7) of this section, as applicable, and may accompany the application for a construction permit for the regulated source. This notification may be waived by the Administrator.

(1) Identification of the storage vessels subject to subpart C of this part.

(2) Identification of the process vents subject to subpart D of this part, including process vent group status as specified in § 65.62(a) of subpart D of this part.

(3) Identification of the process vents subject to 40 CFR part 60, subpart DDD complying with requirements of subpart G of this part.

(4) Identification of the transfer racks subject to subpart E of this part.

(5) For equipment leaks, identification of the process units subject to subpart F of this part.

(6) The proposed implementation schedule specified in § 65.1(f)(1) for sources identified in paragraphs (c)(1) through (c)(5) of this section, with the implementation schedule extending no longer than 3 years.

(7) *Process unit identification.* As an alternative to requirements specified in paragraphs (c)(1) through (c)(4), and (c)(6) of this section, the process units

can be identified instead of the individual pieces of equipment. For this alternative, the kind of emission point in the process unit that will comply must also be identified.

(d) *Initial Compliance Status Report*—(1) *Contents.* The owner or operator shall submit an Initial Compliance Status Report for each regulated source subject to this part containing the information specified in the subparts of this part. Unless the required information has already been submitted under requirements of the applicable referencing subpart, this information can be submitted as part of a title V permit application or amendment.

(2) *Due date.* The owner or operator shall submit the Initial Compliance Status Report for each regulated source 240 days after the applicable compliance date specified in the referencing subparts, or 60 days after the completion of the initial performance test or initial compliance determination, whichever is earlier. Initial compliance Status Reports may be combined for multiple regulated sources as long as the due date requirements for all sources covered in the combined report are met.

(e) *Periodic reports.* The owner or operator of a source subject to monitoring requirements of this part or to other requirements of this part where periodic reporting is specified, shall submit a periodic report.

(1) *Contents.* Periodic reports shall include all information specified in subparts of this part.

(2) *Due date.* The periodic report shall be submitted semiannually no later than 60 calendar days after the end of each 6-month period. The first report shall be submitted no later than the last day of the month that includes the date 8 months after the date the source became subject to this rule or since the last part 60, part 61, or part 63 periodic report was submitted for the applicable requirement, whichever is earlier.

(3) *Overlap with title V reports.* Information required by this part, which is submitted with a title V periodic report, need not also be included in a subsequent periodic report required by this part. The title V report shall be referenced in the periodic report required by this part.

(f) *General report content.* All reports and notifications submitted pursuant to this part, including reports that combine information from this part and a referencing subpart, shall include the information specified in paragraphs (f)(1) through (f)(4) of this section.

(1) The name, address, and telephone number (fax number may also be provided) of the owner or operator.

(2) The name, address and telephone number of the person to whom inquiries should be addressed, if different than the owner/operator.

(3) The address (physical location) of the reporting facility.

(4) Identification of each regulated source covered in the submission and identification of which subparts (referencing and part 65) options from this part are applicable to that regulated source. Summaries and groupings of this information are permitted.

(g) *Report and notification submission*—(1) *Submission.* All reports and notifications required under this part shall be sent to the Administrator at the appropriate EPA Regional Office and to the delegated State authority, except that requests for permission to use an alternative means of emission limitation as provided for in § 65.8(a) shall be submitted to the Director of the EPA Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, MD–10, Research Triangle Park, North Carolina, 27711. The EPA Regional Office may waive the requirement to receive a copy of any reports or notifications at its discretion.

(2) *Submission of copies.* If any State requires a notice that contains all the information required in a report or notification listed in this part, an owner or operator may send the appropriate EPA Regional Office a copy of the report or notification sent to the State to satisfy the requirements of this part for that report or notification.

(3) *Method of submission.* Wherever this subpart specifies ''postmark'' dates, submittals may be sent by methods other than the U.S. Mail (for example, by fax or courier). Submittals shall be sent on or before the specified date.

(4) *Submission by electronic media.* If acceptable to both the Administrator and the owner or operator of a source, reports may be submitted on electronic media.

(h) *Adjustment to timing of submittals and review of required communications*—(1) *Alignment with title V submission.* An owner or operator may submit periodic reports required by this part on the same schedule as the title V periodic report for the facility. The owner or operator using this option need not obtain prior approval, but must assure no reporting gaps from the last periodic report for the relevant standards. The owner or operator shall clearly identify the change in reporting schedule in the first report filed under paragraph (h) of this section. The requirements of paragraph (e) of this section are not waived when implementing this change.

(2) *Request for adjustment.* An owner or operator may arrange by mutual agreement (which may be a standing agreement) with the Administrator a common schedule on which periodic reports required by this part shall be submitted throughout the year as long as the reporting period is not extended. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practical before the subject activity is required to take place. The owner or operator shall include in the request whatever information he or she considers useful to convince the Administrator that an adjustment is warranted. A request for a change to the periodic reporting schedule need only be made once for every schedule change and not once for every semiannual report submitted.

(3) *Approval of request for adjustment.* If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 15 calendar days of receiving sufficient information to evaluate the request.

(4) *Notification of delay.* If the Administrator is unable to meet a specified deadline, the owner or operator will be notified of any significant delay and informed of the amended schedule.

(i) An owner or operator shall report in a title V permit application or as otherwise specified by the permitting authority, the information listed in paragraphs (i)(1) through (i)(5) of this section.

(1) A list designating each emission point complying with subparts C through G of this part and whether each process vent is Group 1, Group 2A, or Group 2B.

(2) The control technology or method of compliance that will be applied to each emission point.

(3) A statement that the compliance demonstration, monitoring, inspection, recordkeeping, and reporting provisions in subparts C through G of this part that are applicable to each emission point will be implemented beginning on the date of compliance as specified in the referencing subpart.

(4) The monitoring information in § 65.162(e) of subpart G of this part if, for any emission point, the owner or operator of a source seeks to comply

through use of a control technique other than those for which monitoring parameters are specified in §§ 65.148 through 65.154 of subpart G of this part.

(5) Any requests for alternatives to the continuous operating parameter monitoring and recordkeeping provisions, as specified in § 65.162(d) of subpart G of this part.

§ 65.6 Startup, shutdown, and malfunction plan and procedures.

(a) Paragraphs (b) and (c) of this section do not apply to Group 2A or Group 2B process vents.

(b) *Startup, shutdown, and malfunction plan*—(1) *Description and purpose of plan.* The owner or operator of a regulated source shall develop and implement a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the regulated source during periods of startup, shutdown, and malfunction and a program of corrective action for malfunctioning process and air pollution control equipment used to comply with the relevant standard. The plan shall also address routine or otherwise predictable CPMS malfunctions. This plan shall be developed by the owner or operator by the regulated source's implementation date as specified in § 65.1(f), or, for sources referenced from 40 CFR part 63, subpart F, by the compliance date specified in that subpart. The requirement to develop and implement this plan shall be incorporated into the source's title V permit. This requirement is optional for equipment that must comply with subpart F of this part. It is not optional for equipment equipped with a closed vent system and control device subject to subpart G of this part. The purpose of the startup, shutdown, and malfunction plan is described in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(i) To ensure that owners or operators are prepared to correct malfunctions as soon as practical after their occurrence in order to minimize excess emissions of regulated material; and

(ii) To reduce the reporting burden associated with periods of startup, shutdown, and malfunction (including corrective action taken to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation).

(2) *Operation of source.* During periods of startup, shutdown, and malfunction, the owner or operator of a regulated source shall operate and maintain such source (including associated air pollution control equipment and CPMS) in accordance with the procedures specified in the startup, shutdown, and malfunction plan developed under paragraph (b)(1) of this section.

(3) *Use of additional procedures.* To satisfy the requirements of this section to develop a startup, shutdown, and malfunction plan, the owner or operator may use the regulated source's standard operating procedures (SOP) manual, or an Occupational Safety and Health Administration (OSHA) or other plan, provided the alternative plans meet all the requirements of this section and are made available for inspection when requested by the Administrator.

(4) *Revisions to the plan.* Based on the results of a determination made under § 65.3(b)(3), the Administrator may require that an owner or operator of a regulated source make changes to the startup, shutdown, and malfunction plan for that source. The Administrator may require reasonable revisions to a startup, shutdown, and malfunction plan, if the Administrator finds that the plan is inadequate as specified in paragraphs (b)(4)(i) through (b)(4)(iv) of this section:

(i) Does not address a startup, shutdown, and malfunction event of the CPMS, the air pollution control equipment, or the regulated source that has occurred; or

(ii) Fails to provide for the operation of the regulated source (including associated air pollution control equipment and CPMS) during a startup, shutdown, and malfunction event in a manner consistent with good air pollution control practices for minimizing emissions to the extent practical; or

(iii) Does not provide adequate procedures for correcting malfunctioning process and/or air pollution control equipment as quickly as practicable; or

(iv) Does not provide adequate measures to prevent or minimize excess emissions to the extent practical as specified in § 65.3(a)(4).

(5) *Additional malfunction plan requirements.* If the startup, shutdown, and malfunction plan fails to address or inadequately addresses an event that meets the characteristics of a malfunction but was not included in the startup, shutdown, and malfunction plan at the time the owner or operator developed the plan, the owner or operator shall revise the startup, shutdown, and malfunction plan within 45 days after the event to include detailed procedures for operating and maintaining the regulated source during similar malfunction events and a program of corrective action for similar malfunctions of process or air pollution control equipment or CPMS.

(c) *Startup, shutdown, and malfunction reporting requirements*—(1) *Periodic startup, shutdown, and malfunction reports.* If actions taken by an owner or operator during a startup, shutdown, and malfunction of a regulated source, or of a control device or monitoring system required for compliance (including actions taken to correct a malfunction) are consistent with the procedures specified in the source's startup, shutdown, and malfunction plan, then the owner or operator shall state such information in a startup, shutdown, and malfunction report. During the reporting period, reports shall only be required for startup, shutdown, and malfunction during which excess emissions occur. A startup, shutdown, and malfunction report can be submitted as part of a periodic report required under § 65.5(e), or on a more frequent basis if specified otherwise in a relevant standard or as established otherwise by the permitting authority in the source's title V permit. The startup, shutdown, and malfunction report shall be delivered or postmarked by the 30th day following the end of each calendar half (or other calendar reporting period, as appropriate), unless the information is submitted with the periodic report. The report shall include the information specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this section.

(i) The name, title, and signature of the owner or operator or other responsible official certifying its accuracy.

(ii) The number of startup, shutdown, malfunction events and the total duration of all periods of startup, shutdown, and malfunction for the reporting period if the total duration amounts to either of the durations in paragraphs (c)(1)(ii)(A) or (c)(1)(ii)(B) of this section.

(A) Total duration of periods of inoperation or malfunctioning of a CPMS, as recorded in § 65.162(a)(2)(iii) of subpart G of this part, equal to or greater than 5 percent of that CPMS operating time for the reporting period; or

(B) Total duration of periods of startup, shutdown, and malfunction for a regulated source during which excess emission occur equal to or greater than 1 percent of that regulated source operating time for the reporting period.

(2) *Immediate startup, shutdown, and malfunction reports.* Notwithstanding the allowance to reduce the frequency of reporting for startup, shutdown, and malfunction reports under paragraph (c)(1) of this section, any time an action taken by an owner or operator during a startup, shutdown, or malfunction (including actions taken to correct a

malfunction) during which excess emissions occur is not consistent with the procedures specified in the regulated source's startup, shutdown, and malfunction plan, the owner or operator shall report the actions taken for that event within 2 working days after commencing actions inconsistent with the plan followed by a letter delivered or postmarked within 7 working days after the end of the event. The immediate report required under this paragraph (c)(2) of this section shall contain the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy, explaining the circumstances of the event, the reasons for not following the startup, shutdown, and malfunction plan, and whether any excess emissions and/or parameter monitoring exceedances are believed to have occurred. Not withstanding the requirements of the previous sentence, after the effective date of an approved permit program in the State in which a regulated source is located, the owner or operator may make alternative reporting arrangements, in advance, with the permitting authority in that State. Procedures governing the arrangement of alternative reporting requirements under paragraph (c)(2) of this section are specified in § 65.5(h).

§ 65.7 Monitoring, recordkeeping, and reporting waivers and alternatives.

(a) *Waiver of recordkeeping or reporting requirements*—(1) *Waiver application.* The owner or operator may apply for a waiver from recordkeeping or reporting requirements if the regulated source is achieving the relevant standard(s), or the source is operating under an extension of compliance, under 40 CFR 63.6(i) or a waiver of compliance under 40 CFR 61.10(b), or the owner or operator has requested an extension or waiver of compliance and the Administrator is still considering that request. The waiver application shall be submitted in writing to the Administrator.

(2) *Extension of compliance request.* If an application for a waiver of recordkeeping or reporting is made, the application shall accompany the request for an extension of compliance under 40 CFR 63.6(i) or the request for a waiver of compliance under 40 CFR 61.10(b), any required compliance progress report or compliance status report required in the source's title V permit application or a permit modification application, or a periodic report required under this part, whichever is applicable. The application shall include whatever information the owner or operator considers useful to convince the Administrator that a waiver of recordkeeping or reporting is warranted.

(3) *Approval or denial of waiver.* The Administrator will approve or deny a request for a waiver of recordkeeping or reporting requirements when performing one of the actions described in paragraphs (a)(3)(i) through (a)(3)(iii) of this section:

(i) Approves or denies an extension of compliance under 40 CFR 63.6(i) or a waiver of compliance under 40 CFR 61.10(b); or

(ii) Makes a determination of compliance following the submission of a required compliance status report or periodic report; or

(iii) Makes a determination of suitable progress towards compliance following the submission of a compliance progress report, whichever is applicable.

(4) *Waiver conditions.* A waiver of any recordkeeping or reporting requirement granted under paragraph (a) of this section may be conditioned on other recordkeeping or reporting requirements deemed necessary by the Administrator.

(5) *Waiver cancellation.* Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later canceling the waiver. The cancellation will be made only after notice is given to the owner or operator of the regulated source.

(b) *Requests for approval of alternative monitoring or recordkeeping.* An owner or operator may submit a written request for approval to use alternatives to the monitoring or recordkeeping provisions of this part. For process vents and transfer racks, except low-throughput transfer racks, the provisions in paragraph (c) of this section shall govern the review and approval of requests. In addition, the application shall include information justifying the owner or operator's request for an alternative monitoring or recordkeeping method, such as the technical or economic infeasibility, or the impracticality, of the regulated source using the required method. For storage vessels and low throughput transfer racks, owners and operators shall comply with the requirements of § 65.145(b) of subpart G of this part for preparing and submitting a design evaluation. For equipment leaks, owners and operators shall comply with the recordkeeping requirements of § 65.163(d) of subpart G of this part.

(c) *Approval or denial of request to use alternative monitoring or recordkeeping.* The Administrator will notify the owner or operator of approval or intention to deny approval of the request to use an alternative monitoring or recordkeeping method within 90 calendar days after receipt of the original request and within 30 calendar days after receipt of any supplementary information that is submitted. Before disapproving any request to use an alternative method, the Administrator will notify the applicant of the Administrator's intention to disapprove the request together with the items specified in paragraphs (c)(1) and (c)(2) of this section:

(1) Notice of the information and findings on which the intended disapproval is based; and

(2) Notice of opportunity for the owner or operator to present additional information to the Administrator before final action on the request. At the time the Administrator notifies the applicant of the intention to disapprove the request, the Administrator will specify how much time the owner or operator will have after being notified of the intended disapproval to submit the additional information.

(d) *Use of an alternative monitoring or recordkeeping method.* (1) The owner or operator of a regulated source is subject to the monitoring and recordkeeping requirements of the relevant standard unless permission to use an alternative monitoring or recordkeeping method requested under paragraph (b) of this section or § 65.162(d) of subpart G of this part has been granted by the Administrator. Once an alternative is approved, the owner or operator shall use the alternative for the emission points or regulated sources cited in the approval and shall meet the monitoring and recordkeeping requirements of the relevant standard for all other emission points or regulated sources.

(2) If the Administrator approves the use of an alternative monitoring or recordkeeping method for a regulated source under paragraph (c) of this section, the owner or operator of such source shall continue to use the alternative monitoring or recordkeeping method unless he or she receives approval from the Administrator to use another method.

(3) If the Administrator finds reasonable grounds to dispute the results obtained by an alternative monitoring or recordkeeping method, requirement, or procedure, the Administrator may require the use of a method, requirement, or procedure specified in the relevant standard. If the results of the specified and alternative methods, requirements, or procedures do not agree, the results obtained by the specified method, requirement, or procedure shall prevail.

§ 65.8 Procedures for approval of alternative means of emission limitation.

(a) *Alternative means of emission limitation.* An owner or operator may request a determination of equivalence for an alternative means of emission limitation to the requirements of design, equipment, work practice, or operational standards of this part. If, in the judgment of the Administrator, an alternative means of emission limitation will achieve a reduction in regulated material emissions at least equivalent to the reduction in emissions from that source achieved under any design, equipment, work practice, or operational standards (but not performance standards) in this part, the Administrator will publish in the **Federal Register** a notice permitting the use of the alternative means for purposes of compliance with that requirement.

(1) The notice may condition the permission on requirements related to the operation and maintenance of the alternative means.

(2) Any such notice shall be published only after public notice and an opportunity for a hearing.

(b) *Content of submittal.* (1) In order to obtain approval, any person seeking permission to use an alternative means of compliance under this section shall collect, verify, and submit to the Administrator information showing that the alternative means achieves equivalent emission reductions. An owner or operator seeking permission to use an alternative means of compliance who has not previously performed testing shall also submit a proposed test plan. If the owner or operator seeks permission to use an alternative means of compliance based on previously performed testing, they shall submit the results of that testing, a description of the procedures followed in testing or monitoring, and a description of pertinent conditions during testing or monitoring.

(2) The owner or operator who requests an alternative means of emission limitation shall submit a description of the proposed testing, monitoring, recordkeeping, and reporting that will be used and the proposed basis for demonstrating compliance.

(3) For storage vessels, the owner or operator shall include the results of actual emissions tests using full-size or scale-model storage vessels that accurately collect and measure all regulated material emissions using a given control technique, and that accurately simulate wind and account for other emission variables such as temperature and barometric pressure, or an engineering analysis that the Administrator determines is an accurate method of determining equivalence.

(4) For proposed alternatives to equipment leak requirements, the owner or operator shall also submit the information and meet the requirements for alternative means of emission limitation specified in § 65.102(b) of subpart F of this part (alternative means of emission limitation).

(c) Manufacturers of equipment used to control equipment leaks of a regulated material may request a determination of equivalence for an alternative means of emission limitation for equipment leaks, as specified in § 65.102(c) of this part.

(d) *Compliance.* If the Administrator makes a determination that a means of emission limitation is a permissible alternative to the requirements of design, equipment, work practice, or operational standards of this part, the owner or operator shall either comply with the alternative or comply with the requirements of this part.

§ 65.9 Availability of information and confidentiality.

(a) *Availability of information.* The availability to the public of information provided to, or otherwise obtained by, the Administrator under this part shall be governed by part 2 of this chapter. With the exception of information protected under part 2 of this chapter, all reports, records, and other information collected by the Administrator under this part are available to the public. In addition, a copy of each permit application, compliance plan (including the schedule of compliance), initial compliance status report, periodic report, and title V permit is available to the public, consistent with protections recognized in section 503(e) of the Act.

(b) *Confidentiality.* (1) If an owner or operator is required to submit information entitled to protection from disclosure under section 114(c) of the Act, the owner or operator may submit such information separately. The requirements of section 114(c) shall apply to such information.

(2) The contents of a title V permit shall not be entitled to protection under section 114(c) of the Act; however, information submitted as part of an application for a title V permit may be entitled to protection from disclosure.

§ 65.10 State authority.

(a) The provisions of this part shall not be construed in any manner to preclude any State or political subdivision thereof from adopting and enforcing any emission standard or limitation applicable to a regulated source, provided that such standard, limitation, prohibition, or other regulation is not less stringent than the standard applicable to such a regulated source.

(b) The provisions of this part shall not be construed in any manner to preclude any State or political subdivision thereof from requiring the owner or operator of a regulated source to obtain permits, licenses, or approvals prior to initiating construction, modification, or operation of such a regulated source.

§ 65.11 Circumvention.

(a) No owner or operator subject to the provisions of this part shall build, erect, install, or use any article, machine, equipment, or process to conceal an emission that would otherwise constitute noncompliance with a relevant standard. Such concealment includes, but is not limited to those listed in paragraphs (a)(1) and (a)(2) of this section.

(1) The use of diluents to achieve compliance with a relevant standard based on the concentration of a pollutant in the effluent discharged to the atmosphere and;

(2) The fragmentation of an operation for the purpose of avoiding regulation by a relevant standard.

(b) *Prohibited activities.* (1) No owner or operator subject to the provisions of this part shall operate any regulated source in violation of the requirements of this part except under the provisions specified in paragraphs (b)(1)(i) through (b)(1)(iii):

(i) An extension or waiver of compliance granted by the Administrator under an applicable part; or

(ii) An extension of compliance granted under an applicable part by a State with an approved permit program; or

(iii) An exemption from compliance granted by the President under section 112(i)(4) of the Act.

(2) After the effective date of an approved permit program in a State, no owner or operator of a regulated source in that State who is required under an applicable part to obtain a title V permit shall operate such source except in compliance with the provisions of this part and the applicable requirements of the permit program in that State.

(3) An owner or operator of a regulated source who is subject to an emission standard promulgated under this part or a referencing part shall comply with the requirements of that standard by the date(s) established in the applicable subpart(s) (including this

subpart) regardless of whether the criteria specified in paragraph (b)(3)(i) or (b)(3)(ii) are met:

(i) A title V permit has been issued to that source; or

(ii) If a title V permit has been issued to that source, whether such permit has been revised or modified to incorporate the emission standard.

(c) *Severability.* Notwithstanding any requirement incorporated into a title V permit obtained by an owner or operator subject to the provisions of this part, the provisions of this part are federally enforceable.

§ 65.12 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under sections 111(c) and 112(l) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities that will not be delegated to States: § 65.8, § 65.46 of subpart C of this part, and § 65.102 of subpart F of this part.

§ 65.13 Incorporation by reference.

(a) The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the **Federal Register**. The materials are available for purchase at the corresponding addresses noted below, and all are available for inspection at the Office of the Federal Register, 800 North Capital Street, NW, suite 700, Washington, DC, at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M Street, SW., Washington, DC, and at the EPA Library (MD–35), U.S. EPA, Research Triangle Park, North Carolina.

(b) The materials listed below are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.

(1) ANSI B31.3—1996, Process Piping, IBR approved [Insert Effective Date of Final Rule] for § 65.2.

(2) ASTM D1946–77, 90, 94, Standard Method for Analysis of Reformed Gas by Gas Chromatography, IBR approved [Insert Effective Date of Final Rule] for § 65.64(e)(2), § 65.147(b)(3)(ii).

(3) ASTM D2382–76, 88, Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter [High-Precision Method]. IBR approved [Insert Effective Date of Final Rule] for § 65.64(e)(1), § 65.147(b)(3)(ii).

(4) ASTM D2879–93, 96, Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, IBR approved [Insert Effective Date of Final Rule] for § 65.2.

§ 65.14 Addresses.

(a) All requests, reports, applications, notifications, and other communications submitted pursuant to this part, except as specified under § 65.5(g)(1) of this part, shall be sent to the Administrator at the appropriate EPA Regional Office indicated in the following list:

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), Director, Air Management Division, U.S. Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02203.

Region II (New Jersey, New York, Puerto Rico, Virgin Islands), Director, Air and Waste Management Division, U.S. Environmental Protection Agency, 290 Broadway, New York, New York 10007.

Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia), Director, Air and Waste Management Division, U.S. Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), Director, Air and Waste Management Division, U.S. Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303.

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), Director, Air Management Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507.

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas); Director; Air, Pesticides, and Toxics Division; U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

Region VII (Iowa, Kansas, Missouri, Nebraska), Director, Air and Toxics Division, U.S. Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), Director, Air and Waste Management Division, U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80295.

Region IX (American Samoa, Arizona, California, Guam, Hawaii, Nevada), Director, Air and Waste Management Division, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105.

Region X (Alaska, Oregon, Idaho, Washington), Director, Air and Waste Management Division, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

(b) All information required to be submitted to the Administrator under this part also shall also be submitted to the appropriate State agency of any State to which authority has been delegated under section 112(l) of the Act. The mailing addresses for State agencies are listed below:

State of Alabama, Air Pollution Control Division, Air Pollution Control Commission, 645 S. McDonough Street, Montgomery, Alabama 36104.

State of Alaska, Department of Environmental Conservation, 3220 Hospital Drive, Juneau, Alaska 99811.

Arizona Department of Health Services, 1740 West Adams Street, Phoenix, Arizona 85007.

State of Arkansas: Chief, Division of Air Pollution Control, Arkansas Department of Pollution Control and Ecology, 8001 National Drive, P.O. Box 9583, Little Rock, Arkansas 72209.

California

Amador County Air Pollution Control District, P.O. Box 430, 810 Court Street, Jackson, California 95642.

Bay Area Air Pollution Control District, 939 Ellis Street, San Francisco, California 94109.

Butte County Air Pollution Control District, P.O. Box 1229, 316 Nelson Avenue, Oroville, California 95965.

Calaveras County Air Pollution Control District, Government Center, El Dorado Road, San Andreas, California 95249.

Colusa County Air Pollution Control District, 751 Fremont Street, Colusa, California 95952.

El Dorado Air Pollution Control District, 330 Fair Lane, Placerville, California 95667.

Fresno County Air Pollution Control District, 1221 Fulton Mall, Fresno, California 93721.

Glenn County Air Pollution Control District, P.O. Box 351, 720 North Colusa Street, Willows, California 95988.

Great Basin Unified Air Pollution Control District, 157 Short Street, suite 6, Bishop, California 93514.

Imperial County Air Pollution Control District, County Services Building, 939 West Main Street, El Centro, California 92243.

Kern County Air Pollution Control District, 1601 H Street, suite 250, Bakersfield, California 93301.

Kings County Air Pollution Control District, 330 Campus Drive, Hanford, California 93230.

Lake County Air Pollution Control District, 255 North Forbes Street, Lakeport, California 95453.

Lassen County Air Pollution Control District, 175 Russell Avenue, Susanville, California 96130.

Madera County Air Pollution Control District, 135 West Yosemite Avenue, Madera, California 93637.

Mariposa County Air Pollution Control District, Box 5, Mariposa, California 95338.

Mendocino County Air Pollution Control District, County Courthouse, Ukiah, California 94582.

Merced County Air Pollution Control District, P.O. Box 471, 240 East 15th Street, Merced, California 95340.

Modoc County Air Pollution Control District, 202 West 4th Street, Alturas, California 96101.

Monterey Bay Unified Air Pollution Control, 1164 Monroe Street, Suite 10, Salinas, California 93906.

Nevada County Air Pollution Control District, H.E.W. Complex, Nevada City, California 95959.

North Coast Unified Air Quality Management District, 5630 South Broadway, Eureka California 95501.

Northern Sonoma County Air Pollution Control District, 134 ''A'' Avenue, Auburn, California 95448.

Placer County Air Pollution Control District, 11491 ''B'' Avenue, Auburn, California 95603.

Camino del Rimedio, Santa Barbara, California 93110.

Shasta County Air Pollution Control District, 2650 Hospital Lane, Redding, California 96001.

Sierra County Air Pollution Control District, P.O. Box 286, Downieville, California 95936.

Siskiyou County Air Pollution Control District, 525 South Foothill Drive, Yreka, California 96097.

South Coast Air Quality Management District, 9150 Flair Drive, El Monte, California 91731.

Stanislaus County Air Pollution Control District, 1030 Scenic Drive, Modesto, California 95350.

Sutter County Air Pollution Control District, Sutter County Office Building, 142 Garden Highway, Yuba City, California 95991.

Tehama County Air Pollution Control District, P.O. Box 38, 1760 Walnut Street, Red Bluff, California 96080.

Tulare County Air Pollution Control District, County Civic Center, Visalia, California 93277.

Tuolumne County Air Pollution Control District, 9 North Washington Street, Sonora, California 95370.

Ventura County Air Pollution Control District, 800 South Victoria Avenue, Ventura, California 93009.

Yolo-Solano Air Pollution Control District, P.O. Box 1006, 323 First Street, i5, Woodland, California 95695.

State of Colorado, Department of Health, Air Pollution Control Division, 4210 East 11th Avenue, Denver, Colorado 80220.

State of Connecticut, Bureau of Air Management, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, Connecticut 06106.

State of Delaware, Delaware Department of Natural Resources and Environmental Control, Tatnall Building, P.O. Box 1401, Dover, Delaware 19901.

Florida Bureau of Air Quality Management, Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301.

State of Georgia, Environmental Protection Division, Department of Natural Resources, 270 Washington Street, SW., Atlanta, Georgia 30334.

Hawaii Department of Health, 1250 Punchbowl Street, Honolulu, Hawaii 96813.

Hawaii Department of Health (mailing address), Post Office Box 3378, Honolulu, Hawaii 96801.

Idaho Division of Environmental Quality, 601 Pole Line Rd. Ste. # 2 Twin Falls Idaho 83301.

Illinois Environmental Protection Agency—Bureau of Air, 1340 North Ninth St. Springfield, Illinois 62702, 1021 North Grand Avenue East (mailing address), P.O. Box 19276, 62794–9276.

State of Indiana, Indiana Department of Environmental Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206.

State of Iowa: Iowa Department of Natural Resources, Environmental Protection Division, Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319.

State of Kansas: Kansas Department of Health and Environment, Bureau of Air Quality and Radiation Control, Forbes Field, Topeka, Kansas 66620.

Kentucky Division of Air Pollution Control, Department for Natural Resources and Environmental Protection, U.S. 127, Frankfort, Kentucky 40601.

State of Louisiana: Program Administrator, Air Quality Division, Louisiana Department of Environmental Quality, P.O. Box 44096, Baton Rouge, Louisiana 70804.

State of Maine, Bureau of Air Quality Control, Department of Environmental Protection, State House, Station No. 17, Augusta, Maine 04333.

State of Maryland, Bureau of Air Quality and Noise Control, Maryland State Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, Maryland 21201.

Commonwealth of Massachusetts, Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 7th floor, Boston, Massachusetts 02108.

State of Michigan, Air Pollution Control Division, Michigan Department of Natural Resources, Stevens T. Mason Building, 8th Floor, Lansing, Michigan 48926.

Minnesota Pollution Control Agency, Division of Air Quality, 520 Lafayette Road, St. Paul, Minnesota 55155.

Bureau of Pollution Control, Department of Natural Resources, P.O. Box 10385, Jackson, Mississippi 39209.

State of Missouri: Missouri Department of Natural Resources, Division of Environmental Quality, P.O. Box 176, Jefferson City, Missouri 65102.

State of Montana, Department of Health and Environmental Services, Air Quality Bureau, Cogswell Building, Helena, Montana 59601.

State of Nebraska, Nebraska Department of Environmental Control, P.O. Box 94877, State House Station, Lincoln, Nebraska 68509.

Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, 201 South Fall Street, Carson City, Nevada 89710.

State of New Hampshire, Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, New Hampshire 03302–2033.

State of New Jersey: New Jersey Department of Environmental Protection, John Fitch Plaza, P.O. Box 2807, Trenton, New Jersey 08625.

State of New Mexico: Director, New Mexico Environmental Improvement Division, Health and Environment Department, 1190 St. Francis Drive, Santa Fe, New Mexico 87503.

New York: New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233, Attention: Division of Air Resources.

North Carolina Environmental Management Commission, Department of Environment and Natural Resources, Division of Air Quality, P.O. Box 29580, Raleigh, North Carolina 27626–0580.

State of North Dakota, State Department of Health and Consolidated Laboratories, Division of Environmental Engineering, State Capitol, Bismarck, North Dakota 58505.

State of Ohio, Ohio Environmental Protection Agency, Central District Office, Air Pollution Unit, P.O. Box 1049, Columbus, Ohio 43266–0149.

State of Oklahoma, Oklahoma State Department of Health, Air Quality Service, P.O. Box 53551, Oklahoma City, Oklahoma 73152.

State of Oregon, Department of Environmental Quality, Yeon Building, 522 SW. Fifth, Portland, Oregon 97204.

Commonwealth of Pennsylvania: Department of Environmental Resources, Post Office Box 2063, Harrisburg, Pennsylvania 17120.

State of Rhode Island, Division of Air and Hazardous Materials, Department of Environmental Management, 291 Promenade Street, Providence, Rhode Island 02908.

State of South Carolina, Office of Environmental Quality Control, Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

State of South Dakota, Department of Water and Natural Resources, Office of Air Quality and Solid Waste, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501–3181.

Division of Air Pollution Control, Tennessee Department of Public Health, 256 Capitol Hill Building, Nashville, Tennessee 37219.

State of Texas, Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

State of Utah, Department of Health, Bureau of Air Quality, 288 North 1460 West, P.O. Box 16690, Salt Lake City, Utah 84116–0690.

State of Vermont, Air Pollution Control Division, Agency of Natural Resources, Building 3 South, 103 South Main Street, Waterbury, Vermont 05676.

Commonwealth of Virginia, Virginia State Air Pollution Control Board, Room 1106, Ninth Street Office Building, Richmond, Virginia 23219.

State of Washington, Department of Ecology, Olympia, Washington 98504.

State of West Virginia: Air Pollution Control Commission, 1558 Washington Street, East, Charleston, West Virginia 25311.

Wisconsin Department of Natural Resources, P.O. Box 7921, Madison, Wisconsin 53707.

Wyoming Department of Environmental Quality Air Division, 122 West 25th St.—4th Floor Cheyenne, Wyoming 82002.

§§ 65.15—65.19 [Reserved]

Table 1 To Subpart A—Applicable 40 CFR Parts 60, 61, and 63 General Provisions

40 CFR part 60 subpart A provisions for referencing subparts Ka, Kb, VV, DDD, III, NNN, and RRR	40 CFR part 61 subpart A provisions for referencing subparts Y, V, and BB	40 CFR part 63 subpart A provisions for referencing subparts G and H
§ 60.1	§ 61.01	§ 63.5 (a)(1), (a)(2), (b), (d)(1)(ii), (d)(3)(i)[a], (d)(3)(iii),[a] (d)(3)(iv)[a], (d)(3)(v), (d)(3)(vi)[a], (d)(4), (e), (f)(1), and (f)(2).
§ 60.2	§ 61.02	
§ 60.5	§ 61.02	§ 63.6 (a) (b)(3), (c)(5), (i)(1), (i)(2), (i)(4)(i)(A), (i)(5) through (i)(14), (i)(16) and (j).
§ 60.6	§ 61.05	
§ 60.7(a)(1), and (a)(4)	§ 61.06	§ 63.9(a)(2), (b)(4)(i)[b], (b)(4)(ii), (b)(4)(iii), (b)(5)[b], (c) and (d) § 63.10 (d)(4) § 63.12(b).
§ 60.14	§ 61.07	
§ 60.15	§ 61.08	
§ 60.16	§ 61.10 (b) and (c)	
	§ 61.11	
	§ 61.15	

[a] These provisions do not apply to equipment leaks.
[a] The notifications specified in §§ 63.9(b)(4)(i) and 63.9(b)(5) shall be submitted at the times specified in 40 CFR part 65.

Subpart B—[Reserved]

Subpart C—Storage Vessels

§ 65.40 Applicability.

(a) The provisions of this subpart and of subpart A of this part apply to control of regulated material emissions from storage vessels where a referencing subpart references the use of this subpart for such emissions control.

(b) If a physical or process change is made that causes a storage vessel to fall outside the criteria in the referencing subpart that required the storage vessel to control emissions of regulated material, the owner or operator may elect to no longer comply with the provisions of this subpart. Instead, the owner or operator shall comply with any applicable provisions of the referencing subpart.

§ 65.41 Definitions.

All terms used in this subpart shall have the meaning given them in the Act and in subpart A of this part. If a term is defined in both subpart A of this part and in other subparts that reference the use of this subpart, the term shall have the meaning given in subpart A of this part for purposes of this subpart.

§ 65.42 Control requirements.

(a) For each storage vessel to which this subpart applies, the owner or operator shall comply with the requirements of paragraphs (b) or (c) of this section.

(b) For each storage vessel storing a liquid for which the maximum true vapor pressure of the total regulated material in the liquid is less than 76.6 kilopascals (10.9 pounds per square inch), the owner or operator shall reduce regulated material emissions to the atmosphere as provided in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), or (b)(7) of this section.

(1) *Internal floating roof (IFR).* Operate and maintain a fixed roof and internal floating roof meeting the requirements of § 65.43.

(2) *External floating roof (EFR).* Operate and maintain an external floating roof meeting the requirements of § 65.44.

(3) *EFR converted to IFR.* Operate and maintain an external floating roof converted to an internal floating roof meeting the requirements of § 65.45.

(4) *Closed vent system and flare.* Operate and maintain a closed vent system and flare as specified in § 65.142(a)(1) of subpart G of this part. Periods of planned routine maintenance of the flare during which the flare does not meet the specifications of § 65.147 of subpart G of this part shall not exceed 240 hours per year. The specifications and requirements in § 65.147 of subpart G of this part for flares do not apply during periods of planned routine maintenance or during a control system malfunction. The owner or operator shall report the periods of planned routine maintenance as specified in § 65.166(d) of subpart G of this part.

(5) *Closed vent system and control device.* Operate and maintain a closed vent system and control device as specified in paragraphs (b)(5)(i) through (b)(5)(iv) of this section and § 65.142(a)(2) of subpart G of this part.

(i) Except as provided in paragraph (a)(1)(ii) of this section, the control device shall be designed and operated to reduce inlet emissions of regulated material by 95 percent or greater.

(ii) For owners or operators referenced to this part from 40 CFR part 63, subpart G, and if the owner or operator of a storage vessel can demonstrate that a control device installed on the storage vessel on or before December 31, 1992 is designed to reduce inlet emissions of total organic HAP by greater than or equal to 90 percent but less than 95 percent, then the control device is

required to be operated to reduce inlet emissions of total organic HAP by 90 percent or greater.

(iii) Periods of planned routine maintenance of the control device, during which the control device does not meet the specifications of paragraph (b)(5)(i) of this section, shall not exceed 240 hours per year. The owner or operator shall report the periods of planned routine maintenance as specified in § 65.166(b) of subpart G of this part.

(iv) The requirements in paragraph (b)(5)(i) of this section for control devices do not apply during periods of planned routine maintenance or during a control system malfunction.

(6) *Route to process or fuel gas system.* Route the emissions to a process or a fuel gas system as specified in § 65.142(a)(3) of subpart G of this part. Whenever the owner or operator bypasses the fuel gas system or process, the owner or operator shall comply with the recordkeeping requirement in § 65.163(b)(3) of subpart G of this part. Bypassing is permitted if the owner or operator complies with one or more of the conditions specified in paragraphs (b)(6)(i) through (b)(6)(iii) of this section.

(i) The liquid level in the storage vessel is not increased;

(ii) The emissions are routed through a closed vent system to a control device complying with paragraph (b)(4) or (b)(5) of subpart C of this part; or

(iii) The total aggregate amount of time during which the emissions bypass the fuel gas system or process during the calendar year without being routed to a control device, for all reasons (except startups/shutdowns/malfunctions or product changeovers of flexible operation units and periods when the storage vessel has been emptied and degassed), does not exceed 240 hours.

(7) *Equivalent requirements.* Comply with an equivalent to the requirements in paragraph (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), or (b)(6) of this section, as provided in § 65.46.

(c) For each storage vessel storing a liquid for which the maximum true vapor pressure of the total regulated material in the liquid is greater than or equal to 76.6 kilopascals (10.9 pounds per square inch), the owner or operator shall meet the requirements in paragraph (b)(4), (b)(5), or (b)(6) of this section, or equivalent as provided in § 65.46.

§ 65.43 Fixed roof with an internal floating roof (IFR).

(a) *IFR design requirements.* The owner or operator who elects to control storage vessel regulated material emissions by using a fixed roof and an internal floating roof shall comply with the design requirements in paragraphs (a)(1) through (a)(4) of this section.

(1) The internal floating roof shall be designed to float on the stored liquid surface except when the floating roof must be supported by the leg supports.

(2) Except as provided in paragraph (a)(3) of this section, the internal floating roof shall be equipped with a closure device between the wall of the storage vessel and the floating roof edge and shall consist of one of the devices listed in paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this section.

(i) A liquid-mounted seal.

(ii) A metallic shoe seal.

(iii) Two continuous seals mounted one above the other. The lower seal may be vapor-mounted.

(3) If the internal floating roof is equipped with a vapor-mounted seal as of December 31, 1992, paragraph (a)(2) of this section does not apply until the next time the storage vessel is emptied and degassed or by April 22, 2004, whichever occurs first.

(4) Except as provided in paragraph (a)(4)(viii) of this section, each internal floating roof shall meet the specifications listed in paragraphs (a)(4)(i) through (a)(4)(vii) of this section.

(i) Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and rim space vents is to provide a projection below the stored liquid surface.

(ii) Except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains, each opening shall be equipped with a gasketed cover or gasketed lid.

(iii) Each penetration of the internal floating roof shall be a sample well. Each sample well shall have a slit fabric cover that covers at least 90 percent of the opening.

(iv) Each automatic bleeder vent and rim space vent shall be gasketed.

(v) Each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover.

(vi) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.

(vii) Covers on each access hatch and each gauge float well shall be designed to be bolted or fastened when they are closed.

(viii) If the internal floating roof does not meet any one of the specifications listed in paragraphs (a)(4)(i) through (a)(4)(vii) of this section as of December 31, 1992, the requirement for meeting those specifications does not apply until the next time the storage vessel is emptied and degassed or by April 22, 2004, whichever occurs first.

(b) *IFR operational requirements.* The owner or operator using a fixed roof and an internal floating roof shall comply with the operational requirements in paragraphs (b)(1) through (b)(4) of this section.

(1) The internal floating roof shall float on the stored liquid surface at all times except when the floating roof must be supported by the leg supports.

(2) When the floating roof is resting on the leg supports, the process of filling or refilling shall be continuous and shall be accomplished as soon as practical and the owner or operator shall maintain the record specified in § 65.47(e).

(3) Automatic bleeder vents are to be set to be closed at all times when the roof is floating except when the roof is being floated off or is being landed on the roof leg supports.

(4) Each cover, access hatch, gauge float well, or lid on any opening in the internal floating roof shall be maintained in a closed position at all times (i.e., no visible gaps) except when the device is in actual use. Prior to filling the storage vessel, rim space vents are to be set to open only when the internal floating roof is not floating or when the pressure beneath the rim seal exceeds the manufacturer's recommended setting.

(c) *IFR inspection requirements.* To demonstrate compliance, the owner or operator shall visually inspect the internal floating roof, the primary seal, and the secondary seal (if one is in service) according to paragraphs (c)(1) through (c)(4) of this section and maintain records of the IFR inspection results as specified in § 65.47(c)(1).

(1) *Single seal.* For vessels equipped with a single-seal system, the owner or operator shall perform the inspections specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this section.

(i) Visually inspect for IFR type A failures the internal floating roof and the seal through manholes and roof hatches on the fixed roof no less frequently than once every 12 months.

(ii) Visually inspect for IFR type B failures the internal floating roof, the seal, gaskets, slotted membranes, and sleeve seals (if any) each time the storage vessel is emptied, but no less frequently than once every 10 years.

(2) *Double seal.* For vessels equipped with two continuous seals mounted one above the other, the owner or operator shall perform either the inspection

required in paragraph (c)(2)(i) of this section or the inspections required in paragraph (c)(2)(ii) of this section.

(i) Visually inspect for IFR type B failures the internal floating roof, the primary seal, the secondary seal, gaskets, slotted membranes, and sleeve seals (if any) each time the storage vessel is emptied, but no less frequently than once every 5 years; or

(ii) Visually inspect the internal floating roof and the other components as specified in paragraphs (c)(2)(ii)(A) and (c)(2)(ii)(B) of this section.

(A) For IFR type A failures, inspect the secondary seal through manholes and roof hatches on the fixed roof no less frequently than once every 12 months; and

(B) For IFR type B failures, inspect the primary seal, the secondary seal, gaskets, slotted membranes, and sleeve seals (if any) each time the vessel is emptied, but no less frequently than once every 10 years.

(3) For inspections to determine if any IFR type B failures are present as required by paragraphs (c)(1)(ii), (c)(2)(i), and (c)(2)(ii)(B) of this section, the owner or operator shall comply with the refilling notification requirements specified in § 65.48(c)(1).

(4) After installing the control equipment required to comply with § 65.42(b)(1) or (b)(3), visually inspect the internal floating roof, the primary seal, and the secondary seal (if one is in service) prior to filling the storage vessel with regulated material. If there are holes, tears, or other openings in the primary seal, the secondary seal, or the seal fabric, or defects in the internal floating roof, the owner or operator shall repair the items before filling the storage vessel.

(d) *IFR repair requirements.* The owner or operator shall repair any observed or determined failures, according to paragraphs (d)(1) and (d)(2) of this section.

(1) If an IFR type A failure is observed, the owner or operator shall repair the items or empty and remove the storage vessel from service within 45 calendar days. If the failure cannot be repaired within 45 calendar days or if the vessel cannot be emptied within 45 calendar days, the owner or operator may utilize up to two extensions of up to 30 additional calendar days each and keep the records specified in § 65.47(d).

(2) If an IFR type B failure is determined, the owner or operator shall repair the items and comply with the refilling notification requirements of § 65.48(c)(1) before refilling the storage vessel with regulated material.

§ 65.44 External floating roof (EFR).

(a) *EFR design requirements.* The owner or operator who elects to control storage vessel regulated material emissions by using an external floating roof shall comply with the design requirements listed in paragraphs (a)(1) through (a)(3) of this section.

(1) The external floating roof shall be designed to float on the stored liquid surface except when the floating roof must be supported by the leg supports.

(2) The external floating roof shall be equipped with a closure device between the wall of the storage vessel and the roof edge.

(i) Except as provided in paragraph (a)(2)(iii) of this section, the closure device is to consist of two continuous seals, one above the other. The lower seal is referred to as the primary seal and the upper seal is referred to as the secondary seal.

(ii) Except as provided in paragraph (a)(2)(iv) of this section, the primary seal shall be either a metallic shoe seal or a liquid-mounted seal.

(iii) If the external floating roof is equipped with a liquid-mounted or metallic shoe primary seal as of December 31, 1992, the requirement for a secondary seal in paragraph (a)(2)(i) of this section does not apply until the next time the storage vessel is emptied and degassed or by April 22, 2004 whichever occurs first.

(iv) If the external floating roof is equipped with a vapor-mounted primary seal and a secondary seal as of December 31, 1992 the requirement for a liquid-mounted or metallic shoe primary seal in paragraph (a)(2)(ii) of this section does not apply until the next time the storage vessel is emptied and degassed or by April 22, 2004, whichever occurs first.

(3) The external floating roof shall meet the specifications listed in paragraphs (a)(3)(i) through (a)(3)(xiii) of this section.

(i) Except for automatic bleeder vents (vacuum breaker vents) and rim space vents, each opening in the noncontact external floating roof shall provide a projection below the stored liquid surface except as provided in paragraph (a)(3)(xiii) of this section.

(ii) Covers on each access hatch and each gauge float well shall be designed to be bolted or fastened when they are closed.

(iii) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening shall be equipped with a gasketed cover, seal, or lid.

(iv) Automatic bleeder vents and rim space vents shall be equipped with a gasket.

(v) Each roof drain that empties into the stored liquid shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

(vi) Each unslotted and slotted guide pole well shall be equipped with a gasketed sliding cover or a flexible fabric sleeve seal.

(vii) Except for antirotational devices equipped with a welded cap, each unslotted guide pole shall be equipped with a gasketed cap on the end of the pole.

(viii) Each slotted guide pole shall be equipped with a gasketed float or other device that closes off the stored liquid surface from the atmosphere.

(ix) Each gauge hatch/sample well shall be equipped with a gasketed cover.

(x) Where a metallic shoe seal is in use as the primary seal, one end of the metallic shoe shall be designed to extend into the stored liquid and the other end shall extend a minimum vertical distance of 61 centimeters (24 inches) above the stored liquid surface.

(xi) The secondary seal shall be designed to be installed above the primary seal so that it completely covers the space between the roof edge and the vessel wall.

(xii) For the primary and secondary seals, there shall be no holes, tears, or other openings in the shoe, seal fabric, or seal envelope.

(xiii) If each opening in a noncontact external floating roof except for automatic bleeder vents (vacuum breaker vents) and rim space vents does not provide a projection below the liquid surface as of December 31, 1992 the requirement for providing these projections below the liquid surface does not apply until the next time the storage vessel is emptied and degassed or by April 22, 2004, whichever occurs first.

(b) *EFR operational requirements.* The owner or operator using an external floating roof shall comply with the operational requirements in paragraphs (b)(1) through (b)(9) of this section.

(1) The external floating roof shall float on the stored liquid surface at all times except when the floating roof must be supported by the leg supports.

(2) When the floating roof is resting on the leg supports, the process of filling or refilling shall be continuous and shall be accomplished as soon as practical and the owner or operator shall maintain the record specified in § 65.47(e).

(3) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening shall be maintained in a closed position (i.e., no

visible gap) at all times except when the device is in actual use.

(4) Covers on each access hatch and each gauge float well shall be bolted or fastened when they are closed.

(5) Automatic bleeder vents are to be set to be closed at all times when the roof is floating except when the roof is being floated off or is being landed on the roof leg supports.

(6) Rim space vents are to be set to open only when the roof is being floated off the roof leg supports or when the pressure beneath the rim seal exceeds the manufacturer's recommended setting.

(7) The cap on the end of each unslotted guide pole shall be closed at all times except when gauging the stored liquid level or taking samples of the stored liquid.

(8) The cover on each gauge hatch/sample well shall be closed at all times except when the hatch or well must be open for access.

(9) Except during the inspections required by paragraph (c) of this section, both the primary seal and the secondary seal shall completely cover the annular space between the external floating roof and the wall of the storage vessel in a continuous fashion.

(c) *EFR inspection requirements.* To demonstrate compliance for an external floating roof vessel, the owner or operator shall use the procedures in paragraphs (c)(4) through (c)(9) of this section for seal gaps according to the frequency specified in paragraphs (c)(1) through (c)(3) of this section and meet the requirements of (c)(10).

(1) Measurements of gaps between the vessel wall and the primary seal shall be performed no less frequently than once every 5 years and at the times specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this section. The owner or operator shall maintain records of the EFR seal gap measurements as specified in § 65.47(c)(2).

(i) During the hydrostatic testing of the vessel, by initial startup, or within 90 days of the initial fill with regulated material.

(ii) For an external floating roof vessel equipped with a liquid-mounted or metallic shoe primary seal and without a secondary seal as provided for in paragraph (a)(2)(iii) of this section, measurements of gaps between the vessel wall and the primary seal shall be performed at least once per year until a secondary seal is installed. When a secondary seal is installed above the primary seal, measurements of gaps between the vessel wall and both the primary and secondary seals shall be performed within 90 calendar days of installation of the secondary seal and according to the frequency specified in paragraphs (c)(1) through (c)(3) of this section thereafter.

(2) Measurements of gaps between the vessel wall and the secondary seal shall be performed no less frequently than once per year and within 90 days of the initial fill with regulated material, within 90 days of installation of the secondary seal, or by initial startup. The owner or operator shall maintain records of the EFR seal gap measurements as specified in § 65.47(c)(2).

(3) If any storage vessel ceases to store regulated material for a period of 1 year or more, measurements of gaps between the vessel wall and the primary seal, and gaps between the vessel wall and the secondary seal shall be performed within 90 days of the vessel being refilled with regulated material. The owner or operator shall maintain records of the EFR seal gap measurements as specified in § 65.47(c)(2).

(4) If the tank contains regulated material, all primary seal inspections or gap measurements that require the removal or dislodging of the secondary seal shall be accomplished as soon as possible, and the secondary seal shall be replaced as soon as possible.

(5) The owner or operator shall notify the Administrator 30 days before any EFR seal gap measurement as specified in § 65.48(c)(2).

(6) Except as provided in paragraph (d) of this section, the owner or operator shall determine gap widths and gap areas in the primary and secondary seals (seal gaps) individually by the procedures described in paragraphs (c)(6)(i) through (c)(6)(iii) of this section.

(i) Seal gaps, if any, shall be measured at one or more floating roof levels when the roof is not resting on the roof leg supports.

(ii) Seal gaps, if any, shall be measured around the entire circumference of the vessel in each place where a 0.32 centimeter (1/8 inch) diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the storage vessel. The circumferential distance of each such location shall also be measured.

(iii) The total surface area of each gap described in paragraph (c)(6)(ii) of this section shall be determined by using probes of various widths to measure accurately the actual distance from the vessel wall to the seal and multiplying each such width by its respective circumferential distance.

(7) The owner or operator shall add the gap surface area of each gap location for the primary seal and divide the sum by the nominal diameter of the vessel. The owner or operator shall include the calculations in the record of the seal gap measurement as specified in § 65.47(c)(2). For metallic shoe primary seals or liquid-mounted primary seals, the accumulated area of gaps between the vessel wall and the primary seal shall not exceed 212 square centimeters per meter of vessel diameter (10.0 square inches per foot of vessel diameter) and the width of any portion of any gap shall not exceed 3.81 centimeters (1.50 inches).

(8) The owner or operator shall add the gap surface area of each gap location for the secondary seal and divide the sum by the nominal diameter of the vessel. The owner or operator shall include the calculations in the record of the seal gap measurement as specified in § 65.47(c)(2). The accumulated area of gaps between the vessel wall and the secondary seal used in combination with a metallic shoe seal or liquid-mounted primary seal shall not exceed 21.2 square centimeters per meter of vessel diameter (1.00 square inch per foot of vessel diameter) and the width of any portion of any gap shall not exceed 1.27 centimeters (0.50 inch). The secondary seal gap requirements may be exceeded during the measurement of primary seal gaps as required by paragraph (c)(1) of this section.

(9) If the owner or operator determines that it is unsafe to perform the seal gap measurements or to inspect the vessel to determine compliance because the floating roof appears to be structurally unsound and poses an imminent or potential danger to inspecting personnel, the owner or operator shall comply with the requirements in either paragraph (c)(9)(i) or (c)(9)(ii) of this section.

(i) The owner or operator shall measure the seal gaps or inspect the storage vessel no later than 30 calendar days after the determination that the roof is unsafe; or

(ii) The owner or operator shall empty and remove the storage vessel from service no later than 45 calendar days after determining that the roof is unsafe. If the vessel cannot be emptied within 45 calendar days, the owner or operator may utilize up to two extensions of up to 30 additional calendar days each and comply with the recordkeeping requirements in § 65.47(d).

(10) The owner or operator shall visually inspect for EFR failures of the external floating roof, the primary seal, secondary seal, and fittings prior to initial filling and each time the vessel is emptied (including initially before the vessel is filled with regulated material), shall maintain records of the EFR

inspection results as specified in § 65.47(c)(1), and shall comply with the refilling notification requirements specified in § 65.48(c)(1).

(d) *EFR repair requirements.* (1) The owner or operator shall repair conditions that do not meet seal gap specifications listed in paragraphs (c)(7) and (c)(8) of this section or any EFR failure observed by the inspection required by paragraph (c)(10) of this section no later than 45 calendar days after identification, or shall empty and remove the storage vessel from service no later than 45 calendar days after identification. If the vessel cannot be repaired or emptied within 45 calendar days, the owner or operator may utilize up to two extensions of up to 30 additional calendar days each and comply with the recordkeeping requirements in § 65.47(d).

(2) If an EFR failure is observed by the inspection required by paragraph (c)(10) of this section, the owner or operator shall repair the items as necessary so that none of the conditions specified in that paragraph exist before filling or refilling the storage vessel with regulated material.

§ 65.45 External floating roof converted into an internal floating roof.

The owner or operator who elects to control storage vessel regulated material emissions by using an external floating roof converted into an internal floating roof shall comply with the internal floating roof requirements of § 65.43 except § 65.43(a)(3), (b)(2), and (b)(3) and the external floating roof deck fitting requirements of § 65.44 except § 65.44(a)(1), (a)(2), (b)(1), (b)(8), (b)(9), (c), and (d), including the recordkeeping and reporting provisions referenced therein.

§ 65.46 Alternative means of emission limitation.

Any person seeking permission to use an alternative means of compliance under this section shall use the procedures of § 65.8 of subpart A of this part.

§ 65.47 Recordkeeping provisions.

(a) *Retention time.* Each owner or operator of a storage vessel subject to this subpart shall meet the requirements of § 65.4 of subpart A of this part, except the record specified in paragraph (b) of this section shall be kept as long as the storage vessel is in operation.

(b) *Vessel dimensions and capacity.* Each owner or operator of a storage vessel subject to this subpart shall keep readily accessible records showing the dimensions of the storage vessel and an analysis of the capacity of the storage vessel.

(c) *Inspection results.* The owner or operator shall keep the following records as specified in paragraphs (c)(1) and (c)(2) of this section.

(1) For each IFR or EFR inspection required by § 65.43(c)(1) and (c)(2) or § 65.44(c)(10), respectively, a record containing the information listed in paragraph (c)(1)(i) or (c)(1)(ii) of this section, as appropriate.

(i) In the event that no IFR type A failure, IFR type B failure, or EFR failure is observed, a record showing that the inspection was performed. The record shall identify the storage vessel on which the inspection was performed, the date the storage vessel was inspected, and references indicating which items were inspected.

(ii) In the event that an IFR type A failure, IFR type B failure, or EFR failure is observed, a record that identifies the storage vessel on which the inspection was performed, the date the storage vessel was inspected, a description of the failure and of the repair made, the date the vessel was emptied (if applicable), and the date that the repair was made. As specified in § 65.48(b)(1), the owner or operator shall include this record in the periodic report.

(2) For each EFR seal gap measurement required by § 65.44(c)(1), (c)(2) or (c)(3), a record describing the results of the measurement. The record shall identify the vessel on which the measurement was performed, shall include the date of the measurement, the raw data obtained in the measurement, and the calculations described in § 65.44(c)(7) and (c)(8), and shall meet any additional requirements in paragraph (c)(2)(i) or (c)(2)(ii) of this section, as appropriate.

(i) In the event that the seal gap measurements do conform to the specifications in § 65.44(c)(7) and (c)(8), the owner or operator shall submit the information specified in § 65.48(b)(2)(i) in the periodic report.

(ii) In the event that the seal gap measurements do not conform to the specifications in § 65.44(c)(7) and (c)(8), the owner or operator shall also keep a description of the repairs that were made, the date the repairs were made, and the date the storage vessel was emptied and shall include a report of the seal gap measurement results in the periodic report as specified in § 65.48(b)(2)(ii).

(d) *Emptying and repairing extension.* The owner or operator who elects to utilize an extension in emptying a storage vessel for purposes of repair shall prepare by the initiation of the extension the documentation as specified in paragraph (d)(1) or (d)(2) of this section, as appropriate, of the decision to utilize an extension.

(1) For an extension pursuant to § 65.43(d)(1) or § 65.44(d)(1), a description of the failure, documentation that alternative storage capacity is unavailable, and a schedule of actions that will ensure that the control equipment will be repaired or the vessel will be emptied as soon as practical. As specified in § 65.48(b)(1)(i), the owner or operator shall include this information in the periodic report.

(2) For an extension pursuant to § 65.44(c)(9), an explanation of why it was unsafe to perform the inspection or seal gap measurement, documentation that alternate storage capacity is unavailable, and a schedule of actions that will ensure that the vessel will be emptied as soon as practical. As specified in § 65.48(b)(3), the owner or operator shall include this information in the periodic report.

(e) *Floating roof set on its legs.* The owner or operator shall maintain a record for each storage vessel subject to §§ 65.43(b)(2) and 65.44(b)(2) identifying the date when the floating roof was set on its legs and the date when the roof was refloated. The record shall also indicate whether this was a continuous operation.

§ 65.48 Reporting provisions.

(a) *Notification of initial startup.* If § 65.5(b) of subpart A of this part requires that a notification of initial startup be filed, then the content of the notification of initial startup shall at least include the information specified in § 65.5(b) of subpart A of this part and the identification of each storage vessel, its capacity, and the types of regulated material stored in the storage vessel.

(b) *Periodic reports.* Report the information specified in paragraphs (b)(1) through (b)(3) of this section, as applicable, in the periodic report specified in § 65.5(e) of subpart A of this part.

(1) *Inspection results.* Report the information specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this section for each inspection conducted in accordance with §§ 65.43(c) and 65.44(c) in which an IFR or EFR failure is detected in the control equipment.

(i) If an IFR type A failure or an EFR failure is observed for vessels for which inspections are required under § 65.43(c)(1)(i), § 65.43(c)(2)(ii)(A), or § 65.44(c)(10), each report shall include a copy of the inspection results record listed in § 65.47(c)(1)(ii). If an extension is utilized in accordance with § 65.43(d)(1) or § 65.44(d)(1), the report shall include the copy of the records listed in § 65.47(c)(1)(ii) plus the

documentation specified in § 65.47(d)(1).

(ii) If an IFR type B failure is observed for vessels for which inspections are required under § 65.43(c)(1)(ii), (c)(2)(i), or (c)(2)(ii)(B), each report shall include a copy of the records listed in § 65.47(c)(1)(ii).

(2) *Seal gap measurements results.* (i) For each vessel whose seal gaps are measured during the reporting period, identify each seal gap measurement made in accordance with § 65.44(c) in which the requirements of § 65.44(c)(7) or (c)(8) are met.

(ii) For each seal gap measurement made in accordance with § 65.44(c) in which the requirements of § 65.44(c)(7) or (c)(8) are not met, from the records kept pursuant to § 65.47(c)(2) report the date of the measurements, results of the calculations, and note which seal gap measurements did not conform to the specifications in § 65.44(c)(7) and (c)(8).

(3) *Extension documentation.* If an extension is utilized in accordance with § 65.44(c)(9), the owner or operator shall include the documentation specified in § 65.47(d)(2) in the next report required by § 65.5(e) of subpart A of this part.

(c) *Special notifications.* An owner or operator who elects to comply with § 65.43, § 65.44, or § 65.45 shall submit, as applicable, the reports specified in paragraphs (c)(1) and (c)(2) of this section except as specified in paragraph (c)(3) of this section. Each written notification or report shall also include the information specified in § 65.5(f) of subpart A of this part.

(1) *Refilling notification.* In order to afford the Administrator the opportunity to have an observer present, notify the Administrator prior to refilling of a storage vessel that has been emptied. If the storage vessel is equipped with an internal floating roof as specified in § 65.43, an external floating roof as specified in § 65.44, or an external floating roof converted to an internal floating roof as specified in § 65.45, the notification shall meet the requirements of either paragraph (c)(1)(i) or (c)(1)(ii) of this section, as applicable.

(i) Notify the Administrator in writing at least 30 calendar days prior to the refilling of each storage vessel; or

(ii) If the inspection is not planned and the owner or operator could not have known about the inspection 30 calendar days in advance of refilling the vessel, the owner or operator shall notify the Administrator as soon as practical, but no later than 7 calendar days prior to the refilling of the storage vessel. Notification may be made by telephone and immediately followed by written documentation demonstrating why the inspection was unplanned. Alternatively, the notification including the written documentation may be made in writing and sent so that it is received by the Administrator at least 7 calendar days prior to refilling.

(2) *Seal gap measurement notification.* In order to afford the Administrator the opportunity to have an observer present, the owner or operator of a storage vessel equipped with an external floating roof as specified in § 65.44 shall notify the Administrator in writing 30 calendar days in advance of any seal gap measurements.

(3) *Notification waiver.* Where a notification required by paragraph (c)(1) or (c)(2) of this section is sent to a delegated State or local agency, a copy of the notification to the Administrator is not required. A delegated State or local agency may waive the requirements for these notifications.

(d) *Compliance certification.* For sources subject to the compliance certification provisions of title V, a recertification of continuous compliance with §§ 65.43(b)(1) and 65.44(b)(1) shall be based on the annual inspections required by § 65.43(c)(1)(i) and (c)(2)(ii)(A) and at other times when the roof is viewed.

§§ 65.49–65.59 [Reserved]

Subpart D—Process Vents

§ 65.60 Applicability.

The provisions of this subpart and of subpart A of this part apply to control of regulated material emissions from process vents where a referencing subpart references the use of this subpart for such emissions control.

§ 65.61 Definitions.

All terms used in this subpart shall have the meaning given them in the Act and in subpart A of this part. If a term is defined in both subpart A of this part and in other subparts that reference the use of this subpart, the term shall have the meaning given in subpart A of this part for purposes of this subpart.

§ 65.62 Process vent group determination.

(a) *Group status.* The owner or operator of a process vent shall determine the group status (i.e., Group 1, Group 2A, or Group 2B) for each process vent. Group 1 process vents require control, and Group 2A and 2B process vents do not. Group 2A process vents require parameter monitoring, and Group 2B process vents do not. The owner or operator shall report the group status of each process vent as specified in § 65.5(c)(2) of subpart A of this part.

(b) *Group 1.* A process vent is considered Group 1 if it meets at least one of the specifications listed in paragraph (b)(1) or (b)(2) of this section.

(1) The owner or operator designates the process vent as Group 1.

(2) At representative conditions for the process vent, the TRE index value is less than or equal to 1.0, the flow rate is greater than or equal to 0.011 standard cubic meter per minute (0.40 standard cubic foot per minute), and the concentration is greater than or equal to the applicable table 1 criterion. Procedures for determining the TRE index value, flow rate, and concentration are specified in § 65.64.

(c) *Group 2A.* A process vent is considered Group 2A if, at representative conditions, it has a TRE index value of greater than 1.0 and less than or equal to 4.0, a flow rate of greater than or equal to 0.011 standard cubic meter per minute (0.40 standard cubic foot per minute), and a concentration greater than or equal to the applicable table 1 criterion. Procedures for determining the TRE index value, flow rate, and concentration are specified in § 65.64.

(d) *Group 2B.* A process vent is considered Group 2B if, at representative conditions, it has a TRE index value of greater than 4.0; or a flow rate of less than 0.011 standard cubic meter per minute (0.40 standard cubic foot per minute); or a concentration less than the applicable table 1 criterion. Procedures for determining the TRE index value, flow rate, and concentration are specified in § 65.64.

§ 65.63 Performance and group status change requirements.

(a) *Group 1 performance requirements.* Except for the additional requirement for halogenated vent streams as provided in paragraph (b) of this section, the owner or operator of a Group 1 process vent shall comply with the requirements of either paragraph (a)(1), (a)(2), or (a)(3) of this section.

(1) *Flare.* Reduce emissions of regulated material using a flare meeting the applicable requirements of § 65.142(b) of subpart G of this part.

(2) *98 percent or 20 parts per million by volume standard.* Reduce emissions of regulated material or TOC by at least 98 weight-percent or to a concentration of less than 20 parts per million by volume, whichever is less stringent. For combustion devices, the emission reduction or concentration shall be calculated on a dry basis, and corrected to 3 percent oxygen. The owner or operator shall meet the requirements in § 65.142(b) of subpart G of this part and

paragraphs (a)(2)(i) and/or (a)(2)(ii) of this section.

(i) Compliance with paragraph (a)(2) of this section may be achieved by using any combination of combustion, recovery, and/or recapture devices except that a recovery device may not be used to comply with paragraph (a)(2) of this section by reducing emissions of total regulated material by 98 weight-percent, except as provided in paragraph (a)(2)(ii) of this section.

(ii) An owner or operator may use a recovery device alone or in combination with one or more combustion or recapture devices to reduce emissions of total regulated material by 98 weight-percent if all the conditions of paragraphs (a)(2)(ii)(A) through (a)(2)(ii)(C) of this section are met.

(A) For process vents referenced to this part by 40 CFR part 63, subpart G, the recovery device (and any combustion device or recapture device that operates in combination with the recovery device to reduce emissions of total regulated material by 98 weight-percent) was installed before December 31, 1992.

(B) The recovery device that will be used to reduce emissions of total regulated material by 98 weight-percent is the last recovery device before emission to the atmosphere.

(C) The recovery device alone or in combination with one or more combustion or recapture devices is capable of reducing emissions of total regulated material by 98 weight-percent but is not capable of reliably reducing emissions of total regulated material to a concentration of 20 parts per million by volume.

(D) If the owner or operator disposed of the recovered material, the recovery device would be considered a recapture device and comply with the requirements of this subpart and § 65.142(b) of subpart G for control devices.

(3) *TRE index value.* Achieve and maintain a TRE index value greater than 1.0 at the outlet of the final recovery device, or prior to release from the process vent to the atmosphere if no recovery device is present. If the TRE index value is greater than 1.0, the process vent shall meet the provisions for a Group 2A or 2B process vent specified in either paragraph (c), (d), (e), or (f) of this section, whichever is applicable.

(b) *Halogenated Group 1 performance requirement.* Halogenated Group 1 process vents that are combusted shall be controlled according to paragraph (b)(1) or (b)(2) of this section. Determination of whether a vent stream is halogenated shall be made using the procedures specified in § 65.64(g) and the halogen concentration in the vent stream shall be recorded and reported in the Initial Compliance Status Report as specified in § 65.160(d) of subpart G of this part.

(1) *Halogen reduction device following combustion.* If a combustion device is used to comply with paragraph (a)(2) of this section for a halogenated process vent, then the process vent exiting the combustion device shall be ducted to a halogen reduction device including, but not limited to, a scrubber before it is discharged to the atmosphere and the halogen reduction device shall meet the requirements of paragraph (b)(1)(i) or (b)(1)(ii) of this section, as applicable. The halogenated process vent shall not be combusted using a flare.

(i) Except as provided in paragraph (b)(1)(ii) of this section, the halogen reduction device shall reduce overall emissions of hydrogen halides and halogens by 99 percent or shall reduce the outlet mass of total hydrogen halides and halogens to less than 0.45 kilogram per hour (0.99 pound per hour), whichever is less stringent. The owner or operator shall meet the requirements in § 65.142(b) of subpart G of this part.

(ii) If a scrubber or other halogen reduction device was installed prior to December 31, 1992, the device shall reduce overall emissions of hydrogen halides and halogens by 95 percent or shall reduce the outlet mass of total hydrogen halides and halogens to less than 0.45 kilogram per hour (0.99 pound per hour), whichever is less stringent. The owner or operator shall meet the requirements in § 65.142(b) of subpart G of this part.

(2) *Halogen reduction device prior to combustion.* A halogen reduction device, such as a scrubber, or other technique may be used to reduce the process vent halogen atom mass emission rate to less than 0.45 kilogram per hour (0.99 pound per hour) prior to any combustion control device and thus make the process vent nonhalogenated; the process vent must comply with the requirements of paragraph (a)(1) or (a)(2) of this section. The halogen atom mass emission rate prior to the combustor shall be determined according to the procedures in § 65.64(g). The owner or operator shall meet the requirements in § 65.142(b) of subpart G of this part.

(c) *Performance requirements for group 2A process vents with recovery devices.* For Group 2A process vents, where the owner or operator is using a recovery device to maintain a TRE index value greater than 1.0, the owner or operator shall maintain a TRE index value greater than 1.0 and comply with the requirements for recovery devices in § 65.142(b) of subpart G of this part.

(d) *Performance requirements for group 2A process vents without recovery devices.* For Group 2A process vents where the owner or operator is not using a recovery device to maintain a TRE index value greater than 1.0, determine the appropriate parameters to be monitored and submit the information as specified in paragraphs (d)(1), (d)(2), and (d)(3) of this section. Such information shall be submitted for approval to the Administrator as part of a title V permit application or by separate notice. The owner or operator shall monitor as specified in § 65.65(a), maintain the record specified in § 65.66(e), and submit reports as specified in § 65.67(c).

(1) *Parameter monitoring.* A description of the parameter(s) to be monitored to ensure the owner or operator of a process vent achieves and maintains the TRE above 1.0. and an explanation of the criteria used to select the parameter(s).

(2) *Demonstration methods and procedures.* A description of the methods and procedures that will be used to demonstrate that the parameter indicates proper operation of the process, the schedule for this demonstration, and a statement that the owner or operator will establish a range for the monitored parameter as part of the Initial Compliance Status Report required in § 65.5(d) of subpart A of this part, unless this information has already been included in the operating permit application.

(3) *Monitoring, recordkeeping, and reporting frequency.* The frequency and content of monitoring, recording, and reporting if monitoring and recordkeeping are not continuous, or if reports of daily average values when the monitored parameter value is outside the range established in the operating permit or Initial Compliance Status Report will not be included in periodic reports required under § 65.5(e) of subpart A of this part. The rationale for the proposed monitoring, recording, and reporting system shall be included.

(e) *Group 2B performance requirements.* For Group 2B process vents, the owner or operator shall maintain a TRE index greater than 4.0, a flow rate less than 0.011 scmm, or a concentration less than the applicable criteria in table 1 of this subpart.

(f) *Group 2A or 2B process change requirements.* Whenever process changes are made that could reasonably be expected to change a Group 2A or 2B process vent to a Group 1 vent, the owner or operator shall recalculate the TRE index value, flow, or TOC or

organic hazardous air pollutant (HAP) concentration according to paragraph (f)(1), (f)(2), or (f)(3) of this section as specified for each process vent as necessary to determine whether the process vent is Group 1, Group 2A, or Group 2B and shall maintain the applicable records specified in § 65.66(d). Examples of process changes include, but are not limited to, changes in production capacity, production rate, feedstock type, or catalyst type, or whenever there is replacement, removal, or addition of recovery equipment. For purposes of paragraph (f) of this section, process changes do not include process upsets; unintentional, temporary process changes; and changes that are within the range on which the original TRE index value calculation was based.

(1) *Flow rate.* The flow rate shall be determined as specified in the sampling site and flow rate determination procedures in § 65.64 (b) and (d) or by using best engineering assessment of the effects of the change. Engineering assessments shall meet the specifications in § 65.64(i);

(2) *Concentration.* The TOC or organic HAP concentration shall be determined as specified in § 65.64 (b) and (c) or by using best engineering assessment of the effects of the change. Engineering assessments shall meet the specifications in § 65.64(i); or

(3) *TRE index value.* The TRE index value shall be recalculated based on measurements of process vent flow rate, TOC, and/or organic HAP concentrations, and heating values as specified in § 65.64 (b), (c), (d), (e), (f), (g), and (h) as applicable, or based on best engineering assessment of the effects of the change. Engineering assessments shall meet the specifications in § 65.64(i).

(4) *Group status change to Group 1.* Where the process change causes the group status to change to Group 1, the owner or operator shall comply with the Group 1 process vent provisions in paragraph (a) of this section and, if they apply, the halogenated Group 1 process vent provisions in paragraph (b) of this section upon initial startup unless the owner or operator demonstrates to the Administrator that achieving compliance will take longer than making the process change. If this demonstration is made to the Administrator's satisfaction, the owner or operator shall comply as expeditiously as practical, but in no event later than 3 years after the emission point becomes Group 1, and shall follow the procedures in paragraphs (f)(4)(i) through (f)(4)(iii) of this section to establish a compliance date.

(i) The owner or operator shall submit to the Administrator for approval a compliance schedule, along with a justification for the schedule.

(ii) The compliance schedule shall be submitted with the operating permit application or amendment or by other appropriate means.

(iii) The Administrator shall approve the compliance schedule or request changes within 120 calendar days of receipt of the compliance schedule and justification.

(5) *Group status change to Group 2A.* Whenever a process change causes the process vent group status to change to Group 2A, the owner or operator shall comply with the provisions of paragraph (c) or (d) of this section upon completion of the group status determination of the process vent. The owner or operator shall perform the group status determination as soon as practical after the process change and within 180 days after the process change.

(6) *Group status change to Group 2B.* Whenever a process change causes the process vent group status to change to Group 2B, the owner or operator shall comply with the provisions of paragraph (e) of this section as soon as practical after the process change.

§ 65.64 Group determination procedures.

(a) *General.* The provisions of this section provide calculation and measurement methods for parameters that are used to determine group status.

(b)(1) *Sampling site.* For purposes of determining total organic TOC or HAP concentration, process vent volumetric flow rate, heating value, or TRE index value as specified under paragraph (c), (d), (e), (f), or (h) of this section, the sampling site shall be located after the last recovery device (if any recovery devices are present) but prior to the inlet of any control device that is present, and prior to release to the atmosphere.

(2) *Sampling site when a halogen reduction device is used prior to a combustion device.* An owner or operator using a scrubber or other halogen reduction device to reduce the process vent halogen atom mass emission rate to less than 0.45 kilogram per hour (0.99 pound per hour) prior to a combustion control device in compliance with § 65.63(b)(2) shall determine the halogen atom mass emission rate prior to the combustor according to the procedures in paragraph (g) of this section.

(3) *Sampling Site Selection Method.* Method 1 or 1A of 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling site. No traverse site selection method is needed for process vents smaller than 0.10 meter (4 inches) in nominal inside diameter.

(c) *TOC or HAP concentration.* The TOC or HAP concentrations used for TRE index value calculations in paragraph (h) of this section shall be determined based on paragraph (c)(1) of this section, or any other method or data that have been validated according to the protocol in Method 301 of appendix A of part 63. For concentrations needed for comparison with the appropriate concentration in table 1 of this subpart, TOC or HAP concentration shall be determined based on paragraph (c)(1), (c)(2), or (i) of this section or any other method or data that have been validated according to the protocol in Method 301 of appendix A of part 63. The owner or operator shall record the TOC or HAP concentration as specified in § 65.66(c).

(1) *Method 18.* The procedures specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this section shall be used to calculate parts per million by volume concentration using Method 18 of 40 CFR part 60, appendix A.

(i) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15-minute intervals during the run.

(ii) The concentration of either TOC (minus methane and ethane) or organic HAP emissions shall be calculated according to paragraph (c)(1)(ii)(A) or (c)(1)(ii)(B) of this section, as applicable.

(A) The TOC concentration (C_{TOC}) is the sum of the concentrations of the individual components and shall be computed for each run using the following equation:

$$C_{TOC} = \frac{\sum_{i=1}^{x}\left(\sum_{j=1}^{n} C_{ji}\right)}{x} \qquad (64\text{-}1)$$

Where:

C_{TOC}=Concentration of TOC (minus methane and ethane), dry basis, parts per million by volume.

x=Number of samples in the sample run.

n=Number of components in the sample.

C_{ji}=Concentration of sample component j of the sample i, dry basis, parts per million by volume.

(B) The total organic HAP concentration (CHAP) shall be computed according to the equation in paragraph (c)(1)(ii)(A) of this section

except that only the organic HAP species shall be summed.

(2) *Method 25A.* The procedures specified in paragraphs (c)(2)(i) through (c)(2)(vi) of this section shall be used to calculate parts per million by volume concentration using Method 25A of 40 CFR part 60, appendix A.

(i) Method 25A of 40 CFR part 60, appendix A, shall be used only if a single organic compound of regulated material is greater than 50 percent of total organic HAP or TOC, by volume, in the process vent.

(ii) The process vent composition may be determined by either process knowledge, test data collected using an appropriate EPA method, or a method or data validated according to the protocol in Method 301 of appendix A of part 63. Examples of information that could constitute process knowledge include calculations based on material balances, process stoichiometry, or previous test results provided the results are still relevant to the current process vent conditions.

(iii) The organic compound used as the calibration gas for method 25A of 40 CFR part 60, appendix A, shall be the single organic compound of regulated material present at greater than 50 percent of the total organic HAP or TOC by volume.

(iv) The span value for Method 25A of 40 CFR part 60, appendix A shall be equal to the appropriate concentration value in table 1 of this subpart.

(v) Use of Method 25A of 40 CFR part 60, appendix A, is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(vi) The owner or operator shall demonstrate that the concentration of TOC including methane and ethane measured by Method 25A of 40 CFR part 60 of this subpart, appendix A is below one-half the appropriate value in table 1 to be considered a Group 2B vent with an organic HAP or TOC concentration below the appropriate value in table 1 of this subpart.

(d) *Volumetric flow rate.* The process vent volumetric flow rate (QS) in standard cubic meters per minute at 20 °C (68 F) shall be determined as specified in paragraph (d)(1) or (d)(2) of this section and shall be recorded as specified in § 65.66(b).

(1) Use Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as appropriate. If the process vent tested passes through a final steam jet ejector and is not condensed, the stream volumetric flow shall be corrected to 2.3 percent moisture; or

(2) The engineering assessment procedures in paragraph (i) of this section can be used for determining volumetric flow rates.

(e) *Heating value.* The net heating value shall be determined as specified in paragraphs (e)(1) and (e)(2) of this section or by using the engineering assessment procedures in paragraph (i) of this section.

(1) The net heating value of the process vent shall be calculated using the following equation:

$$H_T = K_1\left(\sum_{j=1}^{n} D_j H_j\right) \qquad (64\text{-}2)$$

Where:

H_T=Net heating value of the sample, megajoule per standard cubic meter, where the net enthalpy per mole of process vent is based on combustion at 25 °C and 760 millimeters of mercury, but the standard temperature for determining the volume corresponding to 1 mole is 20 °C as in the definition of Q_s (process vent volumetric flow rate).

K_1=Constant, 1.740×10^{-7} parts per million)$^{-1}$ (gram-mole per standard cubic meter) (megajoule per kilocalorie), where standard temperature for (gram-mole per standard cubic meter) is 20 °C.

n=Number of components in the sample.

D_j=Concentration on a wet basis of compound j in parts per million as measured by procedures indicated in paragraph (e)(2) of this section. For process vents that pass through a final steam jet and are not condensed, the moisture is assumed to be 2.3 percent by volume.

H_j=Net heat of combustion of compound j, kilocalorie per gram-mole, based on combustion at 25 °C and 760 millimeters of mercury. The heat of combustion of process vent components shall be determined using American Society for Testing and Materials (ASTM) D2382–76 incorporated by reference as specified in § 65.13 if published values are not available or cannot be calculated.

(2) The molar composition of the process vent (Dj) shall be determined using the methods specified in paragraphs (e)(2)(i) through (e)(2)(iii) of this section:

(i) Method 18 of 40 CFR part 60, appendix A to measure the concentration of each organic compound.

(ii) American Society for Testing and Materials (ASTM) D1946–77 incorporated by reference as specified in § 65.13 to measure the concentration of carbon monoxide and hydrogen.

(iii) Method 4 of 40 CFR part 60, appendix A, to measure the moisture content of the stack gas.

(f) *TOC or HAP emission rate.* The emission rate of TOC (minus methane and ethane) (E_{TOC}) and/or the emission rate of total organic HAP (E_{HAP}) in the process vent as required by the TRE index value equation specified in paragraph (h) of this section, shall be calculated using the following equation:

$$E = K_2\left(\sum_{j=1}^{n} C_j M_j\right) Q_s \qquad (64\text{-}3)$$

Where:

E=Emission rate of TOC (minus methane and ethane) (E_{TOC}) or emission rate of total organic HAP (E_{HAP}) in the sample, kilograms per hour.

K_2=Constant, 2.494 x 10^{-6} (parts per million) *1 (gram-mole per standard cubic meter) (kilogram per gram) (minutes per hour), where standard temperature for (gram-mole per standard cubic meter) is 20 °C.*

n=Number of components in the sample.

C_j=Concentration on a dry basis of organic compound j in parts per million as measured by Method 18 of 40 CFR part 60, appendix A, as indicated in paragraph (c) of this section. If the TOC emission rate is being calculated, C_j includes all organic compounds measured minus methane and ethane; if the total organic HAP emission rate is being calculated, only organic HAP compounds are included.

M_j=Molecular weight of organic compound j, gram/gram-mole.

Q_s=Process vent flow rate, dry standard cubic meter per minute, at a temperature of 20 °C.

(g) *Halogenated vent determination.* In order to determine whether a process vent is halogenated, the mass emission rate of halogen atoms contained in organic compounds shall be calculated according to the procedures specified in paragraphs (g)(1) and (g)(2) of this section. A process vent is considered halogenated if the mass emission rate of halogen atoms contained in the organic compounds is equal to or greater than 0.45 kilogram per hour (0.99 pound per hour).

(1) The process vent concentration of each organic compound containing halogen atoms (parts per million by volume, by compound) shall be determined based on one of the procedures specified in paragraphs (g)(1)(i) through (g)(1)(iv) of this section:

(i) Process knowledge that no halogen or hydrogen halides are present in the process vent; or

(ii) Applicable engineering assessment as discussed in paragraph (i)(3) of this section; or

(iii) Concentration of organic compounds containing halogens measured by Method 18 of 40 CFR part 60, appendix A; or

(iv) Any other method or data that have been validated according to the

applicable procedures in Method 301 of appendix A of this part.

(2) The following equation shall be used to calculate the mass emission rate of halogen atoms:

$$E = K_2 Q \left(\sum_{j=1}^{n} \sum_{i=1}^{m} C_j * L_{j,i} * M_{j,i} \right) \quad (64\text{-}4)$$

Where:

E=Mass of halogen atoms, dry basis, kilogram per hour.

K_2=Constant, 2.494×10^{-6} (parts per million)$^{-1}$ (kilogram-mole per standard cubic meter) (minute per hour), where standard temperature is 20 °C.

Q=Flow rate of gas stream, dry standard cubic meters per minute, determined according to paragraph (d) or (i) of this section.

n=Number of halogenated compounds j in the gas stream.

j=Halogenated compound j in the gas stream.

m=Number of different halogens i in each compound j of the gas stream.

i=Halogen atom i in compound j of the gas stream.

C_j=Concentration of halogenated compound j in the gas stream, dry basis, parts per million by volume.

L_{ji}=Number of atoms of halogen i in compound j of the gas stream.

M_{ji}=Molecular weight of halogen atom i in compound j of the gas stream, kilogram per kilogram-mole.

(h) *TRE index value.* The owner or operator shall calculate the TRE index value of the process vent using the equations and procedures specified in paragraphs (h)(1) through (h)(3) of this section, as applicable, and shall maintain the records specified in § 65.66(a) or § 65.66(d)(4), as applicable.

(1) *TRE index value equation.* The equation for calculating the TRE index is as follows:

$$TRE = A * [B + C + D + E + F] \quad (64-5)$$

where:

TRE=TRE index value.

A, B, C, D, E, and F=Parameters presented in tables 2 and 3 of this subpart that include the following variables:

Q=Process vent flow rate, standard cubic meters per minute, at a standard temperature of 20 °C, as calculated according to paragraph (d) or (i) of this section.

H=Process vent net heating value, megajoules per standard cubic meter, as calculated according to paragraph (e) or (i) of this section.

E_{TOC}=Emission rate of TOC (minus methane and ethane), kilograms per hour, as calculated according to paragraph (f) or (i) of this section.

E_{HAP}=Emission rate of total organic HAP, kilograms per hour, as calculated according to paragraph (f) or (i) of this section.

(2) *Nonhalogenated process vents.* The owner or operator of a nonhalogenated process vent shall calculate the TRE index value based on either paragraph (h)(2)(i) or (h)(2)(ii) of this section, as applicable.

(i) *TRE calculations: Part 60 regulated sources.* Use the parameters in table 2 of this subpart and calculate the TRE index value twice, once using the appropriate equation (depending on the heating value and flow rate of the process vent) in equations 15 through 30 and once using the appropriate equation (depending on the heating value of the process vent) in equations 31 and 32. Select the lowest TRE index value.

(ii) *TRE calculations: Part 63 regulated sources.* Use the equation and parameters in table 3 of this subpart and calculate the TRE index value using equations 34, 35, and 36 for process vents at existing sources; or equations 38, 39, and 40 for process vents at new sources. Select the lowest TRE index value.

(3) *Halogenated process vents.* The owner or operator of a halogenated process vent stream as determined according to procedures specified in paragraph (g) of this section shall calculate the TRE index value based on either paragraph (h)(3)(i) or (h)(3)(ii) of this section, as applicable.

(i) *TRE Calculations: Part 60 regulated sources.* Use the parameters in table 2 of this subpart and calculate the TRE index value using the appropriate equation chosen from equations 1 through 14 depending on the heating value and flow rate of the process vent.

(ii) *TRE calculations: Part 63 regulated sources.* Use the appropriate parameters in table 3 of this subpart and calculate the TRE index value using equation 33 or 37 depending on whether the process vent is at a new or existing source.

(i) *Engineering assessment.* For purposes of TRE index value determination, engineering assessment may be used to determine process vent flow rate, net heating value, TOC emission rate, and total organic HAP emission rate for the representative operating condition expected to yield the lowest TRE index value. Engineering assessments shall meet the requirements of paragraphs (i)(1) through (i)(4) of this section. If process vent flow rate or process vent organic HAP or TOC concentration is being determined for comparison with the 0.011 scmm (0.40 standard cubic foot) flow rate or the applicable concentration value in table 1 of this subpart, engineering assessment may be used to determine the flow rate or concentration for the representative operating condition expected to yield the highest flow rate or concentration.

(1) If the TRE index value calculated using such engineering assessment and the TRE index value equation in paragraph (h) of this section is greater than 4.0, then the owner or operator is not required to perform the measurements specified in paragraphs (c) through (g) of this section.

(2) If the TRE index value calculated using such engineering assessment and the TRE index value equation in paragraph (h) of this section is less than or equal to 4.0, then the owner or operator is required either to perform the measurements specified in paragraphs (c) through (g) of this section for group determination or to consider the process vent a Group 1 process vent and comply with the requirement (or standard) specified in § 65.63(a) and, if applicable, § 65.63(b).

(3) Engineering assessment includes, but is not limited to, the examples specified in paragraphs (i)(3)(i) through (i)(3)(iv) of this section:

(i) Previous test results provided the tests are representative of current operating practices at the process unit.

(ii) Bench-scale or pilot-scale test data representative of the process under representative operating conditions.

(iii) Maximum flow rate, TOC emission rate, organic HAP emission rate, organic HAP or TOC concentration, or net heating value limit specified or implied within a permit limit applicable to the process vent.

(iv) 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 those specified in paragraphs (i)(3)(iv)(A) through (i)(3)(iv)(D) of this section:

(A) Use of material balances based on process stoichiometry to estimate maximum TOC or organic HAP concentrations;

(B) Estimation of maximum flow rate based on physical equipment design such as pump or blower capacities;

(C) Estimation of TOC or organic HAP concentrations based on saturation conditions; and

(D) Estimation of maximum expected net heating value based on the stream concentration of each organic compound or, alternatively, as if all TOC in the stream were the compound with the highest heating value.

(4) All data, assumptions, and procedures used in the engineering assessment shall be documented. The owner or operator shall maintain the records specified in § 65.66(a), (b), (c), or (d), as applicable.

§ 65.65 Monitoring.

(a) An owner or operator of a Group 2A process vent maintaining a TRE index value greater than 1.0 without a recovery device shall monitor based on the approved plan as specified in § 65.63(d).

(b) As required in § 65.63(a) and (c), an owner or operator of a Group 2A process vent maintaining a TRE index value greater than 1.0 with a recovery device or a Group 1 process vent shall comply with § 65.142(b) of subpart G of this part.

§ 65.66 Recordkeeping provisions.

(a) *TRE index value records.* The owner or operator shall maintain records of measurements, engineering assessments, and calculations performed to determine the TRE index value of the process vent according to the procedures of § 65.64(h), including those records associated with halogen vent stream determination. Documentation of engineering assessments shall include all data, assumptions, and procedures used for the engineering assessments, as specified in § 65.64(i). As specified in § 65.67(a), the owner or operator shall include this information in the Initial Compliance Status Report.

(b) *Flow rate records.* The owner or operator shall record the flow rate as measured using the sampling site and flow rate determination procedures specified in § 65.64(b) and (d) or determined through engineering assessment as specified in § 65.64(i). As specified in § 65.67(a), the owner or operator shall include this information in the Initial Compliance Status Report.

(c) *Concentration records.* The owner or operator shall record the organic HAP or TOC concentration as measurement using the sampling site and HAP or TOC concentration determination procedures specified in § 65.64(b) and (c) or determined through engineering assessment as specified in § 65.64(i). As specified in § 65.67(a), the owner or operator shall include this information in the Initial Compliance Status Report.

(d) *Process change records.* The owner or operator shall keep up-to-date, readily accessible records as specified in paragraphs (d)(1) through (d)(4) of this section and shall report this information as specified in § 65.67(b).

(1) If the process vent is Group 2B on the basis of flow rate being less than 0.011 scmm (0.40 standard cubic foot), then the owner or operator shall keep records of any process changes as defined in § 65.63(f) that increase the process vent flow rate and any recalculation or measurement of the flow rate pursuant to § 65.63(f).

(2) If the process vent is Group 2B on the basis of organic HAP or TOC concentration being less than the applicable value in table 1 of this subpart, then the owner or operator shall keep records of any process changes as defined in § 65.63(f) that increase the organic HAP or TOC concentration of the process vent and any recalculation or measurement of the concentration pursuant to § 65.63(f).

(3) If the process vent is Group 2A or Group 2B on the basis of the TRE index value being greater than 1.0, then the owner or operator shall keep records of any process changes as defined in § 65.63(f) and any recalculation of the TRE index value pursuant to § 65.63(f).

(4) As a result of a process change, if a process vent that was Group 2B on any basis becomes a Group 2B process vent only on the basis of having a TRE greater than 4.0, then the owner or operator shall keep records of the TRE index value determination performed according to the sample site and TRE index value determination procedures of § 65.64(b)(1) and (h) or determined through engineering assessment as specified in § 65.64(i).

(e) *Other Group 2A records.* An owner or operator of a Group 2A process vent maintaining a TRE index value greater than 1.0 without a recovery device shall record the parameters monitored based on the approved plan as specified in § 65.63(d).

§ 65.67 Reporting provisions.

(a) *Initial compliance status report.* The owner or operator shall submit as part of the Initial Compliance Status Report specified in § 65.5(d) of subpart A of this part the information recorded in § 65.66(a), (b), and (c).

(b) *Process change.* (1) Whenever a process change, as described in § 65.63(f) is made that causes a Group 2A or 2B process vent to become a Group 1 process vent or a Group 2B process vent to become a Group 2A process vent, the owner or operator shall submit a report within 60 days after the performance test or group determination. The report may be submitted as part of the next periodic report. The report shall include the information specified in paragraphs (b)(1)(i) through (b)(1)(iii) of this section.

(i) A description of the process change;

(ii) The results of the recalculation of the flow rate, organic HAP or TOC concentration, and/or TRE index value required under § 65.63(f) and recorded under § 65.66(d); and

(iii) A statement that the owner or operator will comply with the provisions of § 65.63 by the schedules specified in § 65.63(f)(4) through (f)(6).

(2) For process vents that become Group 1 process vents after a process change requiring a performance test to be conducted for the control device being used as specified in subpart G of this part, the owner or operator shall specify that the performance test has become necessary due to a process change. This specification shall be made in the notification to the Administrator of the intent to conduct a performance test as provided in § 65.164(b)(1) of subpart G of this part.

(3) Whenever a process change as described in § 65.63(f) is made that changes the group status of a process vent from Group 1 to Group 2A, or from Group 1 to Group 2B, or from Group 2A to Group 2B, the owner or operator shall include a statement in the next periodic report after the process change that a process change has been made and the new group status of the process vents.

(4) The owner or operator is not required to submit a report of a process change if one of the conditions listed in paragraph (b)(4)(i), (b)(4)(ii), (b)(4)(iii), or (b)(4)(iv) of this section is met.

(i) The change does not meet the definition of a process change in § 65.63(f) of this subpart, or

(ii) For a Group 2B process vent, the vent stream flow rate is recalculated according to § 65.63(f) of this subpart and the recalculated value is less than 0.011 standard cubic meter per minute (0.40 standard cubic foot per minute), or

(iii) For a Group 2B process vent, the organic HAP or TOC concentration of the vent stream is recalculated according to § 65.63(f) of this subpart, and the recalculated value is less than the applicable value in table 1 of this subpart, or

(iv) For a Group 2B process vent, the TRE index value is recalculated according to § 65.63(f) of this subpart and the recalculated value is greater than 4.0.

(c) *Parameters for Group 2A without a recovery device.* An owner or operator of a Group 2A process vent maintaining a TRE index value greater than 1.0 without using a recovery device shall report the information specified in the approved plan under § 65.63(d).

§§ 65.68–65.79 [Reserved]

TABLE 1 TO SUBPART D.—CONCENTRATION FOR GROUP DETERMINATION

Referencing subpart	Concentration
Subpart III of Part 60	NA.[1]
Subpart NNN of Part 60	300 ppmv of TOC.
Subpart RRR of Part 60	300 ppmv of TOC.
Subpart G of Part 63	50 ppmv of HAP.[2]

[1] Process vents subject to subpart III of Part 60 are not eligible for the low concentration exemption provisions of this part.
[2] For process vents subject to subpart G of part 63, the owner or operator may measure HAP or TOC concentration with regard to the low concentration exemption provisions of this part.

TABLE 2.—TO SUBPART D.—TRE PARAMETERS FOR NSPS REFERENCING SUBPARTS [a]

Halogenated vent stream?	Net heating value (MJ/scm)	Vent stream flow rate (scm/min)	Values of terms for TRE equation: TRE=A * [B+C+D+E+F]						Equation No.
			A	B	C	D	E	F	
Yes	0≤ H ≤3.5	Q <14.2	$1/E_{TOC}$	30.96334	0	0	−0.13064QH	0	1
		14.2≤ Q ≤18.8	$1/E_{TOC}$	19.18370	0.27580Q	$0.757620Q^{0.88}$	−0.13064QH	$0.01025Q^{0.5}$	2
		18.8< Q ≤699	$1/E_{TOC}$	20.00563	0.27580Q	$0.303870Q^{0.88}$	−0.13064QH	$0.01025Q^{0.5}$	3
		699< Q ≤1400	$1/E_{TOC}$	39.87022	0.29973Q	$0.303870Q^{0.88}$	−0.13064QH	$0.01449Q^{0.5}$	4
		1400< Q ≤2100	$1/E_{TOC}$	59.73481	0.31467Q	$0.303870Q^{0.88}$	−0.13064QH	$0.01775Q^{0.5}$	5
		2100< Q ≤2800	$1/E_{TOC}$	79.59941	0.32572Q	$0.303870Q^{0.88}$	−0.13064QH	$0.02049Q^{0.5}$	6
		2800< Q ≤3500	$1/E_{TOC}$	99.46400	0.33456Q	$0.303870Q^{0.88}$	−0.13064QH	$0.02291Q^{0.5}$	7
	H >3.5	Q <14.2	$1/E_{TOC}$	20.61052	0	0	0	0	8
		14.2≤ Q ≤18.8	$1/E_{TOC}$	18.84466	0.26742Q	$-0.200440Q^{0.88}$	0	$0.01025Q^{0.5}$	9
		18.8< Q ≤699	$1/E_{TOC}$	19.66658	0.26742Q	$-0.253320Q^{0.88}$	0	$0.01025Q^{0.5}$	10
		699< Q ≤1400	$1/E_{TOC}$	39.19213	0.29062Q	$-0.253320Q^{0.88}$	0	$0.01449Q^{0.5}$	11
		1400< Q ≤2100	$1/E_{TOC}$	58.71768	0.30511Q	$-0.253320Q^{0.88}$	0	$0.01775Q^{0.5}$	12
		2100< Q ≤2800	$1/E_{TOC}$	78.24323	0.31582Q	$-0.253320Q^{0.88}$	0	$0.02049Q^{0.5}$	13
		2800< Q ≤3500	$1/E_{TOC}$	97.76879	0.32439Q	$-0.253320Q^{0.88}$	0	$0.02291Q^{0.5}$	14
No	0≤ H ≤0.48	Q <14.2	$1/E_{TOC}$	11.01250	0	0	−0.17109QH	0	15
		14.2≤ Q ≤1340	$1/E_{TOC}$	8.54245	0.10555Q	$0.090300Q^{0.88}$	−0.17109QH	$0.01025Q^{0.5}$	16
		1340< Q ≤2690	$1/E_{TOC}$	16.94386	0.11470Q	$0.090300Q^{0.88}$	−0.17109QH	$0.01449Q^{0.5}$	17
		2690< Q ≤4040	$1/E_{TOC}$	25.34528	0.12042Q	$0.090300Q^{0.88}$	−0.17109QH	$0.01775Q^{0.5}$	18
	0.48< H ≤1.9.	Q <14.2	$1/E_{TOC}$	13.45630	0	0	−0.16181QH	0	19
		14.2≤ Q ≤1340	$1/E_{TOC}$	9.25233	0.06105Q	$0.319370Q^{0.88}$	−0.16181QH	$0.01025Q^{0.5}$	20
		1340< Q ≤2690	$1/E_{TOC}$	18.36363	0.06635Q	$0.319370Q^{0.88}$	−0.16181QH	$0.01449Q^{0.5}$	21
		2690< Q ≤4040	$1/E_{TOC}$	27.47492	0.06965Q	$0.319370Q^{0.88}$	−0.16181QH	$0.01775Q^{0.5}$	22
	1.9< H ≤3.6	Q <14.2	$1/E_{TOC}$	7.96988	0	0	0	0	23
		14.2≤ Q ≤1180	$1/E_{TOC}$	6.67868	0.06943Q	$0.025820Q^{0.88}$	0	$0.01025Q^{0.5}$	24
		1180< Q ≤2370	$1/E_{TOC}$	13.21633	0.07546Q	$0.025820Q^{0.88}$	0	$0.01449Q^{0.5}$	25
		2370< Q ≤3550	$1/E_{TOC}$	19.75398	0.07922Q	$0.025820Q^{0.88}$	0	$0.01775Q^{0.5}$	26
	H >3.6	Q <14.2	$1/E_{TOC}$	6.67868	0	$0.02220Q^{0.88}H^{0.88}$	−0.00707QH	$0.02036H^{0.5}$	27
		Q ≥14.2 and 14.2≤ Q* (H/3.6) ≤1180.	$1/E_{TOC}$	6.67868	0	$0.02220Q^{0.88}H^{0.88}$	−0.00707QH	$0.00540Q^{0.5}H^{0.5}$	28
		Q ≥14.2 and 1180< Q* (H/3.6) ≤2370.	$1/E_{TOC}$	13.21633	0	$0.02412Q^{0.88}H^{0.88}$	−0.00707QH	$0.00764Q^{0.5}H^{0.5}$	29
		Q ≥14.2 and 2370< Q* (H/3.6) ≤3550.	$1/E_{TOC}$	19.75398	0	$0.02533Q^{0.88}H^{0.88}$	−0.00707QH	$0.00936Q^{0.5}H^{0.5}$	30
No	0≤ H ≥11.2	All	$1/E_{TOC}$	2.08	2.25Q	$0.288Q^{0.8}$	−0.193QH	$-0.0051E_{TOC}$	31
	H ≤11.2	All	$1/E_{TOC}$	2.08	0.309Q	$0.0619Q^{0.8}$	−0.0043QH	$-0.0043E_{TOC}$	32

[a] Use according to procedures outlined in § 65.64(h).
MJ/scm = mega Joules per standard cubic meter; scm/min = standard cubic meters per minute.

TABLE 3 TO SUBPART D.—TRE PARAMETERS FOR HON REFERENCING SUBPARTS[a]

Existing or New?	Halogenated vent stream?	Values of terms for TRE equation: TRE = A * [B+C+D+E+F]						Equation No.
		A	B	C	D	E	F	
Existing	Yes	$1/E_{HAP}$	3.995	0.05200Q	0	−0.001769H	$0.0009700E_{TOC}$	33
	No	$1/E_{HAP}$	1.935	0.3660Q	0	−0.007687H	$-0.000733E_{TOC}$	34
		$1/E_{HAP}$	1.492	0.06267Q	0	0.03177H	$-0.001159E_{TOC}$	35
		$1/E_{HAP}$	2.519	0.01183Q	0	0.01300H	$0.04790E_{TOC}$	36
New	Yes	$1/E_{HAP}$	1.0895	0.01417Q	0	−0.000482H	$0.0002645E_{TOC}$	37
	No	$1/E_{HAP}$	0.5276	0.0998Q	0	−0.002096H	$-0.0002000E_{TOC}$	38
		$1/E_{HAP}$	0.4068	0.00171Q	0	0.008664H	$-0.000316E_{TOC}$	39
		$1/E_{HAP}$	0.6868	0.00321Q	0	0.003546H	$0.01306E_{TOC}$	40

[a] Use according to procedures outlined in § 65.64(h).
MJ/scm = mega Joules per standard cubic meter; scm/min = standard cubic meters per minute.

Subpart E—Transfer Racks

§ 65.80 Applicability.

(a) The provisions of this subpart and of subpart A of this part apply to control of regulated material emissions from transfer racks where a referencing subpart references the use of this subpart for such emissions control.

(b) If a physical or process change is made that causes a transfer rack to fall outside the criteria in the referencing subpart that required the transfer rack to control emission of regulated material, the owner or operator may elect to comply with the provisions for transfer racks not subject to control contained in the referencing subpart instead of the provisions of this subpart.

§ 65.81 Definitions.

All terms used in this subpart shall have the meaning given them in the Act and in subpart A of this part. If a term is defined in both subpart A of this part and in other subparts that reference the use of this subpart, the term shall have the meaning given in subpart A of this part for purposes of this subpart.

§ 65.82 Design requirements.

(a) The owner or operator shall equip each transfer rack with the equipment specified in either paragraph (a)(1) or (a)(2) of this section.

(1) A closed vent system which routes the regulated material vapors to a control device as provided in § 65.83(a)(1) and (a)(2).

(2) Process piping which routes the regulated material vapors to a process or a fuel gas system as provided in § 65.83(a)(4), or to a vapor balance system as provided in § 65.83(a)(3).

(b) Each closed vent system shall be designed to collect the regulated material displaced from tank trucks or railcars during loading and to route the collected regulated material to a control device or a flare as provided in § 65.83(a)(1) and (a)(2).

(c) Process piping shall be designed to collect the regulated material displaced from tank trucks or railcars during loading and to route the collected regulated material vapors to a process or a fuel gas system as provided in § 65.83(a)(4) or to a vapor balance system as provided in § 65.83(a)(3).

(d) Each closed vent system shall meet the applicable requirements of § 65.143 of subpart G of this part.

(e) If the collected regulated material vapors from a transfer rack are routed to a vapor balance system as provided in § 65.83(a)(3), then that transfer rack is exempt from the closed vent system design requirements of paragraphs (b) and (d) of this section, the halogenated vent stream control requirements of § 65.83(b), the control device operation requirements of § 65.84(b), the monitoring requirements of § 65.86, and the requirements of subpart G of this part.

(f) If the collected regulated material vapors are routed to a process or a fuel gas system as provided in § 65.83(a)(4), then each owner or operator shall meet the applicable requirements of § 65.142(c) of subpart G of this part.

§ 65.83 Performance requirements.

(a) The owner or operator of the transfer rack shall comply with paragraph (a)(1), (a)(2), (a)(3) or (a)(4) of this section.

(1) *98 Percent or 20 parts per million by volume standard.* Use a control device to reduce emissions of regulated material by 98 weight-percent or to an exit concentration of 20 parts per million by volume, whichever is less stringent. For combustion devices, the emission reduction or concentration shall be calculated on a dry basis, corrected to 3 percent oxygen. The owner or operator shall meet the applicable requirements of § 65.142(c) of subpart G of this part. Compliance may be achieved by using any combination of combustion, recovery, and/or recapture devices.

(2) *Flare.* Reduce emissions of regulated material using a flare meeting the applicable requirements of § 65.142(c) of subpart G of this part.

(3) *Vapor balancing.* Reduce emissions of regulated material using a vapor balancing system designed and operated to collect regulated material vapors displaced from tank trucks or railcars during loading; and to route the collected regulated material vapors to the storage vessel from which the liquid being loaded originated, or to another storage vessel connected to a common header, or to compress and route collected regulated material vapors to a process. Transfer racks for which the owner or operator is using a vapor balancing system are exempt from the closed vent system design requirements of paragraphs § 65.82(b) and (d), the halogenated vent stream control requirements of paragraph (b) of this section, the control device operation requirements of § 65.84(b), the monitoring requirements of § 65.86, and the requirements of subpart G of this part.

(4) *Route to a process or fuel gas system.* Route emissions of regulated material to a process where the regulated material in the emissions shall predominantly meet one of, or a combination of, the ends specified in paragraphs (a)(4)(i) through (a)(4)(iv) of this section or to a fuel gas system. The owner or operator shall meet the applicable requirements of § 65.142(c) of subpart G of this part.

(i) Recycled and/or consumed in the same manner as a material that fulfills the same function in that process;

(ii) Transformed by chemical reaction into materials that are not regulated materials;

(iii) Incorporated into a product; and/or

(iv) Recovered.

(b) *Additional control requirements for halogenated vent streams.* Halogenated vent streams from transfer racks that are combusted shall be controlled according to paragraph (b)(1) or (b)(2) of this section. Determination of whether a vent stream is halogenated shall be made using the procedures specified in § 65.85(c) and the halogen concentration in the vent stream shall be recorded and reported in the Initial Compliance Status Report as specified in § 65.160(d) of subpart G of this part.

(1) *Halogen reduction device following combustion.* If a combustion device is used to comply with paragraph (a)(1) of this section for a halogenated vent stream, then the vent stream exiting the combustion device shall be ducted to a halogen reduction device including, but not limited to, a scrubber before it is discharged to the atmosphere, and the halogen reduction device shall meet the requirements of paragraph (b)(1)(i) or (b)(1)(ii) of this section, as applicable. The halogenated vent stream shall not be combusted using a flare.

(i) Except as provided in paragraph (b)(1)(ii) of this section, the halogen reduction device shall reduce overall emissions of hydrogen halides and halogens by 99 percent or shall reduce the outlet mass emission rate of total hydrogen halides and halogens to 0.45 kilogram per hour (0.99 pound per hour) or less, whichever is less stringent. The owner or operator shall meet the applicable requirements of § 65.142(c) of subpart G of this part.

(ii) If a scrubber or other halogen reduction device was installed prior to December 31, 1992, the halogen reduction device shall reduce overall emissions of hydrogen halides and halogens by 95 percent or shall reduce the outlet mass of total hydrogen halides and halogens to less than 0.45 kilogram per hour (0.99 pound per hour), whichever is less stringent. The owner or operator shall meet the applicable requirements of § 65.142(c) of subpart G of this part.

(2) *Halogen reduction device prior to combustion.* A halogen reduction device, such as a scrubber, or other

technique may be used to make the vent stream nonhalogenated by reducing the vent stream halogen atom mass emission rate to less than 0.45 kilogram per hour (0.99 pound per hour) prior to any combustion control device used to comply with the requirements of paragraph (a)(1) or (a)(2) of this section. The halogen mass emission rate prior to the combustor shall be determined according to the procedures in § 65.85(c). The owner or operator shall meet the applicable requirements of § 65.142(c) of subpart G of this part.

§ 65.84 Operating requirements.

(a) *Closed vent systems or process piping.* An owner or operator of a transfer rack shall operate the equipment specified in either paragraph (a)(1) or (a)(2) of this section.

(1) A closed vent system which routes the regulated material vapors to a control device as provided in § 65.83(a)(1) and (a)(2).

(2) Process piping which routes the regulated material vapors to a process or a fuel gas system as provided in § 65.83(a)(4) or to a vapor balance system as provided in § 65.83(a)(3).

(b) *Control device operation.* Whenever regulated material emissions are vented to a control device used to comply with the provisions of this subpart, such control device shall be operating.

(c) *Tank trucks and railcars.* The owner or operator shall load regulated material into only tank trucks and railcars that meet the requirements specified in paragraph (c)(1) or (c)(2) of this section and shall maintain the records specified in § 65.87.

(1) Have a current certification in accordance with the U.S. Department of Transportation (DOT) pressure test requirements of 49 CFR part 180 for tank trucks and 49 CFR 173.31 for railcars; or

(2) Have been demonstrated to be vapor-tight within the preceding 12 months as determined by the procedures in § 65.85(a). Vapor-tight means that the pressure in a truck or railcar tank will not drop more than 750 pascals (0.11 pound per square inch) within 5 minutes after it is pressurized to a minimum of 4,500 pascals (0.65 pound per square inch).

(d) *Pressure relief device.* The owner or operator of a transfer rack subject to the provisions of this subpart shall ensure that no pressure relief device in the loading equipment of each tank truck or railcar shall begin to open to the atmosphere during loading. Pressure relief devices needed for safety purposes are not subject to paragraph (d) of this section.

(e) *Compatible system.* The owner or operator of a transfer rack subject to the provisions of this subpart shall load regulated material only to tank trucks or railcars equipped with a vapor collection system that is compatible with the transfer rack's closed vent system or process piping.

(f) *Loading while systems connected.* The owner or operator of a transfer rack subject to this subpart shall load regulated material only to tank trucks or railcars whose collection systems are connected to the transfer rack's closed vent systems or process piping.

§ 65.85 Procedures.

(a) *Vapor tightness.* For the purposes of demonstrating vapor tightness to determine compliance with § 65.84(c)(2), the procedures and equipment specified in paragraphs (a)(1) and (a)(2) of this section shall be used.

(1) The pressure test procedures specified in Method 27 of 40 CFR part 60, appendix A; and

(2) A pressure measurement device that has a precision of ±2.5 millimeters of mercury (0.10 inch) or better and that is capable of measuring above the pressure at which the tank truck or railcar is to be tested for vapor tightness.

(b) *Engineering assessment.* Engineering assessment to determine if a vent stream is halogenated or flow rate of a gas stream includes, but is not limited to, the examples specified in paragraphs (b)(1) through (b)(5) of this section.

(1) Previous test results, provided the tests are representative of current operating practices at the process unit.

(2) Bench-scale or pilot-scale test data representative of the process under representative operating conditions.

(3) Maximum flow rate or halogen emission rate specified or implied within a permit limit applicable to the process vent.

(4) Design analysis based on accepted chemical engineering principles, measurable process parameters, or physical or chemical laws or properties.

(5) All data, assumptions, and procedures used in the engineering assessment shall be documented.

(c) *Halogenated vent stream determination.* In order to determine whether a vent stream is halogenated, the mass emission rate of halogen atoms contained in organic compounds shall be calculated as specified in paragraphs (c)(1) and (c)(2) of this section.

(1) The vent stream concentration of each organic compound containing halogen atoms (parts per million by volume by compound) shall be determined based on any of the procedures specified in paragraphs (c)(1)(i) through (c)(1)(iv) of this section.

(i) Process knowledge that no halogen or hydrogen halides are present in the vent stream; or

(ii) Applicable engineering assessment as specified in paragraph (b); or

(iii) Concentration of organic compounds containing halogens measured by Method 18 of 40 CFR part 60, appendix A; or

(iv) Any other method or data that have been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A.

(2) The following equation shall be used to calculate the mass emission rate of halogen atoms:

$$E = K_2 V_s \left(\sum_{j=1}^{n} \sum_{i=1}^{m} C_j * L_{ji} * M_{ji} \right) \quad (85\text{-}1)$$

Where:

E = Mass of halogen atoms, dry basis, kilograms per hour.

K_2 = Constant, 2.494×10^{-6} (parts per million)$^{-1}$ (kilogram-mole per standard cubic meter) (minute/hour), where standard temperature is 20° C.

V_s = Flow rate of gas stream, dry standard cubic meters per minute, determined according to Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as appropriate, or determined using engineering assessment as specified in paragraph (b).

n = Number of halogenated compounds j in the gas stream.

j = Halogenated compound j in the gas stream.

m = Number of different halogens i in each compound j of the gas stream.

i = Halogen atom i in compound j of the gas stream.

C_j = Concentration of halogenated compound j in the gas stream, dry basis, parts per million by volume.

L_{ji} = Number of atoms of halogen i in compound j of the gas stream.

M_{ji} = Molecular weight of halogen atom i in compound j of the gas stream, kilogram per kilogram-mole.

§ 65.86 Monitoring.

The owner or operator of a transfer rack equipped with a closed vent system and control device pursuant to § 65.83(a)(1) or (a)(2) shall monitor the closed vent system and control device as required under the applicable paragraphs specified in § 65.142(c) of subpart G of this part.

§ 65.87 Recordkeeping provisions.

The owner or operator of a transfer rack shall record that the verification of U.S. Department of Transportation (DOT) tank certification or Method 27 of 40 CFR part 60, appendix A, testing required in § 65.84(c) has been

performed. Various methods for the record of verification can be used such as: a check off on a log sheet; a list of DOT serial numbers or Method 27 data or a position description for gate security showing that the security guard will not allow any trucks on-site that do not have the appropriate documentation.

§§ 65.88–65.99 [Reserved]

Subpart F—Equipment Leaks

§ 65.100 Applicability.

(a) *Equipment subject to this subpart.* The provisions of this subpart and subpart A of this part apply to equipment that contains or contacts regulated material. Compliance with this subpart instead of the referencing subpart does not alter the applicability of the referencing subpart. This subpart applies to only the equipment to which the referencing subpart applies. This part does not extend applicability to equipment that are not regulated by the referencing subpart.

(b) *Equipment in vacuum service.* Equipment in vacuum service is excluded from the requirements of this subpart.

(c) *Equipment in service less than 300 hours per calendar year.* Equipment intended to be in regulated material service less than 300 hours per calendar year is excluded from the requirements of §§ 65.106 through 65.115 and § 65.117 if it is identified as required in § 65.103(b)(6).

(d) *Lines and equipment not containing process fluids.* Lines and equipment not containing process fluids are not subject to the provisions of this subpart. Utilities and other nonprocess lines, such as heating and cooling systems that do not combine their materials with those in the processes they serve, are not considered to be part of a process unit.

§ 65.101 Definitions.

All terms used in this subpart shall have the meaning given them in the Act and in subpart A of this part. If a term is defined in both subpart A of this part and in other subparts that reference the use of this subpart, the term shall have the meaning given in subpart A of this part for purposes of this subpart.

§ 65.102 Alternative means of emission limitation.

(a) *Performance standard exemption.* The provisions of paragraph (b) of this section do not apply to the performance standards of § 65.111(b) for pressure relief devices or § 65.112(f) for compressors operating under the alternative compressor standard.

(b) *Requests by owners or operators.* An owner or operator may request a determination of alternative means of emission limitation to the requirements of §§ 65.106 through 65.115 as provided in paragraph (d) of this section. If the Administrator makes a determination that a means of emission limitation is a permissible alternative, the owner or operator shall either comply with the alternative or comply with the requirements of §§ 65.106 through 65.115.

(c) *Requests by manufacturers of equipment.*

(1) Manufacturers of equipment used to control equipment leaks of a regulated material may apply to the Administrator for approval of an alternative means of emission limitation that achieves a reduction in emissions of the regulated material equivalent to the reduction achieved by the equipment, design, and operational requirements of this subpart.

(2) The Administrator will grant permission according to the provisions of paragraph (d) of this section.

(d) *Permission to use an alternative means of emission limitation.* Permission to use an alternative means of emission limitation shall be governed by the procedures in paragraphs (d)(1) through (d)(4) of this section.

(1) Where the standard is an equipment, design, or operational requirement, the requirements of paragraphs (d)(1)(i) through (d)(1)(iii) of this section apply.

(i) Each owner or operator applying for permission to use an alternative means of emission limitation shall be responsible for collecting and verifying emission performance test data for an alternative means of emission limitation.

(ii) The Administrator will compare test data for the means of emission limitation to test data for the equipment, design, and operational requirements.

(iii) The Administrator may condition the permission on requirements that may be necessary to ensure operation and maintenance to achieve at least the same emission reduction as the equipment, design, and operational requirements of this subpart.

(2) Where the standard is a work practice, the requirements of paragraphs (d)(2)(i) through (d)(2)(vi) of this section apply.

(i) Each owner or operator applying for permission to use an alternative means of emission limitation shall be responsible for collecting and verifying test data for the alternative.

(ii) For each kind of equipment for which permission is requested, the emission reduction achieved by the required work practices shall be demonstrated for a minimum period of 12 months.

(iii) For each kind of equipment for which permission is requested, the emission reduction achieved by the alternative means of emission limitation shall be demonstrated.

(iv) Each owner or operator applying for such permission shall commit in writing for each kind of equipment to work practices that provide for emission reductions equal to or greater than the emission reductions achieved by the required work practices.

(v) The Administrator will compare the demonstrated emission reduction for the alternative means of emission limitation to the demonstrated emission reduction for the required work practices and will consider the commitment in paragraph (d)(2)(iv) of this section.

(vi) The Administrator may condition the permission on requirements that may be necessary to ensure operation and maintenance to achieve the same or greater emission reduction as the required work practices of this subpart.

(3) An owner or operator may offer a unique approach to demonstrate the alternative means of emission limitation.

(4) If in the judgment of the Administrator an alternative means of emission limitation will be approved, the Administrator will publish a notice of the determination in the **Federal Register** using the procedures pursuant to § 65.8(a) of subpart A.

§ 65.103 Equipment identification.

(a) *General equipment identification.* Equipment subject to this subpart shall be identified. Identification of the equipment does not require physical tagging of the equipment. For example, the equipment may be identified on a plant site plan, in log entries, by designation of process unit boundaries by some form of weatherproof identification, or by other appropriate methods.

(b) *Additional equipment identification.* In addition to the general identification required by paragraph (a) of this section, equipment subject to any of the provisions in §§ 65.106 through 65.115 shall be specifically identified as required in paragraphs (b)(1) through (b)(6) of this section, as applicable. Paragraph (b) of this section does not apply to an owner or operator of a batch product-process who elects to pressure test the batch product-process equipment train pursuant to § 65.117.

(1) *Connectors.* Except for inaccessible, ceramic, or ceramic-lined connectors meeting the provisions of

§ 65.108(e)(2) and instrumentation systems identified pursuant to paragraph (b)(5) of this section, identify the connectors subject to the requirements of this subpart. Connectors need not be individually identified if all connectors in a designated area or length of pipe subject to the provisions of this subpart are identified as a group, and the number of connectors subject is indicated. With respect to connectors, the identification shall be complete no later than the completion of the initial survey required by § 65.108(a).

(2) [Reserved]

(3) *Routed to a process or fuel gas system or equipped with a closed vent system and control device.* Identify the equipment that the owner or operator elects to route to a process or fuel gas system or equip with a closed vent system and control device under the provisions of § 65.107(e)(3) (pumps in light liquid service), § 65.109(e)(3) (agitators), § 65.111(d) (pressure relief devices in gas/vapor service), § 65.112(e) (compressors), or § 65.118 (alternative means of emission limitation for enclosed-vented process units).

(4) *Pressure relief devices.* Identify the pressure relief devices equipped with rupture disks under the provisions of § 65.111(e).

(5) *Instrumentation systems.* Identify instrumentation systems subject to the provisions of this subpart. Individual components in an instrumentation system need not be identified.

(6) *Equipment in service less than 300 hours per calendar year.* Identify either by list, location (area or group), or other method, equipment in regulated material service less than 300 hours per calendar year within a process unit subject to the provisions of this subpart shall be recorded.

(c) *Special equipment designations: Equipment that is unsafe or difficult-to-monitor*—(1) Designation and criteria for unsafe-to-monitor. Valves meeting the provisions of § 65.106(e)(1), pumps meeting the provisions of § 65.107(e)(6), connectors meeting the provisions of § 65.108(e)(1), and agitators meeting the provisions of § 65.109(e)(7) may be designated unsafe-to-monitor if the owner or operator determines that monitoring personnel would be exposed to an immediate danger as a consequence of complying with the monitoring requirements of this subpart.

(2) *Designation and criteria for difficult-to-monitor.* Valves meeting the provisions of § 65.106(e)(2) may be designated difficult-to-monitor if the provisions of paragraphs (c)(2)(i) apply. Agitators meeting the provisions of § 65.109(e)(5) may be designated difficult-to-monitor if the provisions of paragraph (c)(2)(ii) of this section apply.

(i) *Valves.* (A) The owner or operator of the valve determines that the valve cannot be monitored without elevating the monitoring personnel more than 2 meters (7 feet) above a support surface or it is not accessible in a safe manner when it is in regulated material service; and

(B) The process unit within which the valve is located is a regulated source for which the owner or operator commenced construction, reconstruction, or modification prior to the compliance date of the referencing subpart; or

(C) The owner or operator designates less than 3 percent of the total number of valves within the process unit as difficult-to-monitor.

(ii) *Agitators.* (A) The owner or operator determines that the agitator cannot be monitored without elevating the monitoring personnel more than 2 meters (7 feet) above a support surface or it is not accessible in a safe manner when it is in regulated material service.

(3) *Identification of unsafe or difficult-to-monitor equipment.* The owner or operator shall record the identity of equipment designated as unsafe-to-monitor or difficult-to-monitor according to the provisions of paragraph (c)(1) or (c)(2) of this section, the planned schedule for monitoring this equipment and an explanation why the equipment is difficult-to-monitor, if applicable.

(4) *Written plan requirements.* (i) The owner or operator of equipment designated as unsafe-to-monitor according to the provisions of paragraph (c)(1) of this section shall have a written plan that requires monitoring of the equipment as frequently as practical during safe-to-monitor times, but not more frequently than the periodic monitoring schedule otherwise applicable, and repair of the equipment according to the procedures in § 65.105 if a leak is detected.

(ii) The owner or operator of equipment designated as difficult-to-monitor according to the provisions of paragraph (c)(2) of this section shall have a written plan that requires monitoring of the equipment at least once per calendar year and repair of the equipment according to the procedures in § 65.105 if a leak is detected.

(d) *Special equipment designations: Equipment that is unsafe to repair*—(1) *Designation and criteria.* Connectors subject to the provisions of § 65.105(e) may be designated unsafe to repair if the owner or operator determines that repair personnel would be exposed to an immediate danger as a consequence of complying with the repair requirements of this subpart and if the connector will be repaired before the end of the next process unit shutdown as specified in § 63.105(e).

(2) *Identification of equipment.* The identity of connectors designated as unsafe to repair and an explanation why the connector is unsafe to repair shall be recorded.

(e) *Special equipment designations: Compressors operating with an instrument reading of less than 500 parts per million.* Identify the compressors that the owner or operator elects to designate as operating with an instrument reading of less than 500 parts per million under the provisions of § 65.112(f).

(f) *Special equipment designations: Equipment in heavy liquid service.* The owner or operator of equipment in heavy liquid service shall comply with the requirements of either paragraph (f)(1) or (f)(2) of this section as provided in paragraph (f)(3) of this section.

(1) Retain information, data, and analyses used to determine that a piece of equipment is in heavy liquid service.

(2) When requested by the Administrator, demonstrate that the piece of equipment or process is in heavy liquid service.

(3) A determination or demonstration that a piece of equipment or process is in heavy liquid service shall include an analysis or demonstration that the process fluids do not meet the definition of ''in light liquid service.'' Examples of information that could document this include, but are not limited to, records of chemicals purchased for the process, analyses of process stream composition, engineering calculations, or process knowledge.

§ 65.104 Instrument and sensory monitoring for leaks.

(a) *Monitoring for leaks.* The owner or operator of a regulated source subject to this subpart shall monitor regulated equipment as specified in paragraph (a)(1) of this section for instrument monitoring and paragraph (a)(2) of this section for sensory monitoring.

(1) *Instrument monitoring for leaks.* (i) Valves in gas/vapor service and in light liquid service shall be monitored pursuant to § 65.106(b).

(ii) Pumps in light liquid service shall be monitored pursuant to § 65.107(b).

(iii) Connectors in gas/vapor service and in light liquid service shall be monitored pursuant to § 65.108(b).

(iv) Agitators in gas/vapor service and in light liquid service shall be monitored pursuant to § 65.109(b).

(v) Pressure relief devices in gas/vapor service shall be monitored pursuant to § 65.111(b) and (c).

(vi) Compressors designated to operate with an instrument reading less than 500 parts per million as described in § 65.103(e) shall be monitored pursuant to § 65.112(f).

(2) *Sensory monitoring for leaks.* (i) Pumps in light liquid service shall be observed pursuant to § 65.107(b)(4) and (e)(1).

(ii) Inaccessible, ceramic, or ceramic-lined connectors in gas/vapor service and in light liquid service shall be observed pursuant to § 65.108(e)(2).

(iii) Agitators in gas/vapor service and in light liquid service shall be monitored pursuant to § 65.109(b)(3) or (e)(1)(i).

(iv) Pumps, valves, agitators, and connectors in heavy liquid service; instrumentation systems; and pressure relief devices in liquid service shall be observed pursuant to § 65.110(b)(1).

(b) *Instrument monitoring methods.* Instrument monitoring as required under this subpart shall comply with the requirements specified in paragraphs (b)(1) through (b)(6) of this section.

(1) *Monitoring method.* Monitoring shall comply with Method 21 of 40 CFR part 60, appendix A, except as otherwise provided in this section.

(2) *Detection instrument performance criteria.* (i) Except as provided for in paragraph (b)(2)(ii) of this section, the detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the representative composition of the process fluid not each individual VOC in the stream. For process streams that contain nitrogen, air, or other inerts that are not organic HAP's or VOC, the representative stream response factor shall be determined on an inert-free basis. The response factor may be determined at any concentration for which monitoring for leaks will be conducted.

(ii) If no instrument is available at the plant site that will meet the performance criteria specified in paragraph (b)(2)(i) of this section, the instrument readings may be adjusted by multiplying by the representative response factor of the process fluid calculated on an inert-free basis as described in paragraph (b)(2)(i) of this section.

(3) *Detection instrument calibration procedure.* The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(4) *Detection instrument calibration gas.* Calibration gases shall be zero air (less than 10 parts per million of hydrocarbon in air); and the gases specified in paragraph (b)(4)(i) of this section except as provided in paragraph (b)(4)(ii) of this section.

(i) Mixtures of methane in air at a concentration no more than 2,000 parts per million greater than the leak definition concentration of the equipment monitored. If the monitoring instrument's design allows for multiple calibration scales, then the lower scale shall be calibrated with a calibration gas that is no higher than 2,000 parts per million above the concentration specified as a leak, and the highest scale shall be calibrated with a calibration gas that is approximately equal to 10,000 parts per million. If only one scale on an instrument will be used during monitoring, the owner or operator need not calibrate the scales that will not be used during that day's monitoring.

(ii) A calibration gas other than methane in air may be used if the instrument does not respond to methane or if the instrument does not meet the performance criteria specified in paragraph (b)(2)(i) of this section. In such cases, the calibration gas may be a mixture of one or more of the compounds to be measured in air.

(5) *Monitoring performance.* Monitoring shall be performed when the equipment is in regulated material service or is in use with any other detectable material.

(6) *Monitoring data.* Monitoring data obtained prior to the regulated source becoming subject to the referencing subpart that do not meet the criteria specified in paragraphs (b)(1) through (b)(5) of this section may still be used to qualify initially for less frequent monitoring under the provisions in § 65.106(a)(2), (b)(3), or (b)(4) for valves or § 65.108(b)(3) for connectors provided the departures from the criteria or from the specified monitoring frequency of § 65.106(b)(3) or (b)(4) are minor and do not significantly affect the quality of the data. Examples of minor departures are monitoring at a slightly different frequency (such as every 6 weeks instead of monthly or quarterly), following the performance criteria of section 3.1.2(a) of Method 21 of appendix A of 40 CFR part 60 instead of paragraph (b)(2) of this section, or monitoring using a different leak definition if the data would indicate the presence or absence of a leak at the concentration specified in this subpart. Failure to use a calibrated instrument is not considered a minor departure.

(c) *Instrument monitoring readings and background adjustments.* The owner or operator may elect to adjust or not to adjust the instrument readings for background. If an owner or operator elects not to adjust instrument readings for background, the owner or operator shall monitor the equipment according to the procedures specified in paragraphs (b)(1) through (b)(5) of this section. In such cases, all instrument readings shall be compared directly to the applicable leak definition for the monitored equipment to determine whether there is a leak or to determine compliance with § 65.111(b) (pressure relief devices) or § 65.112(f) (alternative compressor standard). If an owner or operator elects to adjust instrument readings for background, the owner or operator shall monitor the equipment according to the procedures specified in paragraphs (c)(1) through (c)(4) of this section.

(1) The requirements of paragraphs (b)(1) through (b)(5) of this section shall apply.

(2) The background level shall be determined using the procedures in Method 21 of 40 CFR part 60, appendix A.

(3) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Method 21 of 40 CFR part 60, appendix A.

(4) The arithmetic difference between the maximum concentration indicated by the instrument and the background level shall be compared to the applicable leak definition for the monitored equipment to determine whether there is a leak or to determine compliance with § 65.111(b) (pressure relief devices) or § 65.112(f) (alternative compressor standard).

(d) *Sensory monitoring methods.* Sensory monitoring consists of visual, audible, olfactory, or any other detection method used to determine a potential leak to the atmosphere.

(e) *Leaking equipment identification and records.* (1) When each leak is detected, a weatherproof and readily visible identification shall be attached to the leaking equipment.

(2) When each leak is detected, the information specified in paragraphs (e)(2)(i) and (e)(2)(ii) shall be recorded and kept pursuant to § 65.4(a) of subpart A of this part except the information for connectors complying with the 8 year monitoring period allowed under § 65.108(b)(3)(iii) shall be kept 5 years beyond the date of its last use.

(i) The instrument and the equipment identification and the instrument operator's name, initials, or identification number if a leak is detected or confirmed by instrument monitoring.

(ii) The date the leak was detected.

§ 65.105 Leak repair.

(a) *Leak repair schedule.* The owner or operator shall repair each leak detected as soon as practical but not later than 15 calendar days after it is detected except as provided in paragraph (d) of this section. A first attempt at repair as defined in subpart A of this part shall be made no later than 5 calendar days after the leak is detected. First attempt at repair for pumps includes, but is not limited to, tightening the packing gland nuts and/or ensuring that the seal flush is operating at design pressure and temperature. First attempt at repair for valves includes, but is not limited to, tightening the bonnet bolts, and/or replacing the bonnet bolts, and/or tightening the packing gland nuts, and/or injecting lubricant into the lubricated packing.

(b) [Reserved]

(c) *Leak identification removal*—(1) *Valves and connectors.* The leak identification on a valve may be removed after it has been monitored as specified in § 65.106(d)(2) and no leak has been detected during that monitoring. The leak identification on a connector may be removed after it has been monitored as specified in § 65.108(b)(3)(iv) and no leak has been detected during that monitoring.

(2) *Other equipment.* The identification that has been placed pursuant to § 65.104(e)(1) on equipment determined to have a leak except for a valve or for a connector that is subject to the provisions of § 65.108(b)(4)(i)(A) may be removed after it is repaired.

(d) *Delay of repair.* Delay of repair is allowed for any of the conditions specified in paragraphs (d)(1) through (d)(5) of this section. The owner or operator shall maintain a record of the facts that explain any delay of repairs and, where appropriate, why the repair was technically infeasible without a process unit shutdown.

(1) Delay of repair of equipment for which leaks have been detected is allowed if repair within 15 days after a leak is detected is technically infeasible without a process unit shutdown. Repair of this equipment shall occur as soon as practical, but no later than the end of the next process unit shutdown, except as provided in paragraph (d)(5) of this section.

(2) Delay of repair of equipment for which leaks have been detected is allowed for equipment that is isolated from the process and that does not remain in regulated material service.

(3) Delay of repair for valves, connectors, and agitators is also allowed if the provisions of paragraphs (d)(3)(i) and (d)(3)(ii) of this section are met.

(i) The owner or operator determines that emissions of purged material resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair; and

(ii) When repair procedures are effected, the purged material is collected and destroyed or recovered in a control device complying with § 65.115.

(4) Delay of repair for pumps is also allowed if the provisions of paragraphs (d)(4)(i) and (d)(4)(ii) of this section are met.

(i) Repair requires replacing the existing seal design with a new system that the owner or operator has determined under the provisions of § 65.116(d) will provide better performance or one of the specifications of paragraphs (d)(4)(i)(A) through (d)(4)(i)(C) of this section are met.

(A) A dual mechanical seal system that meets the requirements of § 65.107(e)(1) will be installed;

(B) A pump that meets the requirements of § 65.107(e)(2) will be installed; or

(C) A system that routes emissions to a process or a fuel gas system or a closed vent system and control device that meets the requirements of § 65.107(e)(3) will be installed; and

(ii) Repair is completed as soon as practical but not later than 6 months after the leak was detected.

(5) Delay of repair beyond a process unit shutdown will be allowed for a valve if valve assembly replacement is necessary during the process unit shutdown, and valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the second process unit shutdown will not be allowed unless the third process unit shutdown occurs sooner than 6 months after the first process unit shutdown.

(e) *Unsafe-to-repair: Connectors.* Any connector that is designated as described in § 65.103(d) as an unsafe-to-repair connector is exempt from the requirements of § 65.108(d) and paragraph (a) of this section if the provisions of paragraphs (e)(1) and (e)(2) of this section are met.

(1) The owner or operator determines that repair personnel would be exposed to an immediate danger as a consequence of complying with paragraph (a) of this section; and

(2) The connector will be repaired before the end of the next scheduled process unit shutdown.

(f) *Leak repair records.* For each leak detected, the information specified in paragraphs (f)(1) through (f)(5) of this section shall be recorded and kept pursuant to § 65.4(a) of subpart A of this part.

(1) The date of first attempt to repair the leak.

(2) The date of successful repair of the leak.

(3) Maximum instrument reading measured by Method 21 of 40 CFR part 60, appendix A, at the time the leak is successfully repaired or determined to be nonrepairable.

(4) ''Repair delayed'' and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak as specified in paragraphs (f)(4)(i) and (f)(4)(ii) of this section.

(i) The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. The written procedures may be included as part of the startup/shutdown/malfunction plan required by § 65.6 of subpart A of this part for the source or may be part of a separate document that is maintained at the plant site. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(ii) If delay of repair was caused by depletion of stocked parts, there must be documentation that the spare parts were sufficiently stocked onsite before depletion and the reason for depletion.

(5) Dates of process unit shutdowns that occur while the equipment is unrepaired.

§ 65.106 Standards: Valves in gas/vapor service and in light liquid service.

(a) *Compliance schedule.* (1) The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f) of subpart A of this part.

(2) The use of monitoring data generated before the regulated source became subject to the referencing subpart to qualify initially for less frequent monitoring is governed by the provisions of § 65.104(b)(6) of this subpart.

(b) *Leak detection.* Unless otherwise specified in §§ 65.102(b), 65.117, 65.118, or paragraph (e) of this section, the owner or operator shall monitor all valves at the intervals specified in paragraphs (b)(3) and/or (b)(4) of this section and shall comply with all other provisions of this section.

(1) *Monitoring method.* The valves shall be monitored to detect leaks by the method specified in § 65.104 (b), (c), and (e).

(2) *Instrument reading that defines a leak.* The instrument reading that defines a leak is 500 parts per million or greater.

(3) *Monitoring frequency.* The owner or operator shall monitor valves for

leaks at the intervals specified in paragraphs (b)(3)(i) through (b)(3)(v) of this section and shall keep the record specified in paragraph (b)(3)(vi) of this section.

(i) If at least the greater of two valves or 2 percent of the valves in a process unit leak, as calculated according to paragraph (c) of this section, the owner or operator shall monitor each valve once per month.

(ii) At process units with less than the greater of two leaking valves or 2 percent leaking valves, the owner or operator shall monitor each valve once each quarter except as provided in paragraphs (b)(3)(iii) through (b)(3)(v) of this section. Monitoring data generated before the regulated source became subject to the referencing subpart and meeting the criteria of either § 65.104 (b)(1) through (b)(5) or § 65.104(b)(6) may be used to qualify initially for less frequent monitoring under paragraphs (b)(3)(iii) through (b)(3)(v) of this section.

(iii) At process units with less than 1 percent leaking valves, the owner or operator may elect to monitor each valve once every 2 quarters.

(iv) At process units with less than 0.5 percent leaking valves, the owner or operator may elect to monitor each valve once every 4 quarters.

(v) At process units with less than 0.25 percent leaking valves, the owner or operator may elect to monitor each valve once every 2 years.

(vi) The owner or operator shall keep a record of the monitoring schedule for each process unit.

(4) *Valve subgrouping.* For a process unit or a group of process units to which this subpart applies, an owner or operator may choose to subdivide the valves in the applicable process unit or group of process units and apply the provisions of paragraph (b)(3) of this section to each subgroup. If the owner or operator elects to subdivide the valves in the applicable process unit or group of process units, then the provisions of paragraphs (b)(4)(i) through (b)(4)(viii) of this section apply.

(i) The overall performance of total valves in the applicable process unit or group of process units to be subdivided shall be less than 2 percent leaking valves, as detected according to paragraphs (b)(1) and (b)(2) of this section and as calculated according to paragraphs (c)(1)(ii) and (c)(2) of this section.

(ii) The initial assignment or subsequent reassignment of valves to subgroups shall be governed by the provisions of paragraphs (b)(4)(ii)(A) through (b)(4)(ii)(C) of this section.

(A) The owner or operator shall determine which valves are assigned to each subgroup. Valves with less than one year of monitoring data or valves not monitored within the last 12 months must be placed initially into the most frequently monitored subgroup until at least one year of monitoring data have been obtained.

(B) Any valve or group of valves can be reassigned from a less frequently monitored subgroup to a more frequently monitored subgroup provided that the valves to be reassigned were monitored during the most recent monitoring period for the less frequently monitored subgroup. The monitoring results must be included with that less frequently monitored subgroup's associated percent leaking valves calculation for that monitoring event.

(C) Any valve or group of valves can be reassigned from a more frequently monitored subgroup to a less frequently monitored subgroup provided that the valves to be reassigned have not leaked for the period of the less frequently monitored subgroup (for example, for the last 12 months, if the valve or group of valves is to be reassigned to a subgroup being monitored annually). Nonrepairable valves may not be reassigned to a less frequently monitored subgroup.

(iii) The owner or operator shall determine every 6 months if the overall performance of total valves in the applicable process unit or group of process units is less than 2 percent leaking valves and so indicate the performance in the next periodic report. If the overall performance of total valves in the applicable process unit or group of process units is 2 percent leaking valves or greater, the owner or operator shall no longer subgroup and shall revert to the program required in paragraphs (b)(1) through (b)(3) of this section for that applicable process unit or group of process units. An owner or operator can again elect to comply with the valve subgrouping procedures of paragraph (b)(4) of this section if future overall performance of total valves in the process unit or groups of process units is again less than 2 percent. The overall performance of total valves in the applicable process unit or group of process units shall be calculated as a weighted average of the percent leaking valves of each subgroup according to the following equation:

$$\%V_{LO} = \frac{\sum_{i=1}^{n} (\%V_{Li} \times V_i)}{\sum_{i=1}^{n} V_i} \qquad (106\text{-}1)$$

where:

$\%V_{LO}$=Overall performance of total valves in the applicable process unit or group of process units

$\%V_{Li}$=Percent leaking valves in subgroup i, most recent value calculated according to the procedures in paragraphs (c)(1)(ii) and (c)(2) of this section.

V_i=Number of valves in subgroup i.

n=Number of subgroups.

(iv) The owner or operator shall maintain records specified in paragraphs (b)(4)(iv)(A) through (b)(4)(iv)(D) of this section.

(A) Which valves are assigned to each subgroup,

(B) Monitoring results and calculations made for each subgroup for each monitoring period,

(C) Which valves are reassigned, the last monitoring result prior to reassignment, and when they were reassigned, and

(D) The results of the semiannual overall performance calculation required in paragraph (b)(4)(iii) of this section.

(v) The owner or operator shall notify the Administrator no later than 30 days prior to the beginning of the next monitoring period of the decision to begin or end subgrouping valves. The notification shall identify the participating process units and the number of valves assigned to each subgroup, if applicable, and may be included in the next periodic report.

(vi) The owner or operator shall submit in the periodic reports the information specified in paragraphs (b)(4)(vi)(A) and (b)(4)(vi)(B) of this section.

(A) Total number of valves in each subgroup, and

(B) Results of the semiannual overall performance calculation required by paragraph (b)(4)(iii) of this section.

(vii) To determine the monitoring frequency for each subgroup, the calculation procedures of paragraph (c)(2) of this section shall be used.

(viii) Except for the overall performance calculations required by paragraphs (b)(4)(i) and (iii) of this section, each subgroup shall be treated as if it were a separate process unit for the purposes of applying the provisions of this section.

(c) *Percent leaking valves calculation.*—(1) *Calculation basis and procedures.* (i) The owner or operator

shall decide no later than the implementation date of this part or upon revision of an operating permit whether to calculate percent leaking valves on a process unit or group of process units basis. Once the owner or operator has decided, all subsequent percentage calculations shall be made on the same basis and this shall be the basis used for comparison with the subgrouping criteria specified in paragraph (b)(4)(i) of this section.

(ii) The percent leaking valves for each monitoring period for each process unit or valve subgroup, as provided in paragraph (b)(4) of this section, shall be calculated using the following equation: where:

$$\%V_L=(V_L/V_T)\times 100 \quad (106–2)$$

Where:

$\%V_L$=Percent leaking valves.

V_L=Number of valves found leaking, excluding nonrepairable valves as provided in paragraph (c)(3) of this section.

V_T=The sum of the total number of valves monitored.

(2) *Calculation for monitoring frequency.* When determining monitoring frequency for each process unit or valve subgroup subject to monthly, quarterly, or semiannual monitoring frequencies, the percent leaking valves shall be the arithmetic average of the percent leaking valves from the last two monitoring periods. When determining monitoring frequency for each process unit or valve subgroup subject to annual or biennial (once every 2 years) monitoring frequencies, the percent leaking valves shall be the arithmetic average of the percent leaking valves from the last three monitoring periods.

(3) *Nonrepairable valves.* (i) Nonrepairable valves shall be included in the calculation of percent leaking valves the first time the valve is identified as leaking and nonrepairable and as required to comply with paragraph (c)(3)(ii) of this section. Otherwise, a number of nonrepairable valves (identified and included in the percent leaking valves calculation in a previous period) up to a maximum of 1 percent of the total number of valves in regulated material service at a process unit may be excluded from calculation of percent leaking valves for subsequent monitoring periods.

(ii) If the number of nonrepairable valves exceeds 1 percent of the total number of valves in regulated material service at a process unit, the number of nonrepairable valves exceeding 1 percent of the total number of valves in regulated material service shall be included in the calculation of percent leaking valves.

(d) *Leak repair.* (1) If a leak is determined pursuant to paragraph (b), (e)(1), or (e)(2) of this section, then the leak shall be repaired using the procedures in § 65.105, as applicable.

(2) When a leak has been repaired, the valve shall be monitored at least once within the first 3 months after its repair. The monitoring required by paragraph (d) of this section is in addition to the monitoring required to satisfy the definition of repair.

(i) The monitoring shall be conducted as specified in § 65.104 (b) and (c), as appropriate, to determine whether the valve has resumed leaking.

(ii) Periodic monitoring required by paragraph (b) of this section may be used to satisfy the requirements of paragraph (d) of this section if the timing of the monitoring period coincides with the time specified in paragraph (d) of this section. Alternatively, other monitoring may be performed to satisfy the requirements of paragraph (d) of this section regardless of whether the timing of the monitoring period for periodic monitoring coincides with the time specified in paragraph (d) of this section.

(iii) If a leak is detected by monitoring that is conducted pursuant to paragraph (d) of this section, the owner or operator shall follow the provisions of paragraphs (d)(2)(iii)(A) and (d)(2)(iii)(B) of this section to determine whether that valve must be counted as a leaking valve for purposes of paragraph (c)(1)(ii) of this section.

(A) If the owner or operator elected to use periodic monitoring required by paragraph (b) of this section to satisfy the requirements of paragraph (d) of this section, then the valve shall be counted as a leaking valve.

(B) If the owner or operator elected to use other monitoring, prior to the periodic monitoring required by paragraph (b) of this section, to satisfy the requirements of paragraph (d) of this section, then the valve shall be counted as a leaking valve unless it is repaired and shown by periodic monitoring not to be leaking.

(e) *Special provisions for valves*—(1) *Unsafe-to-monitor valves.* Any valve that is designated as described in § 65.103(c)(1) as an unsafe-to-monitor valve is exempt from the requirements of paragraph (b) of this section and the owner or operator shall monitor the valve according to the written plan specified in § 65.103(c)(4).

(2) *Difficult-to-monitor valves.* Any valve that is designated as described in § 65.103(c)(2) as a difficult-to-monitor valve is exempt from the requirements of paragraph (b) of this section and the owner or operator shall monitor the valve according to the written plan specified in § 65.103(c)(4).

(3) *Less than 250 valves.* Any equipment located at a plant site with fewer than 250 valves in regulated material service is exempt from the requirements for monthly monitoring specified in paragraph (b)(3)(i) of this section. Instead, the owner or operator shall monitor each valve in regulated material service for leaks once each quarter or comply with paragraph (b)(4)(iii), (b)(4)(iv), or (b)(4)(v) of this section except as provided in paragraphs (e)(1) and (e)(2) of this section.

§ 65.107 Standards: Pumps in light liquid service.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f) of subpart A of this part.

(b) *Leak detection.* Unless otherwise specified in § 65.102(b) or paragraphs (e)(1) through (e)(6) of this section, the owner or operator shall monitor each pump to detect leaks and shall comply with all other provisions of this section.

(1) *Monitoring method.* The pumps shall be monitored monthly to detect leaks by the method specified in § 65.104(b), (c), and (e).

(2) *Instrument reading that defines a leak.* The instrument reading that defines a leak is specified in paragraphs (b)(2)(i) through (b)(2)(iii) of this section.

(i) 5,000 parts per million or greater for pumps handling polymerizing monomers;

(ii) 2,000 parts per million or greater for pumps in food/medical service; and

(iii) 1,000 parts per million or greater for all other pumps.

(3) *Leak repair exception.* For pumps to which a 1,000 parts per million leak definition applies, repair is not required unless an instrument reading of 2,000 parts per million or greater is detected.

(4) *Visual inspection.* Each pump shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal. The owner or operator shall document that the inspection was conducted and the date of the inspection. If there are indications of liquids dripping from the pump seal at the time of the weekly inspection, the owner or operator shall follow the procedure specified in either paragraph (b)(4)(i) or (b)(4)(ii) of this section.

(i) The owner or operator shall monitor the pump as specified in § 65.104(b), (c), and (e). If the

instrument reading indicates a leak as specified in paragraph (b)(2) of this section, a leak is detected and it shall be repaired using the procedures in § 65.105, except as specified in paragraph (b)(3) of this section; or

(ii) The owner or operator shall eliminate the visual indications of liquids dripping.

(c) *Percent leaking pumps calculation.* (1) The owner or operator shall decide no later than the implementation date of this part or upon revision of an operating permit whether to calculate percent leaking pumps on a process unit basis or group of process units basis. Once the owner or operator has decided, all subsequent percentage calculations shall be made on the same basis.

(2) If, when calculated on a 6-month rolling average, at least the greater of either 10 percent of the pumps in a process unit or three pumps in a process unit leak, the owner or operator shall implement a quality improvement program for pumps that complies with the requirements of § 65.116.

(3) The number of pumps at a process unit shall be the sum of all the pumps in regulated material service, except that pumps found leaking in a continuous process unit within 1 month after startup of the pump shall not count in the percent leaking pumps calculation for that one monitoring period only.

(4) Percent leaking pumps shall be determined by the following equation:

$$\%P_L = ((P_L - P_S)/(P_T - P_S)) * 100$$

(107–1) where:

$\%P_L$ = Percent leaking pumps.

P_L = Number of pumps found leaking as determined through monthly monitoring as required in paragraph (b)(1) of this section.

P_S = Number of pumps leaking within 1 month of startup during the current monitoring period.

P_T = Total pumps in regulated material service, including those meeting the criteria in paragraphs (e)(1) and (e)(2) of this section.

(d) *Leak repair.* If a leak is detected pursuant to paragraph (b) of this section, then the leak shall be repaired using the procedures in § 65.105, as applicable, unless otherwise specified in paragraphs (b)(4) of this section for leaks identified by visual indications of liquids dripping.

(e) *Special provisions for pumps*—(1) *Dual mechanical seal pumps.* Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraph (b) of this section, provided the requirements specified in paragraphs (e)(1)(i) through (e)(1)(viii) of this section are met.

(i) The owner or operator determines, based on design considerations and operating experience, criteria applicable to the presence and frequency of drips and to the sensor that indicates failure of the seal system, the barrier fluid system, or both. The owner or operator shall keep records of the design criteria and an explanation of the design criteria, and any changes to these criteria and the reasons for the changes.

(ii) Each dual mechanical seal system shall meet the requirements specified in paragraph (e)(1)(ii)(A), (e)(1)(ii)(B), or (e)(1)(ii)(C) of this section.

(A) Each dual mechanical seal system is operated with the barrier fluid at a pressure that is at all times (except periods of start-up, shutdown, or malfunction) greater than the pump stuffing box pressure; or

(B) Equipped with a barrier fluid degassing reservoir that is routed to a process or fuel gas system or connected by a closed vent system to a control device that complies with the requirements of § 65.118; or

(C) Equipped with a closed-loop system that purges the barrier fluid into a process stream.

(iii) The barrier fluid is not in light liquid service.

(iv) Each barrier fluid system is equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(v) Each pump is checked by visual inspection each calendar week for indications of liquids dripping from the pump seal. The owner or operator shall document that the inspection was conducted and the date of the inspection. If there are indications of liquids dripping from the pump seal at the time of the weekly inspection, the owner or operator shall follow the procedure specified in either paragraph (e)(1)(v)(A) or (e)(1)(v)(B) of this section.

(A) The owner or operator shall monitor the pump as specified in § 65.104(b), (c), and (e) to determine if there is a leak of regulated material in the barrier fluid. If an instrument reading of 1,000 parts per million or greater is measured, a leak is detected and it shall be repaired using the procedures in § 65.105; or

(B) The owner or operator shall eliminate the visual indications of liquids dripping.

(vi) If indications of liquids dripping from the pump seal exceed the criteria established in paragraph (e)(1)(i) of this section, or if based on the criteria established in paragraph (e)(1)(i) of this section the sensor indicates failure of the seal system, the barrier fluid system, or both, a leak is detected.

(vii) Each sensor as described in paragraph (e)(1)(iv) of this section is observed daily or is equipped with an alarm unless the pump is located within the boundary of an unmanned plant site.

(viii) When a leak is detected pursuant to paragraph (e)(1)(vi) of this section, it shall be repaired as specified in § 65.105(a).

(2) *No external shaft.* Any pump that is designed with no externally actuated shaft penetrating the pump housing is exempt from the monitoring requirements of paragraph (b) of this section.

(3) *Routed to a process or fuel gas system or equipped with a closed vent system.* Any pump that is routed to a process or fuel gas system or equipped with a closed vent system that captures and transports leakage from the pump to a control device meeting the requirements of § 65.115 is exempt from the monitoring requirements of paragraph (b) of this section.

(4) *Unmanned plant site.* Any pump that is located within the boundary of an unmanned plant site is exempt from the weekly visual inspection requirement of paragraphs (b)(4) and (e)(1)(v) of this section, and the daily requirements of paragraph (e)(1)(vii) of this section provided that each pump is visually inspected as often as practical and at least monthly.

(5) *Ninety percent exemption.* If more than 90 percent of the pumps at a process unit meet the criteria in either paragraph (e)(1) or (e)(2) of this section, the process unit is exempt from the requirements of paragraph (b) of this section.

(6) *Unsafe-to-monitor pumps.* Any pump that is designated as described in § 65.103(c)(1) as an unsafe-to-monitor pump is exempt from the monitoring requirements of paragraph (b) of this section and the repair requirements of § 65.105 and the owner or operator shall monitor the pump according to the written plan specified in § 65.103(c)(4).

§ 65.108 Standards: Connectors in gas/vapor service and in light liquid service.

(a) *Compliance schedule.* The owner or operator shall monitor all connectors in each process unit initially for leaks by the later of either 12 months after the implementation date as specified in § 65.1(f) of subpart A of this part or 12 months after initial startup, whichever is later. If all connectors in each process unit have been monitored for leaks prior to the implementation date specified in § 65.1(f) of subpart A of this part, no initial monitoring is required provided either no process changes have been made since the monitoring or the owner

or operator can determine that the results of the monitoring, with or without adjustments, reliably demonstrate compliance despite process changes. If required to monitor because of a process change, the owner or operator is required to monitor only those connectors involved in the process change.

(b) *Leak detection.* Except as allowed in § 65.102(b) or as specified in paragraph (e) of this section, the owner or operator shall monitor all connectors in gas/vapor and light liquid service as specified in paragraphs (a) and (b)(3) of this section.

(1) *Monitoring method.* The connectors shall be monitored to detect leaks by the method specified in § 65.104(b), (c), and (e).

(2) *Instrument reading that defines a leak.* If an instrument reading greater than or equal to 500 parts per million is measured, a leak is detected.

(3) *Monitoring Periods.* The owner or operator shall perform monitoring, subsequent to the initial monitoring required in paragraph (a) of this section, as specified in paragraphs (b)(3)(i) through (b)(3)(iii) of this section, and shall comply with the requirements of paragraphs (b)(3)(iv) and (b)(3)(v) of this section. The required period in which monitoring must be conducted shall be determined from paragraphs (b)(3)(i) through (b)(3)(iii) of this section using the monitoring results from the preceding monitoring period. The percent leaking connectors shall be calculated as specified in paragraph (c) of this subpart.

(i) If the percent leaking connectors in the process unit was greater than or equal to 0.5 percent, then monitor within 12 months (1 year).

(ii) If the percent leaking connectors in the process unit was greater than or equal to 0.25 percent but less than 0.5 percent, then monitor within 4 years. An owner or operator may comply with the requirements of paragraph (b)(3)(ii) of this section by monitoring at least 40 percent of the connectors within 2 years of the start of the monitoring period, provided all connectors have been monitored by the end of the 4 year monitoring period.

(iii) If the percent leaking connectors in the process unit was less than 0.25 percent, then monitor as provided in paragraph (b)(3)(iii)(A) of this section and either paragraph (b)(3)(iii)(B) or (b)(3)(iii)(C) of this section, as appropriate.

(A) An owner or operator shall monitor at least 50 percent of the connectors within 4 years of the start of the monitoring period.

(B) If the percent leaking connectors calculated from the monitoring results in paragraph (b)(3)(iii)(A) of this section is greater than or equal to 0.35 percent of the monitored connectors, the owner or operator shall monitor as soon as practical, but within the next 6 months, all connectors that have not yet been monitored during the monitoring period. At the conclusion of monitoring, a new monitoring period shall be started pursuant to paragraph (b)(3) of this section, based on the percent leaking connectors of the total monitored connectors.

(C) If the percent leaking connectors calculated from the monitoring results in paragraph (b)(3)(iii)(A) of this section is less than 0.35 percent of the monitored connectors, the owner or operator shall monitor all connectors that have not yet been monitored within 8 years of the start of the monitoring period.

(iv) If, during the monitoring conducted pursuant to paragraphs (b)(3)(i) through (b)(3)(iii) of this section, a connector is found to be leaking, it shall be re-monitored once within 90 days after repair to confirm that it is not leaking.

(v) The owner or operator shall keep a record of the start date and end date of each monitoring period under this section for each process unit.

(c) *Percent leaking connectors calculation.* For use in determining the monitoring frequency as specified in paragraphs (a), and (b)(3) of this section, the percent leaking connectors as used in paragraphs (a) and (b)(3) of this section shall be calculated by using the following equation:

$$\%C_L = C_L / C_t * 100 \qquad (108\text{–}1)$$

Where:

$\%C_L$=Percent leaking connectors as determined through monitoring required in paragraphs (a) and (b) of this section.

C_L=Number of connectors measured at 500 parts per million or greater by the method specified in § 65.104(b).

C_t=Total number of monitored connectors in the process unit.

(d) *Leak repair.* If a leak is detected pursuant to paragraphs (a) and (b) of this section, then the leak shall be repaired using the procedures in § 65.105, as applicable.

(e) *Special provisions for connectors.*—(1) *Unsafe-to-monitor connectors.* Any connector that is designated, as described in § 65.103(c)(1), as an unsafe-to-monitor connector is exempt from the requirements of paragraphs (b)(1) through (b)(3) of this section and the owner or operator shall monitor according to the written plan specified in § 65.103(c)(4).

(2) *Inaccessible, ceramic, or ceramic-lined connectors.* (i) Any connector that is inaccessible or that is ceramic or ceramic-lined (for example, porcelain, glass, or glass-lined), is exempt from the monitoring requirements of paragraphs (a) and (b) of this section and from the recordkeeping and reporting requirements of §§ 65.119 and 65.120. An inaccessible connector is one that meets any of the provisions specified in paragraphs (e)(2)(i)(A) through (e)(2)(i)(F), as applicable.

(A) Buried;

(B) Insulated in a manner that prevents access to the connector by a monitor probe;

(C) Obstructed by equipment or piping that prevents access to the connector by a monitor probe;

(D) Unable to be reached from a wheeled scissor-lift or hydraulic-type scaffold that would allow access to connectors up to 7.6 meters (25 feet) above the ground.

(E) Inaccessible because it would require elevating the monitoring personnel more than 2 meters (7 feet) above a permanent support surface or would require the erection of scaffold;

(F) Not able to be accessed at any time in a safe manner to perform monitoring. Unsafe access includes, but is not limited to, the use of a wheeled scissor-lift on unstable or uneven terrain, the use of a motorized man-lift basket in areas where an ignition potential exists, or access would require near proximity to hazards such as electrical lines or would risk damage to equipment.

(ii) If any inaccessible, ceramic, or ceramic-lined connector is observed by visual, audible, olfactory, or other means to be leaking, the visual, audible, olfactory, or other indications of a leak to the atmosphere shall be eliminated as soon as practical.

§ 65.109 Standards: Agitators in gas/vapor service and in light liquid service.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f) of subpart A of this part.

(b) *Leak detection.*—(1) *Monitoring method.* Each agitator seal shall be monitored monthly to detect leaks by the methods specified in § 65.104(b), (c), and (e) except as provided in § 65.102(b).

(2) *Instrument reading that defines a leak.* If an instrument reading of 10,000 parts per million or greater is measured, a leak is detected.

(3) *Visual inspection.* Each agitator seal shall be checked by visual

inspection each calendar week for indications of liquids dripping from the agitator seal. If there are indications of liquids dripping from the agitator seal, the owner or operator shall follow the procedure specified in either paragraph (b)(3)(ii)(A) or (b)(3)(ii)(B) of this section.

(A) The owner or operator shall monitor the agitator seal as specified in § 65.104(b), (c), and (e) to determine if there is a leak of regulated material. If an instrument reading of 10,000 parts per million or greater is measured, a leak is detected, and it shall be repaired using the procedures in § 65.105;

(B) The owner or operator shall eliminate the indications of liquids dripping from the pump seal.

(c) [Reserved]

(d) *Leak repair.* If a leak is detected, then the leak shall be repaired using the procedures in § 65.105(a).

(e) *Special provisions for agitators—* (1) *Dual mechanical seal.* Each agitator equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraph (b) of this section provided the requirements specified in paragraphs (e)(1)(i) through (e)(1)(vi) of this section are met.

(i) Each dual mechanical seal system shall meet the applicable requirement specified in paragraph (e)(1)(i)(A), (e)(1)(i)(B), or (e)(1)(i)(C) of this section.

(A) Operated with the barrier fluid at a pressure that is at all times (except during periods of startup, shutdown, or malfunction) greater than the agitator stuffing box pressure; or

(B) Equipped with a barrier fluid degassing reservoir that is routed to a process or fuel gas system, or connected by a closed vent system to a control device that meets the requirements of § 65.115; or

(C) Equipped with a closed-loop system that purges the barrier fluid into a process stream.

(ii) The barrier fluid is not in light liquid service.

(iii) Each barrier fluid system is equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(iv) Each agitator seal is checked by visual inspection each calendar week for indications of liquids dripping from the agitator seal. If there are indications of liquids dripping from the agitator seal at the time of the weekly inspection, the owner or operator shall follow the procedure specified in either paragraph (e)(1)(iv)(A) or (e)(1)(iv)(B) of this section.

(A) The owner or operator shall monitor the agitator seal as specified in § 65.104(b) (c), and (e), to determine the presence of regulated material in the barrier fluid. If an instrument reading of 10,000 parts per million or greater is measured, a leak is detected and it shall be repaired using the procedures in § 65.105; or

(B) The owner or operator shall eliminate the visual indications of liquids dripping.

(v) Each sensor as described in paragraph (e)(1)(iii) of this section is observed daily or is equipped with an alarm unless the agitator seal is located within the boundary of an unmanned plant site.

(vi) The owner or operator of each dual mechanical seal system shall meet the requirements specified in paragraphs (e)(1)(vi)(A) and (e)(1)(vi)(B).

(A) The owner or operator shall determine based on design considerations and operating experience criteria that indicates failure of the seal system, the barrier fluid system, or both and that are applicable to the presence and frequency of drips. If indications of liquids dripping from the agitator seal exceed the criteria, or if based on the criteria the sensor indicates failure of the seal system, the barrier fluid system, or both, a leak is detected and shall be repaired pursuant to § 65.105, as applicable.

(B) The owner or operator shall keep records of the design criteria and an explanation of the design criteria, and any changes to these criteria and the reasons for the changes.

(2) *No external shaft.* Any agitator that is designed with no externally actuated shaft penetrating the agitator housing is exempt from paragraph (b) of this section.

(3) *Routed to a process or fuel gas system or equipped with a closed vent system.* Any agitator that is routed to a process or fuel gas system or equipped with a closed vent system that captures and transports leakage from the agitator to a control device meeting the requirements of § 65.115 is exempt from the requirements of paragraph (b) of this section.

(4) *Unmanned plant site.* Any agitator that is located within the boundary of an unmanned plant site is exempt from the weekly visual inspection requirement of paragraphs (b)(3) and (e)(1)(iv) of this section, and the daily requirements of paragraph (e)(1)(v) of this section provided that each agitator is visually inspected as often as practical and at least monthly.

(5) *Difficult-to-monitor agitator seals.* Any agitator seal that is designated as described in § 65.103(c)(2) as a difficult-to-monitor agitator seal is exempt from the requirements of paragraph (b) of this section and the owner or operator shall monitor the agitator seal according to the written plan specified in § 65.103(c)(4).

(6) *Equipment obstructions.* Any agitator seal that is obstructed by equipment or piping that prevents access to the agitator by a monitor probe is exempt from the monitoring requirements of paragraph (b) of this section.

(7) *Unsafe-to-monitor agitator seals.* Any agitator seal that is designated as described in § 65.103(c)(1)(i) as an unsafe-to-monitor agitator seal is exempt from the requirements of paragraph (b) of this section and the owner or operator of the agitator seal monitors the agitator seal according to the written plan specified in § 65.103(c)(4).

§ 65.110 Standards: Pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in liquid service; and instrumentation systems.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f) of subpart A of this part.

(b) *Leak detection* (1) *Monitoring method.* Pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in light liquid or heavy liquid service; and instrumentation systems shall be monitored within 5 calendar days by the method specified in § 65.104 (b), (c), and (e) if evidence of a potential leak to the atmosphere is found by visual, audible, olfactory, or any other detection method, unless the potential leak is repaired as required in paragraph (c) of this section.

(2) *Instrument reading that defines a leak.* If an instrument reading of 10,000 parts per million or greater for agitators, 5,000 parts per million or greater for pumps handling polymerizing monomers, 2,000 parts per million or greater for pumps in food/medical service, 1,000 parts per million or greater for all other pumps, or 500 parts per million or greater for valves, connectors, instrumentation systems, and pressure relief devices is measured pursuant to paragraph (b)(1) of this section, a leak is detected and it shall be repaired pursuant to § 65.105, as applicable.

(c) *Leak Repair.* For equipment identified in paragraph (b) of this section that is not monitored by the method specified in § 65.104(b), repaired shall mean that the visual, audible, olfactory, or other indications of a leak to the atmosphere have been eliminated; that no bubbles are observed at potential leak sites during a leak

check using soap solution; or that the system will hold a test pressure.

§ 65.111 Standards: Pressure relief devices in gas/vapor service.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f) of subpart A of this part.

(b) *Compliance standard.* Except during pressure releases as provided for in paragraph (c) of this section, each pressure relief device in gas/vapor service shall be operated with an instrument reading of less than 500 parts per million as measured by the method specified in § 65.104(b), (c), and (e).

(c) *Pressure relief requirements.* (1) After each pressure release, the pressure relief device shall be returned to a condition indicated by an instrument reading of less than 500 parts per million, as soon as practical, but no later than 5 calendar days after each pressure release except as provided in § 65.105(d).

(2) The pressure relief device shall be monitored no later than 5 calendar days after the pressure release and being returned to regulated material service to confirm the condition indicated by an instrument reading of less than 500 parts per million as measured by the method specified in § 65.104(b), (c), and (e).

(3) The owner or operator shall record the dates and results of the monitoring required by paragraph (c)(2) of this section following a pressure release including maximum instrument reading measured during the monitoring and the background level measured if the instrument reading is adjusted for background.

(d) *Pressure relief devices routed to a process or fuel gas system or equipped with a closed vent system and control device.* Any pressure relief device that is routed to a process or fuel gas system or equipped with a closed vent system capable of capturing and transporting leakage from the pressure relief device to a control device meeting the requirements of either §§ 65.115 or 65.102(b) is exempt from the requirements of paragraphs (b) and (c) of this section.

(e) *Rupture disk exemption.* Any pressure relief device that is equipped with a rupture disk upstream of the pressure relief device is exempt from the requirements of paragraphs (b) and (c) of this section provided the owner or operator installs a replacement rupture disk upstream of the pressure relief device as soon as practical after each pressure release, but no later than 5 calendar days after each pressure release except as provided in § 65.105(d).

§ 65.112 Standards: Compressors.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f) of subpart A of this part.

(b) *Seal system standard.* Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of process fluid to the atmosphere except as provided in § 65.102(b) and paragraphs (e) and (f) of this section. Each compressor seal system shall meet the applicable requirements specified in paragraph (b)(1), (b)(2), or (b)(3) of this section.

(1) Operated with the barrier fluid at a pressure that is greater than the compressor stuffing box pressure at all times (except during periods of start-up, shutdown, or malfunction); or

(2) Equipped with a barrier fluid system degassing reservoir that is routed to a process or fuel gas system, or connected by a closed vent system to a control device that meets the requirements of § 65.115; or

(3) Equipped with a closed-loop system that purges the barrier fluid directly into a process stream.

(c) *Barrier fluid system.* The barrier fluid shall not be in light liquid service. Each barrier fluid system shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both. Each sensor shall be observed daily or shall be equipped with an alarm unless the compressor is located within the boundary of an unmanned plant site.

(d) *Failure criterion and leak detection.* (1) The owner or operator shall determine based on design considerations and operating experience a criterion that indicates failure of the seal system, the barrier fluid system, or both. If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion, a leak is detected and shall be repaired pursuant to § 65.105, as applicable.

(2) The owner or operator shall keep records of the design criteria and an explanation of the design criteria, and any changes to these criteria and the reasons for the changes.

(e) *Routed to a process or fuel gas system or equipped with a closed vent system.* A compressor is exempt from the requirements of paragraphs (b) through (d) of this section if it is equipped with a system to capture and transport leakage from the compressor drive shaft seal to a process or a fuel gas system or to a closed vent system that captures and transports leakage from the compressor to a control device meeting the requirements of § 65.115.

(f) *Alternative compressor standard.* (1) Any compressor that is designated as described in § 65.103(e) shall operate at all times with an instrument reading of less than 500 parts per million . A compressor so designated is exempt from the requirements of paragraphs (b) through (d) of this section if the compressor is demonstrated initially upon designation, annually, and at other times requested by the Administrator to be operating with an instrument reading of less than 500 parts per million as measured by the method specified in § 65.104(b), (c), and (e). A compressor may not be designated or operated as having an instrument reading of less than 500 parts per million as described in § 65.103(e) if the compressor has a maximum instrument reading greater than 500 parts per million.

(2) The owner or operator shall record the dates and results of each compliance test including the background level measured and the maximum instrument reading measured during each compliance test.

§ 65.113 Standards: Sampling connection systems.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f) of subpart A of this part.

(b) *Equipment requirement.* Each sampling connection system shall be equipped with a closed-purge, closed-loop, or closed vent system except as provided in paragraph (d) of this section or § 65.102(b). Gases displaced during filling of the sample container are not required to be collected or captured.

(c) *Equipment design and operation.* Each closed-purge, closed-loop, or closed vent system as required in paragraph (b) of this section shall meet the applicable requirements specified in paragraphs (c)(1) through (c)(5) of this section.

(1) The system shall return the purged process fluid directly to a process line or to a fuel gas system; or

(2) Collect and recycle the purged process fluid to a process; or

(3) Be designed and operated to capture and transport all the purged process fluid to a control device that meets the requirements of § 65.115; or

(4) Collect, store, and transport the purged process fluid to a system or facility identified in paragraph (c)(4)(i), (c)(4)(ii), or (c)(4)(iii) of this section.

(i) A waste management unit as defined in 40 CFR 63.111 of subpart G, if the waste management unit is

complying with the provisions of 40 CFR part 63, subpart G, applicable to Group 1 wastewater streams. For sources referenced to this part from 40 CFR part 63, subpart H, and if the purged process fluid does not contain any organic HAP listed in table 9 of 40 CFR part 63, subpart G, the waste management unit need not be subject to and operated in compliance with the requirements of 40 CFR part 63, subpart G, applicable to Group 1 wastewater steams provided the facility has a National Pollution Discharge Elimination System (NPDES) permit or sends the wastewater to an NPDES-permitted facility.

(ii) A treatment, storage, or disposal facility subject to regulation under 40 CFR parts 262, 264, 265, or 266; or

(iii) A facility permitted, licensed, or registered by a State to manage municipal or industrial solid waste, if the process fluids are not hazardous waste as defined in 40 CFR part 261.

(5) Containers that are part of a closed-purge system must be covered or closed when not being filled or emptied.

(d) *In-situ sampling systems.* In-situ sampling systems and sampling systems without purges are exempt from the requirements of paragraphs (b) and (c) of this section.

§ 65.114 Standards: Open-ended valves or lines.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f) of subpart A of this part.

(b) *Equipment and operational requirements.* (1) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve except as provided in § 65.102(b) and paragraphs (c) and (d) of this section. The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring process fluid flow through the open-ended valve or line, or during maintenance. The operational provisions of paragraphs (b)(2) and (b)(3) of this section also apply.

(2) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the process fluid end is closed before the second valve is closed.

(3) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with paragraph (b)(1) of this section at all other times.

(c) *Emergency shutdown exemption.* Open-ended valves or lines in an emergency shutdown system that are designed to open automatically in the event of a process upset are exempt from the requirements of paragraph (b) of this section.

(d) *Polymerizing materials exemption.* Open-ended valves or lines containing materials that would autocatalytically polymerize or would present an explosion, serious over pressure, or other safety hazard if capped or equipped with a double block and bleed system as specified in paragraph (b) of this section are exempt from the requirements of paragraph (b) of this section.

§ 65.115 Standards: Closed vent systems and control devices; or emissions routed to a fuel gas system or process.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f) of subpart A of this part.

(b) *Compliance standard.* (1) Owners or operators of closed vent systems and nonflare control devices used to comply with provisions of this subpart shall design and operate the closed vent systems and nonflare control devices to reduce emissions of regulated material with an efficiency of 95 percent or greater or to reduce emissions of regulated material to a concentration of 20 parts per million by volume or, for an enclosed combustion device, to provide a minimum residence time of 0.50 second at a minimum of 760 °C (1400 °F). Owners and operators of closed vent systems and nonflare control devices used to comply with this part shall comply with the provisions of § 65.142(d) of subpart G of this part, except as provided in § 65.102(b). Note that this includes the startup, shutdown, and malfunction plan specified in § 65.6.

(2) Owners or operators of closed vent systems and flares used to comply with the provisions of this subpart shall design and operate the flare as specified in § 65.142(d) of subpart G of this part, except as provided in § 65.102(b). Note that this includes the startup, shutdown, and malfunction plan specified in § 65.6.

(3) Owners or operators routing emissions from equipment leaks to a fuel gas system or process shall comply with the provisions of § 65.142(d) of subpart G of this part, except as provided in § 65.102(b).

§ 65.116 Quality improvement program for pumps.

(a) *Criteria.* If, on a 6-month rolling average, at least the greater of either 10 percent of the pumps in a process unit (or plant site) or three pumps in a process unit (or plant site) leak, the owner or operator shall comply with the requirements specified in paragraphs (a)(1) and (a)(2) of this section.

(1) Pumps that are in food/medical service or in polymerizing monomer service shall comply with all requirements except for those specified in paragraph (d)(8) of this section.

(2) Pumps that are not in food/medical or polymerizing monomer service shall comply with all requirements of this section.

(b) *Exiting the QIP.* The owner or operator shall comply with the requirements of this section until the number of leaking pumps is less than the greater of either 10 percent of the pumps or three pumps calculated as a 6-month rolling average in the process unit (or plant site). Once the performance level is achieved, the owner or operator shall comply with the requirements in § 65.107.

(c) *Resumption of QIP.* If in a subsequent monitoring period, the process unit (or plant site) has greater than 10 percent of the pumps leaking or three pumps leaking (calculated as a 6-month rolling average), the owner or operator shall resume the quality improvement program starting at performance trials.

(d) *QIP requirements.* The quality improvement program shall meet the requirements specified in paragraphs (d)(1) through (d)(8) of this section.

(1) The owner or operator shall comply with the requirements in § 65.107.

(2) *Data collection.* The owner or operator shall collect the data specified in paragraphs (d)(2)(i) through (d)(2)(v) of this section and maintain records for each pump in each process unit (or plant site) subject to the quality improvement program. The data may be collected and the records may be maintained on a process unit or plant site basis.

(i) Pump type (for example, piston, horizontal or vertical centrifugal, gear, bellows); pump manufacturer; seal type and manufacturer; pump design (for example, external shaft, flanged body); materials of construction; if applicable, barrier fluid or packing material; and year installed.

(ii) Service characteristics of the stream such as discharge pressure, temperature, flow rate, corrosivity, and annual operating hours.

(iii) The maximum instrument readings observed in each monitoring observation before repair, response factor for the stream if appropriate, instrument model number, and date of the observation.

(iv) If a leak is detected, the repair methods used and the instrument readings after repair.

(v) If the data will be analyzed as part of a larger analysis program involving data from other plants or other types of process units, a description of any maintenance or quality assurance programs used in the process unit that are intended to improve emission performance.

(3) The owner or operator shall continue to collect data on the pumps as long as the process unit (or plant site) remains in the quality improvement program.

(4) *Pump or pump seal inspection.* The owner or operator shall inspect all pumps or pump seals that exhibited frequent seal failures and were removed from the process unit due to leaks. The inspection shall determine the probable cause of the pump seal failure or of the pump leak and shall include recommendations, as appropriate, for design changes or changes in specifications to reduce leak potential.

(5) *Data analysis.* (i) The owner or operator shall analyze the data collected to comply with the requirements of paragraph (d)(2) of this section to determine the services, operating or maintenance practices, and pump or pump seal designs or technologies that have poorer than average emission performance and those that have better than average emission performance. The analysis shall determine if specific trouble areas can be identified on the basis of service, operating conditions or maintenance practices, equipment design, or other process-specific factors.

(ii) The analysis shall also be used to determine if there are superior performing pump or pump seal technologies that are applicable to the service(s), operating conditions, or pump or pump seal designs associated with poorer than average emission performance. A superior performing pump or pump seal technology is one with a leak frequency of less than 10 percent for specific applications in the process unit or plant site. A candidate superior performing pump or pump seal technology is one demonstrated or reported in the available literature or through a group study as having low emission performance and as being capable of achieving less than 10 percent leaking pumps in the process unit (or plant site).

(iii) The analysis shall include consideration of the information specified in paragraphs (d)(5)(iii)(A) through (d)(5)(iii)(C) of this section.

(A) The data obtained from the inspections of pumps and pump seals removed from the process unit due to leaks;

(B) Information from the available literature and from the experience of other plant sites that will identify pump designs or technologies and operating conditions associated with low emission performance for specific services; and

(C) Information on limitations on the service conditions for the spump seal technology operating conditions as well as information on maintenance procedures to ensure continued low emission performance.

(iv) The data analysis may be conducted through an inter- or intracompany program (or through some combination of the two approaches) and may be for a single process unit, a plant site, a company, or a group of process units.

(v) The first analysis of the data shall be completed no later than 18 months after the start of the quality improvement program. The first analysis shall be performed using data collected for a minimum of 6 months. An analysis of the data shall be done each year the process unit is in the quality improvement program.

(6) *Trial evaluation program.* A trial evaluation program shall be conducted at each plant site for which the data analysis does not identify use of superior performing pump seal technology or pumps that can be applied to the areas identified as having poorer than average performance except as provided in paragraph (d)(6)(v) of this section. The trial program shall be used to evaluate the feasibility of using in the process unit (or plant site) the pump designs or seal technologies, and operating and maintenance practices that have been identified by others as having low emission performance.

(i) The trial evaluation program shall include on-line trials of pump seal technologies or pump designs and operating and maintenance practices that have been identified in the available literature or in analysis by others as having the ability to perform with leak rates below 10 percent in similar services, as having low probability of failure, or as having no external actuating mechanism in contact with the process fluid. If any of the candidate superior performing pump seal technologies or pumps is not included in the performance trials, the reasons for rejecting specific technologies from consideration shall be documented as required in paragraph (e)(3)(ii) of this section.

(ii) The number of pump seal technologies or pumps in the trial evaluation program shall be the lesser of 1 percent or two pumps for programs involving single process units and the lesser of 1 percent or five pumps for programs involving a plant site or groups of process units. The minimum number of pumps or pump seal technologies in a trial program shall be one.

(iii) The trial evaluation program shall specify and include documentation of the information specified in paragraphs (d)(6)(iii)(A) through (d)(6)(iii)(D) of this section.

(A) The candidate superior performing pump seal designs or technologies to be evaluated, the stages for evaluating the identified candidate pump designs or pump seal technologies, including the time period necessary to test the applicability;

(B) The frequency of monitoring or inspection of the equipment;

(C) The range of operating conditions over which the component will be evaluated; and

(D) Conclusions regarding the emission performance and the appropriate operating conditions and services for the trial pump seal technologies or pumps.

(iv) The performance trials shall initially be conducted at least for a 6-month period beginning not later than 18 months after the start of the quality improvement program. No later than 24 months after the start of the quality improvement program, the owner or operator shall have identified pump seal technologies or pump designs that combined with appropriate process, operating, and maintenance practices operate with low emission performance for specific applications in the process unit. The owner or operator shall continue to conduct performance trials as long as no superior performing design or technology has been identified except as provided in paragraph (d)(6)(vi) of this section. The initial list of superior emission performance pump designs or pump seal technologies shall be amended in the future, as appropriate, as additional information and experience are obtained.

(v) Any plant site with fewer than 400 valves and owned by a corporation with fewer than 100 employees shall be exempt from trial evaluations of pump seals or pump designs. Plant sites exempt from the trial evaluations of pumps shall begin the pump seal or pump replacement program at the start of the fourth year of the quality improvement program.

(vi) An owner or operator who has conducted performance trials on all alternative superior emission performance technologies suitable for the required applications in the process unit may stop conducting performance

trials provided that a superior performing design or technology has been demonstrated or there are no technically feasible alternative superior technologies remaining. The owner or operator shall prepare an engineering evaluation documenting the physical, chemical, or engineering basis for the judgment that the superior emission performance technology is technically infeasible or demonstrating that it would not reduce emissions.

(7) *Quality assurance program.* Each owner or operator shall prepare and implement a pump quality assurance program that details purchasing specifications and maintenance procedures for all pumps and pump seals in the process unit. The quality assurance program may establish any number of categories, or classes, of pumps as needed to distinguish among operating conditions and services associated with poorer than average emission performance as well as those associated with better than average emission performance. The quality assurance program shall be developed considering the findings of the data analysis required under paragraph (d)(5) of this section, if applicable, the findings of the trial evaluation required in paragraph (d)(6) of this section, and the operating conditions in the process unit. The quality assurance program shall be updated each year as long as the process unit has the greater of either 10 percent or more leaking pumps or has three leaking pumps.

(i) The quality assurance program shall meet the requirements specified in paragraphs (d)(7)(i)(A) through (d)(7)(i)(D) of this section.

(A) Establish minimum design standards for each category of pumps or pump seal technology. The design standards shall specify known critical parameters such as tolerance, manufacturer, materials of construction, previous usage, or other applicable identified critical parameters;

(B) Require that all equipment orders specify the design standard (or minimum tolerances) for the pump or the pump seal;

(C) Provide for an audit procedure for quality control of purchased equipment to ensure conformance with purchase specifications. The audit program may be conducted by the owner or operator of the plant site or process unit or by a designated representative; and

(D) Detail off-line pump maintenance and repair procedures. These procedures shall include provisions to ensure that rebuilt or refurbished pumps and pump seals will meet the design specifications for the pump category and will operate so that emissions are minimized.

(ii) The quality assurance program shall be established no later than the start of the third year of the quality improvement program for plant sites with 400 or more valves or 100 or more employees, and no later than the start of the fourth year of the quality improvement program for plant sites with less than 400 valves and less than 100 employees.

(8) *Pump or pump seal replacement.* Beginning at the start of the third year of the quality improvement program for plant sites with 400 or more valves or 100 or more employees and at the start of the fourth year of the quality improvement program for plant sites with less than 400 valves and less than 100 employees, the owner or operator shall replace as described in paragraphs (d)(8)(i) and (d)(8)(ii) of this section the pumps or pump seals that are not superior emission performance technology with pumps or pump seals that have been identified as superior emission performance technology and that comply with the quality assurance standards for the pump category. Superior emission performance technology is that category or design of pumps or pump seals with emission performance that when combined with appropriate process, operating, and maintenance practices will result in less than 10 percent leaking pumps for specific applications in the process unit or plant site. Superior emission performance technology includes material or design changes to the existing pump, pump seal, seal support system, installation of multiple mechanical seals or equivalent, or pump replacement.

(i) Pumps or pump seals shall be replaced at the rate of 20 percent per year based on the total number of pumps in light liquid service. The calculated value shall be rounded to the nearest nonzero integer value. The minimum number of pumps or pump seals shall be one. Pump replacement shall continue until all pumps subject to the requirements of § 65.107 are pumps determined to be superior performance technology.

(ii) The owner or operator may delay replacement of pump seals or pumps with superior technology until the next planned process unit shutdown provided the number of pump seals and pumps replaced is equivalent to the 20 percent or greater annual replacement rate.

(iii) The pumps shall be maintained as specified in the quality assurance program.

(e) *QIP recordkeeping.* In addition to the records required by paragraph (d)(2) of this section, the owner or operator shall maintain records for the period of the quality improvement program for the process unit as specified in paragraphs (e)(1) through (e)(6) of this section.

(1) When using a pump quality improvement program as specified in this section, record the information specified in paragraphs (e)(1)(i) through (e)(1)(iii) of this section.

(i) The rolling average percent leaking pumps.

(ii) Documentation of all inspections conducted under the requirements of paragraph (d)(4) of this section and any recommendations for design or specification changes to reduce leak frequency.

(iii) The beginning and ending dates while meeting the requirements of paragraph (d) of this section.

(2) If a leak is not repaired within 15 calendar days after discovery of the leak, the reason for the delay and the expected date of successful repair.

(3) Records of all analyses required in paragraph (d) of this section. The records will include the information specified in paragraphs (e)(3)(i) through (e)(3)(iv) of this section.

(i) A list identifying areas associated with poorer than average performance and the associated service characteristics of the stream, the operating conditions, and the maintenance practices.

(ii) The reasons for rejecting specific candidate superior emission performing pump technology from performance trials.

(iii) The list of candidate superior emission performing valve or pump technologies and documentation of the performance trial program items required under paragraph (d)(6)(iii) of this section.

(iv) The beginning date and duration of performance trials of each candidate superior emission performing technology.

(4) All records documenting the quality assurance program for pumps as specified in paragraph (d)(7) of this section, including records indicating that all pumps replaced or modified during the period of the quality improvement program are in compliance with the quality assurance.

(5) Records documenting compliance with the 20 percent or greater annual replacement rate for pumps as specified in paragraph (d)(8) of this section.

(6) Information and data to show the corporation has fewer than 100 employees, including employees

providing professional and technical contracted services.

§ 65.117 Alternative means of emission limitation: Batch processes.

(a) *General requirement.* As an alternative to complying with the requirements of §§ 65.106 through 65.114 and 65.116, an owner or operator of a batch process that operates in regulated material service during the calendar year may comply with one of the standards specified in paragraphs (b) and (c) of this section, or the owner or operator may petition for approval of an alternative standard under the provisions of § 65.102(b). The alternative standards of this section provide the options of pressure testing or monitoring the equipment for leaks. The owner or operator may switch among the alternatives provided the change is documented as specified in paragraph (b)(7) of this section.

(b) *Pressure testing of the batch equipment.* The following requirements shall be met if an owner or operator elects to use pressure testing of batch product-process equipment to demonstrate compliance with this subpart.

(1) *Reconfiguration.* Each time equipment is reconfigured for production of a different product or intermediate, the batch product-process equipment train shall be pressure-tested for leaks before regulated material is first fed to the equipment and the equipment is placed in regulated material service.

(i) When the batch product-process equipment train is reconfigured to produce a different product, pressure testing is required only for the new or disturbed equipment.

(ii) Each batch product-process that operates in regulated material service during a calendar year shall be pressure-tested at least once during that calendar year.

(iii) Pressure testing is not required for routine seal breaks, such as changing hoses or filters, that are not part of the reconfiguration to produce a different product or intermediate.

(2) *Testing procedures.* The batch product-process equipment shall be tested either using the procedures specified in paragraph (b)(5) of this section for pressure vacuum loss or with a liquid using the procedures specified in paragraph (b)(6) of this section.

(3) *Leak detection.* (i) For pressure or vacuum tests using a gas, a leak is detected if the rate of change in pressure is greater than 6.9 kilopascals (1 pound per square inch gauge) in 1 hour or if there is visible, audible, or olfactory evidence of fluid loss.

(ii) For pressure tests using a liquid, a leak is detected if there are indications of liquids dripping or if there is other evidence of fluid loss.

(4) *Leak repair.* (i) If a leak is detected, it shall be repaired and the batch product-process equipment shall be retested before startup of the process.

(ii) If a batch product-process fails the retest or the second of two consecutive pressure tests, it shall be repaired as soon as practical but not later than 30 calendar days after the second pressure test except as specified in paragraph (e) of this section.

(5) *Gas pressure test procedure for pressure or vacuum loss.* The procedures specified in paragraphs (b)(5)(i) through (b)(5)(v) of this section shall be used to pressure test batch product-process equipment for pressure or vacuum loss to demonstrate compliance with the requirements of paragraph (b)(3)(i) of this section.

(i) The batch product-process equipment train shall be pressurized with a gas to a pressure less than the set pressure of any safety relief devices or valves or to a pressure slightly above the operating pressure of the equipment, or alternatively the equipment shall be placed under a vacuum.

(ii) Once the test pressure is obtained, the gas source or vacuum source shall be shut off.

(iii) The test shall continue for not less than 15 minutes unless it can be determined in a shorter period of time that the allowable rate of pressure drop or of pressure rise was exceeded. The pressure in the batch product-process equipment shall be measured after the gas or vacuum source is shut off and at the end of the test period. The rate of change in pressure in the batch product-process equipment shall be calculated using the following equation:

$$\Delta(P/t)=(|P_f - P_i|)/(t_f - t_i) \quad (117–1)$$

Where:

$\Delta(P/t)$=Change in pressure, pounds per square inch gauge/hr.

P_f=Final pressure, pounds per square inch gauge.

P_i=Initial pressure, pounds per square inch gauge.

$t_f - t_i$=Elapsed time, hours.

(iv) The pressure shall be measured using a pressure measurement device (gauge, manometer, or equivalent) that has a precision of $\pm$2.5 millimeters mercury (0.10 inch of mercury) in the range of test pressure and is capable of measuring pressures up to the relief set pressure of the pressure relief device. If such a pressure measurement device is not reasonably available, the owner or operator shall use a pressure measurement device with a precision of at least ±10 percent of the test pressure of the equipment and shall extend the duration of the test for the time necessary to detect a pressure loss or rise that equals a rate of 1 pound per square inch gauge per hour (7 kilopascals per hour).

(v) An alternative procedure may be used for leak testing the equipment if the owner or operator demonstrates the alternative procedure is capable of detecting a pressure loss or rise.

(6) *Pressure test procedure using test liquid.* The procedures specified in paragraphs (b)(6)(i) through (b)(g)(iv) of this section shall be used to pressure test batch product-process equipment using a liquid to demonstrate compliance with the requirements of paragraph (b)(3)(ii) of this section.

(i) The batch product-process equipment train or section of the equipment train shall be filled with the test liquid (for example, water, alcohol) until normal operating pressure is obtained. Once the equipment is filled, the liquid source shall be shut off.

(ii) The test shall be conducted for a period of at least 60 minutes unless it can be determined in a shorter period of time that the test is a failure.

(iii) Each seal in the equipment being tested shall be inspected for indications of liquid dripping or other indications of fluid loss. If there are any indications of liquids dripping or of fluid loss, a leak is detected.

(iv) An alternative procedure may be used for leak testing the equipment if the owner or operator demonstrates the alternative procedure is capable of detecting losses of fluid.

(7) *Pressure testing recordkeeping.* The owner or operator of a batch product-process who elects to pressure test the batch product-process equipment train to demonstrate compliance with this subpart shall maintain records of the information specified in paragraphs (b)(7)(i) through (b)(7)(v) of this section.

(i) The identification of each product or product code produced during the calendar year. It is not necessary to identify individual items of equipment in a batch product-process equipment train.

(ii) Physical tagging of the equipment to identify that it is in regulated material service and subject to the provisions of this subpart is not required. Equipment in a batch product-process subject to the provisions of this subpart may be identified on a plant site plan, in log entries, or by other appropriate methods.

(iii) The dates of each pressure test required in paragraph (b) of this section,

the test pressure, and the pressure drop observed during the test.

(iv) Records of any visible, audible, or olfactory evidence of fluid loss.

(v) When a batch product-process equipment train does not pass two consecutive pressure tests, the information specified in paragraphs (b)(7)(v)(A) through (b)(7)(v)(E) of this section shall be recorded in a log and kept for 2 years.

(A) The date of each pressure test and the date of each leak repair attempt;

(B) Repair methods applied in each attempt to repair the leak;

(C) The reason for the delay of repair;

(D) The expected date for delivery of the replacement equipment and the actual date of delivery of the replacement equipment; and

(E) The date of successful repair.

(c) *Equipment monitoring.* The following requirements shall be met if an owner or operator elects to monitor the equipment in a batch process to detect leaks by the method specified in § 65.104(b) to demonstrate compliance with this subpart.

(1) The owner or operator shall comply with the requirements of §§ 65.106 through 65.116 as modified by paragraphs (c)(2) through (c)(4) of this section.

(2) The equipment shall be monitored for leaks by the method specified in § 65.104(b) when the equipment is in regulated material service or is in use with any other detectable material.

(3) The equipment shall be monitored for leaks as specified in paragraphs (c)(3)(i) through (c)(3)(iv) of this section.

(i) Each time the equipment is reconfigured for the production of a new product, the reconfigured equipment shall be monitored for leaks within 30 days of startup of the process. This initial monitoring of reconfigured equipment shall not be included in determining percent leaking equipment in the process unit.

(ii) Connectors shall be monitored in accordance with the requirements in § 65.108.

(iii) Equipment other than connectors shall be monitored at the frequencies specified in table 1 of this subpart. The operating time shall be determined as the proportion of the year the batch product-process that is subject to the provisions of this subpart is operating.

(iv) The monitoring frequencies specified in paragraph (c)(3)(iii) of this section are not requirements for monitoring at specific intervals and can be adjusted to accommodate process operations. An owner or operator may monitor anytime during the specified monitoring period (for example, month, quarter, year), provided the monitoring is conducted at a reasonable interval after completion of the last monitoring campaign. For example, if the equipment is not operating during the scheduled monitoring period, the monitoring can be done during the next period when the process is operating.

(4) If a leak is detected, it shall be repaired as soon as practical but not later than 15 calendar days after it is detected except as provided in paragraph (e) of this section.

(d) *Added equipment recordkeeping.* (1) For batch product-process units that the owner or operator elects to monitor as provided under paragraph (c) of this section, the owner or operator shall prepare a list of equipment added to batch product-process units since the last monitoring period required in paragraphs (c)(3)(ii) and (c)(3)(iii) of this section.

(2) Maintain records demonstrating the proportion of the time during the calendar year the equipment is in use in a batch process that is subject to the provisions of this subpart. Examples of suitable documentation are records of time in use for individual pieces of equipment or average time in use for the process unit. These records are not required if the owner or operator does not adjust monitoring frequency by the time in use, as provided in paragraph (c)(3)(iii) of this section.

(3) Record and keep pursuant to § 65.4 of subpart A of this part the date and results of the monitoring required in paragraph (c)(3)(i) of this section for equipment added to a batch product-process unit since the last monitoring period required in paragraphs (c)(3)(ii) and (c)(3)(iii) of this section. If no leaking equipment is found during this monitoring, the owner or operator shall record that the inspection was performed. Records of the actual monitoring results are not required.

(e) *Delay of repair.* Delay of repair of equipment for which leaks have been detected is allowed if the replacement equipment is not available providing the conditions specified in paragraphs (e)(1) and (e)(2) of this section are met.

(1) Equipment supplies have been depleted and supplies had been sufficiently stocked before the supplies were depleted.

(2) The repair is made no later than 10 calendar days after delivery of the replacement equipment.

(f) *Periodic report contents.* For owners or operators electing to meet the requirements of paragraph (b) of this section, the periodic report to be filed pursuant to § 65.120(b) shall include the information listed in paragraphs (f)(1) through (f)(4) of this section for each process unit.

(1) Batch product-process equipment train identification;

(2) The number of pressure tests conducted;

(3) The number of pressure tests where the equipment train failed the pressure test; and

(4) The facts that explain any delay of repairs.

§ 65.118 Alternative means of emission limitation: Enclosed-vented process units.

(a) *Use of closed vent system and control device.* Process units enclosed in such a manner that all emissions from equipment leaks are vented through a closed vent system to a control device meeting the requirements of either § 65.115 or § 65.102(b) are exempt from the requirements of §§ 65.106 through 65.116. The enclosure shall be maintained under a negative pressure at all times while the process unit is in operation to ensure that all emissions are routed to a control device.

(b) *Recordkeeping.* Owners and operators choosing to comply with the requirements of this section shall maintain the records specified in paragraphs (b)(1) through (b)(3) of this section.

(1) Identification of the process unit(s) and the regulated materials they handle.

(2) A schematic of the process unit, enclosure, and closed vent system.

(3) A description of the system used to create a negative pressure in the enclosure to ensure that all emissions are routed to the control device.

§ 65.119 Recordkeeping provisions.

(a) *Recordkeeping system.* An owner or operator of more than one regulated source subject to the provisions of this subpart may comply with the recordkeeping requirements for these regulated sources in one recordkeeping system. The recordkeeping system shall identify each record by regulated source and the type of program being implemented (for example, quarterly monitoring, quality improvement) for each type of equipment. The records required by this subpart are summarized in paragraphs (b) and (c) of this section.

(b) *General equipment leak records.* (1) As specified in § 65.103(a) through (c), the owner or operator shall keep general and specific equipment identification if the equipment is not physically tagged and the owner or operator is electing to identify the equipment subject to subpart F of this part through written documentation such as a log or other designation.

(2) The owner or operator shall keep a written plan as specified in § 65.103(c)(4) for any equipment that is designated as unsafe- or difficult-to-monitor.

(3) The owner or operator shall maintain a record of the identity and an explanation as specified in § 65.103(d)(2) for any equipment that is designated as unsafe to repair.

(4) As specified in § 65.103(e), the owner or operator shall maintain a record of the identity of compressors operating with an instrument reading of less than 500 parts per million.

(5) The owner or operator shall keep records associated with the determination that equipment is in heavy liquid service as specified in § 65.103(f).

(6) The owner or operator shall keep records for leaking equipment as specified in § 65.104(e)(2).

(7) The owner or operator shall keep records for leak repair as specified in § 65.105(f) and records for delay of repair as specified in § 65.105(d).

(c) *Specific equipment leak records.* (1) For valves, the owner or operator shall maintain the records specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this section.

(i) The monitoring schedule for each process unit as specified in § 65.106(b)(3)(i).

(ii) The valve subgrouping records specified in § 65.106(b)(4)(iv), if applicable.

(2) For pumps, the owner or operator shall maintain the records specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section.

(i) Documentation of pump visual inspections as specified in § 65.107(b)(4).

(ii) Documentation of dual mechanical seal pump visual inspections as specified in § 65.107(e)(1)(v).

(iii) For the criteria as to the presence and frequency of drips for dual mechanical seal pumps, records of the design criteria and explanations and any changes and the reason for the changes, as specified in § 65.107(e)(1)(i).

(3) For connectors, the owner or operator shall maintain the records specified in § 65.108(b)(3)(v) which identify a monitoring schedule for each process unit.

(4) For agitators equipped with a dual mechanical seal system that includes barrier fluid system, the owner or operator shall keep records as specified in § 65.109(e)(1)(vi)(B).

(5) For pressure relief devices in gas/vapor or light liquid service, the owner or operator shall keep records of the dates and results of monitoring following a pressure release, as specified in § 65.111(c)(3).

(6) For compressors, the owner or operator shall maintain the records specified in paragraphs (c)(6)(i) and (c)(6)(ii) of this section.

(i) For criteria as to failure of the seal system and/or the barrier fluid system, record the design criteria and explanations and any changes and the reason for the changes, as specified in § 65.112(d)(2).

(ii) For compressors operating under the alternative compressor standard, record the dates and results of each compliance test as specified in § 65.112(f)(2).

(7) For a pump QIP program, the owner or operator shall maintain the records specified in paragraphs (c)(7)(i) through (c)(7)(v) of this section.

(i) Individual pump records as specified in § 65.116(d)(2).

(ii) Trial evaluation program documentation as specified in § 65.116(d)(6)(iii).

(iii) Engineering evaluation documenting the basis for judgement that superior emission performance technology is not applicable as specified in § 65.116(d)(6)(vi).

(iv) Quality assurance program documentation as specified in § 65.116(d)(7).

(v) QIP records as specified in § 65.116(e).

(8) For process units complying with the batch process unit alternative, the owner or operator shall maintain the records specified in paragraphs (c)(8)(i) and (c)(8)(ii) of this section.

(i) Pressure test records as specified in § 65.117(b)(7).

(ii) Records for equipment added to the process unit as specified in § 65.117(d).

(9) For process units complying with the enclosed-vented process unit alternative, the owner or operator shall maintain the records for enclosed-vented process units as specified in § 65.118(b).

§ 65.120 Reporting provisions.

(a) *Initial Compliance Status Report.* Unless the information specified in paragraphs (a)(1) through (a)(3) has previously been submitted, each owner or operator shall submit an Initial Compliance Status Report according to the procedures in § 65.5(d) of subpart A of this part. The notification shall include the information listed in paragraphs (a)(1) through (a)(3) of this section, as applicable.

(1) The notification shall provide the information listed in paragraphs (a)(1)(i) through (a)(1)(iii) of this section for each process unit subject to the requirements of this subpart.

(i) Process unit identification.

(ii) Number of each equipment type (for example, valves, pumps) excluding equipment in vacuum service.

(iii) Method of compliance with the standard (for example, ''monthly leak detection and repair'' or ''equipped with dual mechanical seals'').

(2) The notification shall provide the information listed in paragraphs (a)(2)(i) and (a)(2)(ii) of this section for each process unit subject to the requirements of § 65.117(b).

(i) Batch products or product codes subject to the provisions of this subpart; and

(ii) Planned schedule for pressure testing when equipment is configured for production of products subject to the provisions of this subpart.

(3) The notification shall provide the information listed in paragraphs (c)(3)(i) and (c)(3)(ii) of this section for each process unit subject to the requirements in § 65.118.

(i) Process unit identification.

(ii) A description of the system used to create a negative pressure in the enclosure and the control device used to comply with the requirements of subpart G of this part.

(b) *Periodic reports.* The owner or operator shall report the information specified in paragraphs (b)(1) through (b)(9) of this section, as applicable, in the periodic report specified in § 65.5(e) of subpart A of this part.

(1) For the equipment specified in paragraphs (b)(1)(i) through (b)(1)(v) of this section, report in a summary format by equipment type the number of components for which leaks were detected, and for valves, pumps, and connectors show the percent leakers and the total number of components monitored. Also include the number of leaking components that were not repaired as required by § 65.105(a), and for valves and connectors identify the number of components that are determined by § 65.106(c)(3) to be nonrepairable.

(i) Valves in gas/vapor service and in light liquid service pursuant to § 65.106(b) and (c).

(ii) Pumps in light liquid service pursuant to § 65.107(b) and (c).

(iii) Connectors in gas/vapor service and in light liquid service pursuant to § 65.108(b) and (c).

(iv) Agitators in gas/vapor service and in light liquid service pursuant to § 65.109(b).

(v) Compressors pursuant to § 65.112.

(2) Where any delay of repair is utilized pursuant to § 65.105(d), report that delay of repair has occurred and report the number of instances of delay of repair.

(3) If applicable, report the valve subgrouping information specified in § 65.106(b)(4)(iv).

(4) For pressure relief devices in gas/vapor service pursuant to § 65.111(b)

and for compressors pursuant to § 65.112(f) that are to be operated at a leak detection instrument reading of less than 500 parts per million, report the results of all monitoring to show compliance conducted within the semiannual reporting period.

(5) Report, if applicable, the initiation of a monthly monitoring program for valves pursuant to § 65.106(b)(3)(i).

(6) Report, if applicable, the initiation of a quality improvement program for pumps pursuant to § 65.116 of this subpart.

(7) [Reserved]

(8) Where the alternative means of emissions limitation for batch processes is utilized, report the information listed in § 65.117(f).

(9) Report the information listed in paragraph (a) of this section for the Initial Compliance Status Report for process units with later compliance dates. Report any revisions to items reported in an earlier Initial Compliance Status Report if the method of compliance has changed since the last report.

§§ 65.121–65.139 [Reserved].

TABLE 1 TO SUBPART F.—BATCH PROCESSES MONITORING FREQUENCY FOR EQUIPMENT OTHER THAN CONNECTORS

Operating time (percent of year)	Equivalent continuous process monitoring frequency time in use		
	Monthly	Quarterly	Semiannually
0 to <25	Quarterly	Annually	Annually.
25 to <50	Quarterly	Semiannually	Annually.
50 to <75	Bimonthly	Three times	Semiannually.
75 to 100	Monthly	Quarterly	Semiannually.

Subpart G—Closed Vent Systems, Control Devices, and Routing to a Fuel Gas System or a Process

§ 65.140 Applicability.

The provisions of this subpart and of subpart A of this part (including the startup, shutdown, and malfunction provisions in § 65.6 of subpart A of this part) apply to closed vent systems, control devices and recovery devices where another subpart expressly references the use of this subpart.

§ 65.141 Definitions.

All terms used in this subpart shall have the meaning given them in the Act and in subpart A of this part. If a term is defined in both subpart A of this part and in other subparts that reference the use of this subpart, the term shall have the meaning given in subpart A of this part for purposes of this subpart.

§ 65.142 Standards.

(a) *Storage vessel requirements.* The owner or operator expressly referenced to this subpart from subpart C of this part shall comply with the applicable requirements of paragraphs (a)(1) through (a)(3) of this section.

(1) *Closed vent system and flare.* Owners or operators subject to § 65.42(b)(4) of subpart C of this part who route storage vessel emissions through a closed vent system to a flare shall meet the requirements in § 65.143 for closed vent systems; § 65.147 for flares; and paragraphs (a), (b), and (c) of § 65.157 for provisions regarding flare compliance determinations; and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to storage vessel emissions routed through a closed vent system to a flare.

(2) *Closed vent system and nonflare control device.* Owners or operators subject to § 65.42(b)(5) of subpart C of this part who route storage vessel emissions through a closed vent system to a nonflare control device shall meet the requirements in § 65.143 for closed vent systems and § 65.145 for nonflare control devices and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to storage vessel emissions routed through a closed vent system to a nonflare control device unless specifically required in the monitoring plan submitted under § 65.145(c).

(3) *Route to a fuel gas system or process.* Owners or operators subject to § 65.42(b)(6) of subpart C of this part who route storage vessel emissions to a fuel gas system or to a process shall meet the requirements in § 65.144 and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to storage vessel emissions being routed to a fuel gas system or to a process.

(b) *Process vent requirements.* The owner or operator expressly referenced to this subpart from subpart D of this part or 40 CFR part 60, subpart DDD, shall comply with the applicable requirements of paragraphs (b)(1) through (b)(3) of this section.

(1) *Closed vent system and flare.* Owners or operators subject to § 65.63(a)(1) of subpart D of this part or 40 CFR 60.562–1(a)(1)(i)(C) of subpart DDD who route Group 1 process vent emissions through a closed vent system to a flare shall meet the applicable requirements in § 65.143 for closed vent systems; § 65.147 for flares; and paragraphs (a), (b), and (c) of § 65.157 for provisions regarding flare compliance determinations; and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to process vent emissions routed through a closed vent system to a flare.

(2) *Closed vent system and nonflare control device.* Owners or operators subject to § 65.63(a)(2) of subpart D of this part or 40 CFR 60.562–1(a)(1)(i)(A) or (a)(1)(i)(B) of subpart DDD who route process vent emissions through a closed vent system to a nonflare control device shall meet the applicable requirements in § 65.143 for closed vent systems; the requirements applicable to the control devices being used in §§ 65.148 through 65.152 or § 65.155; the applicable general monitoring requirements of § 65.156; the applicable performance test requirements and procedures of §§ 65.157 and 65.158; and the monitoring, recordkeeping, and reporting requirements referenced therein. Owners or operators subject to the halogen reduction device requirements of § 65.63(b) of subpart D must also comply with § 65.154 and the monitoring, recordkeeping, and reporting requirements referenced therein. The requirements of §§ 65.144 through 65.146 do not apply to process vents.

(3) *Final recovery devices.* Owners or operators subject to § 65.63(a)(3) of subpart D who use a final recovery device to maintain the TRE index value of a Group 2 process vent above 1.0 shall meet the requirements in § 65.153 and the monitoring, recordkeeping, and reporting requirements referenced therein applicable to the recovery

device being used and the applicable monitoring requirements in § 65.156 and the recordkeeping and reporting requirements referenced therein, except for § 65.156(c)(2)(ii). No other provisions of this subpart apply to Group 2A process vents.

(c) *Transfer rack requirements.* The owner or operator expressly referenced to this subpart from subpart E of this part shall comply with the applicable requirements of paragraphs (c)(1) through (c)(4) of this section.

(1) *Closed vent system and flare.* Owners or operators subject to § 65.83(a)(2) of subpart E of this part who route transfer rack emissions through a closed vent system to a flare shall meet the applicable requirements in § 65.143 for closed vent systems; § 65.147 for flares; and paragraphs (a), (b), and (c) of § 65.157 for provisions regarding flare compliance determinations; and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to transfer rack emissions routed through a closed vent system to a flare.

(2) *Closed vent system and nonflare control device for low-throughput transfer racks.* Owners or operators of low-throughput transfer racks subject to § 65.83(a)(1) of subpart E of this part who route low-throughput transfer rack emissions through a closed vent system to a nonflare control device shall meet the applicable requirements in § 65.143 for closed vent systems and § 65.145 for nonflare control devices and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to low-throughput transfer rack emissions routed through a closed vent system to a nonflare control device unless specifically required in the monitoring plan submitted under § 65.145(c).

(3) *Closed vent system and nonflare control devices for high-throughput transfer racks.* Owners or operators of high-throughput transfer racks subject to § 65.83(a)(1) of subpart E of this part who route high-throughput transfer rack emissions through a closed vent system to a nonflare control device shall meet the applicable requirements in § 65.143 for closed vent systems, the requirements applicable to the control device being used in §§ 65.148 through 65.152 or § 65.155; the applicable general monitoring of § 65.156; and the applicable performance test requirements and procedures of §§ 65.157 and 65.158; and the monitoring, recordkeeping, and reporting requirements referenced therein. Owners or operators subject to 65.83(b) of subpart E must also comply with § 65.154 and the monitoring, recordkeeping, and reporting requirements referenced therein. The requirements of §§ 65.144 through 65.146 do not apply to high-throughput transfer rack emissions routed through a closed vent system to a nonflare control device. No other provisions of this subpart apply to transfer rack emissions routed through a closed vent system to a nonflare control device.

(4) *Route to a fuel gas system or to a process.* Owners or operators subject to § 65.83(a)(4) of subpart E of this part who route transfer rack emissions to a fuel gas system or to a process shall meet the applicable requirements in § 65.144 and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to transfer rack emissions being routed to a fuel gas system or to a process.

(d) *Equipment leak requirements.* The owner or operator expressly referenced to this subpart from subpart F of this part shall comply with the applicable requirements of paragraphs (d)(1) through (d)(3) of this section.

(1) *Closed vent system and flare.* Owners or operators subject to § 65.115(b) of subpart F of this part who route equipment leak emissions through a closed vent system to a flare shall meet the requirements in § 65.143 for closed vent systems; § 65.147 for flares; and paragraphs (a), (b) and (c) of § 65.157 for provisions regarding flare compliance determinations; and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to equipment leak emissions routed through a closed vent system to a flare.

(2) *Closed vent system and nonflare control device.* Owners or operators subject to § 65.115(b) of subpart F of this part who route equipment leak emissions through a closed vent system to a nonflare control device shall meet the requirements in § 65.143 for closed vent systems and § 65.146 for nonflare control devices used for equipment leak emissions and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to equipment leak emissions routed through a closed vent system to a nonflare control device.

(3) *Route to a fuel gas system or to a process.* Owners or operators subject to § 65.115(b) of subpart F of this part who route equipment leak emissions to a fuel gas system or to a process shall meet the requirements in § 65.144 and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to equipment leak emissions being routed to a fuel gas system or to a process.

(e) *Combined emissions.* When emissions of different kinds (for example, emissions from process vents, transfer racks, and/or storage vessels) are combined, the owner or operator shall comply with the requirements of either paragraph (e)(1) or paragraph (e)(2) of this section.

(1) Comply with the applicable requirements of this subpart for each kind of emissions in the stream (for example, the requirements of § 65.142(b) for process vents, and the requirements of § 65.142(c) for transfer racks); or

(2) Comply with the first set of requirements identified in paragraphs (e)(2)(i) through (e)(2)(iii) of this section which applies to any individual emission stream that is included in the combined stream. Compliance with the first applicable set of requirements identified in paragraphs (e)(2)(i) through (e)(2)(iii) of this section constitutes compliance with all other requirements in paragraphs (e)(2)(i) through (e)(2)(iii) of this section applicable to other types of emissions in the combined stream.

(i) The requirements of § 65.142(b) for Group 1 process vents, including applicable monitoring, recordkeeping, and reporting;

(ii) The requirements of § 65.142(c) for high-throughput transfer racks, including applicable monitoring, recordkeeping, and reporting;

(iii) The requirements of § 65.142(a) for control of emissions from storage vessels or low-throughput transfer racks, including monitoring, recordkeeping, and reporting.

§ 65.143 Closed vent systems.

(a) *Closed vent system equipment and operating requirements.* The provisions of paragraph (a) of this section apply to closed vent systems collecting regulated material from a storage vessel, process vent, transfer rack, or equipment leaks.

(1) *Collection of emissions.* Each closed vent system shall be designed and operated to collect the regulated material vapors from the emission point and to route the collected vapors to a control device.

(2) *Period of operation.* Closed vent systems used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(3) *Bypass monitoring.* Except for pressure relief devices needed for safety purposes, low leg drains, high point bleeds, analyzer vents, and open-ended valves or lines, the owner or operator

shall comply with the provisions of either paragraph (a)(3)(i) or (a)(3)(ii) of this section for each closed vent system that contains bypass lines that could divert a vent stream to the atmosphere.

(i) Properly install, maintain, and operate a flow indicator that takes a reading at least once every 15 minutes. Records shall be generated as specified in § 65.163(a)(1)(i). The flow indicator shall be installed at the entrance to any bypass line.

(ii) Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure the valve is maintained in the closed position and the vent stream is not diverted through the bypass line. Records shall be generated as specified in § 65.163(a)(1)(ii).

(4) *Loading arms at transfer racks.* Each closed vent system collecting regulated material from a transfer rack shall be designed and operated so that regulated material vapors collected at one loading arm will not pass through another loading arm in the rack to the atmosphere.

(5) *Pressure relief devices in a transfer rack.* The owner or operator of a transfer rack subject to the provisions of this subpart shall ensure that no pressure relief device in the transfer rack's closed vent system shall open to the atmosphere during loading. Pressure relief devices needed for safety purposes are not subject to paragraph (a)(5) of this section.

(b) *Closed vent system inspection requirements.* The provisions of paragraph (b) of this section apply to closed vent systems collecting regulated material from a storage vessel, transfer rack or equipment leaks. Inspection records shall be generated as specified in § 65.163(a)(3) and (a)(4).

(1) Except for closed vent systems operated and maintained under negative pressure and as provided in paragraphs (b)(2) and (b)(3) of this section, each closed vent system shall be inspected as specified in paragraph (b)(1)(i) or (b)(1)(ii) of this section.

(i) If the closed vent system is constructed of hard-piping, the owner or operator shall comply with the requirements specified in paragraphs (b)(1)(i)(A) and (b)(1)(i)(B) of this section.

(A) Conduct an initial inspection according to the procedures in paragraph (c) of this section; and

(B) Conduct annual visual inspections for visible, audible, or olfactory indications of leaks.

(ii) If the closed vent system is constructed of ductwork, the owner or operator shall conduct an initial and annual inspection according to the procedures in paragraph (c) of this section.

(2) Any parts of the closed vent system that are designated as described in § 65.163(a)(2) as unsafe to inspect are exempt from the inspection requirements of paragraph (b)(1) of this section if the conditions of paragraphs (b)(2)(i) and (b)(2)(ii) of this section are met.

(i) The owner or operator determines that the equipment is unsafe to inspect because inspecting personnel would be exposed to an imminent or potential danger as a consequence of complying with paragraph (b)(1) of this section; and

(ii) The owner or operator has a written plan that requires inspection of the equipment as frequently as practical during safe-to-inspect times. Inspection is not required more than once annually.

(3) Any parts of the closed vent system that are designated, as described in § 65.163(a)(2), as difficult to inspect are exempt from the inspection requirements of paragraph (b)(1) of this section if the provisions of paragraphs (b)(3)(i) and (b)(3)(ii) of this section apply.

(i) The owner or operator determines that the equipment cannot be inspected without elevating the inspecting personnel more than 2 meters (7 feet) above a support surface; and

(ii) The owner or operator has a written plan that requires inspection of the equipment at least once every 5 years.

(c) *Closed vent system inspection procedures.* The provisions of paragraph (c) of this section apply to closed vent systems collecting regulated material from a storage vessel, transfer rack, or equipment leaks.

(1) Each closed vent system subject to paragraph (c) of this section shall be inspected according to the procedures specified in paragraphs (c)(1)(i) through (c)(1)(vii) of this section.

(i) Inspections shall be conducted in accordance with Method 21 of 40 CFR part 60, appendix A, except as specified in this section.

(ii) Except as provided in paragraph (c)(1)(iii) of this section, the detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the representative composition of the process fluid not each individual volatile organic compounds (VOC) in the stream. For process streams that contain nitrogen, air, or other inerts that are not organic hazardous air pollutants (HAP's) or VOC, the representative stream response factor shall be determined on an inert-free basis. The response factor may be determined at any concentration for which the monitoring for leaks will be conducted.

(iii) If no instrument is available at the plant site that will meet the performance criteria specified in paragraph (c)(1)(ii) of this section, the instrument readings may be adjusted by multiplying by the representative response factor of the process fluid calculated on an inert-free basis as described in paragraph (c)(1)(ii) of this section.

(iv) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(v) Calibration gases shall be as specified in paragraphs (c)(1)(v)(A) through (c)(1)(v)(C) of this section.

(A) Zero air (less than 10 parts per million hydrocarbon in air); and

(B) Mixtures of methane in air at a concentration less than 10,000 parts per million. A calibration gas other than methane in air may be used if the instrument does not respond to methane or if the instrument does not meet the performance criteria specified in paragraph (c)(1)(ii) of this section. In such cases, the calibration gas may be a mixture of one or more of the compounds to be measured in air.

(C) If the detection instrument's design allows for multiple calibration scales, then the lower scale shall be calibrated with a calibration gas that is no higher than 2,500 parts per million.

(vi) An owner or operator may elect to adjust or not adjust instrument readings for background. If an owner or operator elects not to adjust readings for background, all such instrument readings shall be compared directly to 500 parts per million to determine whether there is a leak. If an owner or operator elects to adjust instrument readings for background, the owner or operator shall measure background concentration using the procedures in this section. The owner or operator shall subtract the background reading from the maximum concentration indicated by the instrument.

(vii) If the owner or operator elects to adjust for background, the arithmetic difference between the maximum concentration indicated by the instrument and the background level shall be compared with 500 parts per million for determining whether there is a leak.

(2) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Method 21 of 40 CFR part 60, appendix A.

(3) Except as provided in paragraph (c)(4) of this section, inspections shall be performed when the equipment is in regulated material service or in use with any other detectable gas or vapor.

(4) Inspections of the closed vent system collecting regulated material from a transfer rack shall be performed only while a tank truck or railcar is being loaded or is otherwise pressurized to normal operating conditions with regulated material or any other detectable gas or vapor.

(d) *Closed vent system leak repair provisions.* The provisions of paragraph (d) of this section apply to closed vent systems collecting regulated material from a storage vessel, transfer rack, or equipment leak.

(1) If there are visible, audible, or olfactory indications of leaks at the time of the annual visual inspections required by paragraph (b)(1)(i)(B) of this section, the owner or operator shall follow the procedure specified in either paragraph (d)(1)(i) or (d)(1)(ii) of this section.

(i) The owner or operator shall eliminate the indications of the leak.

(ii) The owner or operator shall monitor the equipment according to the procedures in paragraph (c) of this section.

(2) Leaks as indicated by an instrument reading greater than 500 parts per million by volume above background shall be repaired as soon as practical except as provided in paragraph (d)(3) of this section. Records shall be generated as specified in § 65.163(a)(3) when a leak is detected.

(i) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected.

(ii) Except as provided in paragraph (d)(3) of this section, repairs shall be completed no later than 15 calendar days after the leak is detected or at the beginning of the next introduction of vapors to the system, whichever is later.

(3) Delay of repair of a closed vent system for which leaks have been detected is allowed if repair within 15 days after a leak is detected is technically infeasible without a closed vent system shutdown, as defined in § 65.2 of subpart A of this part, or if the owner or operator determines that emissions resulting from immediate repair would be greater than the emissions likely to result from delay of repair. Repair of such equipment shall be completed as soon as practical, but not later than the end of the next closed vent system shutdown.

§ 65.144 Fuel gas systems and processes to which storage vessel, transfer rack, or equipment leak regulated material emissions are routed.

(a) *Equipment and operating requirements for fuel gas systems and processes.* (1) Except as provided in § 65.3(b)(1) of subpart A, the fuel gas system or process shall be operating at all times when regulated material emissions are routed to it.

(2) The owner or operator of a transfer rack subject to the provisions of this subpart shall ensure that no pressure relief device in the transfer rack's system returning vapors to a fuel gas system or process shall open to the atmosphere during loading. Pressure relief devices needed for safety purposes are not subject to paragraph (a)(2) of this section.

(3) Each process piping system collecting regulated material from a transfer rack shall be designed and operated so that regulated material vapors collected at one loading arm will not pass through another loading arm in the rack to the atmosphere.

(b) *Fuel gas system and process compliance determination.* (1) If emissions are routed to a fuel gas system, there is no requirement to conduct a performance test or design evaluation.

(2) For storage vessels and transfer racks and if emissions are routed to a process, the regulated material in the emissions shall predominantly meet one of or a combination of the conditions specified in paragraphs (b)(2)(i) through (b)(2)(iv) of this section. The owner or operator of storage vessels subject to paragraph (b)(2) of this section shall comply with the compliance demonstration requirements in paragraph (b)(3) of this section.

(i) Recycled and/or consumed in the same manner as a material that fulfills the same function in that process;

(ii) Transformed by chemical reaction into materials that are not regulated materials;

(iii) Incorporated into a product; and/or

(iv) Recovered.

(3) To demonstrate compliance with paragraph (b)(2) of this section for a storage vessel, the owner or operator shall prepare a design evaluation (or engineering assessment) that demonstrates the extent to which one or more of the conditions specified in paragraphs (b)(2)(i) through (b)(2)(iv) of this section are being met. The owner or operator shall submit the design evaluation as specified in § 65.165(a)(1).

(c) *Statement of connection.* For storage vessels and transfer racks, the owner or operator shall submit the reports specified in § 65.165(a)(2) and/or (a)(3), as appropriate.

§ 65.145 Nonflare control devices used to control emissions from storage vessels or low-throughput transfer racks.

(a) *Nonflare control device equipment and operating requirements.* The owner or operator shall operate and maintain the nonflare control device so that the monitored parameters defined as required in paragraph (c) of this section remain within the ranges specified in the Initial Compliance Status Report whenever emissions of regulated material are routed to the control device, except during periods of startup, shutdown, and malfunction.

(b) *Nonflare control device design evaluation or performance test requirements.* When using a control device other than a flare, the owner or operator shall comply with the requirements in paragraph (b)(1)(i), (b)(1)(ii), or (b)(1)(iii) of this section except as provided in paragraph (b)(2) of this section.

(1) Unless a design evaluation or performance test as required in the referencing subpart was previously conducted and submitted for the storage vessel or low-throughput transfer rack, the owner or operator shall either prepare and submit with the Initial Compliance Status Report, as specified in § 65.165(b), a design evaluation that includes the information specified in paragraph (b)(1)(i) of this section, or the results of the performance test as described in paragraph (b)(1)(ii) or (b)(1)(iii) of this section.

(i) *Design evaluation.* The design evaluation shall include documentation demonstrating that the control device being used achieves the required control efficiency during the reasonably expected maximum storage vessel filling or transfer loading rate. This documentation is to include a description of the gas stream that enters the control device, including flow and regulated material content, and additionally for storage vessels, under varying liquid level conditions, and the information specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(E) of this section, as applicable. This documentation shall be submitted with the Initial Compliance Status Report as specified in § 65.165(b).

(A) The efficiency determination is to 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 the emission reduction requirement specified in § 65.42(b)(5) or (c)(2) of subpart C of this part for storage vessels or § 65.83(a)(1) of subpart E of this part for transfer racks, documentation that those conditions exist is sufficient to meet the requirements of paragraph (b)(1)(i) of this section.

(C) Except as provided in paragraph (b)(1)(i)(B) of this section for enclosed combustion devices, the design evaluation shall include the estimated autoignition temperature of the stream being combusted, the flow rate of the stream, the combustion temperature, and the residence time at the combustion temperature.

(D) For carbon adsorbers, the design evaluation shall include the estimated affinity of the regulated pollutant vapors for carbon, the amount of carbon in each bed, the number of beds, the humidity, the temperature, the flow rate of the inlet stream and, if applicable, 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 stream vapors, the type of condenser, and the design flow rate of the emission stream.

(ii) *Performance test.* A performance test is acceptable to demonstrate compliance with § 65.42(b)(5) of subpart C of this part for storage vessels and § 65.83(a)(1) of subpart E of this part for transfer racks. The owner or operator is not required to prepare a design evaluation for the control device as described in paragraph (b)(1)(i) of this section if a performance test will be performed that meets the criteria specified in paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section.

(A) The performance test demonstrates that the control device achieves greater than or equal to the required control efficiency specified in § 65.42(b)(5) of subpart C of this part for storage vessels or § 65.83(a)(1) of subpart E of this part for transfer racks; and

(B) The performance test meets the applicable performance test requirements of §§ 65.157 and 65.158, and the results are submitted as part of the Initial Compliance Status Report as specified in § 65.165(b).

(iii) If the control device used to comply with § 65.42(b)(5) of subpart C of this part for storage vessels or with § 65.83(a)(1) of subpart E of this part for low-throughput transfer racks, as applicable, is also used to comply with § 65.63(a)(2) of subpart D of this part for process vents or § 65.83(a)(1) of subpart E of this part for transfer racks (for non low-throughput transfer racks), a performance test required by § 65.148(b), § 65.149(b), § 65.150(b), § 65.151(b), § 65.152(b), or § 65.155(b) is acceptable to demonstrate compliance with § 65.42(b)(5) of subpart C of this part for storage vessels or § 65.83(a)(1) of subpart E of this part for low-throughput transfer racks, as applicable. The owner or operator is not required to prepare a design evaluation for the control device as described in paragraph (b)(1)(i) of this section, if a performance test will be performed which meets the criteria specified in paragraphs (b)(1)(iii)(A) and (b)(1)(iii)(B) of this section.

(A) The performance test demonstrates that the control device achieves greater than or equal to the required control efficiency specified in § 65.42(b)(5) of subpart C of this part for storage vessels or § 65.83(a)(1) of subpart E of this part for transfer racks; and

(B) The performance test is submitted as part of the Initial Compliance Status Report as specified in § 65.165(b).

(2) A design evaluation or performance test is not required if the owner or operator uses a combustion device meeting the criteria in paragraph (b)(2)(i), (b)(2)(ii), (b)(2)(iii), or (b)(2)(iv) of this section.

(i) A boiler or process heater with a design heat input capacity of 44 megawatts (150 million British thermal units per hour) or greater.

(ii) A boiler or process heater burning hazardous waste for which the owner or operator meets the requirements specified in paragraph (b)(2)(ii)(A) or (b)(2)(ii)(B) of this section.

(A) The boiler or process heater 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) The boiler or process heater has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(iii) A hazardous waste incinerator for which the owner or operator meets the requirements specified in paragraph (b)(2)(iii)(A) or (b)(2)(iii)(B) of this section.

(A) The incinerator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O; or

(B) The incinerator has certified compliance with the interim status requirements of 40 CFR part 265, subpart O.

(iv) A boiler or process heater into which the vent stream is introduced with the primary fuel.

(c) *Nonflare control device monitoring requirements.* (1) Unless previously established under an applicable standard prior to the implementation date of this part as specified in § 65.1(f) of subpart A of this part, the owner or operator shall submit with the Initial Compliance Status Report a monitoring plan containing the information specified in § 65.165(b) to identify the parameters that will be monitored to assure proper operation of the control device.

(2) The owner or operator shall monitor the parameters specified in the Initial Compliance Status Report or in the operating permit. Records shall be generated as specified in § 65.163(b)(1).

§ 65.146 Nonflare control devices used for equipment leaks only.

(a) *Equipment and operating requirements.* (1) Owners or operators using a nonflare control device to meet the applicable requirements in § 65.115(b) of subpart F of this part shall meet the requirements of this section.

(2) Control devices used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Performance test requirements.* A performance test is not required for any control device used only to control emissions from equipment leaks.

(c) *Monitoring requirements.* Owners or operators of control devices that are used to comply only with the provisions of § 65.115(b) of subpart F of this part shall monitor these control devices to ensure that they are operated and maintained in conformance with their design. The owner or operator shall maintain the records as specified in § 65.163(d).

§ 65.147 Flares.

(a) *Flare equipment and operating requirements.* Flares subject to this subpart shall meet the performance requirements of paragraphs (a)(1) through (a)(7) of this section.

(1) Flares shall be operated at all times when emissions are vented to them.

(2) Flares shall be designed for and operated with no visible emissions as determined by the methods specified in paragraph (b)(3)(i) of this section except for periods not to exceed a total of 5 minutes during any two consecutive hours.

(3) Flares shall be operated with a flare flame or at least one pilot flame present at all times, as determined by the methods specified in paragraph (c) of this section.

(4) Flares shall be used only when the net heating value of the gas being combusted is 11.2 megajoules per standard cubic meter (300 British thermal units per standard cubic foot) or greater if the flare is steam-assisted or air-assisted, or when the net heating value of the gas being combusted is 7.45 megajoules per standard cubic meter (200 British thermal units per standard cubic foot) or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the methods specified in paragraph (b)(3)(ii) of this section.

(5) Flares used to comply with this section shall be steam-assisted, air-assisted, or nonassisted.

(6) Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity as determined by the methods specified in paragraph (b)(3)(iii) of this section, of less than 18.3 meters per second (60 feet per sec) except as provided in paragraphs (a)(6)(i) and (a)(6)(ii) of this section, as applicable.

(i) Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity as determined by the methods specified in paragraph (b)(3)(iii) of this section equal to or less than 122 meters per second (400 feet per second) if the net heating value of the gas being combusted is greater than 37.3 megajoules per standard cubic meter (1,000 British thermal units per standard cubic foot).

(ii) Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity, as determined by the methods specified in paragraph (b)(3)(iii) of this section, of less than the velocity, V_{max} and less than 122 meters per second (400 feet per sec), where the maximum permitted velocity, V_{max}, is determined by the following equation:

$$\text{Log10}\,(V_{max}) = (H_T + 28.8)/31.7 \qquad (147\text{–}1)$$

Where:

V_{max}=Maximum permitted velocity, meters per second

28.8=Constant

31.7=Constant

H_T=The net heating value as determined in paragraph (b)(3)(ii) of this section.

(7) Air-assisted flares shall be designed for and operated with an exit velocity as determined by the methods specified in paragraph (b)(3)(iii) of this section less than the velocity, V_{max}, where the maximum permitted velocity, V_{max}, is determined by the following equation.

$$V_{max} = 8.706 + 0.7084\,(H_T) \qquad (147\text{–}2)$$

Where:

V_{max}=Maximum permitted velocity, meters per second

8.706=Constant

0.7084=Constant

H_T=The net heating value as determined in paragraph (b)(3)(ii) of this section.

(b) *Flare compliance determination.* (1) Unless an initial flare compliance determination of the flare was previously conducted and submitted under the referencing subpart, the owner or operator shall conduct an initial flare compliance determination of any flare used to comply with the provisions of this subpart. Flare compliance determination records shall be kept as specified in § 65.159(a) and (b) and a flare compliance determination report shall be submitted as specified in § 65.164. An owner or operator is not required to conduct a performance test to determine percent emission reduction or outlet regulated material or TOC concentration when a flare is used.

(2) Unless already permitted by the applicable title V permit, if an owner or operator elects to use a flare to replace an existing control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 65.167(a). Upon implementing the change, a flare compliance determination shall be performed using the methods specified in paragraph (b)(3) of this section within 180 days. The compliance determination report shall be submitted to the Administrator within 60 days of completing the determination as provided in § 65.164(b)(2). If an owner or operator elects to use a flare to replace an existing final recovery device that is used on a Group 2A process vent, the owner or operator shall comply with the applicable provisions of §§ 65.63(e) and 65.67(b) of subpart D of this part and submit the notification specified in § 65.167(a).

(3) Flare compliance determinations shall meet the requirements specified in paragraphs (b)(3)(i) through (b)(3)(iv) of this section.

(i) Method 22 of appendix A of part 60 shall be used to determine the compliance of flares with the visible emission provisions of this subpart. The observation period is 2 hours, except for transfer racks as provided in paragraph (b)(3)(i)(A) or (b)(3)(i)(B) of this section.

(A) For transfer racks, if the loading cycle is less than 2 hours, then the observation period for that run shall be for the entire loading cycle.

(B) For transfer racks, if additional loading cycles are initiated within the 2-hour period, then visible emissions observations shall be conducted for the additional cycles.

(ii) The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_T = K_1 \sum_{j=1}^{n} D_j H_j \qquad (147\text{-}3)$$

where:

H_T=Net heating value of the sample, megajoules per standard cubic meter; where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 millimeters of mercury (30 inches of mercury), but the standard temperature for determining the volume corresponding to 1 mole is 20 °C;

K_1=1.740×10^{-7} (parts per million by volume)$^{-1}$ (gram-mole per standard cubic meter) (megajoules per kilocalories), where the standard temperature for gram mole per standard cubic meter is 20 °C;

D_j=Concentration of sample component j, in parts per million by volume on a wet basis, as measured for organics by Method 18 of part 60, appendix A and measured for hydrogen and carbon monoxide by American Society for Testing and Materials (ASTM) D1946–77; and

H_j=Net heat of combustion of sample component j, kilocalories per gram-mole at 25 °C and 760 millimeters of mercury (30 inches of mercury). The heats of combustion of stream components may be determined using ASTM D2382–76 if published values are not available or cannot be calculated.

(iii) The actual exit velocity of a flare shall be determined by dividing the volumetric flow rate (in units of standard temperature and pressure), as determined by Methods 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A as appropriate; by the unobstructed (free) cross-sectional area of the flare tip.

(iv) Flare flame or pilot monitors, as applicable, shall be operated during any flare compliance determination.

(c) *Flare monitoring requirements.* Where a flare is used, the following monitoring equipment is required: a device (including but not limited to a thermocouple, ultraviolet beam sensor, or infrared sensor) capable of continuously detecting that at least one pilot flame or the flare flame is present. Flame monitoring and compliance records shall be kept as specified in § 65.159 (c) and (d).

§ 65.148 Incinerators.

(a) *Incinerator equipment and operating requirements.* (1) Owners or operators using incinerators to meet the 98 weight-percent emission reduction or 20 parts per million by volume outlet concentration requirement as specified in § 65.63(a)(2) of subpart D of this part or 40 CFR 60.562–1(a)(1)(i)(A) of subpart DDD for process vents, or § 65.83(a)(1) of subpart E of this part for transfer racks, as applicable, shall meet the requirements of this section.

(2) Incinerators used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Incinerator performance test requirements.* (1) Unless an initial performance test was previously conducted and submitted under the referencing subpart and except as specified in § 65.157(b) and paragraph (b)(2) of this section, the owner or operator shall conduct an initial performance test of any incinerator used to comply with the provisions of this subpart according to the procedures in §§ 65.157 and 65.158. Performance test records shall be kept as specified in § 65.160(a) and (b) and a performance test report shall be submitted as specified in § 65.164. As provided in § 65.145(b)(1), a performance test may be used as an alternative to the design evaluation for storage vessels and low-throughput transfer rack controls. As provided in § 65.146(b), no performance test is required for equipment leaks.

(2) An owner or operator is not required to conduct a performance test for 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.

(3) Unless already permitted by the applicable title V permit, if an owner or operator elects to use an incinerator to replace an existing control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 65.167(a) before implementing the change. Upon implementing the change, an incinerator performance test shall be performed, using the methods specified in § 65.157 and within 180 days if required by paragraph (b)(1) of this section. The performance test report shall be submitted to the Administrator within 60 days of completing the determination as provided in § 65.164(b)(2). If an owner or operator elects to use an incinerator to replace an existing recovery device that is used on a Group 2A process vent, the owner or operator shall comply with the applicable provisions of §§ 65.63(e) and 65.67(b) of subpart D of this part and submit the notification specified in § 65.167(a).

(c) *Incinerator monitoring requirements.* (1) Where an incinerator is used, a temperature monitoring device capable of providing a continuous record that meets the provisions specified in paragraph (c)(1)(i) or (c)(1)(ii) of this section is required. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(i) Where an incinerator other than a catalytic incinerator is used, a temperature monitoring device shall be installed in the fire box or in the ductwork immediately downstream of the fire box in a position before any substantial heat exchange occurs.

(ii) Where a catalytic incinerator is used, temperature monitoring devices shall be installed in the gas stream immediately before and after the catalyst bed.

(2) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the incinerator. In order to establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications of § 65.157(b)(1) or upon existing ranges or limits established under a referencing subpart.

§ 65.149 Boilers and process heaters.

(a) *Boiler and process heater equipment and operating requirements.* (1) Owners or operators using boilers and process heaters to meet the 98 weight-percent emission reduction or 20 parts per million by volume outlet concentration requirement as specified in § 65.63(a)(2) of subpart D of this part or 40 CFR 60.562–1(a)(1)(i)(A) of subpart DDD for process vents, or § 65.83(a)(1) of subpart E of this part for transfer racks, as applicable, shall meet the requirements of this section.

(2) The vent stream shall be introduced into the flame zone of the boiler or process heater.

(3) Boilers and process heaters used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Boiler and process heater performance test requirements.* (1) Unless an initial performance test was previously conducted and submitted under the referencing subpart, and except as specified in § 65.157(b) and paragraph (b)(2) of this section, the owner or operator shall conduct an initial performance test of any boiler or process heater used to comply with the provisions of this subpart according to the procedures in §§ 65.157 and 65.158. Performance test records shall be kept as specified in § 65.160(a) and (b) and a performance test report shall be submitted as specified in § 65.164. As provided in § 65.145(b)(1), a performance test may be used as an alternative to the design evaluation for storage vessels and low-throughput transfer rack controls. As provided in § 65.146(b), no performance test is required to demonstrate compliance for equipment leaks.

(2) An owner or operator is not required to conduct a performance test when any of the control devices specified in paragraphs (b)(2)(i) through (b)(2)(iii) are used.

(i) A boiler or process heater with a design heat input capacity of 44 megawatts (150 million British thermal units per hour) or greater.

(ii) A boiler or process heater into which 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 meets the requirements specified in paragraph (b)(2)(iii)(A) or (b)(2)(iii)(B) of this section.

(A) The boiler or process heater 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) The boiler or process heater has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(3) Unless already permitted by the applicable title V permit, if an owner or operator elects to use a boiler or process heater to replace an existing control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 65.167(a) before implementing the change. Upon implementing the change, a boiler or process heater performance test shall be performed using the methods specified in §§ 65.157 and 65.158 within 180 days if required by paragraph (b)(1) of this section. The performance test report shall be submitted to the Administrator

within 60 days of completing the determination as provided in § 65.164(b)(2). If an owner or operator elects to use a boiler or process heater to replace an existing recovery device that is used on a Group 2A process vent, the owner or operator shall comply with the applicable provisions of § 65.63(e) and § 65.67(b) of subpart D of this part and submit the notification specified in § 65.167(a).

(c) *Boiler and process heater monitoring requirements.* (1) Where a boiler or process heater of less than 44 megawatts (150 million British thermal units per hour) design heat input capacity is used and the regulated vent stream is not introduced as or with the primary fuel, a temperature monitoring device in the fire box capable of providing a continuous record is required. Any boiler or process heater in which all vent streams are introduced with primary fuel or are used as the primary fuel is exempt from monitoring. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(2) Where monitoring is required, the owner or operator shall establish a range for monitored parameters that indicates proper operation of the boiler or process heater. In order to establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications of § 65.157(b)(1) or upon existing ranges or limits established under a referencing subpart.

§ 65.150 Absorbers used as control devices.

(a) *Absorber equipment and operating requirements.* (1) Owners or operators using absorbers to meet the 98 weight-percent emission reduction or 20 parts per million by volume outlet concentration requirements as specified in § 65.63(a)(2) of subpart D of this part or 40 CFR 60.562–1(a)(1)(i)(A) of subpart DDD for process vents, or § 65.83(a)(1) of subpart E of this part for transfer racks, as applicable, shall meet the requirements of this section.

(2) Absorbers used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Absorber performance test requirements.* (1) Unless an initial performance test was previously conducted and submitted under the referencing subpart and except as specified in § 65.157(b), the owner or operator shall conduct an initial performance test of any absorber used as a recapture device to comply with the provisions of this subpart according to the procedures in §§ 65.157 and 65.158. Performance test records shall be kept as specified in § 65.160 (a) and (b) and a performance test report shall be submitted as specified in § 65.164. As provided in § 65.145(b)(1), a performance test may be used as an alternative to the design evaluation for storage vessels and low-throughput transfer rack controls. As provided in § 65.146(b), no performance test is required to demonstrate compliance for equipment leaks.

(2) Unless already permitted by the applicable title V permit, if an owner or operator elects to use an absorber to replace an existing recovery or control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 65.167(a) before implementing the change. Upon implementing the change, the provisions specified in paragraph (b)(2)(i) or (b)(2)(ii) as applicable shall be followed.

(i) *Replace final recovery device.* If an owner or operator elects to replace the final recovery device on a process vent with an absorber used as a control device, the owner or operator shall comply with the applicable provisions of §§ 65.63(e) and 65.67(b) of subpart D of this part.

(ii) *Replace control device.* If an owner or operator elects to replace a control device on a Group 1 process vent or a transfer rack with an absorber used as a control device, the owner or operator shall perform a performance test using the methods specified in §§ 65.157 and 65.158 within 180 days. The performance test report shall be submitted to the Administrator within 60 days of completing the test as provided in § 65.164(b)(2).

(c) *Absorber monitoring requirements.* (1) Where an absorber is used as a control device, either an organic monitoring device capable of providing a continuous record or a scrubbing liquid temperature monitoring device and a specific gravity monitoring device, each capable of providing a continuous record, shall be used. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(2) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the absorber. In order to establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications of § 65.157(b)(1) or upon existing ranges or limits established under a referencing subpart.

§ 65.151 Condensers used as control devices.

(a) *Condenser equipment and operating requirements.* (1) Owners or operators using condensers to meet the 98 weight-percent emission reduction or 20 parts per million by volume outlet concentration requirements as specified in § 65.63(a)(2) of subpart D of this part or 40 CFR 60.562–1(a)(1)(i)(A) of subpart DDD for process vents, or § 65.83(a)(1) of subpart E of this part for transfer racks, as applicable, shall meet the requirements of this section.

(2) Condensers used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Condenser performance test requirements.* (1) Unless an initial performance test was previously conducted and submitted under the referencing subpart and except as specified in § 65.157(b), the owner or operator shall conduct an initial performance test of any condenser used as a recapture device to comply with the provisions of this subpart according to the procedures in §§ 65.157 and 65.158. Performance test records shall be kept as specified in § 65.160 (a) and (b) and a performance test report shall be submitted as specified in § 65.164. As provided in § 65.145(b)(1), a performance test may be used as an alternative to the design evaluation for storage vessels and low-throughput transfer rack controls. As provided in § 65.146(b), no performance test is required to demonstrate compliance for equipment leaks.

(2) Unless already permitted by the applicable title V permit, if an owner or operator elects to use a condenser to replace an existing recovery or control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 65.167(a) before implementing the change. Upon implementing the change, the provisions specified in paragraph (b)(2)(i) or (b)(2)(ii) of this section, as applicable, shall be followed.

(i) *Replace final recovery device.* If an owner or operator elects to replace the final recovery device on a process vent with a condenser used as a control device, the owner or operator shall comply with the applicable provisions of §§ 65.63(e) and 65.67(b) of subpart D of this part.

(ii) *Replace control device.* If an owner or operator elects to replace a control device on a Group 1 process vent or a transfer rack with a condenser used as a control device, the owner or operator shall perform a performance test using the methods specified in §§ 65.157 and 65.158 within 180 days. The performance test report shall be submitted to the Administrator within 60 days of completing the test as provided in § 65.164(b)(2).

(c) *Condenser monitoring requirements.* (1) Where a condenser is used as a control device, an organic monitoring device capable of providing a continuous record or a condenser exit (product side) temperature monitoring device capable of providing a continuous record shall be used. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(2) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the condenser. In order to establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications in § 65.157(b)(1) or upon existing ranges or limits established under a referencing subpart.

§ 65.152 Carbon adsorbers used as control devices.

(a) *Carbon adsorber equipment and operating requirements.* (1) Owners or operators using carbon adsorbers to meet the 98 weight-percent emission reduction or 20 parts per million by volume outlet concentration requirements as specified in § 65.63(a)(2) of subpart D of this part or 40 CFR 60.562–1(a)(1)(i)(A) of subpart DDD for process vents, or § 65.83(a)(1) of subpart E of this part for transfer racks, as applicable, shall meet the requirements of this section.

(2) Carbon adsorbers used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Carbon adsorber performance test requirements.* (1) Unless an initial performance test was previously conducted and submitted under the referencing subpart and except as specified in § 65.157(b), the owner or operator shall conduct an initial performance test of any carbon absorber used as a control device to comply with the provisions of this subpart according to the procedures in §§ 65.157 and 65.158. Performance test records shall be kept as specified in § 65.160 (a) and (b) and a performance test report shall be submitted as specified in § 65.164. As provided in § 65.145(b)(1), a performance test may be used as an alternative to the design evaluation for storage vessels and low-throughput transfer rack controls. As provided in § 65.146(b), no performance test is required to demonstrate compliance for equipment leaks.

(2) Unless already permitted by the applicable title V permit, if an owner or operator elects to use a carbon adsorber to replace an existing recovery or control device at a later date, the owner or operator shall notify the Administrator either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 65.167(a) before implementing the change. Upon implementing the change, the provisions specified in paragraph (b)(2)(i) or (b)(2)(ii) as applicable shall be followed.

(i) *Replace final recovery device.* If an owner or operator elects to replace the final recovery device on a process vent with a carbon adsorber used as a control device, the owner or operator shall comply with the applicable provisions of §§ 65.63(e) and 65.67(b) of subpart D of this part.

(ii) *Replace control device.* If an owner or operator elects to replace a control device on a Group 1 process vent or transfer rack with a carbon adsorber used as a recapture device, the owner or operator shall perform a performance test using the methods specified in §§ 65.157 and 65.158 within 180 days. The performance test report shall be submitted to the Administrator within 60 days of completing the test as provided in § 65.164(b)(2).

(c) *Carbon adsorber monitoring requirements.* (1) Where a carbon adsorber is used as a control device, an organic monitoring device capable of providing a continuous record or an integrating regeneration stream flow monitoring device having an accuracy of ±10 percent or better capable of recording the total regeneration stream mass or volumetric flow for each regeneration cycle and a carbon-bed temperature monitoring device, capable of recording the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle shall be used. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(2) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the carbon adsorber. Where the regeneration stream flow and carbon-bed temperature are monitored, the range shall be in terms of the total regeneration stream flow per regeneration cycle and the temperature of the carbon-bed determined within 15 minutes of the completion of the regeneration cooling cycle. In order to establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications in § 65.157(b)(1) or upon existing ranges or limits established under a referencing subpart.

§ 65.153 Absorbers, condensers, carbon adsorbers and other recovery devices used as final recovery devices.

(a) *Final recovery device equipment and operating requirements.* (1) Owners or operators using a recovery device to meet the requirement to operate and maintain a TRE above 1.0 as specified in § 65.63(a)(3) of subpart D of this part for process vents shall meet the requirements of this section.

(2) Recovery devices used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Recovery device performance test requirements.* (1) There are no performance test requirements for recovery devices. Records of TRE index value determination shall be generated as specified in § 65.160(c).

(2) *Replace a final recovery device or control device.* Unless already permitted by the applicable title V permit, if an owner or operator elects to use a recovery device to replace an existing final recovery or control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 65.167(a) before implementing the change. Upon implementing the change, the owner or operator shall comply with the applicable provisions of §§ 65.63(e) and 65.67(b) of subpart D of this part.

(c) *Recovery device monitoring requirements.* (1) Where an absorber is

the final recovery device in the recovery system and the TRE index value is between 1.0 and 4.0, either an organic monitoring device capable of providing a continuous record or a scrubbing liquid temperature monitoring device and a specific gravity monitoring device, each capable of providing a continuous record shall be used. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(2) Where a condenser is the final recovery device in the recovery system and the TRE index value is between 1.0 and 4.0, an organic monitoring device capable of providing a continuous record or a condenser exit (product side) temperature monitoring device capable of providing a continuous record shall be used. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(3) Where a carbon adsorber is the final recovery device in the recovery system and the TRE index value is between 1.0 and 4.0, an organic monitoring device capable of providing a continuous record; or an integrating regeneration stream flow monitoring device having an accuracy of ±10 percent or better, capable of recording the total regeneration stream mass or volumetric flow for each regeneration cycle, and a carbon-bed temperature monitoring device, capable of recording the carbon-bed temperature after each regeneration and within 15 minutes of completing any cooling cycle shall be used. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(4) Unless previously approved by the Administrator under an applicable standard prior to the implementation date of this part, as specified in § 65.1(f) of subpart A of this part, if an owner or operator uses a recovery device other than those listed in this subpart, the owner or operator shall submit a description of planned monitoring, reporting and recordkeeping procedures as required under § 65.162(e). The Administrator will approve or deny the proposed monitoring, reporting and recordkeeping requirements as part of the review of the submission or permit application or by other appropriate means.

(5) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the recovery device. In order to establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications in § 65.157(b)(1) or upon existing ranges or limits established under a referencing subpart. Where the regeneration stream flow and carbon-bed temperature are monitored, the range shall be in terms of the total regeneration stream flow per regeneration cycle and the temperature of the carbon-bed determined within 15 minutes of the completion of the regeneration cooling cycle.

§ 65.154 Halogen scrubbers and other halogen reduction devices.

(a) *Halogen scrubber and other halogen reduction device equipment and operating requirements.* (1) An owner or operator of halogen scrubbers and other halogen reduction devices subject to this subpart shall reduce the overall emissions of hydrogen halides and halogens by 99 percent or reduce the outlet mass of total hydrogen halides and halogens to less than 0.45 kilograms per hour (0.99 pound per hour) as specified in § 65.63(b) of subpart D of this part for process vents or § 65.83(b) of subpart E of this part for transfer racks, as applicable, and shall meet the requirements of this section.

(2) Halogen scrubbers and other halogen reduction devices used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Halogen scrubber and other halogen reduction device performance test requirements.* (1) Unless an initial performance test was previously conducted and submitted under the referencing subpart, an owner or operator of a combustion device followed by a halogen scrubber or other halogen reduction device to control halogenated vent streams in accordance with § 65.63(b)(1) of subpart D of this part for process vents or § 65.83(b)(1) of subpart E of this part for transfer racks shall conduct an initial performance test to determine compliance with the control efficiency or emission limits for hydrogen halides and halogens according to the procedures in §§ 65.157 and 65.158. Performance test records shall be kept as specified in § 65.160(a) and (b) and a performance test report shall be submitted as specified in § 65.164.

(2) Unless the halogen atom mass emission rate was previously determined under the referencing subpart, an owner or operator of a halogen scrubber or other halogen reduction technique to reduce the vent stream halogen atom mass emission rate to less than 0.45 kilogram per hour (0.99 pound per hour) prior to a combustion device used to comply with § 65.63(b)(2) of subpart D of this part for process vents or § 65.83(b)(2) of subpart E of this part for transfer racks shall determine the halogen atom mass emission rate prior to the combustor according to the procedures in § 65.64(g) of subpart D of this part or § 65.83(b)(3) of subpart E of this part. Records of the halogen concentration in the vent stream shall be generated as specified in § 65.160(d).

(c) *Halogen scrubber and other halogen reduction device monitoring requirements.* (1) Where a halogen scrubber is used, the monitoring equipment specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this section is required for the scrubber. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(i) A pH monitoring device capable of providing a continuous record shall be installed to monitor the pH of the scrubber effluent.

(ii) A flow meter capable of providing a continuous record shall be located at the scrubber influent for liquid flow. Gas stream flow shall be determined using one of the procedures specified in paragraphs (c)(1)(ii)(A) through (c)(1)(ii)(C) of this section.

(A) The owner or operator may determine gas stream flow using the design blower capacity, with appropriate adjustments for pressure drop.

(B) If the scrubber is subject to regulations in 40 CFR parts 264 through 266 that have required a determination of the liquid to gas (L/G) ratio prior to the applicable compliance date for the chemical manufacturing process unit of which it is part as specified in 40 CFR 63.100(k) of subpart F (if the referencing subpart is 40 CFR part 63, subpart F) or prior to the implementation date as specified in § 65.1(f) of subpart A of this part (for all other referencing subparts), the owner or operator may determine gas stream flow by the method that had been utilized to comply with those regulations. A determination that was conducted prior to that compliance date may be utilized to comply with this subpart if it is still representative.

(C) The owner or operator may prepare and implement a gas stream flow determination plan that documents an appropriate method that will be used to determine the gas stream flow. The plan shall require determination of gas stream flow by a method that will at

least provide a value for either a representative or the highest gas stream flow anticipated in the scrubber during representative operating conditions other than startups, shutdowns, or malfunctions. The plan shall include a description of the methodology to be followed and an explanation of how the selected methodology will reliably determine the gas stream flow and a description of the records that will be maintained to document the determination of gas stream flow. The owner or operator shall maintain the plan as specified in § 65.5 of subpart A of this part.

(2) Where a halogen reduction device other than a scrubber is used, the procedures in § 65.162(e) shall be followed to establish monitoring parameters.

(3) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the scrubber or other halogen reduction device. In order to establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications in § 65.157(b)(1) or upon existing ranges or limits established under a referencing subpart.

§ 65.155 Other control devices.

(a) *Other control device equipment and operating requirements.* (1) Owners or operators using a control device other than one listed in §§ 65.147 through 65.152 to meet the 98 weight-percent emission reduction or 20 parts per million by volume outlet concentration requirements specified in § 65.63(a)(2) of subpart D of this part or 40 CFR 60.562–1(a)(1)(i)(A) of subpart DDD for process vents or § 65.83(a)(1) of subpart E of this part for transfer racks, as applicable, shall meet the requirements of this section.

(2) Other control devices used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Other control device performance test requirements.* Unless an initial performance test was previously conducted and submitted under the referencing subpart, an owner or operator of a control device other than those specified in §§ 65.147 through 65.152, to comply with § 65.63(a)(2) of subpart D of this part for process vents or § 65.83(a)(1) of subpart E of this part for transfer racks shall perform an initial performance test according to the procedures in §§ 65.157 and 65.158. Performance test records shall be kept as specified in § 65.160(a) and (b) and a performance test report shall be submitted as specified in § 65.164.

(c) *Other control device monitoring requirements.* (1) Unless previously submitted and approved under the referencing subpart, if an owner or operator uses a control device other than those listed in this subpart, the owner or operator shall submit a description of planned monitoring, reporting, and recordkeeping procedures as required under § 65.162(e). The Administrator will approve, deny, or modify based on the reasonableness of the proposed monitoring, reporting, and recordkeeping requirements as part of the review of the submission or permit application or by other appropriate means.

(2) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the control device. To establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications in § 65.157(b)(1) or upon existing ranges or limits established under a referencing subpart.

§ 65.156 General monitoring requirements for control and recovery devices.

(a) *General monitoring requirement applicability.* (1) This section applies to the owner or operator of a regulated source required to monitor under this subpart.

(2) Flares subject to § 65.147(c) are not subject to the requirements of this section.

(3) Flow indicators are not subject to the requirements of this section.

(b) *Conduct of monitoring.* (1) Monitoring shall be conducted as set forth in this section and in the relevant sections of this subpart unless the provision in either paragraph (b)(1)(i) or (b)(1)(ii) of this section applies.

(i) The Administrator specifies or approves the use of minor changes in methodology for the specified monitoring requirements and procedures; or

(ii) The Administrator approves the use of alternatives to any monitoring requirements or procedures as provided in § 65.7(b), (c), and (d) of subpart A of this part.

(2) When one CPMS is used as a backup to another CPMS, the owner or operator shall report the results from the CPMS used to meet the monitoring requirements of this subpart. If both such CPMS are used during a particular reporting period to meet the monitoring requirements of this part, then the owner or operator shall report the results from each CPMS for the relevant compliance period.

(c) *Operation and maintenance of continuous parameter monitoring systems.* (1) All monitoring equipment shall be installed, calibrated, maintained, and operated according to manufacturers specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

(2) The owner or operator of a regulated source shall maintain and operate each CPMS as specified in this section or in a relevant subpart, and in a manner consistent with good air pollution control practices.

(i) The owner or operator of a regulated source shall ensure the immediate repair or replacement of CPMS parts to correct ''routine'' or otherwise predictable CPMS malfunctions. The necessary parts for routine repairs of the affected equipment shall be readily available.

(ii) Except for Group 2A process vents, if the startup, shutdown, and malfunction plan is followed during a CPMS startup, shutdown, or malfunction and the CPMS is repaired immediately, this action shall be reported in the semiannual startup, shutdown, and malfunction report required under § 65.6(b)(1) of subpart A of this part.

(iii) The Administrator's determination of whether acceptable operation and maintenance procedures are being used for the CPMS will be based on information that may include, but is not limited to, review of operation and maintenance procedures, operation and maintenance records, manufacturer's recommendations and specifications, and inspection of the CPMS.

(3) All CPMS's shall be installed and operational, and the data verified as specified in this subpart either prior to or in conjunction with conducting performance tests. Verification of operational status shall, at a minimum, include completion of the manufacturer's written specifications or recommendations for installation, operation, and calibration of the system or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

(4) All CPMS shall be installed such that representative measurements of

parameters from the regulated source are obtained.

(5) In accordance with § 65.3(a)(3) of subpart A of this part, except for system breakdowns, repairs, maintenance periods, instrument adjustments or checks to maintain precision and accuracy, calibration checks, and zero and span adjustments, all CPMS shall be in continuous operation when emissions are being routed to the monitored device.

(d) Except for Group 2A process vents, the parameter monitoring data shall be used to determine compliance with the required operating conditions for the monitored control devices. For each excursion, except for excused excursions, the owner or operator shall be deemed to have failed to have applied the control in a manner that achieves the required operating conditions.

(1) An excursion means any of the three cases listed in paragraphs (d)(1)(i) through (d)(1)(iii) 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 (d)(1)(i), (d)(1)(ii), or (d)(1)(iii), this is considered a single excursion for the control device.

(i) When the daily average value of one or more monitored parameters is outside the permitted range.

(ii) When the period of control or recovery device operation is 4 hours or greater in an operating day and monitoring data are insufficient to constitute a valid hour of data for at least 75 percent of the operating hours.

(iii) When the period of control or recovery device operation is less than 4 hours in an operating day and more than 1 hour during the period of operation does not constitute a valid hour of data due to insufficient monitoring data.

(iv) Monitoring data are insufficient to constitute a valid hour of data as used in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section, if measured values are unavailable for any of the 15-minute periods within the hour. For data compression systems approved under § 65.162(d)(4), monitoring data are insufficient to calculate a valid hour of data if there are less than four data values recorded during the hour.

(2) One excused excursion for each control device or recovery device for each semiannual period is allowed.

(3) The excursions described in paragraphs (d)(3)(i) through (d)(3)(iii) of this section are not violations, and do not count as excused excursions.

(i) Excursions which occur during periods of startup, shutdown, and malfunction, when the source is being operated during such periods in accordance with its startup, shutdown, and malfunction plan as required by § 65.6 of subpart A.

(ii) Excursions which occur due to failure to collect a valid hour of data during periods of startup, shutdown, and malfunction, when the source is being operated during such periods in accordance with its startup, shutdown, and malfunction plan as required by § 65.6 of subpart A.

(iii) Excursions which occur during periods of nonoperation of the regulated source or portion thereof, resulting in cessation of the emissions to which monitoring applies.

(4) Nothing in paragraph (d) of this section shall be construed to allow or excuse a monitoring parameter excursion caused by any activity that violates other applicable provisions of this part.

(5) Paragraph (d) of this section, except paragraph (d)(3) of this section, shall apply only to emission points and control devices for which continuous monitoring is required by this subpart.

(e) *Alternative monitoring parameter.* An owner or operator may request approval to monitor control, recovery, halogen scrubber, or halogen reduction device operating parameters other than those specified in this subpart by following the procedures specified in § 65.162(e).

§ 65.157 Performance test and flare compliance determination requirements.

(a) *Performance tests and flare compliance determinations.* Where §§ 65.145 through 65.155 require or the owner or operator elects to conduct a performance test of a nonflare control device or a halogen reduction device, or a compliance determination for a flare, the requirements of paragraphs (b) through (d) of this section apply.

(b) *Prior test results and waivers.* Initial performance tests and initial flare compliance determinations are required only as specified in this subpart.

(1) Unless requested by the Administrator, an owner or operator is not required to conduct a performance test or flare compliance determination under this subpart if a prior performance test or compliance determination was conducted using the same methods specified in § 65.158 and either no process changes have been made since the test or the owner or operator can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

(2) Individual performance tests and flare compliance determinations may be waived upon written application to the Administrator per § 65.164(b)(3) if, in the Administrator's judgment, the source is meeting the relevant standard(s) on a continuous basis, or the source is being operated under an extension of compliance under 40 CFR part 63 or a waiver of compliance under 40 CFR part 61, or the owner or operator has requested an extension of compliance under 40 CFR part 63 or a waiver of compliance under 40 CFR part 61, and the Administrator is still considering that request.

(3) Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later canceling the waiver. The cancellation will be made only after notification is given to the owner or operator of the source.

(c) *Performance tests and flare compliance determinations schedule.*

(1) Unless a waiver of performance testing or flare compliance determination is obtained under this section or the conditions of another subpart of this part, the owner or operator shall perform such tests specified in paragraphs (c)(1)(i) through (c)(1)(vii) of this section.

(i) Within 180 days after the effective date of a relevant standard for a new source that has an initial startup date before the effective date of that standard; or

(ii) Within 180 days after initial startup for a new source that has an initial startup date after the effective date of a relevant standard; or

(iii) Within 180 days after the compliance date specified in a referencing subpart for an existing source or within 180 days after startup of an existing source if the source begins operation after the effective date of the relevant 40 CFR part 63 emission standard; or

(iv) Within 180 days after the compliance date for an existing source subject to an emission standard established pursuant to section 112(f) of the Act; or

(v) Within 180 days after the termination date of the source's extension of compliance or a waiver of compliance for an existing source that obtains an extension of compliance under 40 CFR 63.6(i) of subpart A or a waiver of compliance under 40 CFR 61.11 of subpart A; or

(vi) Within 180 days after the compliance date for a new source, subject to an emission standard established pursuant to section 112(f) of the Act, for which construction or reconstruction is commenced after the proposal date of a relevant standard

established pursuant to section 112(d) of the Act but before the proposal date of the relevant standard established pursuant to section 112(f) [see 40 CFR 63.6(b)(4) of subpart A]; or

(vii) When an emission standard promulgated under part 63 is more stringent than the standard that was proposed [see 40 CFR 63.6(b)(3) of subpart A], the owner or operator of a new or reconstructed source subject to that standard for which construction or reconstruction is commenced between the proposal and promulgation dates of the standard shall comply with performance testing requirements within 180 days after the standard's effective date or within 180 days after startup of the source, whichever is later. If the promulgated standard is more stringent than the proposed standard, the owner or operator may choose to demonstrate compliance with either the proposed or the promulgated standard. If the owner or operator chooses to comply with the proposed standard initially, the owner or operator shall conduct a second performance test within 3 years and 180 days after the effective date of the standard, or after startup of the source, whichever is later, to demonstrate compliance with the promulgated standard.

(2) The Administrator may require an owner or operator to conduct performance tests and compliance determinations at the regulated source at any time when the action is authorized by section 114 of the Act.

(d) *Performance testing facilities.* If required to do performance testing, the owner or operator of each new regulated source and, at the request of the Administrator, the owner or operator of each existing regulated source, shall provide performance testing facilities as specified in paragraphs (d)(1) through (d)(5) of this section.

(1) Sampling ports adequate for test methods applicable to such source. This includes, as applicable, the requirements specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this section.

(i) Constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures; and

(ii) Providing a stack or duct free of cyclonic flow during performance tests as demonstrated by applicable test methods and procedures.

(2) Safe sampling platform(s);

(3) Safe access to sampling platform(s);

(4) Utilities for sampling and testing equipment; and

(5) Any other facilities that the Administrator deems necessary for safe and adequate testing of a source.

§ 65.158 Performance test procedures for control devices.

(a) *General procedures.* Where §§ 65.145 through 65.155 require or the owner or operator elects to conduct a performance test of a control device or a halogen reduction device, an owner or operator shall follow the requirements of paragraphs (a)(1) through (a)(3) of this section, as applicable.

(1) Performance tests shall be conducted at maximum representative operating conditions for the process unless the Administrator specifies or approves alternate operating conditions. During the performance test, an owner or operator may operate the control or halogen reduction device at maximum or minimum representative operating conditions for monitored control or halogen reduction device parameters, whichever results in lower emission reduction. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test.

(2) Performance tests shall be conducted and data shall be reduced in accordance with the test methods and procedures set forth in this subpart, in each relevant standard, and, if required, in applicable appendices of 40 CFR parts 51, 60, 61, and 63 unless the Administrator allows revisions to the test methods as specified in one or more of the paragraphs (a)(2)(i) through (a)(2)(v) of this section.

(i) The Administrator specifies or approves, in specific cases, the use of a test method with minor changes in methodology; or

(ii) The Administrator approves the use of an alternative test method, the results of which the Administrator has determined to be adequate for indicating whether a specific regulated source is in compliance. The alternative method or data shall be validated using the applicable procedures of Method 301 of appendix A of 40 CFR part 63; or

(iii) The Administrator approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors; or

(iv) The Administrator waives the requirement for the performance test as provided in § 65.157(b)(2) because the owner or operator of a regulated source has demonstrated by other means to the Administrator's satisfaction that the regulated source is in compliance with the relevant standard; or

(v) The Administrator approves the use of an equivalent method.

(3) Each performance test shall consist of three separate runs using the applicable test method. Except as provided in paragraphs (a)(3)(i) and (a)(3)(ii) of this section, each run shall be conducted for at least 1 hour and under the conditions specified in this section. For the purpose of determining compliance with an applicable standard, the arithmetic mean of results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner or operator's control, compliance may, upon the Administrator's approval, be determined using the arithmetic mean of the results of the two other runs.

(i) For control devices that are used to control emissions from transfer racks (except low-throughput transfer racks), and that are capable of continuous vapor processing but do not handle continuous emissions or emissions from transfer racks that load simultaneously from multiple loading arms each run shall represent at least one complete tank truck or tank car loading period during which regulated materials are loaded, and samples shall be collected using integrated sampling or grab samples taken at least four times per hour at approximately equal intervals of time, such as 15-minute intervals.

(ii) For intermittent vapor processing systems used for controlling transfer rack emissions (except low-throughput transfer racks) that do not handle continuous emissions or multiple loading arms of a transfer rack that load simultaneously, each run shall represent at least one complete control device cycle, and samples shall be collected using integrated sampling or grab samples taken at least four times per hour at approximately equal intervals of time, such as 15-minute intervals.

(b) *Test methods.* Where §§ 65.145 through 65.155 require or the owner or operator elects to conduct a performance test of a control device or a halogen reduction device, an owner or operator shall conduct that performance test using the procedures in paragraphs (b)(1) through (b)(4) of this section, as applicable. The regulated material concentration and percent reduction may be measured as either total regulated material or as TOC minus methane and ethane according to the procedures specified.

(1) Method 1 or 1A of 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites.

(i) For determination of compliance with a percent reduction requirement of total regulated material or TOC, sampling sites shall be located at the inlet of the control device as specified in paragraphs (b)(1)(i)(A) and (b)(1)(i)(B) of this section and at the outlet of the control device.

(A) For process vents, the control device inlet sampling site shall be located after the final product recovery device.

(B) If a vent stream is introduced with the combustion air or as a secondary fuel into a boiler or process heater with a design capacity less than 44 megawatts (150 million British thermal units per hour), selection of the location of the inlet sampling sites shall ensure the measurement of total regulated material or TOC (minus methane and ethane) concentrations, as applicable, in all vent streams and primary and secondary fuels introduced into the boiler or process heater.

(ii) For determination of compliance with the 20 parts per million by volume total regulated material or TOC limit in § 65.63(a)(2) of subpart D of this part, § 65.83(a)(1) of subpart E of this part, and 40 CFR 60.562–1(a)(1)(i)(A) of subpart DDD, the sampling site shall be located at the outlet of the control device.

(2) The gas volumetric flow rate shall be determined using Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as appropriate.

(3) To determine compliance with the 20 parts per million by volume total regulated material or TOC (minus methane and ethane) limit, the owner or operator shall use Method 18 of 40 CFR part 60, appendix A, to measure either TOC minus methane and ethane or total regulated material, as applicable. Alternatively, any other method or data that have been validated according to the applicable procedures in Method 301 of appendix A of 40 CFR part 63, may be used. Method 25A may be used for transfer racks as detailed in paragraph (b)(3)(iv) of this section. The procedures specified in paragraphs (b)(3)(i) through (b)(3)(iv) of this section shall be used to calculate parts per million by volume concentration, corrected to 3 percent oxygen.

(i) Except as provided in paragraphs (a)(3)(i) and (a)(3)(ii) of this section, the minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15 minute intervals during the run.

(ii) The concentration of either TOC (minus methane or ethane) or total regulated material shall be calculated according to paragraph (b)(3)(ii)(A) or (b)(3)(ii)(B) of this section.

(A) The TOC concentration (C_{TOC}) is the sum of the concentrations of the individual components and shall be computed for each run using equation 158–1.

$$C_{REG,}\ \text{or}\ C_{TOC} = \sum_{i=1}^{x} \frac{\left(\sum_{j=1}^{n} C_{ji}\right)}{x} \qquad (158\text{-}1)$$

Where:

C_{REG}, or

C_{TOC} = Concentration of total regulated material or concentration of TOC (minus methane and ethane), dry basis, parts per million by volume.

x = Number of samples in the sample run.

n = Number of components in the sample.

C_{ji} = Concentration of sample components j of sample i, dry basis, parts per million by volume.

(B) The total regulated material (C_{REG}) shall be computed according to equation 158–1 except that only the regulated species shall be summed. Where the regulated material is organic HAP's, the list of organic HAP's provided in table 2 of 40 CFR part 63, subpart F, shall be used.

(iii) The concentration of TOC or total regulated material, as applicable, shall be corrected to 3 percent oxygen if a combustion device is the control device.

(A) The emission rate correction factor (or excess air) integrated sampling and analysis procedures of Method 3B of 40 CFR part 60, appendix A, shall be used to determine the oxygen concentration. The sampling site shall be the same as that of the regulated material or organic compound samples, and the samples shall be taken during the same time that the regulated material or organic compound samples are taken.

(B) The concentration corrected to 3 percent oxygen (C_c) shall be computed using equation 158–2.

$$C_c = C_m\left(\frac{17.9}{20.9 - \%O2_d}\right) \qquad (158\text{-}2)$$

Where:

C_c = Concentration of TOC or regulated material corrected to 3 percent oxygen, dry basis, parts per million by volume.

C_m = Concentration of TOC (minus methane and ethane) or regulated material, dry basis, parts per million by volume.

$\%O2_d$ = Concentration of oxygen, dry basis, percentage by volume.

(iv) Method 25A of 40 CFR part 60, appendix A may be used for the purpose of determining compliance with the 20 parts per million by volume limit specified in § 65.83(a)(1) of subpart E of this part for transfer racks. If Method 25A of 40 CFR part 60, appendix A is used, the procedures specified in paragraphs (b)(3)(iv)(A) through (b)(3)(iv)(D) of this section shall be used to calculate the concentration of organic compounds (C_{TOC}).

(A) The principal organic HAP in the vent stream shall be used as the calibration gas.

(B) The span value for Method 25A of 40 CFR part 60, appendix A, shall be between 1.5 and 2.5 times the concentration being measured.

(C) Use of Method 25A of 40 CFR part 60, appendix A, is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(D) The concentration of TOC shall be corrected to 3 percent oxygen using the procedures and equation in paragraph (b)(3)(iii) of this section.

(4) To determine compliance with a percent reduction requirement, the owner or operator shall use Method 18 of 40 CFR part 60, appendix A; alternatively, any other method or data that have been validated according to the applicable procedures in Method 301 of appendix A of 40 CFR part 63 may be used. Method 25A of 40 CFR part 60, appendix A may be used for transfer racks as detailed in paragraph (b)(4)(v) of this section. Procedures specified in paragraphs (b)(4)(i) through (b)(4)(v) of this section shall be used to calculate percent reduction efficiency.

(i) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15-minute intervals during the run.

(ii) The mass rate of either TOC (minus methane and ethane) or total regulated material (E_i, E_o) shall be computed as applicable.

(A) Equations 158–3 and 158–4 shall be used.

$$E_i = K_2\left(\sum_{j=1}^{n} C_{ij}M_{ij}\right)Q_i \qquad (158\text{-}3)$$

$$E_o = K_2\left(\sum_{j=1}^{n} C_{oj}M_{oj}\right)Q_o \qquad (158\text{-}4)$$

Where:

E_i, E_o = Emission rate of TOC (minus methane and ethane) (E_{TOC}) or emission rate of total organic HAP (E_{HAP}) in the sample at the inlet and outlet of the control device, respectively, dry basis, kilogram per hour.

K_2 = Constant, 2.494×10^{-6} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram per gram) (minute per hour), where standard temperature (gram-mole per standard cubic meter) is 20 °C.

n = Number of components in the sample.

C_{ij}, C_{oj} = Concentration on a dry basis of organic compound j in parts per million by volume of the gas stream at the inlet and outlet of the control device, respectively. If the TOC emission rate is being calculated, C_{ij} and C_{oj} include all organic compounds measured minus methane and ethane; if the total organic HAP emissions rate is being calculated, only organic HAP are included.

M_{ij}, M_{oj} = Molecular weight of organic compound j, gram per gram-mole, of the gas stream at the inlet and outlet of the control device, respectively.

Q_i, Q_o = Process vent flow rate, dry standard cubic meter per minute, at a temperature of 20 °C, at the inlet and outlet of the control device, respectively.

(B) Where the mass rate of TOC is being calculated, all organic compounds (minus methane and ethane) measured by Method 18 of 40 CFR part 60, appendix A, are summed using equations 158–3 and 158–4.

(C) Where the mass rate of total regulated material is being calculated, only the species comprising the regulated material shall be summed using equations 158–3 and 158–4. Where the regulated material is organic HAP's, the list of organic HAP's provided in table 2 of 40 CFR part 63, subpart F, shall be used.

(iii) The percent reduction in TOC (minus methane and ethane) or total regulated material shall be calculated using equation 158–5.

$$R = \frac{E_i - E_o}{E_i}(100) \qquad (158\text{-}5)$$

Where:

R = Control efficiency of control device, percent.

E_i=Mass rate of TOC (minus methane and ethane) or total regulated material at the inlet to the control device as calculated under paragraph (b)(4)(ii) of this section, kilograms TOC per hour or kilograms regulated material per hour.

E_o=Mass rate of TOC (minus methane and ethane) or total regulated material at the outlet of the control device, as calculated under paragraph (b)(4)(ii) of this section, kilograms TOC per hour or kilograms total regulated material per hour.

(iv) If the vent stream entering a boiler or process heater with a design capacity less than 44 megawatts (150 million British thermal units) is introduced with the combustion air or as a secondary fuel, the weight-percent reduction of total regulated material or TOC (minus methane and ethane) across the device shall be determined by comparing the TOC (minus methane and ethane) or total regulated material in all combusted vent streams and primary and secondary fuels with the TOC (minus methane and ethane) or total regulated material exiting the combustion device, respectively.

(v) Method 25A of 40 CFR part 60, appendix A, may also be used for the purpose of determining compliance with the percent reduction requirement for transfer racks.

(A) If Method 25A of 40 CFR part 60, appendix A, is used to measure the concentration of organic compounds (C_{TOC}), the principal regulated material in the vent stream shall be used as the calibration gas.

(B) An emission testing interval shall consist of each 15-minute period during the performance test. For each interval, a reading from each measurement shall be recorded.

(C) The average organic compound concentration and the volume measurement shall correspond to the same emissions testing interval.

(D) The mass at the inlet and outlet of the control device during each testing interval shall be calculated using equation 158–6.

$$M_j = F\ k\ V_s\ C_t \qquad (158\text{–}6)$$

Where:

M_j=Mass of organic compounds emitted during testing interval j, kilograms.

$F=10^{-6}$ = Conversion factor, (cubic meters regulated material per cubic meters air) * (parts per million by volume)$^{-}$1.

K=Density, kilograms per standard cubic meter regulated material. =659 kilograms per standard cubic meter regulated material. (Note: The density term cancels out when the percent reduction is calculated. Therefore, the density used has no effect. The density of hexane is given so that it can be used to maintain the units of Mj.)

V_s=Volume of air-vapor mixture exhausted at standard conditions, 20 °C and 760 millimeters of mercury (30 inches of mercury), standard cubic meters.

C_t=Total concentration of organic compounds (as measured) at the exhaust vent, parts per million by volume, dry basis.

(E) The organic compound mass emission rates at the inlet and outlet of the control device shall be calculated as follows: where:

$$E_i = \frac{\sum_{j=1}^{n} M_{ij}}{T} \qquad (158\text{-}7)$$

$$E_o = \frac{\sum_{j=1}^{n} M_{oj}}{T} \qquad (158\text{-}8)$$

Where:

E_i, E_o=Mass flow rate of organic compounds at the inlet (i) and outlet (o) of the control device, kilograms per hour.

n=Number of testing intervals.

M_{ij}, M_{oj}=Mass of organic compounds at the inlet (i) or outlet (o) during testing interval j, kilograms.

T=Total time of all testing intervals, hours.

(c) *Halogen test method.* An owner or operator using a halogen scrubber or other halogen reduction device to control halogenated vent streams in compliance with § 65.63(b)(1) of subpart D of this part for process vents or § 65.83(b)(1) of subpart E of this part for transfer racks, who is required to conduct a performance test to determine compliance with the control efficiency or emission limits for hydrogen halides and halogens, as specified in § 65.154(b)(1) shall follow the procedures specified in paragraphs (c)(1) through (c)(4) of this section.

(1) For an owner or operator determining compliance with the percent reduction of total hydrogen halides and halogens, sampling sites shall be located at the inlet and outlet of the scrubber or other halogen reduction device used to reduce halogen emissions. For an owner or operator determining compliance with the less than 0.45 kilogram per hour (0.99 pounds per hour) outlet emission limit for total hydrogen halides and halogens,

the sampling site shall be located at the outlet of the scrubber or other halogen reduction device and prior to any releases to the atmosphere.

(2) Except as provided in paragraph (a)(2) of this section, Method 26 or Method 26A of 40 CFR part 60, appendix A, shall be used to determine the concentration, in milligrams per dry standard cubic meter, of total hydrogen halides and halogens that may be present in the vent stream. The mass emissions of each hydrogen halide and halogen compound shall be calculated from the measured concentrations and the gas stream flow rate.

(3) To determine compliance with the percent removal efficiency, the mass emissions for any hydrogen halides and halogens present at the inlet of the halogen reduction device shall be summed together. The mass emissions of the compounds present at the outlet of the scrubber or other halogen reduction device shall be summed together. Percent reduction shall be determined by comparison of the summed inlet and outlet measurements.

(4) To demonstrate compliance with the less than 0.45 kilogram per hour (0.99 pound per hour) outlet emission limit, the test results must show that the mass emission rate of total hydrogen halides and halogens measured at the outlet of the scrubber or other halogen reduction device is below 0.45 kilogram per hour (0.99 pound per hour).

§ 65.159 Flare compliance determination and monitoring records.

(a) *Conditions of flare compliance determination records.* Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of flare compliance determinations performed pursuant to § 65.147(b).

(b) *Flare compliance determination records.* When using a flare to comply with this subpart, record the information specified in paragraphs (b)(1) through (b)(3) of this section for each flare compliance determination performed pursuant to § 65.147(b). As specified in § 65.164(a)(1), the owner or operator shall include this information in the flare compliance determination report.

(1) Flare design (i.e., steam-assisted, air-assisted, or nonassisted);

(2) All visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the flare compliance determination; and

(3) All periods during the flare compliance determination when all pilot flames are absent or, if only the flare flame is monitored, all periods when the flare flame is absent.

(c) *Monitoring records.* Each owner or operator shall keep up to date and readily accessible hourly records of whether the flare flame or pilot flame monitors are continuously operating and whether the flare flame or at least one pilot flame is continuously present. For transfer racks, hourly records are required only while the transfer vent stream is being vented.

(d) *Compliance records.* (1) Each owner or operator shall keep records of the times and duration of all periods during which the flare flame and all the pilot flames are absent. This record shall be submitted in the periodic reports as specified in § 65.166(c).

(2) Each owner or operator shall keep records of the times and durations of all periods during which the flare flame or pilot flame monitors are not operating.

§ 65.160 Performance test and TRE index value determination records.

(a) *Availability of performance tests records.* Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests performed pursuant to § 65.148(b), § 65.149(b), § 65.150(b), § 65.151(b), § 65.152(b), § 65.154(b), or § 65.155(b).

(b) *Nonflare control device and halogen reduction device performance test records.* Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible records of the data specified in paragraphs (b)(1) through (b)(3) of this section, as applicable, measured during each performance test performed pursuant to § 65.148(b), § 65.149(b), § 65.150(b), § 65.151(b), § 65.152(b), § 65.154(b), or § 65.155(b), and also include that data in the Initial Compliance Status Report as specified in § 65.164(a). The same data specified in paragraphs (b)(1) through (b)(3) of this section, as applicable, shall be submitted in the reports of all subsequently required performance tests where either the emission control efficiency of a nonflare control device or the outlet concentration of TOC or regulated material is determined.

(1) *Nonflare combustion device.* Where an owner or operator subject to the provisions of paragraph (b) of this section seeks to demonstrate compliance with a percent reduction requirement or a parts per million by volume requirement using a nonflare combustion device, the information specified in paragraphs (b)(1)(i) through (b)(1)(vi) of this section shall be recorded.

(i) For thermal incinerators, record the fire box temperature averaged over the full period of the performance test.

(ii) For catalytic incinerators, record the upstream and downstream temperatures and the temperature difference across the catalyst bed averaged over the full period of the performance test.

(iii) For an incinerator, record the percent reduction of regulated material or TOC achieved by the incinerator determined as specified in § 65.158(b)(4), as applicable, or the concentration of regulated material or TOC (parts per million by volume, by compound) determined as specified in § 65.158(b)(3) at the outlet of the incinerator.

(iv) For a boiler or process heater, record a description of the location at which the vent stream is introduced into the boiler or process heater.

(v) For boilers or process heaters with a design heat input capacity less than 44 megawatts (150 British thermal units per hour) and where the vent stream is not introduced with or as the primary fuel, record the fire box temperature averaged over the full period of the performance test.

(vi) For a boiler or process heater with a design heat input capacity of less than 44 megawatts (150 British thermal units per hour) and where the process vent stream is introduced with combustion air or used as a secondary fuel and is not mixed with the primary fuel, record the percent reduction of regulated material or TOC, or the concentration of regulated material or TOC (parts per million by volume, by compound) determined as specified in § 65.158(b)(3) at the outlet of the combustion device.

(2) *Other nonflare control devices.* Where an owner or operator seeks to use an absorber, condenser, or carbon adsorber as a control device, the information specified in paragraphs (b)(2)(i) through (b)(2)(v) shall be recorded, as applicable.

(i) Where an absorber is used as the control device, the exit specific gravity and average exit temperature of the absorbing liquid measured at least every 15 minutes and averaged over the same time period as the performance test (both measured while the vent stream is normally routed and constituted); or

(ii) Where a condenser is used as the control device, the average exit (product side) temperature measured at least every 15 minutes and averaged over the same time period as the performance test while the vent stream is routed and constituted normally; or

(iii) Where a carbon adsorber is used as the control device, the total regeneration stream mass flow during

each carbon-bed regeneration cycle during the period of the performance test measured at least every 15 minutes and averaged over the same time period as the performance test (full carbon-bed cycle), and temperature of the carbon-bed after each regeneration during the period of the performance test (and within 15 minutes of completion of any cooling cycle or cycles); or

(iv) As an alternative to paragraph (b)(2)(i), (b)(2)(ii), or (b)(2)(iii) of this section, the concentration level or reading indicated by the organics monitoring device at the outlet of the absorber, condenser, or carbon adsorber measured at least every 15 minutes and averaged over the same time period as the performance test while the vent stream is normally routed and constituted.

(v) For an absorber, condenser, or carbon adsorber used as a control device, the percent reduction of regulated material or TOC achieved by the control device determined as specified in § 65.158(b)(4), or the concentration of regulated material or TOC (parts per million by volume, by compound) determined as specified in § 65.158(b)(3) at the outlet of the control device.

(3) *Halogen reduction devices.* When using a scrubber following a combustion device to control a halogenated vent stream, record the information specified in paragraphs (b)(3)(i) through (b)(3)(iii) of this section.

(i) The percent reduction or scrubber outlet mass emission rate of total hydrogen halides and halogens as specified in § 65.158(c).

(ii) The pH of the scrubber effluent averaged over the time period of the performance test; and

(iii) The scrubber liquid-to-gas ratio averaged over the time period of the performance test.

(c) *Recovery device monitoring records during the TRE index value determination.* For Group 2A process vents, the records specified in paragraph (c)(1) through (c)(5) of this section, as applicable, shall be maintained and they shall be reported as specified in § 65.164(a)(3).

(1) Where an absorber is the final recovery device in the recovery system, the exit specific gravity and average exit temperature of the absorbing liquid measured at least every 15 minutes and averaged over the same time period as the TRE index value determination (both measured while the vent stream is normally routed and constituted); or

(2) Where a condenser is the final recovery device in the recovery system, the average exit (product side) temperature measured at least every 15 minutes and averaged over the same time period as the TRE index value determination while the vent stream is routed and constituted normally; or

(3) Where a carbon adsorber is the final recovery device in the recovery system, the total regeneration stream mass flow measured at least every 15 minutes and averaged over the same time during each carbon-bed regeneration cycle during the period of the TRE index value determination, and temperature of the carbon-bed after each regeneration during the period of the TRE index value determination (and within 15 minutes of completion of any cooling cycle or cycles); or

(4) As an alternative to paragraph (c)(1), (c)(2), or (c)(3) of this section, the concentration level or reading indicated by an organics monitoring device at the outlet of the absorber, condenser, or carbon adsorber measured at least every 15 minutes and averaged over the same time period as the TRE index value determination while the vent stream is normally routed and constituted.

(5) All measurements and calculations performed to determine the TRE index value of the vent stream as specified in § 65.64(h) of subpart D of this part.

(d) *Halogen concentration records.* Record the halogen concentration in the vent stream determined according to the procedures as specified in § 65.63(b) of subpart D of this part or § 65.83(b) of subpart E of this part. Submit this record in the Initial Compliance Status Report, as specified in § 65.165(d).

§ 65.161 Continuous records and monitoring system data handling.

(a) *Required records.* Where this subpart requires a monitoring device capable of providing a continuous record, the owner or operator shall maintain the record specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this section, as applicable. The provisions of this section apply to owners and operators of storage vessels and low-throughput transfer racks only if specified by the applicable monitoring plan established under § 65.165(c)(1) and (c)(2).

(1) A record of values measured at least once every 15 minutes or each measured value for systems that measure more frequently than once every 15 minutes; or

(2) A record of block average values for 15-minute or shorter periods calculated from all measured data values during each period or from at least one measured data value per minute if measured more frequently than once per minute; or

(3) A record of block hourly average values calculated from each 15-minute block average period or from at least one measured value per minute if measured more frequently than once per minute, and a record of the most recent 3 valid hours of continuous (15-minute or shorter) records meeting the requirements of paragraph (a)(1) or (a)(2) of this section.

(4) A record as required by an alternative approved under § 65.162(d).

(b) *Excluded data.* Monitoring data recorded during periods identified in paragraphs (b)(1) through (b)(3) of this section shall not be included in any average computed to determine compliance under this subpart.

(1) Monitoring system breakdowns, repairs, preventive maintenance, calibration checks, and zero (low-level) and high-level adjustments;

(2) Periods of non-operation of the process unit (or portion thereof), resulting in cessation of the emissions to which the monitoring applies; and

(3) Startups, shutdowns, and malfunctions.

(c) *Additional records.* In addition to the records specified in paragraph (a) of this section, owners or operators shall also keep records as specified in paragraphs (c)(1) and (c)(2) of this section unless an alternative monitoring or recordkeeping system has been requested and approved under § 65.162(d).

(1) Except as specified in paragraph (c)(2) of this section, daily average values of each continuously monitored parameter shall be calculated from data meeting the specifications of paragraph (b) of this section for each operating day and retained for 5 years. The data shall be reported in the periodic report as specified in § 65.166(f), if applicable.

(i) The daily average shall be calculated as the average of all values for a monitored parameter recorded during the operating day. The average shall cover a 24-hour period if operation is continuous, or the number of hours of operation per operating day if operation is not continuous (for example, for transfer racks, the average shall cover periods of loading). If values are measured more frequently than once per minute, a single value for each minute may be used to calculate the daily average instead of all measured values.

(ii) The operating day shall be the period defined in the operating permit or the Initial Compliance Status Report. It may be from midnight to midnight or another daily period.

(2) If all recorded values for a monitored parameter during an operating day are within the range established in the Initial Compliance Status Report or in the operating permit, the owner or operator may record that

all values were within the range and retain this record for 5 years rather than calculating and recording a daily average for that operating day.

(d) *Valid data.* Unless determined to be excluded data according to paragraph (b) of this section, the data collected pursuant to paragraphs (a) through (c) of this section shall be considered valid.

(e) *Alternative recordkeeping.* For any parameter with respect to any item of equipment, the owner or operator may implement the recordkeeping requirements in paragraph (e)(1) or (e)(2) of this section as alternatives to the continuous parameter monitoring and recordkeeping provisions listed in paragraphs (a) through (c) of this section. The owner or operator shall retain each record required by paragraph (e)(1) or (e)(2) of this section as provided in § 65.4 of subpart A of this part.

(1) The owner or operator may retain only the daily average value and is not required to retain more frequently monitored operating parameter values for a monitored parameter with respect to an item of equipment if the requirements of paragraphs (e)(1)(i) through (e)(1)(vi) of this section are met. The owner or operator shall notify the Administrator of implementation of paragraph (e)(1) of this section in the Initial Compliance Status Report as required in § 65.165(e) or, if the Initial Compliance Status Report has already been submitted, in the periodic report as required in § 65.166(f)(4) immediately preceding implementation of the requirements of paragraph (e)(1) of this section.

(i) The monitoring system shall be capable of detecting unrealistic or impossible data during periods of operation other than startups, shutdowns, or malfunctions (for example, a temperature reading of −200 °C on a boiler) and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

(ii) The monitoring system shall generate a running average of the monitoring values, updated at least hourly throughout each operating day, that have been obtained during that operating day, and the capability to observe this average is readily available to the Administrator on-site during the operating day. The owner or operator shall record the occurrence of any period meeting the criteria in paragraphs (e)(1)(ii)(A) through (e)(1)(ii)(C) of this section. All instances in an operating day constitute a single occurrence.

(A) The running average is above the maximum or below the minimum established limits; and

(B) The running average is based on at least six 1-hour average values; and

(C) The running average reflects a period of operation other than a startup, shutdown, or malfunction.

(iii) The monitoring system shall be capable of detecting unchanging data during periods of operation other than startups, shutdowns, or malfunctions except in circumstances where the presence of unchanging data is the expected operating condition based on past experience (for example, pH in some scrubbers), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

(iv) The monitoring system shall alert the owner or operator by an alarm if the running average parameter value calculated under paragraph (e)(1)(ii) of this section reaches a set point that is appropriately related to the established limit for the parameter that is being monitored.

(v) The owner or operator shall verify the proper functioning of the monitoring system, including its ability to comply with the requirements of paragraph (e)(1) of this section, at the times specified in paragraphs (e)(1)(v)(A) through (e)(1)(v)(C) of this section. The owner or operator shall document that the required verifications occurred.

(A) Upon initial installation.

(B) Annually after initial installation.

(C) After any change to the programming or equipment constituting the monitoring system, that might reasonably be expected to alter the monitoring system's ability to comply with the requirements of this section.

(vi) The owner or operator shall retain the records identified in paragraphs (e)(1)(vi)(A) through (e)(1)(vi)(C) of this section.

(A) Identification of each parameter for each item of equipment for which the owner or operator has elected to comply with the requirements of § 65.162(e).

(B) A description of the applicable monitoring system(s) and of how compliance will be achieved with each requirement of paragraph (e)(1)(i) through (e)(1)(v) of this section. The description shall identify the location and format (for example, on-line storage; log entries) for each required record. If the description changes, the owner or operator shall retain both the current and the most recent outdated description. Owners and operators shall retain the current description of the monitoring system as long as the description is current, but not less than 5 years from the date of its creation. The current description shall be retained on-site at all times or be accessible from a central location by computer or other means that provide access within 2 hours after a request. The owner or operator shall retain the most recent outdated description at least until 5 years from the date of its creation. The outdated description shall be retained on-site (or accessible from a central location by computer that provides access within 2 hours after a request) at least 6 months after being outdated. Thereafter, the outdated description may be stored off-site.

(C) A description and the date of any change to the monitoring system that would reasonably be expected to affect its ability to comply with the requirements of paragraph (e)(1) of this section.

(2) If an owner or operator has elected to implement the requirements of paragraph (e)(1) of this section and a period of 6 consecutive months has passed without an excursion as defined in paragraph (e)(2)(iv) of this section, the owner or operator is no longer required to record the daily average value for that parameter for that unit of equipment for any operating day when the daily average value is less than the maximum or greater than the minimum established limit. With approval by the Administrator, monitoring data generated prior to the compliance date of this subpart shall be credited toward the period of 6 consecutive months if the parameter limit and the monitoring were required and/or approved by the Administrator.

(i) If the owner or operator elects not to retain the daily average values, the owner or operator shall notify the Administrator in the next periodic report. The notification shall identify the parameter and unit of equipment.

(ii) If there is an excursion as defined in paragraph (e)(2)(iv) of this section on any operating day after the owner or operator has ceased recording daily averages as provided in paragraph (e)(2) of this section, the owner or operator shall immediately resume retaining the daily average value for each day and shall notify the Administrator in the next periodic report. The owner or operator shall continue to retain each daily average value until another period of 6 consecutive months has passed without an excursion.

(iii) The owner or operator shall retain the records specified in paragraphs (e)(1)(i) through (e)(1)(vi) of this section for the duration specified in § 65.4 of subpart A of this part. For any calendar

week, if compliance with paragraphs (e)(1)(i) through (e)(1)(iv) of this section does not result in retention of a record of at least one occurrence or measured parameter value, the owner or operator shall record and retain at least one parameter value during a period of operation other than a startup, shutdown, or malfunction.

(iv) For purposes of paragraph (e) of this section, an excursion means that the daily average value of monitoring data for a parameter is greater than the maximum or less than the minimum established value except as provided in paragraphs (e)(2)(iv)(A) and (e)(2)(iv)(B) of this section.

(A) The daily average value during any startup, shutdown, or malfunction shall not be considered an excursion for purposes of paragraph (e) if the owner or operator follows the applicable provisions of the startup, shutdown, and malfunction plan required by § 65.6 of subpart A of this part.

(B) An excused excursion as described in § 65.156(d) shall not be considered an excursion for purposes of paragraph (e) of this section.

§ 65.162 Nonflare control and recovery device monitoring records.

(a) *Monitoring system records.* For process vents and transfer racks (except low-throughput transfer racks), the owner or operator subject to this subpart shall keep the records specified in paragraph (a) of this section as well as records specified elsewhere in this part.

(1) For CPMS's used to comply with this part, a record of the procedure used for calibrating the CPMS.

(2) For a CPMS used to comply with this subpart, records of the information specified in paragraphs (a)(2)(i) through (a)(2)(v) of this section, as applicable.

(i) The date and time of completion of calibration and preventive maintenance of the CPMS.

(ii) The ''as found'' and ''as left'' CPMS readings whenever an adjustment is made that affects the CPMS reading and a ''no adjustment'' statement otherwise.

(iii) The start time and duration or start and stop time of any periods when the CPMS is inoperative or malfunctioning.

(iv) Records of the occurrence and duration of each startup, shutdown, and malfunction of CPMS used to comply with this part during which excess emissions (as defined in § 65.3(a)(4) of subpart A of this part occur.

(v) For each startup, shutdown, and malfunction during which excess emissions as defined in § 65.3(b)(4) of subpart A of this part occur, records whether the procedures specified in the source's startup, shutdown, and malfunction plan were followed and documentation of actions taken that are not consistent with the plan. These records may take the form of a checklist, or other form of recordkeeping that confirms conformance with the startup, shutdown, and malfunction plan for the event.

(3) Records of startup, shutdown, and malfunction and CPMS calibration and maintenance are not required if they pertain solely to Group 2A process vents.

(b) *Combustion control and halogen reduction device monitoring records.* (1) Each owner or operator using a combustion control or halogen reduction device to comply with this subpart shall keep, as applicable, up to date and readily accessible continuous records, as specified in § 65.161(a); and records of the equipment operating parameters specified to be monitored under § 65.148(c) (incinerator monitoring), § 65.149(c) (boiler and process heater monitoring), § 65.154(c) (halogen reduction device monitoring), § 65.155(c) (other control device monitoring), or specified by the Administrator in accordance with paragraph (e) of this section.

(2) Each owner or operator shall keep records of the daily average value of each continuously monitored parameter for each operating day determined according to the procedures specified in § 65.161(c)(1). For catalytic incinerators, record the daily average of the temperature upstream of the catalyst bed and the daily average of the temperature differential across the bed. For halogen scrubbers, record the daily average pH and the liquid-to-gas ratio.

(3) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible records of periods of operation during which the parameter boundaries are exceeded and report these exceedances as specified in § 65.166(f)(1). The parameter boundaries are established pursuant to § 65.148(c)(2) (incinerator monitoring), § 65.149(c)(2) (boiler and process heater monitoring), § 65.154(c)(2) (halogen reduction device monitoring), or § 65.155(c)(2) (other control device monitoring), as applicable.

(c) *Monitoring records for recovery devices on Group 2A process vents and for absorbers, condensers, carbon adsorbers, or other noncombustion systems used as control devices.* (1) Each owner or operator using a recovery device to achieve and maintain a TRE index value greater than 1.0 but less than 4.0 or using an absorber, condenser, carbon adsorber, or other noncombustion system as a control device shall keep readily accessible, continuous records, as specified in § 65.161(a), of the equipment operating parameters specified to be monitored under § 65.150(c) (absorber monitoring), § 65.151(c) (condenser monitoring), § 65.152(c) (carbon adsorber monitoring), § 65.153(c) (recovery device monitoring) or § 65.155(c) (other control device monitoring), or specified by the Administrator in accordance with paragraph (e) of this section. For transfer racks, continuous records are required while the transfer vent stream is being vented.

(2) Each owner or operator shall keep records of the daily average value of each continuously monitored parameter for each operating day determined according to the procedures specified in § 65.161(c)(1). If carbon adsorber regeneration stream flow and carbon bed regeneration temperature are monitored, the records specified in paragraphs (c)(2)(i) and (c)(2)(ii) of this section shall be kept instead of the daily averages and the records shall be reported as specified in § 65.166(f)(2).

(i) Records of total regeneration stream mass or volumetric flow for each carbon-bed regeneration cycle.

(ii) Records of the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycle.

(3) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible records of periods of operation during which the parameter boundaries are exceeded and report these exceedances as specified in § 65.166(f)(1). The parameter boundaries are established pursuant to § 65.150(c)(2) (absorber monitoring), § 65.151(c)(2) (condenser monitoring), § 65.152(c)(2) (carbon adsorber monitoring), or § 65.155(c)(2) (other control device monitoring), as applicable.

(d) *Alternatives to the continuous operating parameter monitoring and recordkeeping provisions.* An owner or operator may request approval to use alternatives to the continuous operating parameter monitoring and recordkeeping provisions listed in §§ 65.148(c), 65.149(c), 65.150(c), 65.151(c), 65.152(c), 65.153(c), 65.154(c), 65.160, and paragraphs (b) and (c) of this section.

(1) Requests shall be included in the operating permit application or as otherwise specified by the permitting authority and shall contain the information specified in paragraphs (d)(3) through (d)(5) of this section, as applicable.

(2) The provisions in § 65.7(c) of subpart A of this part shall govern the review and approval of requests.

(3) An owner or operator of a source that does not have an automated monitoring and recording system capable of measuring parameter values at least once every 15 minutes and generating continuous records may request approval to use a nonautomated system with less frequent monitoring.

(i) The requested system shall include manual reading and recording of the value of the relevant operating parameter no less frequently than once per hour. Daily average values shall be calculated from these hourly values and recorded.

(ii) The request shall contain the information specified in paragraphs (d)(3)(ii)(A) through (d)(3)(ii)(D) of this section:

(A) A description of the planned monitoring and recordkeeping system;

(B) Documentation that the source does not have an automated monitoring and recording system capable of meeting the specified requirements;

(C) Justification for requesting an alternative monitoring and recordkeeping system; and

(D) Demonstration to the Administrator's satisfaction that the proposed monitoring frequency is sufficient to represent control device operating conditions considering typical variability of the specific process and control device operating parameter being monitored.

(4) An owner or operator may request approval to use an automated data compression recording system that does not record monitored operating parameter values at a set frequency (for example, once every 15 minutes) but records all values that meet set criteria for variation from previously recorded values.

(i) The requested system shall be designed to perform the functions specified in paragraphs (d)(4)(i)(A) through (d)(4)(i)(E) of this section.

(A) Measure the operating parameter value at least once every 15 minutes.

(B) Record at least four values each hour during periods of operation.

(C) Record the date and time when monitors are turned off or on.

(D) Recognize unchanging data that may indicate the monitor is not functioning properly, alert the operator, and record the incident.

(E) Compute daily average values of the monitored operating parameter based on recorded data. If the daily average is not an excursion as defined in § 65.161(e)(2)(iv), the data for that operating day may be converted to hourly average values and the four or more individual records for each hour in the operating day may be discarded.

(ii) The request shall contain a description of the monitoring system and data compression recording system, including the criteria used to determine which monitored values are recorded and retained, the method for calculating averages, and a demonstration that the system meets all criteria in paragraph (d)(4)(i) of this section.

(5) An owner or operator may request approval to use other alternative monitoring and recordkeeping systems as specified in § 65.7(b) of subpart A of this part. The application shall contain a description of the proposed alternative system. In addition, the application shall include information justifying the owner or operator's request for an alternative monitoring method, such as the technical or economic infeasibility, or the impracticality, of the regulated source using the required method.

(e) *Monitoring a different parameter than those listed.* The owner or operator who has been directed by § 65.154(c)(2) or § 65.155(c)(1) to set monitoring parameters or who requests as allowed by § 65.156(e) approval to monitor a different parameter than those listed in § 65.148(c), § 65.149(c), § 65.150(c), § 65.151(c), § 65.152(c), § 65.153(c), § 65.154(c), § 65.160, or paragraphs (b) or (c) of this section shall submit the information specified in paragraphs (e)(1) through (e)(3) of this section with the operating permit application or as otherwise specified by the permitting authority.

(1) A description of the parameter(s) to be monitored to ensure the process, control technology, or pollution prevention measure is operated in conformance with its design and achieves the specified emission limit, percent reduction, or nominal efficiency, and an explanation of the criteria used to select the parameter(s).

(2) A description of the methods and procedures that will be used to demonstrate that the parameter indicates proper operation of the control device, the schedule for this demonstration, and a statement that the owner or operator will establish a range for the monitored parameter as part of the Initial Compliance Status Report required in § 65.5(d) of subpart A of this part unless this information has already been included in the operating permit application or previously established under a referencing subpart.

The frequency and content of monitoring, recording, and reporting if monitoring and recording is not continuous, or if reports of daily average values when the monitored parameter value is outside the range established in the operating permit or Initial Compliance Status Report will not be included in Periodic Reports as specified in § 65.166(e). The rationale for the proposed monitoring, recording, and reporting system shall be included.

§ 65.163 Other records.

(a) *Closed vent system records.* For closed vent systems, the owner or operator shall record the information specified in paragraphs (a)(1) through (a)(4) of this section, as applicable.

(1) For each closed vent system that contains bypass lines that could divert a vent stream away from the control device and to the atmosphere, the owner or operator shall keep a record of the information specified in either paragraph (a)(1)(i) or (a)(1)(ii) of this section, as applicable. The information shall be reported as specified in § 65.166(b).

(i) Hourly records of whether the flow indicator specified under § 65.143(a)(3)(i) was operating and whether a diversion was detected at any time during the hour, as well as records of the times of all periods when the vent stream is diverted from the control device or the flow indicator is not operating.

(ii) Where a seal mechanism is used to comply with § 65.143(a)(3)(ii), hourly records of flow are not required. In such cases, the owner or operator shall record that the monthly visual inspection of the seals or closure mechanisms has been done and shall record the occurrence of all periods when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type lock has been checked out, and records of any car-seal that has been broken.

(2) For closed vent systems collecting regulated material from a storage vessel, transfer rack, or equipment leak, the owner or operator shall record the identification of all parts of the closed vent system that are designated as unsafe or difficult to inspect pursuant to § 65.143(b)(2) or (b)(3), an explanation of why the equipment is unsafe or difficult to inspect, and the plan for inspecting the equipment as required by § 65.143(b)(2)(ii) or (b)(3)(ii).

(3) For a closed vent system collecting regulated material from a storage vessel, transfer rack, or equipment leaks, when a leak is detected as specified in § 65.143(d)(1), the information specified in paragraphs (a)(3)(i) through (a)(3)(vi) of this section shall be recorded. The data shall be reported as specified in § 65.166(b)(1).

(i) The instrument and the equipment identification number and the operator name, initials, or identification number.

(ii) The date the leak was detected and the date of the first attempt to repair the leak.

(iii) The date of successful repair of the leak.

(iv) The maximum instrument reading measured by the procedures in § 65.143(c) after the leak is successfully repaired or determined to be nonrepairable.

(v) ''Repair delayed'' and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak. The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(vi) Copies of the periodic reports if records are not maintained on a computerized database capable of generating summary reports from the records.

(4) For each instrumental or visual inspection conducted in accordance with § 65.143(b)(1) for closed vent systems collecting regulated material from a storage vessel, transfer rack, or equipment leaks during which no leaks are detected, the owner or operator shall record that the inspection was performed, the date of the inspection, and a statement that no leaks were detected.

(b) *Storage vessel and transfer rack records.* For storage vessels, an owner or operator shall keep readily accessible records of the information specified in paragraphs (b)(1) through (b)(3) of this section, as applicable. For low-throughput transfer racks, an owner or operator shall keep readily accessible records of the information specified in paragraph (b)(1).

(1) A record of the measured values of the parameters monitored in accordance with § 65.145(c)(2) and report in the periodic report as specified in § 65.166(e), if applicable.

(2) A record of the planned routine maintenance performed on the control system during which the control system does not meet the applicable specifications of § 65.143(a), § 65.145(a), or § 65.147(a), as applicable, due to the planned routine maintenance. Such a record shall include the information specified in paragraphs (b)(2)(i) through (b)(2)(iii) of this section. This information shall be submitted in the periodic reports as specified in § 65.166(d)(1).

(i) The first time of day and date the requirements of § 65.143(a), § 65.145(a), or § 65.147(a), as applicable, were not met at the beginning of the planned routine maintenance.

(ii) The first time of day and date the requirements of § 65.143(a), § 65.145(a), or § 65.147(a), as applicable, were met at the conclusion of the planned routine maintenance.

(iii) A description of the type of maintenance performed.

(3) *Bypass records for storage vessel emissions routed to a process or fuel gas system.* An owner or operator who uses the bypass provisions of § 65.144(a)(2) shall keep in a readily accessible location the records specified in paragraphs (b)(3)(i) through (b)(3)(iii) of this section.

(i) The reason it was necessary to bypass the process equipment or fuel gas system;

(ii) The duration of the period when the process equipment or fuel gas system was bypassed;

(iii) Documentation or certification of compliance with the applicable provisions of § 65.42(b)(6)(i) through (b)(6)(iii).

(c) *Regulated source and control equipment startup, shutdown and malfunction records.* (1) Records of the occurrence and duration of each startup, shutdown, and malfunction of process equipment or of air pollution control equipment used to comply with this part during which excess emissions (as defined in § 65.3(a)(4) of subpart A of this part) occur.

(2) For each startup, shutdown, and malfunction during which excess emissions occur, records whether the procedures specified in the source's startup, shutdown, and malfunction plan were followed, and documentation of actions taken that are not consistent with the plan. For example, if a startup, shutdown, and malfunction plan includes procedures for routing control device emissions to a backup control device (for example, the incinerator for a halogenated stream could be routed to a flare during periods when the primary control device is out of service), records must be kept of whether the plan was followed. These records may take the form of a checklist or other form of recordkeeping that confirms conformance with the startup, shutdown, and malfunction plan for the event.

(3) Records of startup, shutdown, and malfunction and continuous monitoring system calibration and maintenance are not required if they pertain solely to Group 2A process vents.

(d) *Equipment leak records.* The owner or operator shall maintain records of the information specified in paragraphs (d)(1) and (d)(2) of this section for closed vent systems and control devices subject to the provisions of subpart F of this part. The owner or operator shall meet the record retention requirements of § 65.4 of subpart A of this part, except the records specified in paragraph (d)(1) of this section shall be kept as long as the equipment is in operation.

(1) The design specifications and performance demonstrations specified in paragraphs (d)(1)(i) through (d)(1)(iii) of this section.

(i) Detailed schematics, design specifications of the control device, and piping and instrumentation diagrams.

(ii) The dates and descriptions of any changes in the design specifications.

(iii) A description of the parameter or parameters monitored as required in § 65.146(c), to ensure that control devices are operated and maintained in conformance with their design and an explanation of why that parameter (or parameters) was selected for the monitoring.

(2) Records of operation of closed vent systems and control devices, as specified in paragraphs (d)(2)(i) through (d)(2)(iii) of this section.

(i) Dates and durations when the closed vent systems and control devices required in § 65.115(b) of subpart F of this part are not operated as designed as indicated by the monitored parameters, including periods when a flare flame or at least one pilot flame is not present.

(ii) Dates and durations during which the monitoring system or monitoring device is inoperative.

(iii) Dates and durations of startups and shutdowns of control devices required in § 65.115(b) of subpart F of this part.

(e) *Records of monitored parameters outside of range.* The owner or operator shall record the occurrences and the cause of periods when the monitored parameters are outside of the parameter ranges documented in the Initial Compliance Status Report in accordance with § 65.165(b). This information shall be reported in the periodic report as specified in § 65.166(e).

§ 65.164 Performance test and flare compliance determination notifications and reports.

(a) *Performance test and flare compliance determination reports.* Performance test reports and flare compliance determination reports shall be submitted as specified in paragraphs (a)(1) through (a)(3) of this section.

(1) For performance tests or flare compliance determinations, the Initial Compliance Status Report or report required by paragraph (b)(2) of this section shall include one complete test report as specified in paragraph (a)(2) of this section for each test method used for a particular kind of emission point

and other applicable information specified in paragraph (a)(3) of this section. For additional tests performed for the same kind of emission point using the same method, the results and any other information required in applicable sections of this subpart or in other subparts of this part shall be submitted, but a complete test report is not required.

(2) A complete test report shall include a brief process description, sampling site description, description of sampling and analysis procedures and any modifications to standard procedures, quality assurance procedures, record of operating conditions during the test, record of preparation of standards, record of calibrations, raw data sheets for field sampling, raw data sheets for field and laboratory analyses, documentation of calculations, and any other information required by the test method.

(3) The performance test or flare compliance determination report shall also include the information specified in paragraphs (a)(3)(i) through (a)(3)(iii) of this section, as applicable.

(i) For flare compliance determinations, the owner or operator shall submit the records specified in § 65.159(b).

(ii) For nonflare combustion device and halogen reduction device performance tests as required under § 65.148(b), § 65.149(b), § 65.150(b), § 65.151(b), § 65.152(b), § 65.154(b), or § 65.155(b), the owner or operator shall submit the applicable records specified in § 65.160(b).

(iii) For Group 2A process vents, the owner or operator shall submit the records specified in § 65.160(c), as applicable.

(b) *Other notifications and reports.* (1) The owner or operator shall notify the Administrator of the intention to conduct a performance test at least 30 calendar days before the performance test is scheduled to allow the Administrator the opportunity to have an observer present. If after 30 day's notice for an initially scheduled performance test, there is a delay (due to operational problems, etc.) in conducting the scheduled performance test the owner or operator of an affected facility shall notify the Administrator as soon as possible of any delay in the original test date. The owner or operator shall provide at least 7 days prior notice of the rescheduled date of the performance test or arrange a rescheduled date with the Administrator by mutual agreement.

(2) Unless specified differently in this subpart or another subpart of this part, performance test and flare compliance determination reports not submitted as part of an Initial Compliance Status Report shall be submitted to the Administrator within 60 days of completing the test or determination.

(3) Any application for a waiver of an initial performance test or flare compliance determination as allowed by § 65.157(b)(2), shall be submitted no later than 90 calendar days before the performance test or flare compliance determination is required. The application for a waiver shall include information justifying the owner or operator's request for a waiver, such as the technical or economic infeasibility, or the impracticality, of the source performing the test.

§ 65.165 Initial Compliance Status Reports.

(a) An owner or operator who elects to comply with § 65.144 by routing emissions from a storage vessel or transfer rack to a process or to a fuel gas system shall submit as part of the Initial Compliance Status Report the information specified in paragraphs (a)(1) and (a)(2) or (a)(3) of this section, as applicable.

(1) If storage vessel emissions are routed to a process, the owner or operator shall submit the information specified in § 65.144(b)(3).

(2) As specified in § 65.144(c) if storage vessel emissions are routed to a fuel gas system, the owner or operator shall submit a statement that the emission stream is connected to a fuel gas system.

(3) As specified in § 65.144(c) report that the transfer rack emission stream is being routed to a fuel gas system or process, when complying with the requirements of § 65.83(a)(4) of subpart E of this part.

(b) An owner or operator who elects to comply with § 65.145 by routing emissions from a storage vessel or low-throughput transfer rack to a nonflare control device shall submit with the Initial Compliance Status Report required by § 65.5(d) of subpart A of this part the applicable information specified in paragraphs (b)(1) through (b)(6) of this section. Owners and operators who elect to comply with § 65.145(b)(1)(i) by submitting a design evaluation shall submit the information specified in paragraphs (b)(1) through (b)(4) of this section. Owners and operators who elect to comply with § 65.145(b)(1)(ii) by submitting performance test results shall submit the information specified in paragraphs (b)(1), (b)(2), (b)(4) and (b)(5) of this section. Owners and operators who elect to comply with § 65.145(b)(1)(iii) by submitting performance test results for a shared control device shall submit the information specified in paragraph (b)(6) of this section.

(1) A description of the parameter or parameters to be monitored to ensure that the control device is being properly operated and maintained, an explanation of the criteria used for selection of that parameter (or parameters), and the frequency with which monitoring will be performed (for example, when the liquid level in the storage vessel is being raised). If continuous records are specified, indicate whether the provisions of § 65.166(f) apply.

(2) The operating range for each monitoring parameter identified in the monitoring plan required by § 65.145(c)(1). The specified operating range shall represent the conditions for which the control device is being properly operated and maintained.

(3) The documentation specified in § 65.145(b)(1)(i), if the owner or operator elects to prepare a design evaluation.

(4) The provisions of § 65.166(f) do not apply to any low-throughput transfer rack for which the owner or operator has elected to comply with § 65.145 or to any storage vessel for which the owner or operator is not required to keep continuous records, as specified by the applicable monitoring plan established under § 65.145(c)(1) and (c)(2). If continuous records are required, the owner or operator shall specify in the monitoring plan whether the provisions of § 65.166(f) apply.

(5) A summary of the results of the performance test described in § 65.145(b)(1)(ii) or (b)(1)(iii), as applicable. If a performance test is conducted as provided in § 65.145(b)(1)(ii), submit the results of the performance test, including the information specified in § 65.164(a)(1) and (a)(2).

(6) Identification of the storage vessel or transfer rack and control device for which the performance test will be submitted, and identification of the emission point(s), if any, that share the control device with the storage vessel or transfer rack and for which the performance test will be conducted.

(c) The owner or operator shall submit as part of the Initial Compliance Status Report the operating range for each monitoring parameter identified for each control, recovery, or halogen reduction device as determined in §§ 65.148(c)(2), 65.149(c)(2), 65.150(c)(2), 65.151(c)(2), 65.152(c)(2), 65.153(c)(5), 65.154(c)(3), and 65.155(c)(2). The specified operating range shall represent the conditions for which the control, recovery, or halogen reduction device is being properly operated and maintained. This report

shall include the information in paragraphs (c)(1) through (c)(3) of this section, as applicable, unless the range and the operating day definition have been established in the operating permit.

(1) The specific range of the monitored parameter(s) for each emission point;

(2) The rationale for the specific range for each parameter for each emission point, including any data and calculations used to develop the range and a description of why the range indicates proper operation of the control, recovery, or halogen reduction device, as specified in paragraph (c)(2)(i), (c)(2)(ii), or (c)(2)(iii) of this section, as applicable.

(i) If a performance test or TRE index value determination is required by this subpart or another subpart of this part for a control, recovery or halogen removal device, the range shall be based on the parameter values measured during the TRE index value determination or performance test and may be supplemented by engineering assessments and/or manufacturer's recommendations. TRE index value determinations and performance testing is not required to be conducted over the entire range of permitted parameter values.

(ii) If a performance test or TRE index value determination is not required by this subpart or other subparts of this part for a control, recovery, or halogen reduction device, the range may be based solely on engineering assessments and/or manufacturer's recommendations.

(iii) The range may be based on ranges or limits previously established under a referencing subpart.

(3) A definition of the source's operating day for purposes of determining daily average values of monitored parameters. The definition shall specify the times at which an operating day begins and ends.

(d) *Halogen reduction device.* The owner or operator shall submit as part of the Initial Compliance Status Report the information recorded pursuant to § 65.160(d).

(e) *Alternative recordkeeping.* The owner or operator shall notify the administrator in the Initial Compliance Status Report if the alternative recordkeeping provisions of § 65.161(e)(1) are being implemented. If the Initial Compliance Status Report has been submitted, the notification must be in the periodic report submitted immediately preceding implementation of the alternative, as provided in § 65.166(f)(4).

§ 65.166 Periodic reports.

(a) Periodic reports shall include the reporting period dates, the total source operating time for the reporting period, and, as applicable, all information specified in this section and in other subparts of this part, including reports of periods when monitored parameters are outside their established ranges.

(b) For closed vent systems subject to the requirements of § 65.143, the owner or operator shall submit as part of the periodic report the information specified in paragraphs (b)(1) through (b)(3) of this section, as applicable.

(1) The information recorded in § 65.163 (a)(3)(ii) through (a)(3)(v);

(2) Reports of the times of all periods recorded under § 65.163(a)(1)(i) when the vent stream is diverted from the control device through a bypass line; and

(3) Reports of all times recorded under § 65.163(a)(1)(ii) when maintenance is performed on car-sealed valves, when the seal is broken, when the bypass line valve position is changed, or the key for a lock-and-key type configuration has been checked out.

(c) For flares subject to this subpart, report all periods when all pilot flames were absent or the flare flame was absent as recorded in § 65.159(d)(1).

(d) For storage vessels, the owner or operator shall include in each periodic report required the information specified in paragraphs (d)(1) through (d)(3) of this section.

(1) For the 6-month period covered by the periodic report, the information recorded in § 65.163(b)(2)(i) through (b)(2)(iii).

(2) For the time period covered by the periodic report and the previous periodic report, the total number of hours that the control system did not meet the requirements of § 65.143(a), § 65.145(a), or § 65.147(a) due to planned routine maintenance.

(3) A description of the planned routine maintenance that is anticipated to be performed for the control system during the next 6-month periodic reporting period when the control system is not expected to meet the required control efficiency. This description shall include the type of maintenance necessary, planned frequency of maintenance, and expected lengths of maintenance periods.

(e) If a control device other than a flare is used to control emissions from storage vessels or low-throughput transfer racks, the periodic report shall identify and state the cause for each occurrence when the monitored parameters were outside of the parameter ranges documented in the Initial Compliance Status Report in accordance with § 65.165(b).

(f) For process vents and transfer racks (except low-throughput transfer racks), periodic reports shall include the information specified in paragraphs (f)(1) through (f)(4).

(1) Periodic reports shall include the daily average values of monitored parameters, calculated as specified in § 65.161(c)(1) for any days when the daily average value is outside the bounds as specified in § 65.162(b)(3) or (c)(3), or the data availability requirements defined in § 65.156(d)(1) are not met, whether these excursions are excused or unexcused excursions. For excursions caused by lack of monitoring data, the duration of periods when monitoring data were not collected shall be specified.

(2) Report all carbon-bed regeneration cycles during which the parameters recorded under § 65.162(c)(2) were outside the ranges established in the Initial Compliance Status Report or in the operating permit.

(3) The provisions of paragraphs (f)(1) and (f)(2) of this section do not apply to any low-throughput transfer rack for which the owner or operator has elected to comply with § 65.145 or to any storage vessel for which the owner or operator is not required, by the applicable monitoring plan established under § 65.165(c)(1) and (c)(2) to keep continuous records. If continuous records are required, the owner or operator shall specify in the monitoring plan whether the provisions of paragraphs (f)(1) and (f)(2) of this section apply.

(4) If the owner or operator has chosen to use the alternative recordkeeping provisions of § 65.161(e)(1), and has not notified the Administrator in the Initial Compliance Status Report that the alternative recordkeeping provisions are being implemented as provided in § 65.165(e), the owner or operator shall notify the Administrator in the periodic report submitted immediately proceeding implementation of the alternative.

§ 65.167 Other reports.

(a) *Replacing an existing control or recovery device.* As specified in § 65.147(b)(2), § 65.148(b)(3), § 65.149(b)(3), § 65.150(b)(2), § 65.151(b)(2), § 65.152(b)(2), or § 65.153(b)(2), if an owner or operator at a facility not required to obtain a title V permit elects at a later date to use a different control or recovery device, then the Administrator shall be notified by the owner or operator before implementing the change. This notification may be included in the

facility's periodic reporting and shall include a description of any changes made to the closed vent system.

(b) *Startup, shutdown, and malfunction periodic reports.* Startup, shutdown, and malfunction periodic reports shall be submitted as required in § 65.6(c) of subpart A of this part.

§§ 65.168–65.169 [Reserved]

[FR Doc. 98–27260 Filed 10–27–98; 8:45 am]

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Federal Register

Wednesday
October 28, 1998

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 46

Federal Acquisition Regulation: Conditionally Accepted Items; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 46

[FAR Case 98–002]

RIN 9000–A117

Federal Acquisition Regulation; Conditionally Accepted Items

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to require that, when conditionally accepting nonconforming items, amounts withheld from payments should be at least sufficient to cover the cost and related profit to correct deficiencies and complete unfinished work; and that the basis for the amounts withheld shall be documented in the contract file. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before December 28, 1998 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), Attn: Ms Laurie Duarte 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.98–002@gsa.gov.

Please cite FAR case 98–002 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, 1800 F Street, NW, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAR case 98–002.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule implements the recommendation of General Accounting Office Report GAO/NSIAD–98–20 Defense Acquisition, Guidance Is Needed On Payments For Conditionally Accepted Items, dated December 12, 1997. The rule amends FAR 46.101 to add a definition of ''conditional acceptance,'' and amends FAR 46.407 to provide procedures for the conditional acceptance of supplies and services.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the use of conditional acceptance is not widespread. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 98–002), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 46

Government procurement.

Dated: October 22, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Part 46 be amended as set forth below:

PART 46—QUALITY ASSURANCE

1. The authority citation for 48 CFR Part 46 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 46.101 is amended by adding, in alphabetical order, the definition ''Conditional acceptance'' to read as follows:

46.101 Definitions.

* * * * *

Conditional acceptance means acceptance of supplies or services that do not conform to contract quality requirements, or are otherwise incomplete, that the contractor is required to correct or otherwise complete by a specified date.

* * * * *

3. Section 46.407 is amended by revising paragraphs (c)(1) and (f) to read as follows:

46.407 Nonconforming supplies or services.

* * * * *

(c)(1) In situations not covered by paragraph (b) of this section, the contracting officer shall ordinarily reject supplies or services when the nonconformance is critical or major, or the supplies or services are otherwise incomplete. However, there may be circumstances (*e.g.*, reasons of economy or urgency) when acceptance or conditional acceptance of such supplies or services is determined by the contracting officer to be in the best interest of the Government. The contracting officer shall make this determination based upon—

(i) Advice of the technical activity that the item is safe to use and will perform its intended purpose;

(ii) Information regarding the nature and extent of the nonconformance or otherwise incomplete supplies or services;

(iii) A request from the contractor for acceptance of the nonconforming or otherwise incomplete supplies or services (if feasible);

(iv) A recommendation for acceptance, conditional acceptance, or rejection, with supporting rationale; and

(v) The contract adjustment considered appropriate, including any adjustment offered by the contractor.

* * * * *

(f) When supplies or services are accepted with critical or major nonconformances as authorized in paragraph (c) of this section, the contract shall be modified to provide for an equitable price reduction or other consideration. In the case of conditional acceptance, amounts withheld from payments generally should be at least sufficient to cover the estimated cost and related profit to correct deficiencies and complete unfinished work. The basis for the amounts withheld shall be documented in the contract file. For services, the contracting officer can consider identifying the value of the individual work requirements or tasks (subdivisions) that may be subject to price or fee reduction. This value may be used to determine an equitable adjustment for nonconforming services. However, when supplies or services involving minor nonconformances are accepted, the contract need not be modified unless it appears that the

savings to the contractor in fabricating the nonconforming supplies or performing the services will exceed the cost to the Government of processing the modification.

* * * * *

[FR Doc. 98–28782 Filed 10–27–98; 8:45 am]

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Federal Register

Wednesday
October 28, 1998

Part IV

Department of Housing and Urban Development

24 CFR Parts 91 and 570

Fair Housing Performance Standards for Acceptance of Consolidated Plan Certifications and Compliance With Community Development Block Grant Performance Review Criteria; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 91 and 570

[Docket No. FR–4133–P–01]

RIN No. 2529–AA81

Fair Housing Performance Standards for Acceptance of Consolidated Plan Certifications and Compliance With Community Development Block Grant Performance Review Criteria

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD regulations on Consolidated Submissions for Community Planning and Development Programs to establish a standard for determining if the jurisdiction's certification regarding affirmatively furthering fair housing is inaccurate.

This rule would also amend HUD regulations on Community Development Block Grants to provide performance review standards for affirmatively furthering fair housing requirements. The performance review standards would clarify the basis upon which the Department makes its annual statutory determination that a grantee is carrying out its Community Development Block Grant (CDBG) program in compliance with its certifications and with other applicable laws.

Both revisions would also make clear that compliance with the requirement to affirmatively further fair housing would require grantees to have a complete and accurate analysis of impediments to fair housing choice and to not violate the Fair Housing Act or civil rights laws prohibiting discrimination in housing programs receiving Federal financial assistance. These revisions would serve to provide communities with a clear idea of the standards that HUD would use in both reviewing certifications included as part of a grantee's Consolidated Plan submission, as well as determining CDBG grantees' compliance with the statutory requirements of the CDBG program to affirmatively further fair housing.

DATES: *Comment Due Date:* December 28, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communications submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For questions on part 570, Deirdre Maguire-Zinni, Director, Entitlement Communities Division, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7282, 451 Seventh Street, SW, Washington, DC 20410. Telephone (202) 708–1577, ext. 4529. For questions on part 91, Sal Sclafani, Acting Director, Policy Coordination Division, Office of Executive Services, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Telephone (202) 708–1283, ext. 4364. For questions on affirmatively furthering fair housing or the analysis of impediments to fair housing choice, William Dudley Gregorie, Deputy Director, Office of Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 452 Seventh Street, SW, Washington, DC 20410. Telephone (202) 708–2288, ext. 266. (These telephone numbers are not toll-free.) Hearing-impaired or speech-impaired individuals may access the voice telephone number listed above by calling the Federal information relay service during working hours at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Statutory Bases

Section 105 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12705) established a requirement for the development of a Comprehensive Housing Affordability Strategy (CHAS) as a condition of a jurisdiction receiving grants from HUD, primarily CDBG and HOME program funds. (The CHAS replaced the CDBG Housing Assistance Plan requirement.) The CHAS includes a certification that jurisdictions receiving the HUD grants will affirmatively further fair housing.

Section 104(b)(2) of the Housing and Community Development Act of 1974 (HCD Act), as amended, (42 U.S.C. 5304), the governing statute for the CDBG program, requires that each grantee certify to HUD's satisfaction that (1) the grant will be conducted and administered in conformity with the Fair Housing Act (42 U.S.C. 3601–20) and (2) the grantee will affirmatively further fair housing. Further, section 104(c)(1) of the HCD Act authorizes CDBG Entitlement grants to be made only to a grantee that is following an approved CHAS. Section 104(e) of the HCD Act also contains a requirement for the Department to determine, at least annually, that each CDBG grantee is carrying out its program in compliance with applicable laws and requirements.

The Consolidated Plan Regulation's Review Standard for Acceptance

When the Consolidated Submission for CPD Programs regulation (part 91) (the ''Consolidated Plan regulation'') was promulgated in 1995, one of the primary purposes of the rule was to coordinate statutory requirements for CPD formula grant programs (CDBG, HOME Investment Partnerships, Emergency Shelter Grant, and Housing Opportunities for Persons with AIDS) in a comprehensive way, in order to simplify application requirements while simultaneously addressing local priority needs more effectively. The Consolidated Plan regulation thus incorporates CHAS requirements as well as CDBG submission requirements.

Departmental approval of a Consolidated Plan is required in order for a jurisdiction to receive any of the four CPD formula grant funds. Disapproval of a Consolidated Plan is based on the statutory standards of the CHAS which authorizes disapproval of any Plan only on two grounds: the Plan is either (1) inconsistent with the purposes of the Cranston-Gonzalez National Affordable Housing Act or (2) substantially incomplete. One of the ways that a Plan may be determined substantially incomplete is if HUD concludes that a certification is inaccurate. In addition, the separate CDBG certifications may be disapproved if not satisfactory to HUD, which would result in disapproval of the CDBG component of the Consolidated Plan.

The Consolidated Plan regulations contain an affirmatively further fair housing certification. The regulations define the certification to mean that a grantee will conduct an ''analysis of impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard'' [§§ 91.225(a)(1), 91.325(a)(1) and 91.425(a)(1)]. The analysis of impediments is not restricted to the design and operation of HUD-funded programs within a grantee's jurisdiction but is meant to be an assessment of conditions, both public and private, that affect fair housing choice.

The Consolidated Plan requirement contains a narrow review standard and a review time frame of 45 days (after which a Plan may be deemed approved automatically unless the Department

specifically notifies a jurisdiction that the Plan has been disapproved). Disapproval of a Consolidated Plan results in the withholding of all CPD formula grant funds for a grantee unless and until an adequate submission is made within an established time frame.

The CDBG Program's Greater Flexibility To Require Grantee Actions in Connection With Grant Award or Improve Performance

The CDBG Entitlement regulations were amended with the Consolidated Plan regulations so that the affirmatively further fair housing certification has the same requirements in the CDBG regulations as in the Consolidated Plan regulations. See § 570.601(a)(2). A determination made by HUD that a CDBG grantee is not affirmatively furthering fair housing, however, offers a wider array of opportunities for resolution in connection with either making the CDBG grant or applying sanctions because of the statutory review authority in the HCD Act (e.g., requesting special assurances; seeking voluntary compliance; or taking actions to reduce or withdraw a grant), whereas evaluation of the grantee's affirmatively furthering activities in the context of the Consolidated Plan offers only one opportunity for HUD action (i.e., disapproval of a Consolidated Plan). Furthermore, corrective actions with respect to the CDBG program are not limited to the Consolidated Plan submission review time frame but can be initiated at any point during a grantee's program year.

The Need for Clarification

While the Department has provided both guidance and training to grantees on meeting the Consolidated Plan fair housing certification requirements, the Department's experience indicates that confusion remains over both the meaning and application of the affirmatively further fair housing requirements. Notwithstanding the identical statutory predicates for affirmatively furthering fair housing in both the CDBG program and the CHAS (included now as a Consolidated Plan requirement), this confusion has been complicated by the placement of the CDBG requirement in the Consolidated Plan regulation at part 91 as a certification requirement (which now applies to all CPD formula grant programs) while remaining in the CDBG regulations at part 570 as a performance review standard. Certification of compliance with the Fair Housing Act is in the Consolidated Plan regulations applicable only to the CDBG program. Thus, in cases where a grantee has been determined to have violated the Fair Housing Act, the narrow disapproval standard for the Consolidated Plan complicates the withholding of CPD grant funds, despite the Department's clear mandate to ensure compliance with Fair Housing Act requirements. Confusion has also resulted over what it means to have a ''complete'' Consolidated Plan as well as the language of the certification which is written in the future tense (that grantees ''will'' conduct an analysis).

Purpose of the Proposed Rule Change

The Department seeks to foster effective fair housing strategies and to provide clear guidance to local communities to help them in their efforts to responsibly identify and solve fair housing problems, as these grantees strive to achieve their own visions of ''viable urban communities.'' Furthermore, the Department believes that grantees receiving CPD formula grant funds not only have the responsibility to identify and endeavor to overcome impediments to fair housing choice, but clearly should not be receiving the grant funds if they are in violation of the Fair Housing Act. At the same time, the Department wishes to ensure more objective application of requirements and to ensure that grantees have a current and accurate analysis of impediments to fair housing choice in place at the time of grant award. To that end, the proposed rule is intended to provide specific standards and the bases upon which these requirements would be measured—both for purposes of receiving CPD formula grant funds and to aid the Department in annually determining that CDBG grantees are in compliance with applicable requirements.

Proposed Change to Part 91

This rule would amend §§ 91.225(a)(1), 91.325(a)(1) and 91.425(a)(1) to make clear that a certification to affirmatively further fair housing means that (1) an analysis of impediments to fair housing choice has already been conducted (and would be updated, as appropriate) and (2) the grantee is taking actions to eliminate identified impediments if the impediments are within the control of the grantee and to overcome the effects of other identified impediments, and is keeping appropriate supporting documentation. Amendments are also made to § 91.500(b)(3) to add three standards for a Departmental determination that a grantee's Consolidated Plan certification to affirmatively further fair housing is inaccurate. HUD could determine that the certification is inaccurate if: (1) the analysis of impediments to fair housing choice is inaccurate or substantially incomplete based on generally available facts and data; (2) the actions taken do not address an identified impediment (eliminate an impediment within the grantee's control or overcome the effects of an impediment that is outside the grantee's control) or do not result in meaningful and measurable progress; or (3) the grantee (a) has been charged with a violation of the Fair Housing Act by HUD, (b) is the defendant in a Fair Housing Act lawsuit filed by the U.S. Department of Justice, or (c) has received from HUD a letter of noncompliance findings involving housing under title VI of the Civil Rights Act of 1968, section 504 of the Rehabilitation Act of 1973 or section 109 of the HCD Act, and the grantee has not resolved such charge, lawsuit, or letter of noncompliance findings to the satisfaction of HUD.

These amendments would make clear that a grantee must (1) have a complete and accurate analysis of impediments to fair housing choice before submitting its Consolidated Plan, (2) be taking appropriate actions to eliminate the impediments within the grantee's control and overcome the effects of identified impediments outside the grantee's control, and (3) comply with the Fair Housing Act and other statutes prohibiting discrimination in housing that the Department enforces. Failure to do so will result in a rejection of its Consolidated Plan certification to affirmatively further fair housing. The amendments are also designed to clarify what is meant by appropriate actions. For example, a grantee that identifies certain types of zoning as impediments to fair housing choice and then holds a housing poster contest as an appropriate action in response to the zoning impediment could expect HUD to question the accuracy of its certification.

Proposed Change to Part 570

This rule would amend § 570.601 to make clear that the requirement to affirmatively further fair housing means that (1) grantees have conducted an analysis of impediments to fair housing choice before submission of a Consolidated Plan (and would require updates to an analysis, as appropriate) and (2) the grantees are taking actions to eliminate identified impediments that are within the control of the grantee and to overcome the effects of identified impediments outside the grantee's control and are maintaining records reflecting the analysis and actions. Section 570.904 would be amended to clarify the distinction between the

rebuttable presumption of compliance with civil rights nondiscrimination requirements versus the standards to measure performance with the requirements for affirmatively furthering fair housing. Currently, this section of the regulation states that the Department will consider grantees to be in compliance with applicable equal opportunity and fair housing criteria UNLESS there is evidence to the contrary. The requirements to affirmatively further fair housing and carry out programs in compliance with the Fair Housing Act require, however, positive actions on the part of grantees. Moreover, the section no longer contains criteria because they were deleted when substantive requirements for affirmatively furthering fair housing were added to the Consolidated Plan rule. Accordingly, the introductory language is proposed to be deleted in paragraph (a) and the paragraph is renamed ''Nondiscrimination requirements.'' In addition, the current paragraph (b) is proposed to be removed because it essentially repeats paragraph (a). Paragraphs (c) and (d) are reordered as paragraphs (b) and (c). As a technical matter, the regulation is amended to reflect that the Fair Housing Act also prohibits discrimination based on disability or familial status.

This section of the regulation is also amended to specify three performance review standards that HUD will use to determine whether a grantee has affirmatively furthered fair housing. Two of the standards are: (1) that the analysis of impediments to fair housing choice is accurate and substantially complete based on generally available facts and data, and (2) that the actions taken to eliminate the impediments within the grantee's control or overcome the effects of identified impediments outside the grantee's control result in meaningful and measurable progress. The third standard is a presumption by HUD that a grantee has not violated the civil rights laws prohibiting discrimination in housing unless the grantee (a) has been charged with a violation of the Fair Housing Act by HUD, (b) is the defendant in a Fair Housing Act lawsuit filed by the U.S. Department of Justice, or (c) has received from HUD a letter of noncompliance findings involving housing under title VI of the Civil Rights Act of 1968, section 504 of the Rehabilitation Act of 1973 or section 109 of the HCD Act, and the grantee has not resolved such charge, lawsuit, or letter of noncompliance findings to the satisfaction of HUD. Such violations could result from actions taken by the grantee in connection with programs other than the four CPD formula grant programs. For example, a grantee that takes discriminatory actions to prevent a public housing authority from acquiring or building scattered site public housing units could be determined to be in violation of the Fair Housing Act and thus might expect the Department to challenge its Consolidated Plan certification to affirmatively further fair housing.

In reviewing performance based on an existing analysis of impediments to fair housing choice, the Department would expect that a jurisdiction would identify actions to be taken based on the analysis and would have taken such actions, or have begun to undertake actions with a reasonable time frame for completion. Further, the appropriateness of the actions would be judged on what impact they have had in eliminating impediments within the grantee's control or overcoming the effects of identified impediments to fair housing choice that are outside the grantee's control.

Examples of such appropriate actions are contained in Volume 1 of HUD's Fair Housing Planning Guide, specifically, Chapter 3, Appendix A, the Chapter 4 Appendix and throughout Chapter 5. A detailed discussion of grantee actions, in general, is the focus of Volume 2 of the Fair Housing Planning Guide.

Comments are specifically sought on (1) the clarity and usefulness of the standards in assisting the Department's review of a grantee's compliance with its certification to affirmatively further fair housing, both as part of a Consolidated Plan submission and as a CDBG performance review requirement; and (2) the identification of any unintended consequences in applying these requirements that would frustrate the purposes of, or otherwise impede a grantee's ability to comply with, fair housing requirements.

Most grantees completed their analysis of impediments to fair housing choice last year and are now taking actions to address identified impediments. Thus, grantees' concerns are now generally focused on how HUD will view the appropriateness and sufficiency of their actions. The proposed regulation is intended to provide for a more objective determination of appropriateness. The regulation does not specifically address, however, the following issues: (1) Is a grantee required to take actions to eliminate or overcome the effects of all identified impediments? (2) Must the actions be taken each program year, or over a period of time—which may coincide with the grantee's Consolidated Plan period or some other period of time? (3) Should certain impediments have a priority for action? (4) At what point in the future would the grantee be expected to have eliminated all identified impediments within the grantee's control and taken all possible actions to overcome the effects of impediments not within the grantee's control? Comments are sought on whether and how the regulation should address these issues.

States are requested to comment on the issue of whether the State CDBG regulations should contain fair housing performance standards comparable to those proposed under § 570.904. The CDBG Entitlement program regulations contain an entire subpart (subpart O) concerning HUD reviews and determinations of grantee performance. Section 570.904, for example, describes the review criteria for determining compliance with equal opportunity and fair housing requirements. In contrast, the regulatory language governing performance reviews under the State CDBG program is much shorter and less detailed. Section 570.493 essentially declares only that HUD shall make such reviews and audits as are necessary to determine whether a State is in compliance with the various requirements of the Act and other applicable laws.

This rule proposes to clarify the review standard (at § 570.904) concerning fair housing performance for entitlement communities. There is no comparable review standard being proposed for States because there is no comparable section in the State program regulations. This proposed rule seeks to ensure more objective determinations of compliance with fair housing requirements. It also seeks to resolve the discontinuity between HUD's limited authority for action under the Consolidated Plan rule and HUD's broader authority to undertake performance reviews under the CDBG program rules. Not including specific review standards for the State CDBG program, however, means that the disparity and ambiguity over standards for performance will still exist for States. The difference between the CDBG program regulations for States and for Entitlement communities could also impart the false impression that HUD is more concerned about fair housing performance under the Entitlement program than under the State program. On the other hand, if HUD revises § 570.493 to include fair housing performance standards comparable to those proposed under § 570.904, the State program regulations

would be far more specific about fair housing performance than about other program requirements. This likewise could convey a false impression that HUD is more concerned about fair housing performance by States than about other CDBG program requirements. Comments on these State CDBG issues are therefore requested.

Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment for this rule has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, D.C. 20410.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities and there are not any unusual procedures that would need to be complied with by small entities. Nevertheless, the Department is sensitive to the fact that the uniform application of requirements on entities of differing sizes often places a disproportionate burden on small businesses. The Department, therefore, is soliciting alternatives for compliance from small entities as to how these small entities might comply in a way less burdensome to them.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule does not have ''federalism implications'' because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Program number assigned to the Community Development Block Grant entitlement program is 14.218 and for the State CDBG program is 14.228.

List of Subjects in 24 CFR Part 91

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low and moderate income housing, Reporting and recordkeeping requirements.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

Accordingly, the Department proposes to amend parts 91 and 570 of title 24 of the Code of Federal Regulations as follow:

PART 91—CONSOLIDATED SUBMISSION FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

1. The authority citation for part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

2. Section 91.225 is amended by revising paragraph (a)(1) to read as follows:

§ 91.225 Certifications.

(a) * * *

(1) *Affirmatively furthering fair housing.* Each jurisdiction is required to submit a certification that it will affirmatively further fair housing which means that it will assume the responsibility of fair housing planning by having conducted a complete and accurate analysis of impediments to fair housing choice within the jurisdiction (with periodic updates, as appropriate); is taking appropriate actions to overcome the effects of any impediments identified through that analysis outside the jurisdiction's control and to eliminate identified impediments within the control of the jurisdiction; and is maintaining records reflecting the analysis and actions in this regard.

* * * * *

3. Section 91.325 is amended by revising paragraph (a)(1) to read as follows:

§ 91.325 Certifications.

(a) *General*—(1) *Affirmatively furthering fair housing.* Each State is required to submit a certification that it will affirmatively further fair housing which means that it will assume the responsibility of fair housing planning by having conducted a complete and accurate analysis of impediments to fair housing choice within the State (with periodic updates, as appropriate); is taking appropriate actions to overcome the effects of any impediments identified through that analysis outside the State's control and to eliminate identified impediments within the State's control; and is maintaining records reflecting the analysis and actions in this regard. (See § 570.487(b)(4) of this title.)

* * * * *

4. Section 91.425 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 91.425 Certifications.

(a) *Consortium certifications*—(1) *General*—(i) *Affirmatively furthering fair housing.* Each consortium must certify that it will affirmatively further fair housing which means that it will assume the responsibility of fair housing planning by having conducted a complete and accurate analysis of impediments to fair housing choice within the area (with periodic updates, as appropriate); is taking appropriate actions to overcome the effects of any impediments identified through that analysis outside the consortium's control and to eliminate identified impediments within the consortium members' control; and is maintaining records reflecting the analysis and actions in this regard.

* * * * *

5. Section 91.500 is amended by adding a sentence to the end of paragraph (b)(3) to read as follows:

§ 91.500 HUD approval action.

* * * * *

(b) * * *

(3) * * * A jurisdiction's certification to affirmatively further fair housing would be determined to be inaccurate if the jurisdiction has no supporting records; the jurisdiction's analysis of impediments to fair housing choice (with periodic updates) is inaccurate or substantially incomplete based on generally available facts and data, including, but not limited to, Home Mortgage Disclosure Act data, facts disclosed in a HUD civil rights monitoring or compliance review, a civil action brought by the U.S. Department of Justice or private parties, and public and private studies of

housing discrimination affecting residents of the grantee jurisdiction; the actions taken by the jurisdiction to eliminate impediments within the grantee's control and overcome the effects of other identified impediments to fair housing choice were not appropriate because the actions did not address an identified impediment or did not result in meaningful and measurable progress in eliminating the impediment or overcoming the impediment's effects; or the grantee has been charged with a violation of the Fair Housing Act by HUD, is the defendant in a Fair Housing Act lawsuit filed by the U.S. Department of Justice, or has received from HUD a letter of noncompliance findings involving housing under title VI of the Civil Rights Act of 1968, section 504 of the Rehabilitation Act of 1974 or Section 109 of the Housing and Community Development Act of 1974, and the grantee has not resolved such charge, lawsuit, or letter of noncompliance findings to the satisfaction of HUD.

* * * * *

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

6. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

7. Section 570.487 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 570.487 Other applicable laws and related program requirements.

* * * * *

(b) * * *

(1) Conducting a complete and accurate analysis to identify impediments to fair housing choice within the State (with periodic updates, as appropriate);

(2) Taking appropriate actions to eliminate any impediments identified through that analysis that are within the control of the State and to overcome the effects of any impediments outside the control of the State;

* * * * *

8. Section 570.601 is amended by revising paragraph (a)(1) and the third sentence of paragraph (a)(2) to read as follows:

§ 570.601 Public Law 88–352 and Public Law 90–284; affirmatively furthering fair housing; Executive Order 11063.

(a) * * *

(1) Public Law 88–352, which is title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), and implementing regulations in 24 CFR parts 1 and 100.

(2) * * * Furthermore, in accordance with section 104(b)(2) of the Act, for each community receiving a grant under subpart D of this part, the certification that the grantee will affirmatively further fair housing shall specifically require the grantee to assume the responsibility of fair housing planning by conducting a complete and accurate analysis to identify impediments to fair housing choice within its jurisdiction (with periodic updates, as appropriate), taking appropriate actions to eliminate any impediments identified through that analysis that are within the grantee's control and to overcome the effects of any identified impediments that are outside its control, and maintaining records reflecting the analysis and actions in this regard.

* * * * *

9. Section 570.904 is amended by revising paragraphs (a)(1) introductory text and (a)(1)(ii), removing the current paragraph (b), redesignating paragraphs (c) and (d) as (b) and (c) respectively and revising newly redesignated paragraph (b), to read as follows:

§ 570.904 Equal opportunity and fair housing review.

(a) *Nondiscrimination requirements.* (1) The Department will presume that the recipient has carried out its CDBG-funded program in accordance with civil rights certifications and requirements of the Act prohibiting discrimination unless:

* * * * *

(ii) There is evidence that a policy, practice, standard or method of administration, although neutral on its face, operates to deny or affect adversely in a significantly disparate way the provision of employment or services, benefits or participation to persons of a particular race, color, religion where applicable, sex, national origin, age or handicap, or fair housing to persons of a particular race, color, religion, sex, disability, familial status, or national origin, or

* * * * *

(b) *Affirmatively furthering fair housing.* HUD will review to determine whether the grantee is affirmatively furthering fair housing in accordance with § 570.601(a)(2).

(1) HUD will determine whether:

(i) The grantee's analysis of impediments to fair housing choice (with periodic updates) is accurate and substantially complete based on generally available facts and data, including, but not limited to, Home Mortgage Disclosure Act data, facts disclosed in a HUD civil rights monitoring or compliance review, a civil action brought by the U.S. Department of Justice or private parties, and public and private studies of housing discrimination affecting residents of the grantee jurisdiction.

(ii) The grantee took appropriate actions to eliminate any identified impediments that are within its control and to overcome the effects of impediments to fair housing choice identified in the grantee's analysis of impediments to fair housing choice that are outside its control. An action is appropriate if the action addresses an identified impediment and results in meaningful and measurable progress in overcoming the impediment's effects.

(2) Notwithstanding favorable determinations under paragraph (b)(1) of this section, HUD may conclude that the grantee failed to meet its responsibility to affirmatively further fair housing if the grantee has been charged with a violation of the Fair Housing Act by HUD, is the defendant in a Fair Housing Act lawsuit filed by the U.S. Department of Justice, or has received from HUD a letter of noncompliance findings involving housing under title VI of the Civil Rights Act of 1968, section 504 of the Rehabilitation Act of 1973 or section 109 of the HCD Act, and the grantee has not resolved such charge, lawsuit, or letter of noncompliance findings to the satisfaction of HUD.

* * * * *

Dated: September 25, 1998.

Andrew Cuomo,

Secretary.

[FR Doc. 98–28812 Filed 10–27–98; 8:45 am]

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Federal Register

Wednesday
October 28, 1998

Part V

The President

Proclamation 7143—United Nations Day, 1998

Federal Register
Vol. 63, No. 208
Wednesday, October 28, 1998

Presidential Documents

Title 3—

The President

Proclamation 7143 of October 23, 1998

United Nations Day, 1998

By the President of the United States of America

A Proclamation

Every year on October 24, we celebrate the United Nations, a unique institution conceived in the crucible of World War II. Although the U.N. is an international body, the term ''United Nations'' was coined by an American, President Franklin Delano Roosevelt, who vigorously advocated for the creation of an assembly, composed of representatives from nations around the globe, devoted to the promotion of world peace and prosperity. The member countries of the United Nations are large and small, with diverse social, cultural, and political values, but each has a voice in shaping the world's destiny. Maintaining peace and security; promoting democracy, development, and human rights—this is the noble mission put forth in the U.N. Charter. The U.N. has been effective in fulfilling this formidable mission, winning Nobel Peace Prizes for its peace-keeping operations, its promotion of children's and workers' rights, and its assistance to refugees. The U.N. has also enabled people in more than 45 countries to participate in free and fair elections by providing electoral advice and assistance and monitoring results. Its day-to-day operations—supplying safe drinking water, fighting disease, giving food and shelter to victims of emergencies and political tumult—have made a difference in the lives of millions of people around the world.

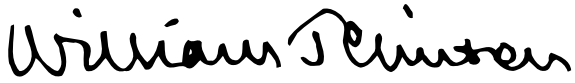
This year marks the 50th anniversary of the Universal Declaration of Human Rights, one of the first major achievements of the U.N. The Declaration has become the standard for international human rights law, beginning with the uncompromising statement: ''All human beings are born free and equal in dignity and rights.'' Over the years, the Declaration has been used countless times in countless ways to advance and defend human rights. As Secretary General Kofi Annan has stated, ''Human rights are universal, indivisible, and interdependent and lie at the heart of all that the United Nations aspires to achieve in peace and development.''

Despite the U.N.'s extraordinary accomplishments, many challenges lie before us. Lasting peace can be realized only through wide social and economic development. Today, three-fourths of the world's people live in developing countries, and 1.3 billion live in abject poverty. The ever-widening gap between the world's richest and poorest countries remains one of our most pressing challenges. The U.N. and its agencies, including the World Bank and the International Monetary Fund, provide vital assistance to developing countries through grants and loans of over $25 billion a year. With the current disruption in the world financial markets, the U.N. also plays a pivotal role as a stabilizing force, attracting investment in emerging economies in the developing world by promoting political stability, transparency, and good governance. And the U.N. continues to serve the world as an effective forum for instant consultation and cooperation among governments when attacking such shared threats as terrorism, drug trafficking, environmental degradation, and infectious disease.

The United States can best honor and celebrate the good work and many accomplishments of the United Nations by ensuring its continued strength and effectiveness. The U.N. has made great strides in streamlining its programs and cutting its costs. I applaud this progress, and I deeply regret the failure of this Congress to agree to pay our overdue U.N. dues. I pledge to work with the next Congress to meet our financial treaty obligations to the U.N. America played a vital role in the birth of the United Nations more than 50 years ago, and, if we are to remain true to our values and goals, we must work constructively with this great institution and maintain our vote in its deliberations.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 24, 1998, as United Nations Day. I encourage all Americans to acquaint themselves with the activities and accomplishments of the United Nations and to observe this day with appropriate ceremonies, programs, and activities furthering the goal of international cooperation.

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



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Charitable organizations qualification requirements; excess benefit transactions; comments due by 11-2-98; published 8-4-98

TREASURY DEPARTMENT

Government Securities Act; implementation:

Brokers and dealers reporting requirement; Year 2000 compliance; comments due by 11-4-98; published 10-5-98

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 2616/P.L. 105–278

Charter School Expansion Act of 1998 (Oct. 22, 1998; 112 Stat. 2682)

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Mount St. Helens National Volcanic Monument Completion Act (Oct. 23, 1998; 112 Stat. 2690)

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